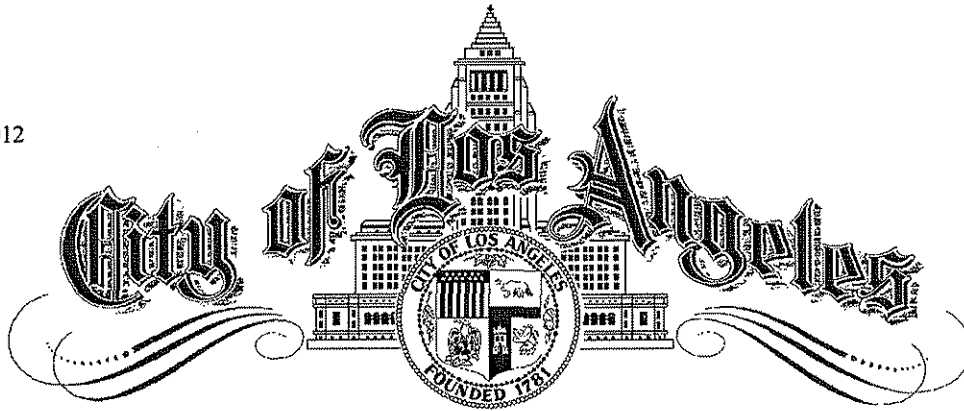


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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 13 - 0132
MAY 20 2013

REPORT RE:

**DRAFT ORDINANCE AMENDING CHAPTERS 11.5 AND 19 OF DIVISION 4 OF THE
LOS ANGELES ADMINISTRATIVE CODE TO MAKE CHANGES REQUIRED TO
MAINTAIN THE TAX-QUALIFIED STATUS OF THE FIRE AND POLICE PENSION
PLAN AND ADD A NEW CHAPTER 23 TO DIVISION 4 OF THE LOS ANGELES
ADMINISTRATIVE CODE CONTAINING EXCESS BENEFIT PLANS FOR THE
FIRE AND POLICE PENSION PLAN**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality, which will make changes to Chapters 11.5 and 19 of Division 4 of the Los Angeles Administrative Code (LAAC) in order to maintain the tax-qualified status of the Fire and Police Pension Plan (FPPP), and will establish a new Chapter 23 to contain a new Excess Benefit Plan (EBP) for members of Tiers 1, 2, 3 and 4, as well as the existing EBP for members of Tier 5. A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Fire and Police Pension Plan (FPPP) and the Office of the City Administrative Office (CAO), and their comments have been incorporated.

The City recently received a favorable tax determination letter for the FPPP from the Internal Revenue Service that is contingent upon the City amending the LAAC, prior to July 27, 2013, to incorporate compliance language required to maintain the FPPP's tax-qualified status. The proposed ordinance will make the necessary changes to the LAAC so as to maintain the FPPP's tax-qualified status.

Although the City has committed to make supplemental EBP payments to members of Tiers 1, 2, 3 and 4 in the event that their benefits are reduced by the limitations on benefits imposed in Internal Revenue Code Section 415, the only EBP that the City has authorized for FPPP is limited to members of Tier 5. The proposed ordinance includes an Excess Benefit Plan for member of Tiers 1 through 4, which the City Council may establish, by ordinance, pursuant to the authority granted in Charter Section 1242. As required by Charter Section 1242, the terms and conditions of the proposed EBP for members of Tiers 1 through 4 are substantially the same as those of the Excess Benefit Plan established for Tier 5.

While none of the retirees from Tiers 1 through 4 have yet become entitled to payments from an Excess Benefit Plan, the adoption of an EBP at this time will allow the City to honor the commitment that has been made to supplement the benefits payable from the FPPP in the event that benefits payable to members of these tiers are reduced by the limitations on benefits imposed in Internal Revenue Code Section 415. Members of Tier 6 are not entitled to participate in this EBP because, unlike the other tiers, the City has not promised to supplement the benefits payable to members of Tier 6 in the event their benefits are reduced by the limitations on benefits imposed in Internal Revenue Code Section 415.

