


**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: August 1, 2018

TO: Honorable Members of the Immigrant Affairs, Civil Rights, and Equity Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No: 18-0086
Assignment No: 18-07-0681 and 18-07-0680

Civil and Human Rights Commission

SUMMARY

On February 23, 2018, the Council instructed the City Attorney and Immigrant and Civil Rights Advocate to prepare a draft ordinance that would establish a Human and Civil Rights Commission capable of investigating and enforcing an anti-discrimination ordinance. The City Attorney presented the draft ordinance at a meeting of the Immigrant Affairs, Civil Rights, and Equity Committee on June 7, 2018 (CF 18-0086).

The proposed ordinance would establish the Civil and Human Rights Commission (Commission) and the position of Executive Director which would be tasked with supporting the Commission and investigating complaints of discrimination. The proposed Los Angeles Civil and Human Rights Ordinance (Ordinance) would provide the basis for the complaints, making it illegal to discriminate against individuals in housing, employment, private commerce, and education based on certain protected classes.

On June 7, 2018, the Committee discussed the City Attorney report and draft Ordinance and instructed the Chief Legislative Analyst, with assistance from the City Administrative Officer (CAO), City Attorney, and Immigrant and Civil Rights Advocate to report on:

- The fiscal impact of the creation of the Commission and Executive Director position, including budget and staffing needs.
- Recommendations for appropriate administrative penalties for violations and recommendations for how to allocate collected administrative penalties.
- Areas in the ordinance where Council may have oversight over the decisions made by the Commission and Executive Director.

This report, with the assistance of the CAO, provides preliminary budget and staffing estimates for the creation of the Commission, as well as recommendations for administrative penalties and the allocation of those penalties, and possibilities for Council oversight of the Commission. A review of Civil/Human Rights Commissions in comparable cities is also included (Attachment A).

If the Council wishes to proceed with the establishment of a Civil and Human Rights Commission and Executive Director, we would recommend bifurcating the ordinance as proposed, approving the Civil and Human Rights Commission, and continuing the Civil and Human Rights Ordinance for a later date pending Council decision on penalties and any other amendments. By bifurcating and approving the Commission, appointment of the Commission and the Executive Director may begin, as well the

subsequent creation of the rules and regulations for the Commission. This would be a process similar to the establishment of the Department of Cannabis Regulation.

In order to finalize the Ordinance, a penalty structure and collection ratio would need to be approved by Council. Further, to the extent that the Council wishes to solicit input from the Commission and Executive Director on this issue, the Council can approve the establishment of the Commission and Executive Director (Section 1) and delay implementation of Section 2 until the Commission structure and rules and regulations are finalized.

CLA RECOMMENDATIONS:

That the City Council:

1. Request the City Attorney to revise the draft ordinance as two ordinances, with one approving the Civil and Human Rights Commission, amended to include Council oversight as directed, and another continuing the Civil and Human Rights Ordinance to be presented for a later date;
2. Request the Civil and Human Rights Commission once appointed, to review and make recommendations regarding penalty structures, rules and regulations, and an educational campaign; and
3. Instruct the CAO to include funding for initial staffing costs for the Civil and Human Rights Commission in a future Financial Status Report.

DISCUSSION

Fiscal Impact of Commission and Executive Director

As described in the proposed Ordinance, the Civil and Human Rights Commission and Executive Director would be tasked with several responsibilities in their capacity as an investigatory and enforcement body. This would include administrative tasks, processing discrimination complaints, investigation, defending notices of violation, and several other duties. The proposed ordinance provides an expansion of protected classes not currently covered by state or federal law, providing protections for citizenship status, employment/income status, partnership status, and veteran status. In addition, the Ordinance would not limit enforcement to those who employ more than 5 employees nor would it provide a statute of limitations, as done by Department of Fair Employment and Housing (DFEH) and other cities. There are no figures available to help estimate the workload that will result from these expansions. The Fair Employment and Housing Act (FEHA) includes a preemption clause which prohibits local jurisdictions from enforcing its provisions in favor of state enforcement. The City would be unable to enforce complaints regarding housing and employment discrimination for those classes which are protected under state law. Classes not protected by FEHA, as well as complaints for any kind of discrimination in private commerce and education are not affected by preemption and may be enforced. FEHA preemption makes it difficult to accurately anticipate the number of complaints that will be enforced by the City and those that will be referred.

