

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Council File No. 18-0086

Council District: Citywide

To: The Council

From: Richard H. Llewellyn, Jr., City Administrative Officer

Reference: Communication from the Chair and Vice Chair, Immigrant Affairs, Civil Rights, and Equity Committee approved by Council on November 28, 2018

Subject: **INITIAL IMPLEMENTATION AND ESTIMATED FULL-YEAR COST FOR THE CIVIL AND HUMAN RIGHTS COMMISSION**

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### RECOMMENDATION

That the Council receives and files this report as it is for informational purposes only in response to the Communication from the Chair and Vice Chair, Immigrant Affairs, Civil Rights, and Equity Committee (C.F. 18-0086).

### SUMMARY

On November 28, 2018, the Council adopted the Immigrant Affairs, Civil Rights, and Equity Committee Report which directed this Office to report on the initial implementation costs and necessary authorities for the proposed Civil and Human Rights Commission (Commission), including the estimated full year cost for the Commission. This Office has utilized the most relevant available data from other City departments and other cities to estimate the implementation and full-year costs for the Commission. This Office considered two scenarios for the estimated full-year costs based on whether State law relative to preemption is amended or if the current preemption policy is continued. The California Fair Employment and Housing Act (FEHA) contains a preemption clause which prohibits local enforcement of FEHA provisions. Under current law, the Commission would only be able to address discrimination complaints related to the four protected classes included in the proposed City Civil and Human Rights Law including: 1) citizenship status; 2) partnership status; 3) veteran status; and, 4) employment and income status. The cost estimates provided also include an estimate from the City Attorney relative to the staffing resources needed to provide the necessary legal support for the Commission. Additionally, this Office considered whether Administrative Law Judges (ALJs) or hearing officers would be utilized to conduct appeals hearings for the commission and a comparison of the estimated costs for ALJs and hearing officers is provided in this report.

This report provides details on the methodology and implications of these amounts and a breakdown of these costs is included in the attachments to this report. The table below provides a summary of these cost estimates:

**Summary of Commission and City Attorney Cost Estimates**

<b>Staffing Scenario</b>	<b>Time Period</b>	<b>Total Positions</b>	<b>Total Position and Expense Cost</b>
Commission Implementation	3 Months	4	\$ 237,768
<b>Preemption:</b>			
Commission	12 Months	8	\$ 1,814,822
City Attorney	12 Months	6.5	1,192,869
<b>Preemption Total</b>		<b>14.5</b>	<b>\$ 3,007,691</b>
<b>Non-Preemption:</b>			
Commission	12 Months	25	\$ 4,827,488
City Attorney	12 Months	29	4,909,585
<b>Non-Preemption Total</b>		<b>54</b>	<b>\$ 9,737,073</b>
Note: Total costs shown do not include costs for appeals hearings.			

**BACKGROUND**

This report provides the cost estimates for the initial three-month implementation, workload projections, full-year staffing, and appeal hearings. The three-month implementation cost is based on updated figures from the preliminary implementation costs this Office provided in July 2018 as included in a report from the Chief Legislative Analyst dated August 7, 2018 (C.F. 18-0086). Workload projections accounted for two scenarios relative to whether the State takes action to amend the preemption clause of FEHA. These projections were utilized to formulate the estimates for full year staffing and costs for the Commission and an estimate of the necessary support from the City Attorney under both preemption and non-preemption scenarios. This report also provides an estimated range for the number of appeals that would need hearings and a comparison of the costs for utilizing ALJs or hearing officers to address those appeals hearings.

The full implementation of the Commission will require additional information and approvals beyond those contemplated by this report. Should the Council decide to approve the Commission and position authorities, funding would need to be identified to support the authorized positions and related expenses. The 2018-19 Adopted Budget did not include funding for this purpose and the implementation of this Commission in the current fiscal year would require adjustments to existing expenditure appropriations or the allocation of new unbudgeted revenues.