Section 1 amends Chapter 11.5 of the Administrative Code to formally establish a Health Care Coverage Account pursuant to the provision of Internal Revenue Section 401(h). This codifies, as required by the IRS, the authority for the existing 401(h) account that the FPPP uses to provide health care benefits to members.

Section 2 provides that the costs of the subsidies provided in Chapter 11.5 and related administrative costs shall be paid solely from the Health Care Coverage Account, while Section 3 deletes an outdated provision that is being replaced by the provision added in Section 2.

Section 4 updates the provision giving the Council the authority to make changes to maintain the tax-qualified status of the FPPP pursuant to Charter Section 1240, which was approved in 2011.

Sections 5, 6, 7 and 8 contain the other amendments required by the IRS to maintain the FPPP's tax-qualified status.

Section 9 adds a new Chapter 23 as the location for the Excess Benefit Plans for the Fire and Police Pension Plan.

Section 10 creates an Excess Benefit Plan for members of Tiers 1, 2, 3 and 4 that is substantially the same as the current EBP for members of Tier 5.

Section 11 relocates the EBP for Tier 5 from Chapter 20 to Chapter 23 of Division 4 of the LAAC.

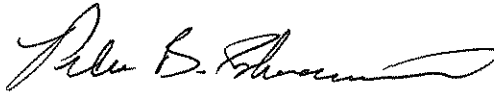
Section 12 provides that this ordinance becomes effective upon publication.

This ordinance may be adopted by the City Council, pursuant to the authority granted in Charter Sections 1240 and 1242, in the manner provided in Charter Section 1618(b), which requires approval by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and the override by the Council by three-fourths of the membership of the Council. The final adoption of this ordinance cannot occur until after a public hearing has been held and until at least 30 days after its first presentation to the Council. Since this ordinance does not change or modify benefits, no actuarial report is required.

If you have any questions regarding this matter, please contact Deputy City Attorney Mary Jo Curwen or Assistant City Attorney Alan Manning from the Retirement Benefits Division at (213) 978-4400. They or other members of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 
PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:MJC:AM:pj
Transmittal

ORDINANCE NO. _____

An ordinance amending Chapters 11.5 and 19 of Division 4 of the Los Angeles Administrative Code to make changes required to maintain the tax-qualified status of the Fire and Police Pension Plan, and add a new Chapter 23 to Division 4 of the Los Angeles Administrative Code containing excess benefit plans for the Fire and Police Pension Plan.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Chapter 11.5 of Division 4 of the Los Angeles Administrative Code is amended to add a new Section 4.1150 to read as follows:

Sec. 4.1150. Health Care Coverage Account.

(a) Effective March 21, 1975, there is established within the respective General Pension Fund under each membership Tier ("Fund") a separate account for the purpose of paying benefits for health, medical, hospital, or other medical plans as authorized under the programs established in this Chapter ("Health Care Plan"). The account is established pursuant to Section 401(h) of the Internal Revenue Code. The assets in this account shall be accounted for separately from the other accounts in the Fund. However, the assets of this account may be commingled for investment purposes only with the other accounts of the Fund. Investment earnings and expenses will be allocated on a reasonable basis. All assets in the 401(h) account shall be held in trust for the exclusive benefit of eligible retirees and their spouses and dependents.

(b) Effective October 3, 1989, contributions to the 401(h) account established by this Section shall be made from appropriations and any other sources. Contributions to the 401(h) account are subordinate to the contributions to the Fund. At no time shall contributions to the 401(h) account, plus any life insurance protection costs, be in excess of twenty-five percent (25%) of the total aggregate actual contributions made to the Fund for the traditional pension plan benefits (not including contributions to fund past service credits) and the 401(h) account plus any life insurance protection costs. The plan actuary shall annually determine whether the twenty-five percent (25%) limit has been exceeded.

(c) Forfeitures are not to be allocated to any individual accounts under the Health Care Plan, but shall be used to provide the defined health care benefits under the Health Care Plan.

(d) The assets of the 401(h) account shall only be used for the payment of health care coverage and medical benefits as provided in the Health Care Plan for eligible retirees, their eligible dependents, and their qualified survivors.

