COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL

(1) DEPARTMENT	(2) MEETING DATE	(3) CONTACT/PHONE
Social Services	April 11, 2006	Lee Collins 781-1825

(4) SUBJECT
Hearing to consider amendments to the ordinance establishing a Public Authority pursuant to California Welfare and Institutions Code Section 12301.6

(5) SUMMARY OF REQUEST
Social Services Director requests that Board consider changes to existing Public Authority structure, including delegation of Governing Board authority to Board of Supervisors and establishment of a Public Authority Advisory Board.

(6) RECOMMENDED ACTION
Consider and adopt amendments to Ordinance.

(7) FUNDING SOURCE (S)	(8) CURRENT YEAR COST –	(9) ANNUAL COST--	(10) BUDGETED?
Federal, State and County	-0-	$410,224	☒ YES ☐ N/A ☐ NO

(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): The Department has consulted with the existing Public Authority Advisory Board, the United Domestic Workers, the Administrative Office and with County Counsel in preparing this proposal.

(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? ☐ No ☒ Yes, How Many? 5.0 FTE
☐ Permanent ☒ Limited Term 5.0 ☐ Contract _____ ☐ Temporary Help

(13) SUPERVISOR DISTRICT(S)
1st, 2nd, 3rd, 4th, 5th, All

(14) LOCATION MAP
☐ Attached ☒ N/A

(15) AGENDA PLACEMENT
☐Consent ☒ Hearing (Time Est. 20 minutes)
☐ Presentation ☐ Board Business (Time Est._____)

(16) EXECUTED DOCUMENTS
☐ Resolutions (Orig + 4 copies) ☐ Contracts
☒ Ordinances (Orig + 4 copies) ☐ N/A

(17) NEED EXTRA EXECUTED COPIES?
☐ Number: _____ ☐ Attached ☒ N/A

(18) APPROPRIATION TRANSFER REQUIRED?
☐ Submitted ☐ 4/5th's Vote Required ☒ N/A

19) ADMINISTRATIVE OFFICE REVIEW

ok Dan Bakshi

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(4-11-06)

DEPARTMENT OF SOCIAL SERVICES

3433 South Higuera Street, P.O. Box 8119, San Luis Obispo, CA 93403-8119

TO: **Board of Supervisors**

FROM: **Leland W. Collins**
Social Services Director

DATE: **April 11, 2006**

SUBJECT: **Public Hearing for consideration of proposed changes to the ordinance establishing a Public Authority pursuant to California Welfare and Institutions Code Section 12301.6**

Recommendation

It is recommended that your Board consider and adopt amendments to the Ordinance.

Discussion

As part of our Department's ongoing evaluation process, we periodically review programs for which we are responsible. Over the past year, we have been reviewing the operations and mandated activities of the Public Authority in the context of the Adult Services Division, the In-Home Supportive Services program (IHSS) and the best customer service for IHSS clients and caregivers.

The establishment of the Public Authority was mandated by State legislation. The purpose of the legislation was to enable service employee unions to organize IHSS caregivers for the purpose of collective bargaining that would improve wages and benefits for caregivers. Since neither the State nor counties wanted to become the employers of over 200,000 IHSS caregivers, a "separate entity" or "employer of record" needed to be established in each county.

In almost every county, the Board of Supervisors was designated as the public authority governing board, with an "advisory committee" established to provide input and recommendations. San Luis Obispo County, on the recommendation of the Department of Social Services, chose the option of establishing a public authority with its own governing board, rather than establishing a public authority with the Board of Supervisors acting as the governing board.

It has been over two years since the Public Authority for San Luis Obispo County became operational. By May 2003 the Public Authority had been established by county ordinance, recruited and established a community governing board, developed procedures described in the operating agreement or contract for services, took over responsibility for operating the Caregiver Registry and recruiting new caregivers to be

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matched with IHSS clients unable to find their own caregivers, developed and conducted monthly trainings for caregivers, met with UDW to negotiate the first collective bargaining agreement that increased caregiver wages by over 18% (from $6.95 to $8.25 per hour), and continued to work with UDW to find a health insurance plan for caregivers. All of the mandates of the original State legislation have been met, and the existing Public Authority Governing Board deserves recognition for their advocacy and dedication.

We have learned, however, that the current management structure of the PA has some inherent problems that are unrelated to performance. There is the ongoing operational problem of the Public Authority as a quasi-independent entity that is wholly dependent upon the Department for its funding and for most of its services. The Public Authority resides in the Department, but Department employees do not staff it. It is not required to operate utilizing Department or County operational procedures, but has created duplicate operational procedures. It has its own Governing Board, yet the Department and the Auditor's office must oversee and approve its expenditures.

The Department has struggled to create the bridge between County procedures and the duplicate procedures developed by the Public Authority. Our attempt to "embed" a separate operating system within the County operating system has been time consuming, frustrating and chronically inefficient; again, we would note that this is a by-product of design, and not of performance.