The cost estimates provided in this report do not include any potential cost recovery from administrative penalties as it has not been decided how these penalties would be allocated or what standards will be applied for the levying of these penalties for various instances of discrimination. Additionally, the cost of any potential support from other City departments is not included in the estimates provided in this report as they have yet to be determined.

### Estimates for Initial Implementation Staffing and Expense Costs

The preliminary cost estimate for initiating the creation of the Civil and Human Rights Commission (Commission) is \$243,203 and includes three-month costs for four positions with initial operating expenses. Additional cost detail is reflected in Attachment 1 to this report. These positions include an Executive Director, one Management Analyst, one Commission Executive Assistant, and one Administrative Clerk. These four positions would address start up activities, assist the Commission in the drafting of rules and regulations, and conduct other Commission work. The Executive Director would be responsible for coordinating with the Commissioners in development of the Commission's operational rules and regulations, refining estimates for the resources required to address the anticipated work of the Commission, and hiring and supervising the other staff members. The Management Analyst would assist the Executive Director with budget preparation for the Commission, any necessary reports, and general Commission administration. The Commission Executive Assistant would serve as a liaison between the Executive Director and the Commission, and provide logistical and administrative support to the Commissioners as needed to facilitate Commission meetings and related work. The Administrative Clerk would provide logistical and administrative support for the Executive Director and the Management Analyst. Additional refinement of the duties of these positions would be determined at a later date should they be approved. It is important to note that initiating this Commission on an interim basis would have an impact on the General Fund as the costs were not contemplated in the 2018-19 budget.

### Preemption vs Non Preemption

Currently, the FEHA contains a preemption clause prohibiting local jurisdictions from enforcing the provisions of FEHA. On October 14, 2018, in a veto message to SB 491, the former Governor directed the DFEH to create an advisory group to explore allowing the enforcement of FEHA provisions by local jurisdictions and to prepare a report with findings and recommendations. In December 2018, the advisory group released its report on the issues and implications of removing or modifying the preemption clause of FEHA. The advisory group noted several scenarios relative to the modification of FEHA preemption including multiple scenarios with dual state and local enforcement of FEHA. The report did not provide specific recommendations for the modification of FEHA and it is up to the State Legislature how the FEHA preemption clause may be modified. Due to the uncertainty relative to FEHA preemption, this Office assumed two workload and full year Commission cost scenarios to provide a range of potential workload that the Commission would need to address. One scenario assumed preemption continues as is current law and the second assumed that local jurisdictions which elect to address employment and housing discrimination cases would take complete responsibility for the enforcement of FEHA within their respective jurisdictions. If the State takes action to modify FEHA preemption, it is likely that it will follow one of several dual State and local enforcement scenarios.

### Full-Year Workload Estimates

This Office estimated the workload that the Commission may potentially address based on information from the California Department of Fair Employment and Housing (DFEH), the New York City Human Rights Commission, and demographic data from the California Employment



Development Department, United States Census Bureau, and the Pew Research Center. This estimates formed the basis for an estimation of the full-year cost of the Commission, specifically which position authorities and how many of those authorities would be required by the Commission. The workload estimates created by this Office are based on several assumptions due to a lack of available data and may be higher or lower than the complaint case load that the Commission would need to address. A detailed breakdown of the estimated workload and the assumption utilized to create this estimate is provided in Attachment 2 of this report.

#### Full-Year Staffing and Expense Costs

Based on the estimated workload and information from the DFEH on the annual caseload for its investigators, this Office estimates that four investigators would be needed to address Commission workload if FEHA preemption is unchanged and nineteen investigators if FEHA preemption is removed and enforcement is shifted to local jurisdictions. The staff estimates provided by this Office took into account the need for supervision of additional authorities and included additional authorities or advanced paygrades. In the non-preemption scenario this included the addition of one Senior Management Analyst I authority to assist in the Executive Director with the overall management of the Commission and provide supervision of the administrative functions of the Commission. It was assumed that the full year funding would begin at the beginning of 2019-20; however, this would be contingent on the timeline for initial implementation of the Commission and the adoption of rules and regulations governing the Commission. Additionally, the full year staffing figures referenced in this report are likely to be changed based on the investigatory needs stipulated by the rules and regulations of the Commission and assessments of the actual workload the Commission would address. The estimated costs for an outreach and education program related to the proposed Civil and Human Rights Law and leasing costs were included in the full-year cost estimates.

