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Honorable Members of the City Council
c/o Holly L. Wolcott, City Clerk
200 N. Spring Street, Room 395
Los Angeles, CA 90012

June 19, 2015

Honorable Members:

BUREAU OF CONTRACT ADMINISTRATION – OFFICE OF LABOR STANDARDS
IMPLEMENTATION PLAN AND RESOURCE REQUIREMENTS (COUNCIL FILES
14-1371-S1 AND 09-2642)

Provided for your consideration is the Bureau of Contract Administration's (BCA's) implementation plan and resource requirements for an Office of Labor Standards (OLS).

BACKGROUND

On May 19, 2015, the City Council (Council) considered several reports relative to the establishment of a minimum wage in the City of Los Angeles and creation of an Office of Labor Standards to enforce the minimum wage and address wage theft (Council Files 14-1371, 14-1371-S1, 14-1371-S2, and 09-2642). The Council's actions on this day included instructing the BCA to provide a report addressing the following:

- Establish an implementation plan for the OLS. Such a plan will address enforcement mechanisms modeled on the San Francisco Labor Standards Division.
- Develop partnerships with local public interest groups and legal entities and/or bar associations. These partnerships will play a key role in a basic public outreach plan.
- Identify the staffing requirements and resources necessary to implement the plan.

On June 3, 2015, the Council voted to formally enact the Minimum Wage (MW) and Wage Enforcement Division (WED) ordinances and designated the BCA as the agency responsible for administration and enforcement.



STAFFING AND RESOURCES FOR IMPLEMENTATION

BCA anticipates this program will need approximately thirty-nine (39) positions, with the appropriate space allocation, and an outreach plan allowance of \$2.1 million to successfully administer a plan that addresses the elements in the recently signed ordinances. The positions and allowance will be phased in over four years to cover the expected workload demand.

To develop this response, BCA, in addition to using its own experience as a State Certified Labor Compliance Program, and as the Designated Administrative Agency responsible for the City's Living Wage Ordinance, also:

- Consulted with representatives from the City of San Francisco's Office of Labor Standards Enforcement, the City of Seattle's Office of Labor Standards, the State of California's Division of Labor Standards Enforcement (DLSE), the Office of the City Attorney, and several Community-Based Organizations (CBOs) to discuss best practices.
- Examined information contained in the two March 2015 reports: "Los Angeles Rising: A City That Works for Everyone," by the Economic Roundtable UCLA Labor Center – UCLS Institute for Research on Labor and Employment (Economic Roundtable) and "The Proposed Minimum Wage Law for Los Angeles: Economic Impacts and Policy Options," by the Institute for Research on Labor and Employment – University of California, Berkeley (Berkeley).
- Considered the elements contained in the recently-submitted ordinances by the City Attorney, establishing a Minimum Wage for employees and creating a Wage Enforcement Division.

PROGRAM DEVELOPMENT AND OVERVIEW

The BCA envisions a plan that focuses on four key components for success:

- Inform the Community
- Intake Concerns
- Investigate Complaints
- Implement Corrective Actions.

This plan presents a fair enforcement and educational approach that maximizes information flow, minimizes resolution time, and monitors effectiveness to ensure a proper response to the concerns raised in these ordinances.

INFORM THE COMMUNITY

The MW and WED ordinances will impose new employee compensation requirements and potential monetary penalties on employers; therefore, effective compliance will depend on a thorough information campaign at the earliest possible stage. Focusing resources up front to inform employers of their obligations and employees of their rights will establish an environment that facilitates success.

Effective compliance demands that employers and employees know the following:

- The required minimum wage amount.
- When mandatory wage increases occur.
- How to qualify as a Small Business or Non-Profit Organization.
- What constitutes a potential wage theft violation (e.g., overtime, meal and rest breaks).
- When compliance must occur and the consequences for non-compliance.

Outreach Strategy

This effort will require, at a minimum, the following multi-faceted strategy:

- A. Develop an accessible, multi-lingual website that informs employers of their obligations and employees of their rights and provides a portal to submit wage-related complaints or concerns.

In addition to providing a method for the instant submission of wage complaints, this website will provide information such as wage schedules and “Frequently Asked Questions” in English, Spanish, and a variety of other languages as identified in the Los Angeles WED ordinance (the City of San Francisco provides information in every language that represents over 5% of the working population).