Although the Public Authority's daily activities serve a small percentage of IHSS recipients and their caregivers, the PA itself is not wholly integrated into the IHSS program. IHSS clients, caregivers and community service providers are confused about who performs which duty. Traditionally they have called either the IHSS payroll clerk or IHSS Social worker assigned to clients in their community to find out about services, payroll issues, hours of service and basic eligibility. They have expressed frustration when they either call the PA about a program question or call IHSS about a client/caregiver match question, only to be asked to call another number.

Our client population doesn't always understand the distinction between IHSS and PA staff—frequently, they have a hard time just making contact. They are used to talking with a staff person who has the answer to any question they ask. Community service providers also are confused about how (and whom) to call for information. Confusion has increased with information coming from the caregivers' union that may not provide accurate information and is difficult to confirm or deny.

With the proposed changes to the existing Ordinance, the Department proposes the following:

1. **Designate the County Board of Supervisors as the Public Authority Governing Board.** This is the model that currently is in place in virtually every county.
2. **Establish a Public Authority Advisory Committee.** This Advisory Committee, including representatives of those who receive and provide IHSS services, will advocate on behalf of an effective service-delivery system for IHSS, and will assist in identifying emerging issues related to the system of care for disabled residents of our community.
3. **Reduce the cost of operating the Public Authority.** By reducing duplicate systems and the number of staff, the County will achieve annual savings to the taxpayers of approximately $42,940.

These changes would take effect on July 1, 2006.

Other Agency Involvement

The Department has consulted with the existing Public Authority Advisory Board, the United Domestic Workers, the Administrative Office and with County Counsel in preparing this proposal.

Financial Considerations

If the Public Authority structure were to continue as currently constituted, projected costs for Fiscal Year 2006/2007 would be the same as those budgeted in the current year, at a net cost of $453,164. Under the proposed design, total operational costs for Fiscal Year 2006/2007 are projected at $410,224, for total savings in the amount of $42,940, of which approximately 22% is savings to the County General Fund.

Results

Implementation of this Ordinance is projected to result in the following:

- Decrease in cost to taxpayers of operating Public Authority: Decrease of $42,940.
- Increase successful match of caregivers to clients to 95% within 30 days; current matching rate is at approximately 80% within 45 days
- PA staff will collocate with IHSS staff to facilitate face-to face communication and reduce paperwork and provide better customer service to IHSS clients and caregivers
- All collective bargaining activities will conform wholly to requirements of Meyers-Milias-Brown

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8.90.010 Creation and Ppurpose.

Pursuant to Welfare and Institutions Code Section 12301.6 the San Luis Obispo County board Board of supervisors Supervisors establishes a public Public authority Authority to provide for the delivery of Iin-home Home Ssupportive servicesServices, subject to applicable federal and state laws and regulations, and to the limitations set forth in this chapter. The name of the public Public authority Authority shall be In-Home Supportive Services Public Authority for San Luis Obispo County (Authority). (Ord. 2969 § 1 (part), 2002)

8.90.020 Definitions.

For purposes of this chapter, the following definitions apply:
(1) "Authority" means the Iin-Hhome supportive Supportive services Services public Public authority Authority for San Luis Obispo County.
(2) "Board of Supervisors" means the board Board of supervisors Supervisors of the county County of San Luis Obispo.
(3) "Consumer" means a person eligible for and authorized to receive inIn-Hhome Ssupportive Sservices.
(4) "County" means San Luis Obispo County.
(5) "Governing Body" means the governing body for the In-Home Supportive Services in-home supportive services Ppublic Aauthority for San Luis Obispo County.
(6) "In-home Supportive Services (IHSS)" means In-Home Supportive Servicesin-home supportive services as described in Welfare and Institutions Code Section 12300.
(7) "Provider" means a person who provides authorized In-Home Supportive Servicesin-home supportive services. (Ord. 2969 § 1 (part), 2002)

8.90.030 Governing body characteristics.

~~The governing body of the authority shall consist of eleven members and three alternates, all of whom shall be approved by a majority vote of the board of supervisors. No fewer than fifty percent of the governing board shall be individuals who are current or past users of personal assistance services paid for through public or private funds or consumers of services through Welfare and Institutions Code Section 12300, et seq. The board of supervisors shall solicit recommendations for appointments of qualified members through a fair and open process, including reasonable written notice to and affording reasonable response time from, members of the general public and interested persons and organizations. No member of the board of supervisors or employee of the county shall serve on the authority governing board. (Ord. 2969 § 1 (part), 2002)~~The Governing Body of the Authority shall consist of five members of the Board of Supervisors of the County of San Luis Obispo.

