ANALYSIS

This ordinance amends Title 5 Personnel of the Los Angeles County Code to formally close Section 5.23, County of Los Angeles Deferred Earnings Plan, and merge participant accounts into Section 5.26, County of Los Angeles Savings Plan.

RAYMOND G. FORTNER, JR.
County Counsel

By: _____
HALVOR S. MELOM
Principal Deputy County Counsel
Labor & Employment Division

HSM:asv
Requested: 02/26/08
Revised: 03/18/08

ORDINANCE NO. 2008-0022

An ordinance amending Title 5 – Personnel of the Los Angeles County Code, relating to the merger of the 401(k) Savings Plan and 401(k) Deferred Earnings Plan.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 5.23.010 is hereby amended to read as follows:

5.23.010 Adopted -- Purpose.

The County of Los Angeles, pursuant to the order of its board of supervisors, adopts a profit sharing plan known as "The County of Los Angeles Deferred Earnings Plan," effective as of December 31, 1985. This amendment and restatement of the Plan shall constitute an amendment, restatement and continuation of the Plan to be effective as of January 1, 1997 unless a provision expressly states otherwise. Certain provisions of this amendment and restatement, however, are effective before or after the effective date. Provisions which are effective prior to the Effective Date shall be deemed to amend the corresponding provisions of the Plan as amended and in effect before this restatement. Events occurring before the applicable effective date of any provisions of this restatement shall be governed by the applicable provisions of the Plan in effect on the date of the event. Effective May 30, 2008, this Plan is merged into the County of Los Angeles Savings Plan, established and maintained under Chapter 5.26 of the Los Angeles County Code; accordingly, as of that date, the provisions of this Chapter shall be inoperative and the rights of Participants under this Plan shall be governed by the terms of the Savings Plan as set forth in Chapter 5.26.

The purpose of the plan is to permit employees to defer a portion of their compensation and provide for retirement, disability and death benefits. The plan is a retirement benefit enhancement provided to employees subsequent to the withdrawal of the county from the Social Security System effective December 31, 1982.

While the county intends to continue the plan, it reserves the right to amend and/or terminate the plan, in whole or in part, at any time. Benefits under the plan shall at any time be limited to those that are payable from participant's accounts to the extent then funded by the county's contributions that have already been made and credited to such accounts. Therefore, while participants' existing account balances are at all times fully protected, neither participation in the plan nor eligibility therefore shall entitle any employee to have the plan or any of its provisions continued for his benefit in the future.

SECTION 2. Section 5.23.080 is hereby amended to read as follows:

5.23.080 Administration of the Plan and Trust Agreement.

...

I. Expense Charges to Plan.

1. With the approval of the Board, expenses incurred as a result of County employees performing the functions defined in this Section 5.23.080 may be charged through the Trustee or reimbursed from Plan assets and paid to the County. The expenses so charged will be allocated to the individual Participants' accounts and shall be reflected on quarterly statements. The annual charges shall not exceed the amount approved by the Board of Supervisors in the County budget, and will only include direct, additional County costs.

2. Expenses incurred as a result of contractors performing the Plan functions described in this Section 5.23.080, TPA and Trustee fees, and the cost of fiduciary and liability insurance, are limited by the contract or contracts approved by the Administrative Committee or the Board, and will be charged through the Trustee or reimbursed from Plan assets and paid to the County. The expenses, fees and costs so charged will be allocated to the individual Participants' accounts and shall be reflected on quarterly statements.

3. In the event that the Plan accumulates (a) fees in excess of actual administrative expenses, or (b) unallocated earnings from Plan operations, the Administrative Committee shall allocate excess fees and earnings first by establishing a reserve for contingencies and payment of planned obligations not to exceed one-half of the total annual County fees charged to Participants, and then by allocating any remainder by reducing TPA fees charged to Participants by a method determined by the Administrative Committee. Effective May 29, 2008, any amounts remaining in these contingency and expense reserves shall be allocated per capita to the Accounts of the Participants who are Employees of the County on that date; provided, however, that such allocations shall be treated as Annual Additions and shall not cause the limitations of Section 5.23.050F.2. to be exceeded for any such Participant. To the extent any amounts remain unallocated due to the limits imposed under Section 5.23.050F.2., such unallocated amounts shall continue to be held in a contingency and expense reserve, which reserve shall be transferred to the corresponding reserve under the County of Los Angeles Savings Plan upon the merger of this Plan into the Savings Plan.

J. Compliance With Laws. The Administrative Committee shall have the duty to make changes in the administration of this Plan which are necessary to comply with federal or State of California laws.