Due to these variables and lack of precedent for the Commission, we cannot accurately estimate the degree of workload the Commission may receive and recommend gradual adjustments based on workload to maintain the consistency of operations and sustainability of the Commission.

Projected Start-up Costs for the Proposed Civil and Human Rights Commission

Per the CAO, the preliminary cost estimate for initiating the creation of the Civil and Human Rights Commission is \$608,408 and includes nine-month costs for four positions with initial operating expenses. Additional cost detail is reflected in Attachment B to this report. Should the Council decide to approve the ordinance, initial staffing could include four resolution authority positions to address start up activities and Commission work. These positions include an Executive Director, one Management Analyst, one Commission Executive Assistant, and one Administrative Clerk. The Executive Director would be responsible for working with the Commissioners in development of the rules and regulations to govern Commission operations, identifying additional resources required to implement the Commission's work, preparing a budget request for the resources necessary 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 the positions 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. Should the Council decide to create the Commission with the four positions discussed, any additional requests for resources to expand and implement the Commission as envisioned by the Council, should be submitted by the Executive Director as part of the 2019-20 budget process. We anticipate however, that these costs will increase once additional staff resources are identified to perform complaint investigations, hearing coordination, and other administrative work. The preliminary cost estimates provided in Attachment B are based on several assumptions listed in the notes section of Attachment B. In addition, there are several unknown variables which would increase the operational cost of the Commission and are not included in the current cost estimate due to a lack of available information.

Rules and Regulations of the Commission

The rules and regulations for the Commission will further determine its workload and the resources required to fully implement the proposed Ordinance. The rules and regulations will not be known until they are adopted by the Commission and any necessary approvals are received from the Council. Additionally, the processes for complaint intake, how investigations are conducted, classification of personnel utilized to conduct the investigations, and the quantity and cost of the Administrative Law Judge (ALJ) appeals hearings will be dependent on the adopted rules and regulations of the Commission. Finally, the availability and cost of lease space required would also depend on the Commission structure created by the rules and regulations as approved by Council and the estimated resource needs proposed by the Executive Director to address the projected workload.

Administrative Law Judges

As proposed by the Ordinance, an alleged violator can pay the administrative fine or can alternatively elect to have the case heard before an administrative law judge. This option is vital to ensure the provision of due process. These administrative hearings could also be held by hearing officers similar to other hearings held by the city. According to the City Attorney, the relative independence of an ALJ

in a quasi-judicial process may produce less challenges to the process and result in lower overall costs. The cost of contracting ALJs would also be dependent on the workload they receive which at this moment cannot be accurately anticipated.

Commission Priorities/Direction

Determining the priorities of the Commission will be critical in addressing the issue of unknown workload. Priorities and objectives of the Commission should be clearly defined in order to give the Commission direction in their duties. Under the proposed Ordinance, notwithstanding rules and regulations to be approved by the Commission, the number and types of complaints which are investigated would be at the sole discretion of the Executive Director.

The Commission could prioritize work that would provide more expedient and efficient processing for complaints not preempted by FEHA, while preempted complaints could simply be referred. This policy would prioritize the non-protected classes: citizenship status, employment/income status, partnership status, and veteran status.

Alternatively, in order to provide relief for complaints that would otherwise be preempted by the lengthy state process, the Commission could provide supplementary services such as mediation and direct individuals to legal services, regardless of the type of complaint. This would provide cost free services to all complainants, increasing the options for redress already available. The State DFEH and the federal Equal Employment and Opportunity Commission (EEOC) currently handle most complaints of discrimination relating to housing and employment, however due to the volume of complaints and the large jurisdiction of these agencies, response time and resource allocation may be negatively impacted for each investigation.