8.90.040 ~~Term of office.~~(Reserved)

~~(a) The initial appointment period shall be staggered as follows:~~

~~Three members for one year;~~

~~Four members for two years;~~
~~Four members for three years;~~
~~Alternates for three years.~~

~~(b) Members shall draw lots to determine the length of each member's initial term. After the initial term, the term of each member shall be three years. Members who serve for a specified term may be reappointed but no member may serve for more than two consecutive full three year terms. Members of the governing body serve at the will of the board of supervisors, who shall have the sole authority to remove governing board members. (Ord. 2969 § 1 (part), 2002)~~

8.90.050 ~~Qualification.~~(Reserved)

~~Persons qualified for the authority governing body must reside in San Luis Obispo County and have familiarity with or knowledge of personal assistance services and the client populations; the capacity to understand their role to aid and assist the authority in the administration of its duties; and the ability to attend regularly scheduled meetings, which shall occur only in facilities which meet mandated disability access requirements. (Ord. 2969 § 1 (part), 2002)~~

8.90.060 Character of the Aauthority.

(~~a~~1) The Aauthority shall be an entity separate from the county of San Luis Obispo and shall file the Statement of Fact for the Roster of Public Agencies as required by Government Code Section 53051.
(~~b~~2) The Aauthority shall be a corporate public body, exercising public and essential governmental functions with all powers necessary and convenient to carry out the powers conferred upon it by Welfare Institutions Code Sections 12300, et seq. (Ord. 2969 § 1 (part), 2002)

8.90.070 Status of ~~authority~~ Authority Eemployees, Pproviders, and Oofficers.

~~Authority personnel, providers and members of the authority governing body~~Provider shall not be deemed to be employees of the Ccounty of San Luis Obispo for any purpose. (Ord. 2969 § 1 (part), 2002)

8.90.080 Authority Ffunctions.

(~~a~~1) The Aauthority shall carry out the following functions:
(~~a~~1) The provision of assistance to consumers in finding ~~in-home supportive services~~ In-Home Supportive Services providers through the establishment of a registry;
(~~2~~b) Investigation of the qualifications and background of potential In-Home Supportive Services ~~in-home supportive services~~ providers;
(~~3~~c) Establishment of a referral system under which In-Home Supportive Services ~~in-home supportive services~~ providers shall be referred to consumers;
(4d) Providing for access to training for providers and consumers;

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(~~5~~e) Insuring that the requirements of the personal care option pursuant to subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are met;
(~~6~~f) Adopt rules and regulations for the administration of the A~~a~~uthority consistent with the provisions of this chapter;
(~~7~~g) ~~Assist and advise the board of supervisors regarding governing board membership;~~
~~(8)~~ Performing any other such functions as necessary for the delivery of in-home supportive services.
(~~b~~2) Notwithstanding subsection 8.90.080(a)(4), the ~~authority~~ Authority shall not be obligated to provide training directly, to pay for training provided privately or in the community, to pay for the providers' time spent in training, to accompany consumers to training, to pay for transportation to training or to pay for any materials required by the training. The ~~authority~~ Authority shall not be obligated to insure that any provider or consumer attend or complete training.
(~~c~~3) The ~~authority~~ Authority shall not be responsible for:
(a~~1~~) Authorizing services for an In-Home Supportive Services ~~in-home supportive services~~ consumer;
(~~2~~b) Determining a consumer's need for i In-Home Supportive Services~~n-home supportive services~~, the level and quality of services required, and the eligibility of individuals to be served;
(~~3~~c) Conducting the initial or any subsequent assessment of need for services;
(4d) Terminating the consumer's participation in the In-Home Supportive Services ~~in-home supportive services~~ program.
The above-referenced services and functions shall be the exclusive responsibility of the ~~county~~County.
(~~d~~4) Prior to initiating the delivery of ~~in-home supportive services~~ In-Home Supportive Services ~~-~~through the ~~authority~~Authority, as described in this chapter, the ~~county~~ County and the ~~authority~~ Authority shall enter into an agreement specifying the purposes, scope and nature of the agreement, the rules and responsibilities of each party including the provisions which insure compliance with all applicable state and federal labor laws and compliance with all statutory and regulatory provisions applicable to the delivery of In-Home Supportive Services~~in-home supportive services~~. (Ord. 2969 § 1 (part), 2002)

8.90.090 Employer of R~~r~~ecord.

The ~~authority~~ Authority shall be deemed to be the employer of record of In-Home Supportive Services ~~in-home supportive services~~ providers referred to consumers within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code. Consumers shall retain the right to hire, fire and supervise the work of any In-Home Supportive Services ~~in-home supportive services~~ personnel providing services to them. (Ord. 2969 § 1 (part), 2002)

8.90.100 Consumer ~~control~~Control.

(a~~1~~) The ~~authority~~ Authority shall have no authority or jurisdiction to regulate, control, or limit the rights and responsibilities of consumers of In-Home Supportive Services ~~in-home supportive services~~ to hire, fire or to supervise providers. The right to supervise includes, but is not limited to, the right to determine matters such as work schedules, tasks and duties, assignments and direction of work, methods and standards of caring and conduct, discipline, provision for safety and security control of premises, any in-home living or other accommodations, and final resolution of concerns, problems and complaints relating to such supervision. Consumers retain such rights and responsibilities just as they held such