SECTION 3. Section 5.23.140 is hereby amended to read as follows:

5.23.140 Amendment or termination.

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F. Temporary Suspension of Plan Provisions.

Notwithstanding any provision of the Plan to the contrary, during any conversion period (including but not limited to a change of Trustee, TPA or Investment Funds), in accordance with procedures established by the Administrative Committee, the Administrative Committee may temporarily suspend, in whole or in part, certain provisions of the Plan, which may include, but are not limited to, a Participant's right to change his contribution election, a Participant's right to change his investment election and a Participant's right to borrow or withdraw from his Account or obtain a distribution from his Account.

SECTION 4. Section 5.26.010 is hereby amended to read as follows:

5.26.010 Adoption -- Purpose.

The County of Los Angeles, pursuant to the order of its Board of Supervisors, adopted a profit sharing plan known as "The County of Los Angeles Savings Plan," effective as of September 1, 1984. The Plan was amended and restated generally effective as of January 1, 1997, to comply with the Unemployment Compensation Amendments of 1992, the requirements of the Omnibus Budget Reconciliation Act of

1993, the Uniform Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998 and the Economic Growth and Tax Relief Reconciliation Act of 2001. ~~Effective as of [_____], 2004, the County amends and restates this Plan to permit the "pick up" of certain contributions to the Plan.~~ Effective May 30, 2008, the County amends this Plan to reflect the merger of the Los Angeles County Deferred Earnings Plan, as originally established and maintained under Chapter 5.23 of the Los Angeles County Code ("Deferred Earnings Plan") into this Plan.

The Plan is a profit sharing plan with a cash or deferred arrangement intended to qualify under Code Section 401(a) and to meet the requirements of Code Section 401(k). The purpose of the Plan is to permit Employees to defer a portion of their Compensation and provide for retirement, disability and death benefits. The Plan is a retirement benefit enhancement provided to Employees subsequent to the withdrawal of the County from the Social Security System effective December 31, 1982.

While the County intends to continue the plan, it reserves the right to amend and/or terminate the Plan, in whole or in part, at any time. Benefits under the Plan shall at any time be limited to those that are payable from Participants' Accounts to the extent then funded by County Contributions that have already been made and credited to such Accounts. Therefore, while Participants' existing Account balances are at all times fully protected, neither participation in the Plan nor eligibility therefore shall entitle any Employee to have the Plan or any of its provisions continued for his benefit in the future.

SECTION 5. Section 5.26.020 is hereby amended to read as follows:

5.26.020 Definitions.

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7. "Beneficiary" means such person or persons as a Participant may designate to receive his interest under the Plan after his death. The designation may be made, and may be revoked or changed, only by a written instrument (in form acceptable to the Administrative Committee) signed by the Participant and filed with the Administrative Committee before his death. Following the merger of the Deferred Earnings Plan into this Plan effective May 30, 2008, (1) if a Participant previously made a beneficiary designation only under the Deferred Earnings Plan, that beneficiary designation shall be the applicable beneficiary designation under this Plan unless or until changed or revoked by the Participant in accordance with the terms of this Plan; and (2) if a Participant has made a beneficiary designation under both the Deferred Earnings Plan and this Plan, the beneficiary designation made under this Plan shall govern unless or until charged or revoked by the Participant in accordance with the terms of this Plan. In the absence of a designation and at any other time when there is no existing Beneficiary designated by the Participant, his Beneficiary shall be his spouse, if living 30 days after the date of his death, or, if not, his children (by blood or adoption) equally (with children of a deceased child to share equally the share of such deceased child). If a Beneficiary cannot be determined pursuant to the preceding sentence, the Beneficiary shall be the Participant's estate.

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16. "Eligible Employee" means a full-time permanent Employee who is not a Leased Employee, is not in an Excluded Bargaining Unit and who is designated by the Los Angeles County Board of Supervisors as eligible to participate in the Plan. For purposes hereof, "full-time permanent" means any employee appointed to an "A," "L" or "N" item pursuant to Title 6 of the Los Angeles County Code, or any employee appointed to a "D" item pursuant to said Title 6 who is required to possess a California license to practice as a Registered Nurse. Any employee who would otherwise cease to be an Eligible Employee because of a change in employment classification and/or entry into an Excluded Bargaining Unit shall remain an Eligible Employee until the last day of the month following the month in which such change or entry occurs or such later date as the Administrative Committee may provide; provided, however, that the County and representatives of an Excluded Bargaining Unit may, subject to approval by the Los Angeles County Board of Supervisors, agree that any employee who would otherwise cease to be an Eligible Employee because of certification or accretion of the employee' s employment classification into an Excluded Bargaining Unit may continue as an Eligible Employee for such period as may be established in such agreement. Effective as of September 1, 1994, Special Eligible Employees shall be treated as if they are Eligible Employees until March 31, 2004 for purposes of making Tax Deferred Contributions, but not for the purpose of having any other County Contributions made on their behalf. An Employee who is not otherwise eligible to participate in this Plan shall not become an Eligible Employee solely by becoming an inactive Participant through the merger of the Deferred Earnings Plan into this Plan.