This website will also enable BCA staff to track inquiries and complaints in real time so that data is readily available for the City’s open data initiative.

The City of Seattle developed a robust website as part of its minimum wage and wage theft program roll out. Seattle allocated a systems staff person exclusively during the nine month roll out period to establish the website. The State’s DLSE also recently created a stand-alone bi-lingual website dedicated to providing wage theft information.

- B. Engage Community-Based Organizations (CBOs) to do outreach.

The cities of San Francisco and Seattle, and the State DLSE, all recognize the necessity of utilizing existing grassroots networks available through CBOs, particularly to reach low-income and immigrant populations who may be otherwise fearful and reluctant to come forward with wage complaints. San Francisco began contracting with community-based workers’ rights organizations in 2007. Their effort was so successful that the Board of Supervisors increased the annual funding for the CBO budget from \$186,500 to \$482,125 in Fiscal Year 2013.

San Francisco utilizes CBOs with cultural and linguistic expertise to help identify and resolve wage complaints, provide workshops and one-on-one consultations with employees, and conduct media events. These worker rights organizations can also identify industries and locations where violations are rampant so that the BCA can more effectively target its educational campaigns and enforcement resources. The San Francisco CBO contract includes minimum performance requirements. For example, the contractors must refer at least 70 complaints per year, provide 195 workers’ rights

consultations per year, perform direct personal outreach to 3,500 workers per year, and hold four media events each year to publicize success stories.

San Francisco's contract is \$482,125 per year. Seattle has a budget of \$500,000 per year. The City of Los Angeles' estimated workforce is four times that of San Francisco and five times that of Seattle.

The Berkeley report also recognized contracts with CBOs as an effective tool in education and enforcement efforts. In particular, the report highlighted the ability of CBOs to utilize their linguistic, cultural, and industry expertise to bolster enforcement in three key ways: educating workers about their rights, building trust between workers and investigators, and providing knowledge of the relevant dynamics of particular industries.

- C. Mail critical wage-related information to all businesses registered with the Office of Finance.

Periodic mailings, such as at the beginning of the program and prior to each annual wage increase, will be necessary to clearly inform employers of their obligations to maximize compliance. The Office of Finance typically utilizes a postcard mailing process to inform the approximately 170,000 active registered businesses of tax requirements. Similarly, the City of San Francisco mails roughly 43,000 notices each year to inform employers of wage rate increases and distributes posters that employers must post in each place of employment to inform employees of their rights to minimum wage and wage theft protection.

The BCA plans to utilize a postcard mailing campaign to provide information, comparable to that provided by San Francisco's mailers, and will include the web address to the BCA website where employers can print out posters and access additional information.

- D. Use alternative means of advertising and outreach for employees in harder to reach communities.

This educational campaign should also distribute information in ways that are accessible to communities of workers that may not utilize traditional media. For example, resources should be allocated for the strategic placement of notices in ethnic publications and community papers, and in locations frequented by low wage workers including public busses. Seattle, which just completed its initial information campaign, utilized newspaper and radio advertisements. San Francisco's OLSE found bus posters to be a successful outreach method, while public service announcements, merchant walks, and advertisements in bus shelters were not particularly effective. Seattle's roll out/public relations budget was \$100,000 for a workforce that is estimated to be 20% the size of Los Angeles'.

Rolling out this new program will require a strategic approach that aims to inform as many employees and employers as possible across all industries and geographic locations. The BCA will regularly assess this strategy to ensure resources can be reallocated for maximum effectiveness.

Development of Informational Materials

Staff will develop materials that inform employers and employees to promote compliance. Key materials will include “Rules and Regulations,” compliance forms, and posters and advertisements.

Inquiries from the Public

Prior to and immediately following the effective date of the minimum wage increase, it will be essential to have staff available to answer questions and provide clarification to employees, CBOs, and employers. The City of Seattle, which implemented its minimum wage program on April 1, 2015, received almost 650 inquiries in the nine months preceding the effective date, and 183 inquiries in the month after the new minimum wage took effect. According to the interim director, these calls (and the associated research) were instrumental in helping shape their rules, outreach materials, and “Frequently Asked Questions.” The Los Angeles workforce is roughly five times that of Seattle. Due to this size disparity, the BCA could encounter over 4,000 inquiries in the ramp up period and over 900 calls per month after start up. Having adequate staff to respond to these inquiries will ensure that employers can access the information they need to comply with new wage requirements that become effective on July 1, 2016.