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rights and responsibilities independent of the ~~county~~ County prior to the formation of the ~~authority~~Authority.
(~~b~~2) Consumers of In-Home Supportive Services ~~in-home supportive services~~ may select In-Home Supportive Services ~~in-home supportive services~~ providers who are not referred to them by the ~~authority~~Authority. Those providers shall nevertheless be referred to the ~~authority~~ Authority for the purposes of wages, benefits, and other terms and conditions of employment. (Ord. 2969 § 1 (part), 2002)

8.90.110 Payroll ~~functions~~Functions.

The creation and operation of the ~~authority~~ Authority shall not alter, require the alteration of, or interfere with the state payroll systems and other provisions of Welfare and Institutions Code Section 12302.2 for individual providers of In-Home Supportive Services ~~in-home supportive services~~, or affect the state's responsibility with respect to unemployment insurance or workers' compensation for providers of In-Home Supportive Services~~in-home supportive services~~. (Ord. 2969 § 1 (part), 2002)

8.90.120 ~~Executive director.~~(Reserved)

~~The authority governing body shall have authority to appoint by employment or contract an executive director of the authority. The executive director may hire or contract for personnel as necessary within the parameters established by the authority governing body. (Ord. 2969 § 1 (part), 2002)~~

8.90.130 Labor ~~relations~~Relations.

Due to the special and critical health care services provided through the In-Home Supportive Services ~~in-home supportive services~~ program, the B~~b~~oard of S~~s~~upervisors finds that any interruption of such services would pose an imminent threat to the health and safety of the consumers of In-Home Supportive Services ~~in-home supportive services~~ and to the community. In order to minimize the likelihood of such interruption and thereby protect the health and safety of consumers and to promote harmony and productive labor relations between the A~~a~~uthority and any labor organization which seeks to represent or represents the providers of services to consumers of In-Home Supportive Services~~in-home supportive services~~:
(1) Authority ~~personnel and~~ providers shall be entitled to all the rights conferred upon them by Meyers-Milias-Brown Act, Government Code Section 3500, et seq., including the right to be represented in their employment relationship with the A~~a~~uthority by an employee organization of their choice and the right to meet and confer with the A~~a~~uthority with regard to wages, benefits and any other terms and conditions of employment.
(2) The A~~a~~uthority governing body shall establish rules and regulations respecting the labor relations responsibility of the A~~a~~uthority and such rules shall provide that a showing of interest of at least twenty percent of the eligible providers shall be a sufficient showing of interest for any labor organization to initiate any election or representation procedures established by the A~~a~~uthority for the purposes of certifying an exclusive representative for the purposes of collective bargaining.
(3) Any collective bargaining agreement between the A~~a~~uthority and any labor organizations certified to represent the A~~a~~uthority employees and providers ~~of in-home supportive services~~ In-Home Supportive Services shall be subject to the limitations of this title and to ratification in its entirety (i.e., all provisions of such agreement shall be subject to the same vote) by a simple majority of the votes cast in a ballot in which all providers of

In-Home Supportive Services~~in-home supportive services~~, as recognized by the Aauthority, shall be eligible to participate. Final adoption of any such agreement shall be by simple majority vote of the Aauthority governing board.
(4) The Aauthority shall have a non-strike clause in any and all collective bargaining agreements with providers and personnel of the Aauthority. The non-strike clause shall continue at least one year beyond the other provisions of any and all collective bargaining agreements.
(5) The Aauthority shall take all legal action necessary to bar any strike or other concerted interruption of services to ~~in-home supportive services~~ In-Home Supportive Services consumers. (Ord. 2969 § 1 (part), 2002)