(e) At no time prior to the satisfaction of all liabilities under the Health Care Plan shall any assets in the 401(h) account be used for, or diverted to, any purpose other than providing the benefits under Subsection (d) of this section and the payment of

administrative expenses. Assets in the 401(h) account may not be used for retirement, disability or survivor benefits, or for any other purpose under the Fire and Police Pension Plan.

(f) Upon the satisfaction of all liabilities under the law to provide benefits pursuant to Subsection (d) of this section, any assets in the 401(h) account, if any, that are not used as provided in Subsection (d) of this section shall be transferred to the City Fund, as required by Section 401(h)(5) of the Internal Revenue Code.

(g) It is the intent of the City of Los Angeles in adopting this amendment to comply in all respects with Sections 401(a) and 401(h) of the Internal Revenue Code, and regulations interpreting those sections. In applying this amendment, the Board will apply the interpretation that achieves compliance with those sections and preserves the qualified status of the Fire and Police Pension Plan as a governmental plan under Sections 401(a) and 414(d) of the Internal Revenue Code.

Sec. 2. Chapter 11.5 of Division 4 of the Los Angeles Administrative Code is amended to add a new second paragraph to Section 4.1151 to read as follows:

The cost of the subsidies provided in this Chapter and the Board's administrative costs connected therewith shall be provided solely from the Health Care Coverage Account established in Section 4.1150 of this Chapter.

Sec. 3. Section 4.1153 of Chapter 11.5 of Division 4 of the Los Angeles Administrative Code is amended by deleting the second paragraph.

Sec. 4. Section 4.1900 of Chapter 19 of Division 4 of the Los Angeles Administrative Code is amended by replacing "Sections 1220(e), 1222, 1524 and 1624" with "Section 1240."

Sec. 5. Section 4.1902 of Chapter 19 of Division 4 of the Los Angeles Administrative Code is amended in its entirety to read as follows:

Sec. 4.1902. Minimum Distribution Rule.

Notwithstanding any provision to the contrary, the Board shall pay all benefits in accordance with a good faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the Treasury Regulations in effect under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. The Fire and Police Pension Plan is subject to the following provisions:

(a) Distribution of a member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the member attains age 70 1/2, or April 1 of the year following the calendar year in which the member terminates.

(b) The member's entire interest must be distributed over the member's life or the lives of the member and a qualified survivor, or over a period not extending beyond the life expectancy of the member or of the member and a qualified survivor.

(c) The Board, pursuant to a court order, may pay a portion of the member's benefit to a non-member.

(d) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.

(e) If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either:

(1) distributed (in accordance with federal regulations) over the life or life expectancy of the qualified survivor, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the member's death, or

(2) distributed within five (5) years of the member's death.

(f) The amount of an annuity paid to a member's qualified survivor may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

(g) The death and disability benefits provided by the Plan are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury Regulation Section 1.401-1(b)(1)(i), or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the members' benefits received from the Plan.

(h) Notwithstanding the other provisions of this rule or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code, based on a reasonable and good faith interpretation of that section.

Sec. 6. Section 4.1903 of Chapter 19 of Division 4 of the Los Angeles Administrative Code is amended in its entirety to read as follows:

Sec. 4.1903. Direct Rollovers.

On or after January 1, 1993, the "distributee" of an "eligible rollover distribution" from the Fire and Police Pension Plan may elect to have any portion of such distribution that is equal to at least \$200.00 paid directly to an "eligible retirement plan" specified by the distributee in a "direct rollover."

Definitions.

(a) "Eligible rollover distribution" means any distribution of all, or any portion of, contributions made, or the Basic Death Benefit to, a distributee. An eligible distribution does not include pension payments made to a retired Plan member, Qualified Surviving Spouse or other eligible surviving dependents, any portion of a distribution that is not includable in gross income, any distribution that is reasonably expected to total less than \$200.00 during a year, or any other distribution required under Section 401(a)(9) of the Internal Revenue Code. On or after January 1, 2002, a portion of a distribution that is not includable in gross income, but that otherwise qualifies as an eligible rollover distribution, is an eligible rollover distribution, provided that the eligible retirement plan designated to receive such portion of a distribution is (i) an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Code or a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable; (ii) on or after January 1, 2007, a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code, or is an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not so includable; (iii) on or after January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