...

30. "Matching Contributions Account" means an account to which the following are credited: (1) the Matching Contributions allocated to each Participant, (2) the funds transferred to the Plan from the Participant's matching contribution account under the Deferred Earnings Plan, if any, upon the merger of the Deferred Earnings Plan with this Plan, and (3) any earnings, investment gains or losses and applicable Plan expenses allocable to the foregoing ~~thereto, are credited~~.

31. "Participant" means an Eligible Employee or a former Eligible Employee who has become and continues to be a Participant of the Plan in accordance with the provisions of Part 2 of this chapter, or an Employee or former Employee who became an inactive Participant in accordance with Part 2 of this chapter solely due to the merger of the Deferred Earnings Plan into this Plan.

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43. "Tax Deferred Contributions Account" means an account to which the following are credited: (1) the Tax Deferred Contributions and~~, effective January 1, 2002,~~ Catch-Up Contributions, subject to any action taken by the Administrative Committee under Section 5.26.190 to establish a separate account or subaccount for such Catch-Up Contributions, made for each Participant, (2) the funds transferred to the Plan from the Participant's tax deferred contribution account under the Deferred Earnings Plan, if any, upon the merger of the Deferred Earnings Plan with this Plan, and (3) any earnings, investment gains or losses and applicable Plan expenses allocable to the foregoing ~~thereto, are credited~~.

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55. "Year of Service" means an Employee shall be credited with a Year of Service for each Plan Year (including the Plan Year commencing September 1, 1984, and ending December 31, 1984) in which he is employed by the County and is a Participant in the Plan, the Deferred Earnings Plan or in the Horizons Plan.

SECTION 6. Section 5.26.040 is hereby amended to read as follows:

5.26.040 Commencement of Participation.

A. An Eligible Employee may become a Participant by entering into a Compensation Deferral Agreement or, effective as of January 1, 2002, a Salary Deduction Agreement before an Entry Date. Such an Eligible Employee's participation shall become effective with respect to Eligible Earnings payable for services rendered to the County on and after the next Entry Date following the date the Compensation Deferral Agreement or Salary Deduction Agreement is entered into.

B. An Eligible Employee who does not enter into a Compensation Deferral Agreement or Salary Deduction Agreement may become a Participant by entering into a Payroll Deduction Authorization Agreement as provided in Section 5.26.175; provided, however, that (1) an Eligible Employee who becomes a Participant pursuant to this subsection B shall cease to be a Participant immediately upon his termination of employment with the County in the event that (i) he is not entitled to a Termination Pay Contribution upon termination of employment with the County, and (ii) no portion of the Investment Fund is credited to his Account and held for his benefit as of his Severance Date, and (2) no Eligible Employee may become a Participant pursuant to this

subsection B on and after January 1, 2008, and any Eligible Employee who became a Participant solely pursuant to this subsection B shall cease to be a Participant, unless he has an Account balance on that date.

C. Upon the merger of the Deferred Earnings Plan into this Plan, an Employee or former Employee whose account balance under the Deferred Earnings Plan is transferred to this Plan will become a Participant; provided, however, that an Employee who becomes a Participant pursuant to this subsection C shall have no County Contributions made on his behalf following such merger unless and until he becomes an Eligible Employee and commences participation pursuant to section 5.26.040.A.

SECTION 7. Section 5.26.200 is hereby amended to read as follows:

5.26.200 Investment of Contributions.

A. Investment by Participants.

1. Each Participant may instruct the Trustee or TPA, as applicable, to allocate his Tax Deferred Contributions, After-Tax Contributions, Termination Pay Contribution, Rollover Contributions and, if his Matching Contributions Account is 100 percent vested and nonforfeitable under Section 5.26.250, Matching Contributions (collectively, "Contributions") among the Investment Funds. A Participant may change the allocation of future Contributions and may transfer past Contributions, adjusted for earnings, gains and losses, and applicable Plan charges, if any, from one Investment Fund to another. A Participant may make investment elections and changes at the time

and manner prescribed by procedures established from time to time by the Administrative Committee.

