ORDINANCE NO. 3842

AN ORDINANCE OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AMENDING THE SAN BERNARDINO COUNTY CODE BY ADDING CHAPTER 42 TO DIVISION 2 OF TITLE 1 OF THE SAN BERNARDINO COUNTY CODE TO ESTABLISH A PUBLIC AUTHORITY PURSUANT TO CALIFORNIA WELFARE AND INSTITUTIONS CODE SECTION 12301.6 TO PROVIDE FOR THE DELIVERY OF IN-HOME SUPPORTIVE SERVICES.

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. Chapter 42 is added to Division 2 of Title 1 of the San Bernardino County Code, to read:

CHAPTER 42

IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY

Sections:

12.4201 Establishment of In-Home Supportive Services Public Authority.

12.4202 Purpose.

12.4203 Board of Directors.

12.4204 Officers and Administrative Employees of the In-Home Supportive Services Public Authority.

12.4205 Meetings; Quorum; Minutes; Bylaws.

12.4206 Annual Budget.

12.4207 Powers.

12.4208 Duties.

12.4209 Fiscal Provisions.

12.4210 Annual Report and Plan.

12.4211 Establishment of In-Home Supportive Services Advisory Committee.

12.4212 Termination.

12.4213 Enumeration of Powers.

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12.4201 Establishment of In-Home Supportive Services Public Authority.

As authorized by Welfare and Institutions Code section 12302.25, the Board of Supervisors for the County of San Bernardino (hereinafter Board of Supervisors) hereby establishes a public authority whose powers are derived from and are consistent with the provisions of Welfare and Institutions Code section 12301.6. The name of this public authority shall be the San Bernardino County In-Home Supportive Services Public Authority, and shall be referred to in this Chapter as the "IHSS PA." The IHSS PA shall be governed by a Board of Directors as provided in Section 12.4203 of this Chapter.

12.4202 Purpose.

The purpose of the IHSS PA is to act as the employer for San Bernardino In-Home Supportive Services (hereinafter IHSS) providers pursuant to Welfare and Institutions Code section 12301.6(c)(1) and to perform other IHSS functions as required by Welfare and Institutions Code section 12301.6(e) and not retained by the County of San Bernardino.

12.4203 Board of Directors.

(a) Board of Directors. The governing body of the IHSS PA shall be the Board of Directors comprised of five members who shall be the members of the Board of Supervisors.

(b) Chairperson and Vice-Chairperson. The Board of Directors shall elect from among its members, a Chairperson and Vice-Chairperson. Each such officer shall serve for a term of one (1) year. Elections for such officers shall be held each year with terms running concurrent with the IHSS PA's fiscal year. The Chairperson shall sign all contracts on behalf of the IHSS PA, unless the Bylaws provide otherwise, and shall perform such other duties as may be imposed by the Board of Directors in the Bylaws. The Vice-Chairperson shall sign contracts and perform all of the Chairperson's duties in the absence of the Chairperson.

12.4204 Officers and Administrative Employees of the In-Home Supportive Services Public Authority.

(a) IHSS PA Executive Director. The Executive Director of the IHSS PA shall be appointed by a majority vote of the Board of Directors and shall serve at the pleasure of the Board of Directors. The Board of Directors shall further provide for the duties and responsibilities of the Executive Director in the Bylaws.

(b) Secretary. The Board of Directors shall appoint a Secretary to the Board. The Secretary shall serve at the pleasure of the Board. The Secretary shall be responsible to the Board for the call and noticing of the meetings pursuant to the Ralph M. Brown Act (section 54950 et seq. of the Government Code). The Secretary shall have charge of, handle and have access to all records, other than those held by the Treasurer, of the Board. The Board shall further provide for the duties and responsibilities of the Secretary in the Bylaws.

(c) Treasurer. The San Bernardino County Auditor-Controller is hereby designated as the Treasurer of the IHSS PA. The Treasurer shall be the depository, shall have custody of all of the accounts, funds and money of the IHSS PA from whatever source, and shall assure strict accountability of all funds and reporting of all receipts and disbursements of the IHSS PA. The Treasurer shall make arrangements with a certified public accountant or firm of certified public accountants for the annual audit of accounts and records of the IHSS PA. The Treasurer shall serve without any additional bond. The Treasurer shall have charge of, handle and have access to all accounts, funds and money of the IHSS PA.