(b) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified plan described in Section 401(a) of the Code that accepts a distributee's eligible rollover distribution. On or after January 1, 2002, an eligible deferred compensation plan described in Section 457(b) of the Code, maintained by an employer described in Section 457(e)(1)(A) of the Code, and an annuity contract described in Section 403(b) of the Code, are also eligible retirement plans. However, prior to January 1, 2002, in the case of an eligible rollover distribution to the surviving spouse or other designated beneficiary, an eligible retirement plan is an individual retirement account or individual retirement annuity only. On or after January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code is an eligible retirement plan.

(c) "Distributee" means a Plan member or former Plan member or spouse or former spouse of a Plan member or former Plan member, eligible for a rollover distribution. On or after January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(d) "Direct rollover" means a payment by the Fire and Police Pension Plan to the eligible retirement plan specified by the distributee.

Sec. 7. Section 4.1904 of Chapter 19 of Division 4 of the Los Angeles Administrative Code is amended in its entirety to read as follows:

Sec. 4.1904. Reemployment After Military Service.

(a) Notwithstanding any provision of the Fire and Police Pension Plan to the contrary, contributions, benefits and service credit with respect to qualified military service while a member of the Harbor Department, Fire Department or the Police Department will be provided in accordance with Section 414(u) of the Internal Revenue Code.

(b) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of Title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, qualified survivors of a member in the Plan are entitled to any additional benefits that the Plan would provide if the member had resumed employment and then died, such as survivor benefits that are contingent on the member's death while employed.

(c) Effective with respect to deaths and disabilities occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code), to the extent permitted by Section 414(u)(8) of the Internal Revenue Code, for vesting and accrual purposes, the member will be treated as having earned years of service for the period of qualified military service, having returned to employment on the day before the death or disability, and then having terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(d) Beginning January 1, 2009, to the extent required by Section 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (as defined under Section 3401(h)(2) of the Internal Revenue Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Sec. 8. Chapter 19 of Division 4 of the Los Angeles Administrative Code is amended by adding a new Section 4.1906 to read as follows:

Sec. 4.1906. Compliance with Internal Revenue Code Section 415.

(a) Notwithstanding any other provisions of Tiers 1, 2, 3, 4, 5, or 6, the benefits payable to any person under those Tiers who became a member of the Fire and Police Pension Plan prior to January 1, 1990, shall be subject to the greater of the following limitations:

(1) The limitations set forth in Section 415 of the Internal Revenue Code;
or

(2) The accrued benefit of the member determined without regard to any amendment to the Plan made after October 14, 1987, as provided in Section 415(b)(10)(A) of the Internal Revenue Code.

(b) The benefits payable to any person who becomes a member of the Fire and Police Pension Plan on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code.

(c) Should it be determined that the provisions of any section of Tiers 1, 2, 3, 4, 5, or 6 violate the limitations of Section 415 or the incidental death benefit provisions of the Internal Revenue Code, such section shall be deemed inapplicable to the extent necessary to achieve compliance. The Council shall, by ordinance, adopt such measures as are necessary to achieve compliance.

(d) The Council shall, by ordinance, provide such benefits as are necessary to preserve the level of benefits without regard to Section 415 for members of Tiers 1, 2, 3, 4, and 5. The Council shall, by ordinance, preserve the level of incidental death benefits in effect prior to the effective date of this section for members of Tiers 1, 2, 3, 4, 5, and 6.

(e) Ordinances adopted pursuant to this section shall be adopted in the same manner as provided in Section 1618(b) of the City Charter; except, however, any ordinances adopted shall be effective upon publication.

(f) If any of the provisions of Section 415 of the Internal Revenue Code should be repealed, the provisions of this section shall be deemed repealed to the same extent.

(g) All benefits provided pursuant to any ordinance adopted under the provisions of Subsection (e) shall be administered by the Board. A separate and distinct fund or funds shall be created by the Board, as required, to administer such benefits. Such fund or funds shall not contain employee contributions. The Board shall also determine the manner of funding any liabilities incurred as a result of ordinances adopted pursuant to this section.