Anticipated Performance Metrics

- Number of inquiries received each month (broken out by source – online, telephone, email, etc. – as well as industry sector and geographic location).
- Number of employers informed by mail.
- Number of community events attended.

INTAKE CONCERNS

The BCA will implement a transparent, accessible communication submission system that allows employees or employers to submit complaints or concerns in a variety of languages and methods.

Inquiries from the Public

The following represents a few options to facilitate efficient intake of complaints or concerns:

- Online complaint form on the BCA website that can be submitted at a minimum in English or Spanish. Available resources will determine the number of additional languages the system will accommodate for online complaints or concerns.
- A dedicated e-mail address that employees or employers can utilize to submit complaints, questions, or feedback.
- A downloadable form available on the BCA website and in various City office locations that can be filled out and submitted in person, by mail, or by fax to the BCA.
- CBOs will assist in locating potential violators and submitting wage complaints on their behalf. The Berkeley report highlighted that in Fiscal Year 2013-14, San Francisco’s

OLSE collected more in back wages and interest from cases filed with CBOs than from those generated by direct employee complaints.

- A supplemental wage monitoring program, modeled after the BCA's existing Joint Labor Compliance Monitoring Program, will enable community members (who are trained and badged by the BCA) to conduct employee interviews and identify potential wage violations for review by the BCA.

The BCA plans to consider anonymous written complaints, particularly due to rampant fears of employer retaliation. However, San Francisco's OLSE conveyed a strong preference for written complaints signed under penalty of perjury for two key reasons: written complaints are vital during hearings and trials, and investigations rely heavily on the presence of employees who can act as insiders in gathering information. BCA will periodically review this approach to assess the effectiveness of anonymous complaints.

Non-Profit Deferrals

The BCA will develop a list of documents that will enable a non-profit to provide evidence that it satisfies certain salary criteria, provides transitional employment opportunities, provides child care services, or is funded primarily by government grants or reimbursements. These documents would only be required if a complaint is filed.

Anticipated Performance Metrics

- Percentage of complaints acknowledged in writing within one working day.
- Number of complaints received.
- Number of inquiries received.

Necessary Resources for Year 1

- One new position authority and funding in the BCA, with the appropriate work space allocation, to supplement the five (5) position authorities with funding that were approved in the FY 2015-16 budget. These positions will develop informational materials, draft Rules and Regulations and procedural manuals, develop compliance forms and other documents, write and implement a community outreach RFP and contract, coordinate a mailing campaign, respond to inquiries from the public, and develop and maintain an informational website and an internal database for managing cases and tracking data, and validate the criteria necessary to qualify as a small business or non-profit. The positions are detailed in the Recommendations section of this report.
- Two (2) new position authorities and funding in the Office of the City Attorney with the appropriate work space allocation, to provide extensive legal support and interpretation of the new law. These positions will be required ongoing.
- Public relations, technology, and advertising budget of \$200,000 per year.
- Technology (hardware and software) necessary to establish a healthy database and communications system.

INVESTIGATE COMPLAINTS

The BCA will employ multiple strategies, both proactive and complaint-driven, to identify and remedy violations of the new ordinances.

Investigation Process

The BCA will follow the investigation model implemented successfully in San Francisco. Complaints will be acknowledged in writing within one working day and staff will conduct a site visit at the place of business within three working days. This site visit will include employee and employer interviews, observations, and an audit of relevant documentation including payrolls, time cards, and employer policies.

A “Request for Information” letter, if necessary, will be sent to secure additional documentation not available during the site visit, such as payrolls or time cards. The employer will have 10 working days to respond. Requests may also be made to employees to provide supporting documentation such as time cards, pay stubs, or work hour logs. Documents will be accepted through a variety of methods including mail, fax, or electronic means.

