REPORT FROM | THE PERSONNEL DEPARTMENT

TO: City Council	DATE October 5, 2017
REFERENCE: Los Angeles Administrative Code Division 5, Chapter 95	COUNCIL FILE ________
SUBJECT: **Civilian LAwell Employee Benefits Trust Fund**	

RECOMMENDATION:

That the City Council (a) approve proposed amendments to Los Angeles Administrative Code (LAAC), Division 5, Chapter 95 (Chapter 95) regarding the Civilian LAwell Employee Benefits Trust Fund to clarify the operational form of the fund and provide authority to issue benefit premium refunds with interest to City employees; and (b) request the City Attorney to prepare and present the necessary ordinance.

SUMMARY:

The Personnel Department administers the City's Civilian LAwell Employee Benefits Program (Benefits Program) for active City civilian employees and their qualified dependents in conjunction with the City's Joint Labor-Management Benefits Committee (JLMBC). The JLMBC is composed of five management and five labor representatives. The JLMBC was created in the 1990's by action of the City Council and Mayor for the purpose of determining what plans were to be included in the Benefits Program, defining the structure of the plans, recommending providers/contractors to the Personnel Department's General Manager, and monitoring the administration of the Benefits Program by the Personnel Department.

The mission of the Benefits Program is to promote employee health and wellness with competitive benefits at a reasonable cost relative to the City's financial capacity. The Benefits Program includes Health, Dental, Vision, Disability, Life, and Accidental Death & Dismemberment insurance, as well as an Employee Assistance Program and Tax-Advantaged Spending accounts. Membership presently includes approximately 25,000 employees and 33,000 dependents.

In connection with administration of the Benefits Program, on January 7, 1997, the City established an Employee Benefits Trust Fund (Trust Fund) in LAAC Division 5, Chapter 95, entitled the "Internal Revenue Code Section 501(c)(9) Employee Benefits Trust Fund." The purpose of the Trust Fund is for the receipt and retention of City and participant contributions for the Benefits Program, the payment of premiums to benefit service providers, the reimbursement of administrative and operational costs, and the protection of Trust Fund assets for the sole benefit of LAwell members and their beneficiaries.

Refunds from benefit service providers of certain employee-paid benefit premiums have, on occasion in the past, been returned to the Trust Fund. The Office of the City Attorney has advised that Chapter 95 should be clarified to provide explicit authority for the Trust Fund to administer those refunds and issue refunds, with interest, to the contributing City employees. In addition, the City Attorney has advised that Chapter 95 contains ambiguous language in regards to the operational form of the Trust Fund. As a result, the Personnel Department and JLMBC recommend that the City Council request the City Attorney to draft the necessary ordinance to amend Chapter 95 in order to clarify the operational form of the Trust Fund and to provide authority to process benefit refunds with interest to eligible LAwell members.

A. DISCUSSION

The Trust Fund was established for the receipt and retention of City and participant contributions for the Benefits Program. Amounts deposited into the Trust Fund may be used to pay for service provider premiums (medical, dental, life, disability, vision, and AD&D), cash-in-lieu benefits, and administrative/recordkeeping costs (contracted third-party-administration, staffing reimbursements, consulting services, participant reimbursements, education/travel, and other administrative expenses). General Fund amounts approved through the City's budget process, proprietary department payments, as well as employee contributions for their share of premium costs and supplemental coverage, are deposited into the Trust Fund. In addition, other potential Trust Fund revenue sources (which may have occurred in the past, are ongoing, and/or may recur in the future) include excess premium amounts from service providers with participating contracts, legal settlements, employee direct payments for benefits, other proceeds from benefit service providers, and interest earnings. The Personnel Department is responsible for administering the Trust Fund, including processing all payments in and out of the Trust Fund.

In connection with the processing of several outstanding group refunds to LAwell members relative to prior health, dental and life insurance policies, the Office of the City Attorney notified the Personnel Department and the JLMBC that the authority for administering the return of provider premiums and processing the refunds with interest to the contributing members would need to be clarified in Chapter 95 before any refunds could be made. Specifically, the City Attorney observed that Section 5.495(h) of Chapter 95 states that, "The [Trust] Fund is set up to operate in compliance with Internal Revenue Code Section 501(c)9," which requires, among other things, the creation of a Voluntary Employee Benefits Association ("VEBA") entity and recognition thereof by the Internal Revenue Service (IRS). Under Internal Revenue Code (IRC) Section 501(c)(9) VEBAs that provide for the payment of life, sick, accident, or other benefits to their members and their members' dependents or designated beneficiaries are exempt from federal income tax. IRC Section 501(c)(9), however, imposes restrictions on the disposition of trust funds to beneficiaries of the trust, including the payment of interest from trust assets.