It should be noted that the cost estimates reflect Special Investigator positions to address the projected Commission caseload for budgetary purposes only. The specific position authorities most appropriate to address this workload would be determined by the Personnel Department and the Civil Service Commission. This determination would be based on the approved rules and regulations of the Commission that would specify how Commission investigations would be conducted. A detailed breakdown of the full year staffing projections and the assumptions used to formulate them is included in Attachment 3 for the preemption scenario and Attachment 4 for the non-preemption scenario.

#### Legal Support from the City Attorney

The City Attorney provided an estimate of its staffing needs to support the Commission based on the workload this Office projected for the Commission. These additional City Attorney staff would: 1) provide ongoing general counsel advice to the Executive Director and Commission; 2) advise the Executive Director and their investigators throughout the case intake, investigation and hearing process, and represent the Executive Director at any subsequent writ proceeding; 3) provide separate counsel to a hearing officer during appeal hearings; 4) provide separate counsel to the Commission for further appeals; and, 5) respond to any Writs filed by complainants or respondents



in Superior Court. The City Attorney estimates that it would require 6.5 full time equivalent positions if FEHA preemption is unchanged and 29 positions if FEHA preemption is removed and enforcement is shifted to local jurisdictions. These estimates do not include leasing costs or other expenses which may be needed to support these additional position authorities. A detailed breakdown of the City Attorney projections for both the preemption and non-preemption scenarios is included in Attachment 5.

#### Administrative Law Judge and Hearing Officer Costs

This Office utilized information from existing City contracts, the California Department of General Services Office of Administrative Hearings, and the estimated workload to project the potential costs for appeals hearings. These projections include a comparison of the estimated costs for ALJs and hearing officers. Due to a lack of information on the procedures for appeal hearings, the projections are based on the assumption that each appeal hearing would take one hour. Additionally, a range of appeal rates was utilized due to uncertainty regarding the quantity of cases that would be appealed and the lack of available data from other civil and human rights enforcement entities to make a specific projection for an appeals rate assumption. Additional details on the comparison of the estimated costs for ALJs and hearing officers, including the basis for those estimates, are included in Attachment 6.

#### **FISCAL IMPACT STATEMENT**

There is no impact to the General Fund as this report is for informational purposes only. Should the Council decide to approve the creation of the Commission and direct the authorization of the listed position authorities in the current fiscal year, funding would need to be identified and require adjustments to existing expenditure appropriations or the allocation of new unbudgeted revenues.

*RHL:NSC:02190090C*

Attachment 1: Implementation Cost Estimate for Civil and Human Rights Commission

Attachment 2: Estimated Caseload for Civil and Human Rights Commission by Protected Class

Attachment 3: Full-Year Cost Estimate for Civil and Human Rights Commission – Preemption

Attachment 4: Full-Year Cost Estimate for Civil and Human Rights Commission – Non-Preemption

Attachment 5: Full-Year Cost Estimates for City Attorney Support of Civil and Human Rights Commission

Attachment 6: Comparison of Administrative Law Judge (ALJ) and Hearing Officer Cost Estimates