(d) Provision for Officers and Administrative Employees. Pursuant to Section 12.4207, the IHSS PA shall have the power and authority to either establish itself as an employer or contract with the County for various administrative personnel, including the Executive Director. Should the IHSS PA decide to contract with the County of San Bernardino for such personnel, the IHSS PA shall be responsible for the duties, responsibilities and performance of such personnel. Legal services shall be provided through the Office of the San Bernardino County Counsel, unless that Office

recommends the retention of other legal services. The IHSS PA shall indemnify, defend and hold harmless the County and its authorized officers, employees and agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of the County's provision of personnel to the IHSS PA.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, and all pension, relief, disability, workers' compensation and other benefits, which apply to the activities of officers, agents, or employees of a public agency when performing their respective functions, shall apply to the officers, agents or employees of the IHSS PA to the same degree and extent while engaged in the performance of any of the functions and other duties of such officers, agents or employees under this Chapter.

None of the officers, agents, or employees under contract with the County, or directly employed by the Board of Directors, shall be deemed to be employed by the County or, by reason of their employment by the Board, to be subject to any of the requirements of the County.

12.4205 Meetings; Quorum; Minutes; Bylaws.

(a) Meetings of the Board of Directors.

(1) Regular Meetings. The Board of Directors shall hold at least one regular meeting each quarter of every year. The date, hour and place of the regular meetings shall be fixed by action of the Board of Directors and contained in the Bylaws.

(2) Special Meetings. Special meetings of the Board of Directors may be called in accordance with the provisions of section 54956 of the Government Code.

(3) Call, Notice and Conduct of Meetings. All meetings of the Board of Directors, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (section 54950 et seq. of the Government Code).

(b) Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to

time. The affirmative votes of at least a majority of the Directors present at any meeting at which a quorum is present shall be required to take any action by the Board.

(c) Minutes. The Secretary shall cause to be kept minutes of the meetings of the Board, and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board of Directors.

(d) Bylaws. The Board of Directors shall adopt, from time to time, bylaws for the conduct of its meetings and, as necessary, for administration of this Chapter. The Board may adopt, from time to time, additional resolutions, rules, regulations, and policies for the conduct of its meetings and, as necessary, for administration of this Chapter.

12.4206 Annual Budget.

The Board of Directors shall adopt an annual budget for each fiscal year. The Bylaws shall further provide for the presentation and content of the budget as well as an annual fiscal report by the Treasurer.

12.4207 Powers.

(a) The IHSS PA shall be an entity separate from the County and shall file the Statement of Fact for the Roster of Public Agencies required by section 53051 of the Government Code.

(b) The IHSS PA shall be a corporate public body, exercising public and essential governmental functions with all powers necessary and convenient to carry out the delivery of IHSS, including the power to contract for services pursuant to sections 12302 and 12302.1 of the Welfare and Institutions Code, subject to any limitations set forth in this Chapter.

(c) Pursuant to Welfare and Institutions Code section 12301.6(f)(3), the County shall be immune from any liability resulting from its implementation of said section in the administration of the IHSS Program. Any obligation or legal liability of the IHSS PA, whether statutory, contractual or otherwise, shall be the obligation or liability solely of the IHSS PA and shall not be the obligation or liability of the County. All contracts between

the IHSS PA and third parties shall contain an express provision advising the contractor(s) that the IHSS PA is a separate governmental entity and that such agreement does not bind the County.

(d) All contracts, leases, or other agreements of any nature, including collective bargaining agreements, between the IHSS PA and any party, except those with the County, shall contain the following statement: "The IHSS PA is an independent legal entity, separate and apart from the County. The IHSS PA has no power to bind the County to any contractual or legal obligations, nor may the obligees of the IHSS PA seek recourse against the County for any financial or legal obligations of the IHSS PA."

(e) Employees of the IHSS PA shall not be employees of the County for any purpose.

(f) The IHSS PA shall be deemed to be the employer of IHSS providers referred to consumers from the registry pursuant to Welfare and Institutions Code sections 12301.6(c)(1) and (h), and 12302.25 for the limited purpose of collective bargaining within the meaning of Chapter 10 (commencing with section 3500) of Division 4 of Title 1 of the Government Code, commonly known as the Meyers-Milias-Brown Act. The IHSS PA shall not be deemed to be the employer of IHSS providers under this Chapter for purposes of liability, including but not limited to, the negligence or intentional torts of the IHSS providers.

(g) Nothing in these enumerated powers shall be construed to limit or interfere with the consumers' right to retain, select, terminate, and direct the work of any IHSS provider providing services to them, pursuant to section 12302.25(a) of the Welfare and Institutions Code.

(h) Nothing in these enumerated powers shall be construed to alter, require the alteration of, or interfere with the state's payroll system and other provisions of section 12302.2 of the Welfare and Institutions Code for IHSS providers, or to affect the state's responsibilities with respect to unemployment insurance, or workers' compensation for IHSS providers.

