Date: February 8, 2018
To: Joint Labor-Management Benefits Committee
From: Staff
Subject: Employee Benefits Trust Fund

RECOMMENDATION
That the Joint Labor-Management Benefits Committee consider a draft ordinance amending certain Los Angeles Administrative Code provisions regarding the Employee Benefits Trust Fund.

DISCUSSION
At its August 6, 2015 meeting, the JLMBC reviewed a report regarding the City’s Employee Benefits Trust Fund (“Trust Fund”), as described in Los Angeles Administrative Code (LAAC) Chapter 95 (“Chapter 95”), and approved certain recommendations from staff relative to the issuance of premium refunds to members of the Civilian Benefits Program. At its September 1, 2016 meeting, the JLMBC reviewed a follow-up report from staff regarding the pending refunds, indicating that they had been placed on hold pending a review of the status of the Trust Fund as it related to its authority to issue refunds. At its December 2, 2016 meeting, the JLMBC approved proposed modifications to the Trust Fund to clarify its operational nature and to grant it authority to provide benefit overpayment refunds to City employees. JLMBC further requested that the Personnel Department proceed with a report to City Council with a recommendation to enact the modifications to Chapter 95.

The Personnel Department, with the assistance of the City Attorney’s Office and the Chairperson/Vice-Chairperson of the JLMBC, completed and submitted a report to City Council on this matter in October 2017 (Attachment A). The report recommended that the City Council approve the proposed amendments to Chapter 95, and requested that the City Attorney prepare and present the necessary ordinance to City Council.

The City Council’s Personnel and Animal Welfare (“PAW”) Committee considered the report on January 17, 2018. PAW Committee approved the recommendations and referred the matter to City Council for consideration. City Council approved PAW Committee’s recommendations at its meeting on January 30, 2018.

As instructed by the City Council, the City Attorney prepared the draft ordinance, which amends Chapter 95 (Attachment B). It is being presented to the JLMBC for comment. Additional background/discussion regarding this matter can be found in staff’s December 2, 2016 report to the JLMBC (Attachment C).
Staff has begun work internally and with the City Controller to define the process and methodology for executing the refunds. Staff will provide updates to the Committee, including a timeline for execution, as processing proceeds. As the timeline is refined, those employee organizations wishing to separately and concurrently communicate to their membership regarding the refunds may do so.

Submitted by: ________________________________

Steven Montagna
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 PARUBI, CHAIRPERSON

JOINT LABOR-MANAGEMENT BENEFITS COMMITTEE

WENDY G. MACY, VICE-CHAIRPERSON
ORDINANCE NO. ______________________

An ordinance amending Section 5.495 of Chapter 95 of Division 5 of the Los Angeles Administrative Code.

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS follows:

Section 1. The title to Chapter 95 of the Los Angeles Administrative Code is amended to read:

EMPLOYEE BENEFITS TRUST FUND

Sec. 2. Subsection (a) of Los Angeles Administrative Code Section 5.495 shall be amended by deleting the term “Internal Revenue Code Section 501(c)(9) Employee Benefits Trust Fund” and replacing it with “Employee Benefits Trust Fund”.

Sec. 3. Subsection (b) of Los Angeles Administrative Code Section 5.495 shall be amended by deleting the term “Civilian Modified Flex Plan” and replacing it with “Civilian Benefits Program,” and by deleting the reference to “Plan participants” and replacing it with “Program members.”

Sec. 4. Subsection (h) of Los Angeles Administrative Code Section 5.495 shall be deleted in its entirety and replaced with a new Subsection (h) and is to read:

(h) (1) Any premium contribution monies returned to the Fund from benefit program service providers contracted under the Civilian Benefits Program or its successor shall be separately identified and deposited into a separate account of the Fund known as the “Refund Account”.

(h) (2) Monies deposited in the Refund Account shall be used to issue refunds to those Program members whose premium contribution or portion thereof was returned to the Fund by benefit program service providers contracted under the Civilian Benefits Program or its successor.