### Three-Month Implementation Cost Estimate for Civil and Human Rights Commission

Staffing	Count	Cost
<b>Commission:</b>		
Volunteer Commissioners <sup>2</sup>	15	\$ 1,125
<b>Executive and Admin Staff:</b>		
Executive Director <sup>3</sup>	1	44,438
Management Analyst	1	21,209
Commission Executive Assistant I	1	16,730
Administrative Clerk	1	12,324
<b>Position Total</b>	<b>4</b>	<b>94,701</b>
<b>Related Costs Estimate<sup>4</sup></b>		<b>82,466</b>
<b>TOTAL POSITION COST</b>		<b>\$ 178,292</b>
<b>Expenses</b>	<b>Account</b>	<b>Cost</b>
Printing and Binding	2120	\$ 400
Office and Administrative	6010	52,496
Operating Supplies	6020	1,000
Leasing <sup>5</sup>	6030	-
Equipment	7300	5,580
<b>TOTAL EXPENSE COST</b>		<b>\$ 59,476</b>
<b>GRAND TOTAL</b>		<b>\$ 237,768</b>

**Notes:**

<sup>1</sup>Salary amounts reflect the three-month cost.

<sup>2</sup>Commissioners are estimated to be paid \$25 per meeting and that the Commission would meet once monthly.

<sup>3</sup>Reflects salary range for Executive Officer of Ethics Commission for comparison purposes. The salary for the Executive Director of the Civil and Human Rights Commission will be determined at a later date and the salary shown is for budget planning only.

<sup>4</sup>Cost Allocation Plan 41 special rate used to illustrate the City cost for fringe benefits and central services.

<sup>5</sup>Reflects anticipation that the Commission will not have separate leasing space within the three-month implementation time frame. Leasing costs estimates included in with full year costs.

### Estimated Caseload for Civil and Human Rights Commission by Protected Class

Complaint Category	Preempted by the State <sup>1</sup>	Not Preempted by the State				TOTAL
	Current DFEH Protected Classes <sup>2</sup>	Citizenship Status <sup>3</sup>	Veteran Status <sup>4</sup>	Partnership Status <sup>5</sup>	Employment and Income Status <sup>5</sup>	
Employment	2,324	218	-	14	168	2,724
Housing	131	13	3	1	10	158
Civil Rights Violations	34	4	2	2	4	46
Disabled Persons Act	2	1	1	1	1	6
<b>TOTAL</b>	<b>2,491</b>	<b>236</b>	<b>58</b>	<b>18</b>	<b>183</b>	<b>2,934</b>

**Notes:**

<sup>1</sup>FEHA preemption clause prevents local enforcement of discrimination complaints in housing and employment related to the following protected classes: Race, color, ancestry, national origin, religion, creed, age, disability, sex, gender, gender identity or expression, sexual orientation, medical condition, genetic information, marital status, and military or veteran status (employment only).

<sup>2</sup>Based on 2011-2017 average of Department of Fair Employment and Housing cases attributed to LA County and adjusted proportionally for the City based on demographic information from California Employment Development Department and the United States Census Bureau.

<sup>3</sup>Assumed increase in existing complaints proportional to estimated undocumented share of the City population. Estimate for undocumented population based on information from the Pew Research Center.

<sup>4</sup>Assumed increase in existing complaints proportional to estimated veteran share of the City population. Estimate for veteran population based on information from the United States Census Bureau.

<sup>5</sup>Utilized 2009-2017 data from the New York City Human Rights Commission to calculate the average percent increase in complaints attributable to partnership status and employment and income status discrimination complaints. These average increases were applied to DFEH averages.



**Full-Year Cost Estimate for Civil and Human Rights Commission  
State Preemption Scenario**

<b>Staffing</b>	<b>Count</b>	<b>Cost</b>
<b>Commission:</b>		
Volunteer Commissioners <sup>1</sup>	15	\$ 4,500
<b>Executive and Admin Staff:</b>		
Executive Director <sup>2</sup>	1	186,816
Management Analyst	1	89,162
Commission Executive Assistant I	1	70,333
Administrative Clerk	1	51,812
<b>Investigators:</b>		
Special Investigator II <sup>3</sup>	1	111,852
Special Investigator I <sup>3</sup>	3	260,233
<b>Position Total</b>	<b>8</b>	<b>770,208</b>
<b>Related Costs Estimate<sup>4</sup></b>		<b>605,538</b>
<b>TOTAL POSITION COST</b>		<b>\$ 1,380,246</b>
<b>Expenses</b>	<b>Account</b>	<b>Cost</b>
Printing and Binding <sup>5</sup>	2120	\$ 50,800
Contractual Services <sup>5</sup>	3040	200,000
Office and Administrative	6010	52,496
Operating Supplies	6020	2,000
Leasing <sup>6</sup>	6030	314,040
Equipment	7300	15,240
<b>TOTAL EXPENSE COST</b>		<b>\$ 434,576</b>
<b>GRAND TOTAL</b>		<b>\$ 1,814,822</b>