(h) Participation in Other Qualified Plans: Aggregation of Limits. The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the City of Los Angeles, shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

(i) Basic 415(b) Limitation.

(1) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue

Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code, and subject to any additional limits that may be specified in the Plan. In no event shall a member's benefit payable under the Plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(j) Adjustments to Basic 415(b) Limitation for Form of Benefit.

(1) If the benefit under the Plan is other than the form specified in Subsection (i)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(2) If the form of benefit, without regard to the automatic benefit increase feature, is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:

(i) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply (a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

(A) The annual amount of the straight life annuity (if any) payable to the member under the Plan commencing at the same annuity starting date as the form of benefit to the member; or

(B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for limitation years prior to January 1, 2009, the applicable mortality tables described in

Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62, or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for limitation years after December 31, 2008, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85, or any subsequent Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)).

(ii) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies (a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the Plan for actuarial experience;

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5% interest assumption (or the applicable statutory interest assumption) and (i) for limitation years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62, or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for limitation years after December 31, 2008, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85, or any subsequent Internal Revenue Service guidance implementing Internal Revenue Code section 417(e)(3)(B)); or

(C) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3), using the rate in effect for the third month prior to the beginning of the plan year with a one-year stabilization period) and (i) for limitation years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62, or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for limitation years after December 31, 2008, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85, or any

subsequent Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)), divided by 1.05.

(iii) The actuary may adjust the 415(b) limit at the annuity starting date in accordance with the above subparagraphs (i) and (ii).

(k) Benefits For Which No Adjustment of 415(b) Limit Is Required.

For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

(l) Other Adjustments in 415(b) Limitation.

(1) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations, pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000.00) (as adjusted) annual benefit beginning at age sixty-two (62).

(2) In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police, harbor police, or fire department or on fifteen (15) years of military service, or is based on fifteen (15) years of combined service, the adjustments provided for in (1), above, shall not apply.

(3) The reductions provided for in (1), above, shall not be applicable to members who receive disability retirement benefits or survivors who receive survivors' benefits prior to the date the member reaches age sixty-two (62).

(m) Less than Ten (10) Years of Participation or Service Adjustment for 415(b) Limitations. The maximum retirement benefits payable to any member who has completed less than ten (10) years of participation shall be the amount determined under Subsection (i), as adjusted under Subsection (j) and/or (l), multiplied by a fraction, the numerator of which is the number of the member's years of participation and the

denominator of which is ten (10). The limit under Subsection (n) concerning the \$10,000.00 limit shall be similarly reduced for any member who has accrued less than ten (10) years of service, except the fraction shall be determined with respect to years of service instead of years of participation. The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits. The reductions provided for in this subsection (m) shall not be applicable to members who receive disability retirement benefits or survivors who receive survivors' benefits prior to the date the member reaches age sixty-two (62).

(n) Ten Thousand Dollar (\$10,000.00) Limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this Plan and under all other qualified defined benefit pension plans to which the City of Los Angeles contributes, do not exceed ten thousand dollars (\$10,000.00) for the applicable limitation year, and for any prior limitation year, and the City of Los Angeles has not, at any time, maintained a qualified defined contribution plan in which the member participated.

(o) Effect of COLA without a Lump Sum Component on 415(b) Testing. Effective on and after January 1, 2008, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "Limit") to a member with no lump sum benefit, the following will apply:

(1) A member's applicable Limit will be applied to the Member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under the Plan;

(2) To the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases from the Plan until such time as the benefit, plus the accumulated increases, are less than the Limit; and

(3) Thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under the Plan, shall be tested under the then applicable benefit Limit, including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(p) Effect of COLA with a Lump Sum Component on 415(b) Testing. On and after January 1, 2008, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied, taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(q) Service Purchases under Section 415(n). Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the Plan, then the requirements of Section 415(n) of the Internal Revenue Code will be treated as met only if:

(1) The requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code; or

(2) The requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.

(3) For purposes of applying this section, the Plan will not fail to meet the reduced limit under section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this subparagraph and will not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.