Subsequent to the establishment of the Commission and approval of priorities and the rules and regulations, the Commission would be able to provide recommendations regarding an educational campaign to educate residents about the creation of the Commission, the Civil and Human Rights Ordinance, and the discrimination complaint process.

In addition, a DFEH advisory body is currently considering the feasibility of lifting FEHA preemption and allowing local jurisdictions to enforce the provisions of FEHA. They will report to the governor prior to December 31, 2018. The establishment of the Commission could facilitate the shift in enforcement in the case that FEHA preemption is lifted.

Administrative Penalties

In order to proceed with the draft Ordinance as transmitted by the City Attorney, the Council must determine: 1. the administrative penalty that may be charged, and 2. how the collected funds would be allocated.

There are several structures which may be adopted by Council, each with differing implications on complaint determinations and the resolution of cases. As written, the Executive Director would make the sole determination as to the appropriate penalty for each violation, within the structure approved by Council. The approved penalty range will determine how punitive or lenient the Executive Director can be with his or her determinations. The approved administrative penalty range itself may act as a deterrent to discrimination violations. The approved penalties may also potentially effect monetary compensation reached through settlement agreements.

The only restriction on penalties the Council may approve is the prohibition on excessive fines as provided for by the Eighth Amendment of the Constitution of the United States. The approved penalty amount would have to be defensible against legal challenges. According to the City Attorney, the penalty imposed by New York (\$125,000 for a standard violation and \$250,000 for aggravated violations) would be an appropriate benchmark as the amount has weathered legal challenges.

As written, the Ordinance provides for, but does not specify the amount for two different penalties, one for standard violations and another for violations as a result of harassing or violent acts. Both administrative penalties are structured with upper limits. This structure would allow the Executive Director to impose an amount appropriate to the severity of the violation. This structure also provides the best option for a deterrence penalty as it allows for the highest potential penalty amount. However, this option also provides the Executive Director with near sole discretion in determining the appropriate penalty. This may be addressed by narrowing the allowable penalty range or additional restraints in the rules and regulations approved by the Commission.

The administrative penalty structure as provided in the draft ordinance can also be changed in the following ways:

- A more narrow range with both an upper and lower limit, would provide more predictability as to penalty amounts but would still allow the Executive Director some flexibility to differentiate between the severity of violations.
- A small administrative penalty, with each day the violation continues constituting a separate violation, and therefore an additional penalty. This structure would be similar to that of Chicago. It is worth noting that the penalty imposed by Chicago as of 2012 was \$100 - \$500, however this was later amended to increase the upper limit, to \$100 - \$1000

Appropriate penalty ranges may also be determined according to prior court mandated payments in cases, settlements, or other city penalties.

Collection of Penalties

As written the Ordinance provides for a portion of the administrative penalty to be distributed between the complainant and the City in terms of percentage. The percentage in question is to be decided by the Council. Any allocation would be contingent on the administrative penalty that is approved by the Council as the allocation is in terms of percentage. Among the cities of New York, San Francisco, and Chicago, no city mandated an allocation of an administrative penalty to the complainant. All penalties proceeded straight to the respective general fund of the city to offset the cost of the program.

There are several ways in which the structure of the allocations may be addressed. The City could guarantee a minimum administrative penalty allocation in terms of dollars to be received by the complainant in each case, but would require a minimum be set for the administrative penalty itself, to guarantee the amount could be provided in each case.

The City could also collect 100 percent of an administrative penalty, as done by other cities. This option could allow the Commission to prioritize providing a resolution appropriate to the complaint, rather than financial compensation. As written, the Commission is able to order corrective actions for complainants in a timely manner at no cost. It expands the options of complainants and provides an

avenue of redress for those who may not have access to legal services. Whereas the administrative penalty serves as a punitive measure toward the violator in order to enforce compliance.

In order to provide the complainant with financial compensation, the Ordinance may be amended to add payment of damages to the complainant as an option for relief. This would allow the administrative penalty in its entirety to proceed to the General Fund, or a fund otherwise designated by Council. This option would allow the Executive Director to be flexible in determinations for damages, but allow the Council to set a more narrow range for an administrative penalty. This option would add to the workload of the Executive Director by requiring the defending and/or proving of damages in each case with additional investigation.