**Notes:**

<sup>1</sup>Commissioners are estimated to be paid \$25 per meeting and that the Commission would meet once monthly.

<sup>2</sup>Reflects salary range for Executive Officer of Ethics Commission for comparison purposes. The salary for the Executive Director of the Civil and Human Rights Commission will be determined at a later date and the salary shown is for budget planning only.

<sup>3</sup>Special Investigator class shown for budgetary purposes only. The appropriate class and salary amount for Commission investigatory work will be determined at a later date.

<sup>4</sup>Cost Allocation Plan 41 special rate used to illustrate the City cost for fringe benefits and central services.

<sup>5</sup>Included a total of \$250,000 for education and outreach program based on the funding amounts used for the Rent Stabilization Outreach Program in 2016-17 for comparison purposes. Includes \$50,000 in Printing and Binding and \$200,000 in Contractual Services.

<sup>6</sup>Estimate provided by General Services Department based on CAO staffing projections. Utilized higher range of per square foot lease costs. Figure includes estimate for data network and phone installation. Assumes other necessary tenant improvements will be paid by building owner. Actual leasing costs will be calculated during implementation as the Executive Director and Commission set operational standards and space needs are adjusted based on those standards.

**Full-Year Cost Estimate for Civil and Human Rights Commission  
No State Preemption Scenario**

<b>Staffing</b>	<b>Count</b>	<b>Cost</b>
<b>Commission:</b>		
Volunteer Commissioners <sup>1</sup>	15	\$ 4,500
<b>Executive and Admin Staff:</b>		
Executive Director <sup>2</sup>	1	186,816
Senior Management Analyst I	1	102,458
Management Analyst	1	89,162
Commission Executive Assistant I	1	70,333
Administrative Clerk	2	103,624
<b>Investigators:</b>		
Special Investigator II <sup>3</sup>	3	335,555
Special Investigator I <sup>3</sup>	16	1,387,908
<b>Position Total</b>	<b>25</b>	<b>2,275,856</b>
<b>Related Costs Estimate<sup>4</sup></b>		<b>1,789,278</b>
<b>TOTAL POSITION COST</b>		<b>\$ 4,069,634</b>
<b>Expenses</b>	<b>Account</b>	<b>Cost</b>
Printing and Binding <sup>5</sup>	2120	\$ 52,500
Contractual Services <sup>5</sup>	3040	200,000
Office and Administrative	6010	275,604
Operating Supplies	6020	6,250
Leasing <sup>6</sup>	6030	345,980
Equipment	7300	77,520
<b>TOTAL EXPENSE COST</b>		<b>\$ 757,854</b>
<b>GRAND TOTAL</b>		<b>\$ 4,827,488</b>

**Notes:**

<sup>1</sup>Commissioners are estimated to be paid \$25 per meeting and that the Commission would meet once monthly.

<sup>2</sup>Reflects salary range for Executive Officer of Ethics Commission for comparison purposes. The salary for the Executive Director of the Civil and Human Rights Commission will be determined at a later date and the salary shown is for budget planning only.

<sup>3</sup>Special Investigator class shown for budgetary purposes only. The appropriate class and salary amount for Commission investigatory work will be determined at a later a date.

<sup>4</sup>Cost Allocation Plan 41 special rate used to illustrate the City cost for fringe benefits and central services.