(4) For purposes of this section the term "permissive service credit" means service credit:

(i) recognized by the Plan for purposes of calculating a member's benefit under the Plan;

(ii) which such member has not received under the Plan; and

(iii) which such member may receive only by making a voluntary additional contribution, in an amount determined under the Plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (ii), may include service credited in order to provide an increased benefit for service credit which a member is receiving under the Plan.

(5) The Plan will fail to meet the requirements of this section if:

(i) more than five (5) years of nonqualified service credit are taken into account for purposes of this subparagraph; or

(ii) any nonqualified service credit is taken into account under this paragraph before the member has at least five (5) years of participation under the Plan.

(6) For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal Revenue Code);

(ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (i)) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(iii) service as an employee of an association of employees who are described in clause (i); or

(iv) military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the Plan.

In the case of service described in clause (i), (ii) or (iii), such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer):

(i) the limitations of paragraph (5) will not apply in determining whether the transfer is for the purchase of permissive service credit; and

(ii) the distribution rules applicable under federal law to the Plan will apply to such amounts and any benefits attributable to such amounts.

(8) For an Eligible Member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan in effect on August 5, 1997. For purposes of this paragraph an Eligible Member is an individual who first became a member in the Plan before January 1, 1998.

(r) Repayments of Cash-Outs.

(1) Any repayment of contributions (including interest thereon) to the Plan with respect to an amount previously refunded upon a forfeiture of service credit under the Plan, or another governmental plan maintained by the City of Los Angeles, shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

(2) In the case of any repayment of contributions and interest to the System with respect to an amount previously refunded upon a forfeiture of service credit under another California State or local governmental plan maintained with the State of California, any such repayment with the System shall not be taken into account for purposes of this section.

(s) Reduction of Benefits Priority. Reduction of benefits under the plans of the City of Los Angeles, where required in order to comply with Section 415 of the Internal Revenue Code, shall be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such other plans. The Board of Administration is authorized to create administrative rules necessary to facilitate different manners for reduction of benefits.

Sec. 9. A new Chapter 23 is added to Division 4 of the Los Angeles Administrative Code to read as follows:

CHAPTER 23

EXCESS BENEFIT PLANS FOR THE FIRE AND POLICE PENSION PLAN

Sec. 4.2300. Creation of Excess Benefit Plan for Tiers 1, 2, 3, and 4.

There is hereby created, established and adopted separate and apart from the Fire and Police Pension Plan, a plan entitled the Excess Benefit Plan to supplement the benefits of certain employees under Tiers 1, 2, 3, and 4 of the Fire and Police Pension Plan to the extent such benefits are reduced by the limitations on benefits imposed by Section 415 of the Internal Revenue Code of 1986 as amended.

(a) **Eligibility.** Those members of Tiers 1, 2, 3, and 4 whose benefits at the time of payment are reduced by the limitation on benefits imposed by Section 415 of the Internal Revenue Code shall be participants of the Excess Benefit Plan.

(b) **Benefits.**

(1) The benefits which each participant shall be entitled to receive under the Excess Benefit Plan shall be the difference between the actual benefits of such Participant under the Participant's tier and the benefits that would have been payable under the Participant's tier except for the limitations on benefits imposed by Section 415 of the Internal Revenue Code. The benefits payable under the Excess Benefit Plan shall be payable to the participant, or to any other person who is receiving or entitled to receive benefits with respect to the Participant under the Participant's tier, and shall be paid in the same form, at the same time and for the same period, as benefits are paid with respect to the Participant under the Participant's tier.

(2) Notwithstanding the foregoing, the Board of Fire and Police Pension Commissioners, in its discretion, may elect to pay a benefit under this Excess Benefit Plan in a lump sum in the event that the actuarial equivalent present value of the benefit at the commencement of payment is \$5,000.00 or less.

(3) The Board and the City shall make appropriate arrangements to deduct from all amounts paid under the Excess Benefit Plan any taxes required to be withheld with respect to the Excess Benefit Plan by any government or governmental agency.