2. In addition, effective October 1, 1999, each Participant likewise may instruct the Trustee or TPA, as applicable, to allocate among the Investment Funds the portion of his or her Matching Contributions Account that is vested and nonforfeitable in accordance with Section 5.26.200A.I.

3. Upon the merger of the Deferred Earnings Plan into this Plan, effective May 30, 2008:

a. Investments in a participant's account under the County Deferred Earnings Plan — other than any investment in the participant loan fund under the County Deferred Earnings Plan — shall be liquidated and then the cash shall be transferred as soon as practicable to this Plan, unless the Administrative Committee otherwise makes arrangements for an in-kind transfer of assets. As soon as practicable following the transfer, the transferred cash shall be invested in accordance with the Participant's investment instructions or, if the Participant does not timely provide investment instructions, in the same Investment Funds (or a similar Investment Fund if the identical fund is not an available investment alternative) from which those amounts were liquidated and in the same proportions as they were invested under the County Deferred Earnings Plan.

b. The promissory note for any outstanding loan from a Participant's account in the Deferred Earnings Plan shall be transferred to the Participant Loan Fund under the Plan, and the balance owing and obligations under

such loan shall become the balance owing and obligations due under the Plan. The Participant's transferred loan shall be treated as an investment in the Participant Loan Fund and shall be administered in accordance with the terms of the Plan and the applicable promissory note. Any outstanding loan that is transferred under this section, however, shall not be taken into account when determining whether a Participant has exceeded any limit on the number of loans permitted under this Plan by the rules set forth by the Administrative Committee.

B. Investment by Administrative Committee. Plan assets that are not invested pursuant to Participant instructions under Section 5.26.200A, including but not limited to Plan assets for which no Participant investment instructions are received, nonvested Matching Contributions that are not subject to Participant instructions under Section 5.26.200A, forfeiture accounts, accumulated fees and unallocated Plan earnings, shall be invested by the Trustee as instructed by the Administrative Committee in one or more Investment Funds as the Administrative Committee in its discretion may determine.

SECTION 8. Section 5.26.338 is hereby amended to read as follows:

5.26.338 Application of Forfeitures.

The amount of Participant's Account which is forfeited for a Plan Year in accordance with Sections 5.26.120, 5.26.280 and 5.26.335, plus any amount that is transferred to the Plan from the forfeiture suspense account in the Deferred Earnings Plan established under Section 5.23.070L of the Los Angeles County Code upon the merger of the Deferred Earnings Plan with this Plan, shall be placed in one or more

forfeiture accounts held in the Trust Fund and applied first, restore the accounts of lost Participants who have filed an application for benefits that has been approved by the Administrative Committee, if any, and second, to offset future Matching Contributions to be made by the County in accordance with Section 5.26.140. Earnings on the forfeiture accounts held in the Trust Fund shall be used to reduce administrative expenses of the Plan in accordance with Section 5.26.420.

SECTION 9. Section 5.26.420 is hereby amended to read as follows:

5.26.420 Expense Charges to Plan.

A. With the approval of the Board of Supervisors, expenses incurred as a result of County employees performing the functions defined in Sections 5.26.340 through 5.26.410 may be charged through the Trustee or reimbursed from Plan assets and paid to the County. The expenses so charged will be allocated to the individual Participants' accounts and shall be reflected on quarterly statements. The annual charges shall not exceed the amount approved by the Board of Supervisors in the County budget, and will only include direct, additional County costs.

B. Expenses incurred by members of the Administrative Committee as a result of performing their duties under the Plan will be charged through the Trustee or reimbursed from Plan assets and paid to the member incurring such expense. Such expenses may include the costs of educational materials or classes relating to plan administration or investments if the Administrative Committee determines that such costs are reasonable and necessary.

C. Expenses incurred as a result of contractors performing the Plan functions described in Sections 5.26.340 through 5.26.410, TPA and Trustee fees, and the cost of fiduciary and liability insurance, are limited by the contract or contracts approved by the Administrative Committee or the Board of Supervisors, and will be charged through the Trustee or reimbursed from Plan assets and paid to the County. The expenses, fees and costs so charged will be allocated to the individual Participants' accounts and shall be reflected on quarterly statements.

D. In the event that the Plan accumulates (1) fees in excess of actual administrative expenses, or (2) unallocated earnings from Plan operations, or (3) any amounts transferred from the contingency and expense reserve established under Section 5.23.080.I.3 of the Deferred Earnings Plan as a result of the merger of the Deferred Earnings Plan into this Plan, the Administrative Committee shall allocate excess fees and earnings first by establishing a reserve for contingencies and payment of planned obligations not to exceed one-half of the total annual County fees charged to Participants, and then by allocating any remainder by reducing TPA fees charged to Participants by a method determined by the Administrative Committee.