<sup>5</sup>Included a total of \$250,000 for education and outreach program based on the funding amounts used for the Rent Stabilization Outreach Program in 2016-17 for comparison purposes. Includes \$50,000 in Printing and Binding and \$200,000 in Contractual Services.

<sup>6</sup>Estimate provided by General Services Department based on CAO staffing projections. Utilized higher range of per square foot lease costs. Figure includes estimate for data network and phone installation. Assumes other necessary tenant improvements will be paid by building owner. Actual leasing costs will be calculated during implementation as the Executive Director and Commission set operational standards and space needs are adjusted based on those standards.

## Full-Year Cost Estimates for City Attorney Support of Civil and Human Rights Commission

Staffing	State Preemption		No State Preemption	
	Count <sup>1</sup>	Cost <sup>3</sup>	Count <sup>1</sup>	Cost <sup>3</sup>
Deputy City Attorney IV	1	\$ 211,416	1	\$ 211,416
Deputy City Attorney II (Investigator Support)	2.5	349,793	15	2,098,755
Deputy City Attorney II (Hearing Officer Support)	0.5	69,959	2	279,834
Deputy City Attorney II (Commission Support)	0.5	69,959	1	139,917
Paralegal	1	75,359	5	376,795
Legal Secretary II	1	73,373	5	366,865
<b>Related Costs Estimate<sup>2</sup></b>		<b>343,010</b>		<b>1,436,003</b>
<b>POSITION TOTAL</b>	<b>6.5</b>	<b>\$ 1,192,869</b>	<b>29</b>	<b>\$ 4,909,585</b>

**Notes:**

<sup>1</sup>Reflects an estimated caseload of 200 cases handled annually by each Deputy City Attorney II providing support to investigators.

<sup>2</sup>Includes estimated cost for fringe benefits only.

<sup>3</sup>Estimate does not include leasing or other expense costs related to these position authorities.



### Comparison of Administrative Law Judge (ALJ) and Hearing Officer Cost Estimates:

	State Preemption		No State Preemption	
	1/6th Appeal Rate <sup>3</sup>	1/3rd Appeal Rate <sup>3</sup>	1/6th Appeal Rate <sup>3</sup>	1/3rd Appeal Rate <sup>3</sup>
ALJ	\$ 108,940	\$ 218,140	\$ 514,280	\$ 1,028,820
Hearing Officer	80,340	119,340	246,480	451,620
Estimated Savings from Utilizing Hearing Officer	\$ 28,600	\$ 98,800	\$ 267,800	\$ 577,200

#### Estimation Cost Factors:

Cost Category	Cost
ALJ <sup>4</sup>	\$295 per hour
Staff Counsel <sup>4</sup>	\$280 per hour
Filing Fee <sup>4</sup>	\$100 per case
Hearing Officer <sup>5</sup>	\$800 per hearing session
Hearing Reporter <sup>6</sup>	Full day appearance fee (3+ hours)
	Half day appearance fee (1-3 hours)
Transcription <sup>6</sup>	Transcribed in 2-5 days at \$7.50 per page

#### Notes:

<sup>1</sup> Assumed one case heard per hour

<sup>2</sup> Assumed hearings are held weekly for 52 weeks of the year based on assumption of 261 working days.

<sup>3</sup> Reflected 1/6th and 1/3rd appeal rates to illustrate a potential range for the frequency that cases could be appealed.

<sup>4</sup> Used California Department of General Services Office of Administrative Hearings 2019-20 prices

<sup>5</sup> Used cost factors from fee schedule attached to Housing and Community Investment Department contract with Beth Rosen-Prinz (C-131882). Assumed one hearing session is 8 hours.

<sup>6</sup> Used cost factors from the fee schedule attached to City Attorney contract with Kennedy Court Reporters (C-127829)

<sup>7</sup> Assumed 30 transcribed pages per hour based on: 125 words per minute, 7500 words per hour, 250 words per page.