(h) (3) In the event an issued refund is unclaimed by a Program members described in paragraph (h)(2), the refund shall be made available to the Program member’s estate, heir, assignee or designee.

(h) (4) Except as provided under paragraph (h)(8), monies deposited in the Refund Account shall remain in the account and be made available to issue refunds to persons described in paragraphs (h)(2) or (h)(3).
(h) (5) Monies deposited into the Refund Account shall not revert to the Reserve Fund.

(h) (6) Monies deposited into the Refund Account shall accrue interest.

(h) (7) Any accrued interest attributable to a returned premium contribution shall be included in any refund issued to persons described in paragraphs (h)(2) or (h)(3).

(h) (8) If any refund, including attributable accrued interest, is not claimed within three years from the date made available to persons described in paragraphs (h)(2) or (h)(3), such amount shall revert to the Fund.

(h) (9) Following the period described in (h)(8), any refund, including attributable accrued interest, issued to persons described in paragraphs (h)(2) or (h)(3) shall be paid from the transfer of such amount from the Fund to the Refund Account.

(h) (10) Monies deposited in the Refund Account shall not be considered interest or other earnings of the Fund except to the extent described under paragraph (h)(8) as modified by paragraph (h)(9).

Sec. 5. A new Subsection (i) is added to Section 5.495 of the Los Angeles Administrative Code and is to read:

(i) If any provision, clause, sentence, phrase, or portion of Section 5.495, or the application thereof to any person or circumstance, is held unconstitutional or invalid by any court or tribunal of competent jurisdiction, the remaining provisions, clauses, sentences, phrases, or portions of this Section shall remain in full force and effect, and to this end the provisions, clauses, sentences, phrases, or portions thereof, are severable.

Sec. 6. The City Attorney is authorized to correct any clerical or technical errors in the Ordinance

Sec. 7. 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 the 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.
Sec. 8. 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 the 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.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By __________________________

CHARLES S. HONG
Deputy City Attorney

Date __________________________

File No. _______________________

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles.

CITY CLERK

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MAYOR

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Ordinance Passed________________ Approved __________________
Date: December 2, 2016
To: Joint Labor Management Benefits Committee
From: Staff
Subject: Employee Benefits Trust Fund

RECOMMENDATION:
That the Joint Labor-Management Benefits Committee (JLMBC) (a) approve proposed modifications to Los Angeles Administrative Code, Chapter 95 (Chapter 95) regarding the establishment and operation of the Internal Revenue Code Section 501(c)(9) Employee Benefits Trust Fund to, among other things, clarify the nature of the fund and the authority to provide benefit overpayment refunds to City employees, and request that the Personnel Department proceed with a report to City Council from the JLMBC with a recommendation to enact the changes by requesting the City Attorney to prepare and transmit the necessary ordinance; and (b) receive and file an update regarding the status of an external audit review.

DISCUSSION:
At its August 6, 2015 meeting, the JLMBC reviewed a report regarding the Internal Revenue Code Section 501(c)(9) Employee Benefits Trust Fund (“Trust Fund”), contained in Chapter 95 (Section 5.495), and approved certain recommendations from staff relative to Trust Fund activity, employee refunds, and securing an external auditor to review and validate Trust Fund activity. At its September 1, 2016 meeting, the JLMBC reviewed a report from staff regarding pending employee refunds of premium payments for various City benefits. The report indicated that the City Attorney advised that before processing the refunds it would be prudent to clarify the authority in Chapter 95 for making such refund payments. This report provides a recommendation to amend the provisions of Chapter 95 and an update regarding the external auditor review.

A. Background

On January 2, 1997, the City established the Trust Fund as set forth in Chapter 95. The purpose of the Trust Fund is for the receipt and retention of City and participant contributions for the Civilian 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 returned from medical carriers with participating contracts, legal settlements, insurance company demutualizations, employee direct payments for benefits when ineligible for subsidies, and interest earnings. The Personnel Department’s Administrative Services Division (ASD) is responsible for administering the Trust Fund, including processing all payments in and out of the Trust Fund.