SECTION 10. Section 5.26.610 is hereby amended to read as follows:

5.26.610 Rollovers and Plan-to-Plan Transfers.

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C. ~~Transfers Between County 401(k) Plans.~~

~~1. Transfers to this Plan from the County Deferred Earnings Plan. A Participant who is qualified to make Tax Deferred Contributions to this Plan may elect to~~

transfer to this Plan his membership and the balance in his accounts under the County Deferred Earnings Plan, provided that:

a. Investments in the Participant' s "Account" (as defined in the County Deferred Earnings Plan) –other than any investment in the "Participant Loan Fund" (as defined in the County Deferred Earnings Plan) –under the County Deferred Earnings Plan shall be liquidated and then the cash shall be transferred to this Plan within a commercially reasonable period of time, unless the Administrative Committee otherwise makes arrangements for an in-kind transfer of assets. As soon as practicable following the transfer, the transferred cash shall be invested in the same Investment Funds (or a similar Investment Fund if the identical fund is not an available investment alternative) from which those amounts were liquidated and in the same proportions as they were invested under the County Deferred Earnings Plan;

b. Any balance owing and obligations of a County Deferred Earnings Plan loan shall become the balance owing and obligations due to this Plan; and

c. Vesting credit and benefit distribution rights accrued in the County Deferred Earnings Plan shall be transferred to this Plan.

2. Transfers from this Plan to the County Deferred Earnings Plan. A Participant who is qualified to make Tax-Deferred Contributions (as defined in the County Deferred Earnings Plan) to the County Deferred Earnings Plan may elect to transfer to the County Deferred Earnings Plan his membership and the balance in his accounts under this Plan, provided that:

a. Investments in the Participant's Account--other than any investment in the Participant Loan Fund--under this Plan shall be liquidated and then the cash shall be transferred to the County Deferred Earnings Plan within a commercially reasonable period of time, unless the Administrative Committee otherwise makes arrangements for the in-kind transfer of assets. As soon as practicable following the transfer, the transferred cash shall be invested in the same Investment Funds (as defined in the County Deferred Earnings Plan)--or a similar Investment Fund (if the identical fund is not an available investment alternative) from which those amounts were liquidated and in the same proportions as they were invested under this Plan;

b. Any balance owing and obligations of a loan under this Plan shall become the balance owing and obligations due to the County Deferred Earnings Plan; and

c. Vesting credit and benefit distribution rights accrued in this Plan shall be transferred to the County Deferred Earnings Plan.

3. Transfers from this Plan to a Successor 401(k) Plan. The Account of a Participant who is eligible to participate in (a) a qualified defined contribution plan including a qualified cash or deferred arrangement maintained by an entity determined by the Internal Revenue Service to be a successor employer to the County, or (b) a qualified defined contribution plan including a cash or deferred arrangement that is determined by the Internal Revenue Service to be a successor plan to this Plan such that it is treated as adopted before May 7, 1986 by a state or local government, its political subdivision, or its agency or instrumentality, (referred to herein as a "Successor

CODA Plan"), shall be liquidated and transferred to the Successor CODA Plan in accordance with the procedures implemented by the Administrative Committee; provided that:

a. Any balance owing and obligations of a loan under this Plan shall become the balance owing and obligations due to the Successor CODA Plan, which shall assume the Participant's note; and

b. Vesting credit and benefit distribution rights accrued in this Plan shall be transferred to the Successor CODA Plan.

SECTION 11. Pursuant to Government Code Section 25123(f), this ordinance shall take effect immediately upon final passage.

[SAVINGSPLANDTCEO]

SECTION 12. This ordinance shall be published in The Metropolitan News a newspaper printed and published in the County of Los Angeles.

Yvonne B. Burke
Chair

ATTEST:

Sachi A. Hamai
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles

I hereby certify that at its meeting of May 20, 2008 the foregoing ordinance was adopted by the Board of Supervisors of said County of Los Angeles by the following vote, to wit:

	Ayes		Noes
Supervisors	Gloria Molina	Supervisors	None
	Zev Yaroslavsky		
	Michael D. Antonovich		
	Yvonne B. Burke		

Effective Date: May 20, 2008

~~Operative Date:~~ _____

Sachi A. Hamai
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles

I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By _____ Deputy

APPROVED AS TO FORM:
RAYMOND G. FORTNER, JR.
County Counsel

By _____
Leela Kapur
Chief Deputy County Counsel

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