8.90.140 Fiscal ~~provisions~~Provisions.

In establishing the ~~authority~~Authority, the ~~board~~ Board of ~~supervisors~~ Supervisors recognizes that the funding of In-Home Supportive Services~~in-home supportive services~~ is the product of a complex relationship of federal, state and county financing, and that the ability of the ~~authority~~ Authority to operate and to negotiate wages and benefits with ~~other~~ providers of In-Home Supportive Services ~~in-home supportive services~~ is contingent upon the availability of adequate funding. Nothing in this article is intended to require the Ccounty to appropriate or to transfer any funds for the operation of the Aauthority or for the payment of wages or benefits for In-Home Supportive Services~~in-home supportive services~~, except as expressly provided in an agreement between the Ccounty and the Aauthority.
(1) The total of all administrative costs, wages and benefits proposed or established by the Aauthority shall be consistent with the Ccounty budget. The Aauthority shall adopt its budget under the same laws, rules and policies that control the Ccounty budget process. The Aauthority shall not establish a payment rate, including costs of wages, benefits and operation, until the ~~authority~~ Authority determines that the funds necessary for such expenses are legally available.
(2) The establishment and operation of the Aauthority or application of Government Code Section 3500, et seq. shall not result in payments from the Ccounty's general fund beyond the amounts provided for in the Ccounty's annual budget, as amended from time to time.
(3) Consumer services shall not be reduced in order
to fund the Aauthority to provide for the implementation of Government Code Section 3500, et seq., in regard to Aauthority personnel and providers.
(4) The maximum of Ccounty funds available in any given budget year for the wage and benefit negotiations, if any, shall be set by the Bboard of Ssupervisors as a part of the Ccounty's annual budget. While the establishment of this figure shall not obligate the Ccounty, it shall serve as the absolute limit to Ccounty costs for any increases negotiated in collective bargaining taking place that fiscal year. The absolute cap on annual Ccounty spending on wage or benefits increases shall not be affected by any potential changes in state or federal reimbursement rates.
(5) The Aauthority shall provide the Ccounty with the expenditure information necessary for the Ccounty to report to the California Department of Social Services in order to receive reimbursement for the state and federal share of the Aauthority costs.
(6) The Aauthority shall assist the Ccounty in developing and submitting the information and documentation necessary to obtain approval from the California Department of Social Services and the Department of Health Services for the Aauthority's reimbursement rate and rate adjustment.
(7) Payment for all services provided pursuant to this chapter is contingent upon the appropriation of county, state and federal funds for the purpose of providing In-Home Supportive Services~~in-home supportive services~~. (Ord. 2969 § 1 (part), 2002)

8.90.150 Authority ~~liability~~Liability.

The Aauthority is deemed not the employer of In-Home Supportive Services ~~in-home supportive services~~ providers referred to consumers under this chapter for the purposes of liability due to the negligence or intentional torts of the In-Home Supportive Services ~~in-home supportive services~~ providers. The ~~a~~Authority shall not be held liable for any action or omission of any In-Home Supportive Services ~~in-home supportive services~~ providers whom the Aauthority did not list on a registry or otherwise refer to a consumer. (Ord. 2969 § 1 (part), 2002)

8.90.160 County L~~l~~iability.

(~~a~~1) The C~~c~~ounty shall be immune from any liability resulting from its implementation of this chapter and/or administration of the In-Home Supportive Services ~~in-home supportive services~~ program pursuant to Welfare and Institutions Code Section 12301.6, et seq.
(~~b~~2) Any obligation of the Aauthority, whether statutory, contractual or otherwise, shall be the obligation solely of the Aauthority and shall not be the obligation of the C~~c~~ounty or the state of California. Any and all contracts, leases or other agreements, of any nature, including collective bargaining agreements, between the A~~a~~uthority and third parties other than the C~~c~~ounty shall contain an express provision advising the third party that the A~~a~~uthority is a separate governmental entity and that such agreement does not bind the C~~c~~ounty. (Ord. 2969 § 1 (part), 2002)

8.90.170 Indemnification.

(~~a~~1) The A~~a~~uthority shall require any and all third parties contracting with the A~~a~~uthority, other than the C~~c~~ounty, to indemnify and hold harmless the A~~a~~uthority and C~~c~~ounty, to provide the A~~a~~uthority with written acknowledgment of such indemnification, and to maintain adequate levels of insurance, as determined by the C~~c~~ounty's risk manager, naming the A~~a~~uthority and C~~c~~ounty as an additional insured.
(~~b~~2) The A~~a~~uthority shall require any registry contractor to fully indemnify the A~~a~~uthority and the C~~c~~ounty, to provide the A~~a~~uthority with written acknowledgment of such indemnification and to maintain adequate levels of insurance naming the A~~a~~uthority and the C~~c~~ounty as an additional insured on the required policies.
(~~c~~3) The A~~a~~uthority shall indemnify, defend and hold harmless the C~~c~~ounty and its special districts, elected and appointed officers, employees and agents from and against any and all liability, including defense costs and legal fees, and claims for damages of any nature whatsoever, including but not limited to personal injury or property damages, arising from or connected with any act or omission of any officer, employee or contractor, including registry members, of the A~~a~~uthority. (Ord. 2969 § 1 (part), 2002)

8.90.180 ~~Liability insurance.~~(Reserved)

~~Without limiting its indemnification of the county as set forth above, the authority shall acquire and maintain appropriate insurance in amounts and coverage types to be determined by the county's risk manager to be adequate and shall name the county and the members of the board of supervisors as additional insureds on the policies of insurance maintained by the authority. (Ord. 2969 § 1 (part), 2002)~~

8.90.190 Termination.

If the ordinance codified in this chapter becomes invalid for any reason the Aauthority created by said ordinance shall cease to exist and the Ccounty shall immediately resume the provision of In-Home Supportive Servicesin-home supportive services. The Bboard of Ssupervisors may abolish the Aauthority by repeal of said ordinance at any time. (Ord. 2969 § 1 (part), 2002)