Additional investigation activities will occur as appropriate, including return visits to the work site, monitoring employee work schedules, records analysis, and follow up interviews. Although it’s anticipated that the bulk of the investigation activities will be performed by the BCA staff, some investigations may require assistance from the City Attorney’s Office. Furthermore, some cases may benefit from the involvement of CBOs, particularly in areas such as translation, collecting information from employees, and interviewing employees for hearings or trials.

Targeted Audits

Although San Francisco currently operates a complaint-driven program, the DLSE performs proactive audits usually targeting specific industries or geographic areas. The City of Seattle will be relying on complaints initially but then plans to implement a strategic approach to proactive audits. In order to be as effective as possible, the City of Los Angeles will ultimately implement a proactive enforcement approach by utilizing targeted audits of industry sectors or employers with high rates of non-compliance. The Berkeley report noted that complaint-driven enforcement is less effective than targeted investigations and that many government agencies, including the Department of Labor, are increasing their targeted audits and focusing on key industries.

Investigator Workload

The Economic Roundtable report emphasized that Los Angeles has the highest rate of wage theft in the country. According to the report, thirty percent of low wage employees receive less than the minimum wage in any given week. That percentage may increase when the City’s minimum wage becomes effective and employers must respond to higher wage costs.

The Berkeley report stated that local employment conditions, such as the number of low wage workers, are important when determining the appropriate staffing level for wage theft enforcement. San Francisco’s complaint-driven approach to investigations currently utilizes 5.5 investigators for an estimated workforce of 611,333. A proportional comparison to Los Angeles’ workforce size would place the BCA staffing, for a complaint-driven approach, in the range of

13 - 23 investigators, depending on the workforce estimate used (analysts, clerical, legal support, and management staff are not represented in this discussion).

However, the Berkeley report highlighted that San Francisco has a lower concentration of low-wage employees. Taking into account the high concentration of low-wage employees in Los Angeles, and the projected number of employees that will directly benefit from an increase in the minimum wage (and, therefore, be most vulnerable to wage theft); the Berkeley report suggests that 25 investigators are required to provide enforcement activities comparable to those performed in San Francisco.

The BCA's staffing plan includes 19 investigator positions. This number may increase based on actual workload.

NOTE: There is currently a proposed bill (AB 970) in the state legislature that will provide the State DLSE with the authority to enforce local minimum wage laws. The legislation does not include a mechanism for funding this additional workload and the DLSE appears to be at full capacity with its current workload.

Anticipated Performance Metrics

- Percentage of investigations completed within one year. (Note that this is based on San Francisco's goal to complete all investigations within one year). Community-Based Organizations that were consulted agreed that this is an appropriate goal.

IMPLEMENT CORRECTIVE ACTION

Corrective action represents steps to resolve a complaint and can take a variety of forms. The BCA will work with the employee and employer to achieve full restitution of ANY unpaid wages, plus interest and penalties.

Determination, Penalties and Hearing Process

The BCA will, when necessary, issue administrative citations that articulate the reason for the violation and the required corrective action. Employers have ten days (with an extension of up to twenty-one days, at BCA's discretion) to appeal and/or remedy the violation.

Employers have the option to appeal the citation and pursue an administrative hearing. The hearing officer's decision is final and may uphold part or all of the citation and penalties.

The WED Ordinance outlines a menu of penalties and enforcement options available to achieve compliance, including penalties and interest paid to the employee, fines paid to the City, revoking police permits, liens, and penalties for violating administrative requirements such as allowing access to payroll records. This strategy is in line with the recommendation in the Economic Roundtable report that identifies ten different enforcement best practices; nine of those ten have been incorporated into the ordinance.

The BCA will establish procedures for assessing and collecting these various monetary penalties and for coordinating the administrative hearing process.

The BCA will need assistance from the City Attorney's Office, which will review and criminally and administratively prosecute cases brought by the new WED staff, negotiate settlement agreements with employers as part of compliance actions, and represent the City in Superior Court cases brought by employers appealing the City's administrative hearing decisions.

It is expected that there will be a significant increase in the volume and complexity of wage-related cases that are generated and referred to the City Attorney's Office. These cases are document intensive, often require accounting expertise, and demand extensive follow-up with witnesses and victims. Cases may include prevailing wage violations, wage theft, failure to pay minimum wage, failure to pay unemployment and workers compensation insurance.