(i) The IHSS PA shall maintain general liability insurance in an amount determined to be adequate by the Board of Directors, and shall name the County as an additional insured.

(j) The Board of Directors as the governing body of the IHSS PA may hire staff, and adopt rules and regulations, not inconsistent with the provisions of this Chapter, in order to implement and interpret this Chapter.

12.4208 Duties.

Pursuant to Welfare and Institutions Code section 12301.6, the IHSS PA shall provide for the following functions:

(a) Assist consumers in finding IHSS providers through the establishment of a registry.

(b) Investigate the qualifications and background of potential IHSS providers listed in the registry.

(c) Establish a referral system under which potential IHSS providers are made known to consumers.

(d) Provide for training for IHSS providers and consumers. The IHSS PA shall only pay for training that it provides directly, has contracted for, or for which it has provided prior payment approval. The IHSS PA may not require that any IHSS provider or consumer attend or complete any training.

(e) Ensure 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.

(f) Perform any other function related to the delivery of IHSS, unless otherwise prohibited by this Chapter.

(g) The IHSS PA shall not have the authority to determine a consumer's eligibility for IHSS PA or the number of hours of services each eligible consumer shall receive. Such duties shall be reserved to the County. The County and the IHSS PA shall not reduce authorized hours of service to consumers in order to fund the IHSS PA, fund

wage and/or benefit increases to IHSS providers, or comply with Government Code section 3500 et. seq.

(h) The IHSS PA shall provide the County with information necessary for the County to bill the California Department of Social Services for the state and federal share of the IHSS PA costs.

(i) The IHSS PA shall assist the County in developing and submitting the information and documentation necessary to obtain approval from the California Departments of Social Services and Health Services for the IHSS PA's reimbursement rate and any rate adjustment.

12.4209 Fiscal Provisions.

(a) The IHSS Program is a federal and state funded program with differing levels of required County matching funds. The establishment and operation of IHSS PA or application of Government Code section 3500 et. seq. shall not result in payments from the County's general fund beyond the County's annual appropriation for the IHSS PA, if any, which shall be an absolute limit on County cost.

(b) The IHSS PA shall seek to maximize the benefit of any available new or increased non-County matching federal or state funds authorized for IHSS.

(c) The total of all operating costs, wages and benefits proposed or established by the IHSS PA must be consistent with the provisions of the County budget. The IHSS PA may not establish a payment rate that includes the costs of wages, benefits and operation, until the governing body of the IHSS PA makes a finding that the funds necessary for payment of that rate are legally available.

(d) The IHSS PA shall adopt its budget under the same laws and policies that control the County budget process.

(e) The IHSS PA shall not spend funds or contractually, or otherwise, obligate funds in excess of the limits of its budget as set out in this Chapter.

(f) The IHSS PA shall not have the authority to agree to, or approve any collective bargaining, or other agreement, that requires an increase in wages or economic

benefits, or results in costs, unless there is a state and/or federal funding match for such increase. The IHSS Program shall not be reduced in order to fund the IHSS PA or wage and benefit increases to IHSS providers.

12.4210 Annual Report and Plan.

The IHSS PA shall submit annually a report to the Board of Supervisors detailing its functions, evaluating its operations for that year, and detailing any specific goals and objectives for the coming year and its plan for meeting those goals and objectives. If, for any coming year, the IHSS PA intends to expand its duties, the IHSS PA shall present a detailed plan and budget for the implementation of that expansion of duties. Such plan shall be circulated to all interested County departments and community groups prior to presentation to the Board of Supervisors for its approval.

12.4211 Establishment of In-Home Supportive Services Advisory Committee.

The Board of Supervisors hereby establishes an IHSS Advisory Committee whose powers are derived from and are consistent with the provisions of Welfare and Institutions Code sections 12301.4 and 12301.6.

Because the County's In-Home Supportive Services Advisory Committee established by the Board of Supervisors by Resolution No. 2000-244 was established in compliance with the requirements of the Welfare and Institutions Code section 12301.6(b)(3)(C) and (D), it meets the hereinafter provided requirements and its members shall comprise the initial members of the IHSS Advisory Committee provided by this Section. The IHSS Advisory Committee members and alternates appointed under the above Resolution shall complete their current terms pursuant to this Section. All new appointments shall be made pursuant to this Section and shall be residents of the County of San Bernardino.