8.90.200 Non-severability.

If the provisions of Section 8.90.160 are held invalid by a court of competent jurisdiction, each and any of said provisions shall not be deemed severable from other provisions of the ordinance codified in this chapter and the ordinance codified in this chapter shall be held invalid in its entirety. Except as otherwise provided in this section, if any other provision of the ordinance codified in this chapter shall be held invalid, the remainder of this chapter, to the extent it can be given effect, shall not be effected and to this end the provisions of the ordinance codified in this chapter are severable. (Ord. 2969 § 1 (part), 2002)

8.90.210 Disclaimers.

By establishing an Aauthority the Ccounty is assuming and undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers or employees an obligation for breach of which it is liable and money damages to any person who claims that such breach proximately caused injury. (Ord. 2969 § 1 (part), 2002)

ORDINANCE NO. _____

ORDINANCE TO ESTABLISH A PUBLIC AUTHORITY PURSUANT TO CALIFORNIA WELFARE AND INSTITUTIONS CODE SECTION 12301.6

The Board of Supervisors of the County of San Luis Obispo, State of California, does ordain as follows:

SECTION 1: Chapter 8.90 of the County code is hereby amended to read as follows:

8.90.020 Definitions. For purposes of this chapter, the following definitions apply:

(a) "Authority" means the In-Home Supportive Services Public Authority for San Luis Obispo County.

(b) "Board of Supervisors" means the Board of Supervisors of the County of San Luis Obispo.

(c) "Consumer" means a person eligible for and authorized to receive In-Home Supportive Services.

(d) "County" means San Luis Obispo County.

(e) "Governing Body" means the governing body for the In-Home Supportive Services Public Authority for San Luis Obispo County.

(f) "In-Home Supportive Services (IHSS)" means In-Home Supportive Services as described in Welfare and Institutions Code Section 12300.

(g) "Provider" means a person who provides authorized In-Home Supportive Services. (Ord. 2969 § 1 (part), 2002)

8.90.030 Governing body characteristics.

The Governing Body of the Authority shall consist of five members of the Board of Supervisors of the County of San Luis Obispo.

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8.90.040 (Repealed and Reserved)

8.90.050 (Repealed and Reserved)

8.90.060 Character of the Authority.

(a) The Authority shall be an entity separate from the County of San Luis Obispo and shall file the Statement of Fact for the Roster of Public Agencies as required by Government Code Section 53051.

(b) The Authority shall be a corporate public body, exercising public and essential governmental functions with all powers necessary and convenient to carry out the powers conferred upon it by Welfare Institutions Code Sections 12300, et seq. (Ord. 2969 § 1 (part), 2002)

8.90.070 Status of Authority Employees, Providers, and Officers. Provider shall not be deemed to be employees of the County of San Luis Obispo for any purpose. (Ord. 2969 § 1 (part), 2002)

8.90.080 Authority Functions.

(a) The Authority shall carry out the following functions:

(1) The provision of assistance to consumers in finding In-Home Supportive Services providers through the establishment of a registry;

(2) Investigation of the qualifications and background of potential In-Home Supportive Services providers;

(3) Establishment of a referral system under which In-Home Supportive Services providers shall be referred to consumers;

(4) Providing for access to training for providers and consumers;

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(5) Insuring that the requirements of the personal care option pursuant to subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are met;

(6) Adopt rules and regulations for the administration of the Authority consistent with the provisions of this chapter;

(7) Performing any other such functions as necessary for the delivery of In-Home Supportive Services.

(b) Notwithstanding subsection 8.90.080(a)(4), the Authority shall not be obligated to provide training directly, to pay for training provided privately or in the community, to pay for the providers' time spent in training, to accompany consumers to training, to pay for transportation to training or to pay for any materials required by the training. The Authority shall not be obligated to insure that any provider or consumer attend or complete training.

(c) The County shall have the exclusive responsibility for and the Authority shall not be responsible for:

(1) Authorizing services for an In-Home Supportive Services consumer;

(2) Determining a consumer's need for In-Home Supportive Services, the level and quality of services required, and the eligibility of individuals to be served;

(3) Conducting the initial or any subsequent assessment of need for services;

(4) Terminating the consumer's participation in the In-Home Supportive Services program.