In addition to new cases generated by the BCA, the City Attorney's Office will continue to have cases referred for prosecution to them by the U.S. Department of Labor, the California Department of Labor Standards Enforcement and the City's Office of Contract Compliance. These cases may be prosecuted in one of two ways:

- Civil enforcement actions pursuant to California Business & Professions code section 17200 which allege a pattern or practice of illegal or unfair business practices.
- Misdemeanor prosecution for illegal conduct, typically by individuals.

Anticipated Performance Metrics

- Number of cases that go to administrative hearing
- Amount of penalties collected
- Amount of wage restitution collected

Necessary Resources for Years 2 through 4

- Twenty-three (23) additional positions in the BCA, with the appropriate work space allocations, to address complaints, investigate potential wage theft infractions, oversee the administrative hearings, and assist in assessment and collection of back wages and penalties. The positions are detailed in the Recommendations section of this report.
- Eight (8) positions in the City Attorney's Office with the appropriate work space allocations, to provide legal support and enforcement of wage theft violations. The positions are detailed in the Recommendations section of this report.

NOTE: All requests for position authorities and funding are subject to change based on actual workload.

RECOMMENDATIONS

- A. Approve, in concept, this implementation plan for the Minimum Wage and Wage Enforcement Division Ordinances.

- B. Authorize position authority and funding (effective July 1, 2015) to supplement the existing five position authorities and funding provided in the FY 15-16 budget, as outlined below:

July 1, 2015 through June 30, 2016

Department	Qty	Classification	Class Code
PW-Contract Administration	1	Senior Systems Analyst I	1597-1
Office of City Attorney	1	Deputy City Attorney III	0535
Office of City Attorney	1	Paralegal II	0577

- C. Authorize, in concept, employment authority for thirty-one (31) additional positions in the Bureau of Contract Administration and the Office of the City Attorney, to be phased in over three fiscal years, as outlined below:

July 1, 2016 through June 30, 2017

Department	Qty	Classification	Class Code
PW-Contract Administration	2	Senior Management Analyst I	9171-1
PW-Contract Administration	5	Management Analyst II	9184-2
PW-Contract Administration	1	Management Analyst I	9184-1
PW-Contract Administration	2	Senior Clerk Typist	1368
Office of City Attorney	2	Deputy City Attorney III	0535
Office of City Attorney	1	Legal Secretary I	0580

July 1, 2017 through June 30, 2018

Department	Qty	Classification	Class Code
PW-Contract Administration	1	Senior Management Analyst I	9171-1
PW-Contract Administration	4	Management Analyst II	9184-2
PW-Contract Administration	2	Management Analyst I	9184-1
PW-Contract Administration	1	Senior Clerk Typist	1368
Office of City Attorney	2	Deputy City Attorney III	0535
Office of City Attorney	1	Paralegal II	0577
Office of City Attorney	1	Legal Secretary II	0581

July 1, 2018 through June 30, 2019

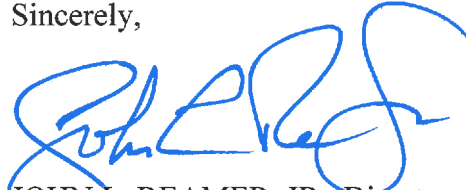
Department	Qty	Classification	Class Code
PW-Contract Administration	3	Management Analyst II	9184-2
PW-Contract Administration	2	Management Analyst I	9184-1
Office of City Attorney	1	Deputy City Attorney III	0535

- D. Authorize, in concept, a Community Outreach budget of \$700,000 each year for a total of \$2.1 million for the period July 1, 2016, through June 30, 2019.

- E. Authorize, in concept, an advertisement, public relations, and technology budget of \$200,000 each year for a total of \$600,000 for the period of July 1, 2016, through June 30, 2019. This appropriation will maintain the funding of \$200,000 provided in the FY 15-16 budget.

- F. Request the General Services Department work with the Bureau of Contract Administration to identify space needs at the Public Works Building for the BCA staff increase.
- G. Change the name of the Wage Enforcement Division to the Labor Standards Enforcement Division.

Sincerely,



JOHN L. REAMER, JR., Director
Bureau of Contract Administration