Chapter 95's language is unclear as to whether the Trust Fund is to be actually established as a VEBA, a separate legal entity, or is to operate as an agency fund within the City but in accordance with the rules governing a VEBA. In reviewing the resource material pertinent to the establishment of the Trust Fund to assess the intent of Section 5.495(h), it was noted that in 1994, the JLMBC, as a part of its charge to develop a cafeteria benefits plan for the Civilian workforce, considered a consultant white paper presentation deck (VEBA Presentation) regarding Section 501(c)(9) VEBAs. The VEBA Presentation listed the benefits and burdens of establishing a VEBA and presented a non-VEBA alternative – establishment of a "Trust, with [a] supporting Trust document specifying that Trust funds are to be used solely for plans that are governed by the City's JLMBC."

In 1996, the JLMBC proposed the creation of a Civilian Modified Flexible Benefits Program (Flex Program); the Flex Program was intended to qualify as a Section 125 cafeteria plan under the IRC.

Creating the Flex Program was to occur in two phases:

- Phase 1 – establish a cash in lieu option and create a Benefits Trust Fund to administer the Flex Program; and
- Phase 2 – utilize savings from Phase 1 to fund improved and expanded benefits implemented in Phase 2.

The JLMBC submitted this proposal to the City Council and recommended approval of both this plan for the Flex Program and the creation of the Trust Fund. In July 1996, the City Council approved the JLMBC's recommendation. An ordinance for the creation of the Trust Fund was adopted by the City Council on November 20, 1996, and became effective January 2, 1997.

After an extensive review, the City Attorney's Office and staff could not locate or identify additional records or documents confirming the formation of a VEBA, recognition of the Trust Fund as a VEBA by the IRS or the City's intention regarding the formation of a VEBA. The apparent absence of any implementing documentation may have been due to the confusion of the two options provided to the City as set forth in the VEBA Presentation and/or to the nature of a VEBA itself.

The fact that the City enacted an ordinance amending the Administrative Code to provide for the establishment of the Trust Fund within the City's treasury "to operate in compliance with Internal Revenue Code Section 501(c)9" without formally requiring that a VEBA be created or taking any subsequent action to create a VEBA likely indicates that the City's intention was to administer the Trust Fund as an agency fund (similar to other types of trust funds established by the City in the Administrative Code) but to observe certain attributes that 501(c)(9) fund "compliance" provides to protect Trust Fund assets for the sole benefit of LAwell members and their beneficiaries.

B. RECOMMENDATION TO MODIFY LAAC DIVISION 4/CHAPTER 95

Irrespective of the City's intent, the City continues to have the option of administering the Trust Fund as either a VEBA or agency fund. Establishing a VEBA involves certain tax filing and compliance responsibilities creating additional administrative burdens for the City. The essential objectives of the Trust Fund can be satisfied without creating a VEBA. Finally, administering the Trust Fund as an agency fund provides the City with the ability to provide premium refunds with interest to LAwell members, an important functionality which is of immediate concern to the JLMBC.

Given this, the Personnel Department and JLMBC recommend that Chapter 95 be amended to clarify that the Trust Fund is to continue to operate as an agency fund, provide explicit authority for the Trust Fund to administer returned provider premiums and issue refunds with interest to contributing members, and to ensure that by operating it as such, Trust Fund assets will continue to be protected for the sole benefit of LAwell members and their beneficiaries. Accordingly, it is further recommended that the City Council request the City Attorney to prepare and present the necessary ordinance.

In addition, the Personnel Department and JLMBC are working together to develop more detailed policies of the JLMBC regarding the administration of the Trust Fund. These policies will provide greater clarity and transparency regarding the Trust Fund on a go-forward basis.

C. FISCAL IMPACT

There is no fiscal impact involved with these modifications to the Administrative Code. The Trust Fund will continue to operate in accordance with its ongoing purpose and functions.

Cheryl Parisi

CHERYL PARISI, CHAIRPERSON

WENDY G. MACY, VICE-CHAIRPERSON

JOINT LABOR-MANAGEMENT BENEFITS COMMITTEE