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(d) Prior to initiating the delivery of In-Home Supportive Services through the Authority, as described in this chapter, the County and the Authority shall enter into an agreement specifying the purposes, scope and nature of the agreement, the rules and responsibilities of each party including the provisions which insure compliance with all applicable state and federal labor laws and compliance with all statutory and regulatory provisions applicable to the delivery of In-Home Supportive Services. (Ord. 2969 § 1 (part), 2002)

8.90.090 Employer of Record. The Authority shall be deemed to be the employer of record of In-Home Supportive Services providers referred to consumers within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code. Consumers shall retain the right to hire, fire and supervise the work of any In-Home Supportive Services personnel providing services to them. (Ord. 2969 § 1 (part), 2002)

8.90.100 Consumer Control.

(a) The Authority shall have no authority or jurisdiction to regulate, control, or limit the rights and responsibilities of consumers of In-Home Supportive Services to hire, fire or to supervise providers. The right to supervise includes, but is not limited to, the right to determine matters such as work schedules, tasks and duties, assignments and direction of work, methods and standards of caring and conduct, discipline, provision for safety and security control of premises, any in-home living or other accommodations, and final resolution of concerns, problems and complaints relating to such supervision. Consumers retain such rights and responsibilities just as they held such rights and responsibilities independent of the County prior to the formation of the Authority.

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(b) Consumers of In-Home Supportive Services may select In-Home Supportive Services providers who are not referred to them by the Authority. Those providers shall nevertheless be referred to the Authority for the purposes of wages, benefits, and other terms and conditions of employment. (Ord. 2969 § 1 (part), 2002)

8.90.110 Payroll Functions. The creation and operation of the Authority shall not alter, require the alteration of, or interfere with the state payroll systems and other provisions of Welfare and Institutions Code Section 12302.2 for individual providers of In-Home Supportive Services, or affect the state's responsibility with respect to unemployment insurance or workers' compensation for providers of In-Home Supportive Services. (Ord. 2969 § 1 (part), 2002)

8.90.120 (Repealed and Reserved)

8.90.130 Labor Relations. Due to the special and critical health care services provided through the In-Home Supportive Services program, the Board of Supervisors finds that any interruption of such services would pose an imminent threat to the health and safety of the consumers of In-Home Supportive Services and to the community. In order to minimize the likelihood of such interruption and thereby protect the health and safety of consumers and to promote harmony and productive labor relations between the Authority and any labor organization which seeks to represent or represents the providers of services to consumers of In-Home Supportive Services:

(a) Authority providers shall be entitled to all the rights conferred upon them by Meyers-Milias-Brown Act, Government Code Section 3500, et seq., including the right to be represented in their employment relationship with the Authority by an employee

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organization of their choice and the right to meet and confer with the Authority with regard to wages, benefits and any other terms and conditions of employment.

(b) The Authority governing body shall establish rules and regulations respecting the labor relations responsibility of the Authority and such rules shall provide that a showing of interest of at least twenty percent of the eligible providers shall be a sufficient showing of interest for any labor organization to initiate any election or representation procedures established by the Authority for the purposes of certifying an exclusive representative for the purposes of collective bargaining.

(c) Any collective bargaining agreement between the Authority and any labor organizations certified to represent the Authority employees and providers of In-Home Supportive Services shall be subject to the limitations of this title and to ratification in its entirety (i.e., all provisions of such agreement shall be subject to the same vote) by a simple majority of the votes cast in a ballot in which all providers of In-Home Supportive Services, as recognized by the Authority, shall be eligible to participate. Final adoption of any such agreement shall be by simple majority vote of the Authority governing board.

(d) The Authority shall have a non-strike clause in any and all collective bargaining agreements with providers and personnel of the Authority. The non-strike clause shall continue at least one year beyond the other provisions of any and all collective bargaining agreements.

(e) The Authority shall take all legal action necessary to bar any strike or other concerted interruption of services to In-Home Supportive Services consumers. (Ord. 2969 § 1 (part), 2002)

8.90.140 Fiscal Provisions. In establishing the Authority, the Board of Supervisors recognizes that the funding of In-Home Supportive Services is the product of a complex relationship of federal, state and county financing, and that the ability of the Authority to operate and to negotiate wages and benefits with providers of In-Home Supportive Services is contingent upon the availability of adequate funding. Nothing in this article is intended to require the County to appropriate or to transfer any funds for the operation of the Authority or for the payment of wages or benefits for In-Home Supportive Services, except as expressly provided in an agreement between the County and the Authority.

(a) The total of all administrative costs, wages and benefits proposed or established by the Authority shall be consistent with the County budget. The Authority shall adopt its budget under the same laws, rules and policies that control the County budget process. The Authority shall not establish a payment rate, including costs of wages, benefits and operation, until the Authority determines that the funds necessary for such expenses are legally available.

(b) The establishment and operation of the Authority or application of Government Code Section 3500, et seq. shall not result in payments from the County's general fund beyond the amounts provided for in the County's annual budget, as amended from time to time.

(c) Consumer services shall not be reduced in order to fund the Authority to provide for the implementation of Government Code Section 3500, et seq., in regard to Authority personnel and providers.

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(d) The maximum of County funds available in any given budget year for the wage and benefit negotiations, if any, shall be set by the Board of Supervisors as a part of the County's annual budget. While the establishment of this figure shall not obligate the County, it shall serve as the absolute limit to County costs for any increases negotiated in collective bargaining taking place that fiscal year. The absolute cap on annual County spending on wage or benefits increases shall not be affected by any potential changes in state or federal reimbursement rates.