B. Employee Refunds & Trust Fund Governing Documents Review

At the JLMBC’s September 1, 2016 meeting, staff and JLMBC counsel provided an update with respect to the processing of approximately $6.6 million in employee refunds of certain returned balances within the Trust Fund. Staff indicated that the refund plan had been placed on hold as a result of guidance provided by the City Attorney’s Office that the authority for processing the refunds be clarified in Chapter 95.

It should be noted that presently, 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.” IRC Section 501(c)(9) exempts from federal income tax Voluntary employees' beneficiary associations (“VEBAs”) that provide for the payment of life, sick, accident, or other benefits to their members and their members’ dependents or designated beneficiaries. Chapter 95 is not clear as to whether the Trust Fund is to be actually established as a Veba, a separate legal entity, or is merely to operate in accordance with the rules governing a Veba.

The City Attorney’s Office worked with staff to review available documentation and other resource material pertinent to the establishment of the Trust Fund in order to assess the intent of Section 5.495(h). Following is a summary of key findings of that review:

- In December 1988 the City Council instructed the City Administrative Officer to bargain with civilian organizations regarding offering a flexible benefits program.
- In 1990, the Council action established the JLMBC to oversee the plan.
- A City consultant was hired to assist with the development process. In 1994, the consultant issued a white paper presentation deck (VEBA Presentation) to the City 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 Internal Revenue Code (Code). 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’s proposal was submitted to the City Council for approval. The recommendation asked the City Council to approve the JLMBC’s proposal for a Flex Plan and the creation of the Trust Fund.

On 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 either confirming the existence of a VEBA or clarifying the City’s intention regarding the formation of a VEBA.

The apparent absence of any documentation of formal organization of a VEBA 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 in the Administrative Code referencing the establishment of the Trust Fund “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 a simplified trust approach as described in the VEBA Presentation, while recognizing certain operational advantages of referencing 501(c)(9) fund “compliance” in the Administrative Code language.

Establishing a VEBA involves certain tax filing and compliance responsibilities which create additional administrative burdens for the City. The apparent essential objectives of the Trust Fund (to process payments and maintain reserve amounts) can be satisfied without creating a VEBA and its related additional administrative burdens. Given this, staff does not recommend the formal organization of a VEBA. Rather, it appears that the more prudent remedial action would be to revise the Administrative Code and to correct the unattended confusion caused by the reference to IRC Section 501(c)(9).

Staff proposes a modification to Chapter 95 to clarify that the Trust Fund is to continue to operate simply as a trust fund, as well as to provide authority for the Trust Fund to issue refunds to employees. Staff recommends that the JLMBC approve these
proposed modifications to Chapter 95 and request that the Personnel Department proceed with a report to City Council from the JLMBC with a recommendation to request the City Attorney to prepare and transmit the draft ordinance.

In connection with the proposed correction, staff is proceeding to document proposed policies of the JLMBC relative to administration of the Trust Fund. It is within these documents that the administrative and operational rules of the Trust Fund can be further detailed, providing for greater clarity and transparency regarding the Trust Fund on a go-forward basis. These will be presented to the JLMBC for adoption at an upcoming meeting.

The City Attorney will be present at the JLMBC’s December 6, 2016 meeting to address questions.

C. External Auditor for Review of Employee Benefits Trust Fund Activity

Due to the size/scope of Trust Fund activity, the JLMBC approved a recommendation from staff to move forward with an external auditor to review and validate Trust Fund activity and Fund balances. Working with the City Controller’s Internal Audit Section, the firm of Turner, Warren, Hwang & Conrad (TWHC) was secured to provide a review of the Trust Fund for the purpose of validating its assets, liabilities and net surplus; and for making any necessary recommendations as to Trust Fund accounting practices. TWHC has completed its analysis and those findings are presently being reviewed by Personnel Department staff. A report on these results is being prepared for the JLMBC’s January 5, 2017 meeting.

Submitted by: ______________________

Steven Montagna