(a) Duties. Pursuant to Welfare and Institutions Code sections 12301.3, 12301.4, and 12302.25, the IHSS Advisory Committee shall submit recommendations to the Board of Supervisors on the preferred mode or modes of service to be utilized in the

County for in-home supportive services and shall provide ongoing advice and recommendations regarding in-home supportive services to the Board of Supervisors, any administrative body in the County that provides the delivery and administration of in-home supportive services, and the Board of Directors. The IHSS Advisory Committee shall meet no less than quarterly.

(b) Voting Members. The IHSS Advisory Committee shall be comprised of not more than eleven (11) voting members of which no less than fifty percent (50%) shall be current or past users of personal assistance services paid for through public or private funds ("Required Composition"), including the IHSS program. The Director of the County Department of Aging and Adult Services (hereinafter DAAS), or his or her designee, shall be appointed as a voting member of the Committee upon the first vacancy of an initial member, which maintains the Required Composition. The Director of DAAS shall designate a County employee to provide ongoing advice and support to the IHSS Advisory Committee. Members of the Advisory Committee, excluding the Director, or designee, of DAAS, shall be appointed by a majority vote of the Board of Supervisors.

(c) Term of Office. The voting members shall hold office for two (2) years, and may be reappointed for an additional two (2) years. The initial terms of the members shall be for one (1) or two (2) years as determined by the Board of Supervisors at the time of appointment to allow for staggered terms. The members of the IHSS Advisory Committee shall serve at the pleasure of the Board of Supervisors.

(d) Alternate Members. The IHSS Advisory Committee shall also be comprised of five (5) alternate members appointed by a majority vote of the Board of Supervisors.

(1) Alternate members shall serve for a one (1) year term, and may be reappointed for an additional one (1) year term. The alternate members shall serve at the pleasure of the Board of Supervisors. Alternate members shall fulfill the same duties as voting members, except alternate members shall not vote on any matters before the IHSS Advisory Committee.

(2) An alternate member shall be appointed to fulfill any vacancy in the voting membership where the member whose position was vacated has a remaining

unexpired term. Following appointment to the vacant voting member position, the alternate member shall assume the full duties of a voting member.

(e) Compensation. Voting and alternate members of the Committee shall be entitled to the stipend provided for in County Code section 13.0618(a).

(f) Funding. Pursuant to Welfare and Institutions Code section 12301.4, the County is eligible to receive state and/or federal reimbursements of IHSS Advisory Committee's administrative costs.

12.4212 Termination.

(a) Termination of the IHSS PA. By repeal of this Chapter, the Board of Supervisors may abolish the IHSS PA.

(b) Distribution of Assets upon Termination. Upon repeal of this Chapter and after resolution of all debts, liabilities and obligations, all property, both real and personal, of the IHSS PA shall be automatically transferred to the County.

12.4213 Enumeration of Powers.

The enumeration of powers in this Chapter of some of the provisions of Welfare and Institutions Code section 12301.6 shall not be interpreted as manifesting the intent of the Board of Supervisors to subject either the County or the IHSS PA to duties or liabilities not imposed by that statute.

12.4214 Severability.

(a) If any provision of this Chapter, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Chapter, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Chapter are severable.

(b) Notwithstanding the provisions of subsection (a), if any provision of this Chapter imposing limitations or restrictions on the IHSS PA, or the powers or duties of

the IHSS PA, including the ability of the IHSS PA to propose or establish payment rates, shall be held invalid, the provisions of this Chapter shall not be deemed severable and this Chapter shall be held invalid in its entirety.

SECTION 2. This ordinance shall take effect thirty (30) days after adoption pursuant to the provisions of Government Code section 25123.

FRED AGUIAR, Chairman
Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

J. RENEE BASTIAN
Clerk of the Board of Supervisors
of the County of San Bernardino

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

I, J. RENEE BASTIAN, Clerk of the Board of Supervisors of the County of San Bernardino, State of California, hereby certify that at a regular meeting of the Board of Supervisors of said County and State, held on the 8th day of January, 2002, at which meeting were present Supervisors: Bill Postmus, Jon D. Mikels, Dennis Hansberger, Jerry Eaves, Fred Aguiar and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to wit:

AYES: SUPERVISORS: Postmus, Mikels, Hansberger, Eaves, Aguiar

NOES: SUPERVISORS: None

ABSENT: SUPERVISORS: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board of Supervisors this 8th day of January, 2002.

J. RENEE BASTIAN, Clerk of the Board of Supervisors of the County of San Bernardino, State of California

By: _____
Deputy

Approved as to Form
Alan K. Marks, County Counsel

By _____
Deputy County Counsel

Date _____

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RAC:paw
9/8/2003