(e) The Authority shall provide the County with the expenditure information necessary for the County to report to the California Department of Social Services in order to receive reimbursement for the state and federal share of the Authority costs.

(f) The Authority shall assist the County in developing and submitting the information and documentation necessary to obtain approval from the California Department of Social Services and the Department of Health Services for the Authority's reimbursement rate and rate adjustment.

(g) Payment for all services provided pursuant to this chapter is contingent upon the appropriation of county, state and federal funds for the purpose of providing In-Home Supportive Services. (Ord. 2969 § 1 (part), 2002)

8.90.150 Authority Liability. The Authority is deemed not the employer of In-Home Supportive Services providers referred to consumers under this chapter for the purposes of liability due to the negligence or intentional torts of the In-Home Supportive Services providers. The Authority shall not be held liable for any action or omission of any In-Home Supportive Services providers whom the Authority did not list on a registry or otherwise refer to a consumer. (Ord. 2969 § 1 (part), 2002)

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8.90.160 County Liability.

(a) The County shall be immune from any liability resulting from its implementation of this chapter and/or administration of the In-Home Supportive Services program pursuant to Welfare and Institutions Code Section 12301.6, et seq.

(b) Any obligation of the Authority, whether statutory, contractual or otherwise, shall be the obligation solely of the Authority and shall not be the obligation of the County or the state of California. Any and all contracts, leases or other agreements, of any nature, including collective bargaining agreements, between the Authority and third parties other than the County shall contain an express provision advising the third party that the Authority is a separate governmental entity and that such agreement does not bind the County. (Ord. 2969 § 1 (part), 2002)

8.90.170 Indemnification.

(a) The Authority shall require any and all third parties contracting with the Authority, other than the County, to indemnify and hold harmless the Authority and County, to provide the Authority with written acknowledgment of such indemnification, and to maintain adequate levels of insurance, as determined by the County's risk manager, naming the Authority and County as an additional insured.

(b) The Authority shall require any registry contractor to fully indemnify the Authority and the County, to provide the Authority with written acknowledgment of such indemnification and to maintain adequate levels of insurance naming the Authority and the County as an additional insured on the required policies.

(c) The Authority shall indemnify, defend and hold harmless the County and its special districts, elected and appointed officers, employees and agents from and against

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any and all liability, including defense costs and legal fees, and claims for damages of any nature whatsoever, including but not limited to personal injury or property damages, arising from or connected with any act or omission of any officer, employee or contractor, including registry members, of the Authority. (Ord. 2969 § 1 (part), 2002)

8.90.180 Liability Insurance. Without limiting its indemnification of the county as set forth above, the Authority shall acquire and maintain appropriate insurance in amounts and coverage types to be determined by the county's risk manager to be adequate and shall name the County and the members of the Board of Supervisors as additional insureds on the policies of insurance maintained by the Authority. (Ord. 2969 § 1 (part), 2002).

8.90.190 Termination. If the ordinance codified in this chapter becomes invalid for any reason the Authority created by said ordinance shall cease to exist and the County shall immediately resume the provision of In-Home Supportive Services. The Board of Supervisors may abolish the Authority by repeal of said ordinance at any time. (Ord. 2969 § 1 (part), 2002)

8.90.200 Non-severability. If the provisions of Section 8.90.160 are held invalid by a court of competent jurisdiction, each and any of said provisions shall not be deemed severable from other provisions of the ordinance codified in this chapter and the ordinance codified in this chapter shall be held invalid in its entirety. Except as otherwise provided in this section, if any other provision of the ordinance codified in this chapter shall be held invalid, the remainder of this chapter, to the extent it can be given effect, shall not be effected and to this end the provisions of the ordinance codified in this chapter are severable. (Ord. 2969 § 1 (part), 2002)

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8.90.210 Disclaimers. By establishing an Authority the County is assuming and undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers or employees an obligation for breach of which it is liable and money damages to any person who claims that such breach proximately caused injury. (Ord. 2969 § 1 (part), 2002)

SECTION 2: This ordinance shall be declared in full force and effect from and after thirty (30) days from the date of its passage and shall be published once before the expiration of fifteen (15) days after the passage with the names of the members of the Board of Supervisors voting for and against the ordinance in The Tribune, a newspaper of general circulation published in the County of San Luis Obispo, State of California.

INTRODUCED at a regular meeting of the Board of Supervisors held on the 21st day of March, 2006, and PASSED and ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the _____ day of _____, 2006, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

_____
Chairperson of the Board of Supervisors,
County of San Luis Obispo, State of California

ATTEST:

_____
County Clerk and Ex-Officio Clerk

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of the Board of Supervisors, County
of San Luis Obispo, State of California

ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM AND CODIFICATION:

County Counsel

By: Kathy Bouchard
Deputy County Counsel

Dated: March 10, 2006

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