(4) Except as otherwise provided in the Excess Benefit Plan, no right or benefit under the Excess Benefit Plan shall be subject to anticipation, alienation, sale, assignment, pledge, encumbrance or charge, and any attempt to anticipate, alienate, sell, assign, pledge, encumber or charge such right or benefit shall be void. No such right or benefit shall, in any manner, be liable for or subject to the debts, liabilities or torts of a participant or other benefit recipient. In addition, no right of a participant or other benefit recipient under the Excess Benefit Plan is transferable by *inter vivos* gift or testamentary disposition.

(c) **Administration.** The Excess Benefit Plan shall be under the exclusive management and control of the Board of Fire and Police Pension Commissioners. The Board shall have, and is hereby granted, full power and authority to adopt and enforce all such rules and regulations as it may deem necessary for the carrying out of the provisions of this section. The Board shall have the right to construe the Excess Benefit Plan, to interpret any provision thereof, to make rules and regulations relating to the Excess Benefit Plan, and to determine any factual questions arising in connection with the Excess Benefit Plan's operation after such investigation or hearing as the Board may deem appropriate. Any decision made by the Board under the provisions of this ordinance shall be conclusive and binding on all parties concerned.

(d) **Funding.** The Excess Benefit Plan shall be unfunded, and benefits under the Excess Benefit Plan shall be paid from the General Fund of the City of Los Angeles through an Excess Benefit Plan Fund hereby established for payment of administration expense and benefit payments, subject to the claims of the City's general creditors. No person other than the City shall, by virtue of the provisions of the Plan, have any interest in such amounts. Title to and beneficial ownership of any assets, whether cash or other investments, which the City may earmark to pay any amount under the Excess Benefit Plan, shall at all times remain in the City, and the participants and any other persons entitled to benefits hereunder shall not have any property interest whatsoever in any specific assets of the City. The obligation of the City to make payments pursuant to the Excess Benefit Plan is contractual only. No participant or other person entitled to benefits hereunder shall have a preferred claim or lien on any assets of the City.

(e) **Budget.** The Board of Fire and Police Pension Commissioners shall annually prepare and transmit to the Mayor and Controller a budget setting forth the estimated cost of maintaining the Excess Benefit Plan, which budget shall include therein:

(1) A sum equal to 125% of the projected benefit payments to be made in the budget year, offset by any residual sum budgeted in a previous year and not expended for a previous year's benefit payments.

(2) A sum estimated to provide for administrative costs of the Excess Benefit Plan.

(f) **Amendment or Termination of the Excess Benefit Plan.** The Council of the City of Los Angeles shall have the right to amend the Excess Benefit Plan or terminate the Excess Benefit Plan at any time. If the Excess Benefit Plan is terminated, the actuarial equivalent present value of any remaining benefits payable to a participant or other person, increased by an amount determined by the Board to permit approximately the same after-tax payout over time to participants as would have been realized in the absence of such termination, shall be paid in a lump sum thirty (30) days after the termination of the Excess Benefit Plan.

(g) **Compliance with the Internal Revenue Code.** It is the intention that this Excess Benefit Plan be a "qualified governmental excess benefit arrangement" within the meaning of Section 415(m) of the Internal Revenue Code, and may, at any time, be amended to comply with the Code requirements to maintain such qualification and status. This Excess Benefit Plan shall be deemed a "portion" of the Fire and Police Pension Plan solely to the extent required under, and within the meaning of, Section 415(m) of the Internal Revenue Code, and not for any other purpose.

(h) **Adoption of Ordinances.** Ordinances adopted pursuant to this section shall be in accord with the authority granted to the City Council in Section 1242 of the Charter of the City of Los Angeles, and shall be adopted in the manner specified therein.

Sec. 10. Section 4.2021 of Chapter 20 of Division 4 of the Los Angeles Administrative Code moved and renumbered as a new Section 4.2301 within Chapter 23 of Division 4 of the Los Angeles Administrative Code and retitled as Section 4.2301. Creation of Excess Benefit Plan for Tier 5.

Sec. 11. This ordinance shall become effective upon publication pursuant to Charter Section 252, Subsection (i).

Sec. 12. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, **by a vote of not less than two-thirds** of all its members, at its meeting of _____.

JUNE LAGMAY, City Clerk

By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By Mary Jo Curwen (7102)
MARY JO CURWEN
Deputy City Attorney

Date 5/20/13

File No. _____