If an allocation is based on a percentage, the amount one complainant may receive can differ from the amount received by another for a similar case of discrimination. For this reason, the compensation a complainant might expect could vary widely from case to case. In order to completely understand the implications an allocation may have, the allocation could be determined following the approval of an administrative penalty structure.

Council Oversight

As proposed, the Commission would be primarily tasked with enforcement of the anti-discrimination ordinance through the investigation of complaints of discrimination. In this capacity, the Executive Director would make several determinations regarding complaints received by the Commission. The Commission itself would be tasked with formulating the rules and regulations under which it will operate. The City Council may wish the ability to review the function of the Commission in order to ensure compliance with the law, efficient operations, and accountability to City residents.

The proposed Commission is intended to serve complainants as efficiently as possible, as opposed to the lengthy state and federal processes. Any Council oversight should ideally allow the Commission to maintain the same efficiency throughout the process. Council participation can be increased without adding to the process or having significant impacts on Commission processes as written and intended.

There are several amendments the Council can make to the proposed Ordinance to allow Council oversight:

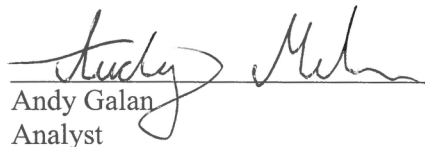
- Amend the Ordinance to require Council approval for the Commission to adopt, amend, or rescind rules and regulations. These rules and regulations would significantly impact the day-to-day operations and procedures by which the Commission would operate. This option would give Council a voice regarding Commission issues.
- As drafted, Commission members would be appointed by the Mayor, subject to Council approval, pursuant to Charter Section 502. The Ordinance could be amended to allow for one or more seats to be appointed by the Council and/or Council President. Council may also elect to add qualifications beyond those already provided pursuant to Charter Section 501(d). These qualifications may include but are not limited to legal experience, human resources experience, or any other relevant experience.
- Amend the Ordinance to include required annual reporting by the Executive Director to the Council. This would provide for updates on Commission activities to the Council and would give the Council an opportunity to provide input on the operations of the Commission

More direct Council intervention in the processes and operations of the Commission would require amending the proposed ordinance to insert Council into the existing process as shown in Attachment C. Providing for direct Council oversight or jurisdiction in this way would require substantive changes to the proposed ordinance. We also note that this may result in significantly increased workload for both Council and the Commission. The Council itself may be required to participate in a quasi-judicial process and potentially hear hundreds or thousands of cases. With the increased workload, compensation for the Commission members may also be required.

Similar to most City Commissions, the Council has the option, pursuant to Charter Section 245, to veto the decision of a Commission. However, as currently written this option could only be exercised on the appellate decision, as the appeal represents the only point at which the Commission itself would formally take action. Furthermore, the Council's veto would only return the matter to the Commission at the appellate stage, and would do little to provide jurisdiction over the process prior to any appeal.

Council is given an opportunity to exercise oversight through approval of an administrative penalty structure as provided for in the draft Ordinance. Furthermore, Council retains the ability to change any process or policy of the Commission by ordinance to address any issues that may arise in the future.

If the Council wishes to proceed with any options discussed above, the City Attorney should be requested to amend the ordinance.


Andy Galan
Analyst

Attachment A. Review of Comparable Cities
 B. Cost Estimates for the Civil and Human Rights Commission
 C. Complaint Process Flowchart

Comparable Cities

Summary

In a prior CLA report released on September 7, 2017 (CF #17-1077), an overview of similar commissions in other municipalities was conducted. The report included information on the formation and purpose, Commission structure, duties, and the complaint process for the commissions in New York, San Francisco, and Chicago. The following overview of these agencies focuses on budget, workload, personnel, and the Commission's enforcement role as a point of comparison to Los Angeles. Any relevant practices are also included to highlight recent efforts or unique practices.

Differing conditions in each City make it impractical to make direct comparisons to Los Angeles, however they may serve to inform as to how certain policy decisions or problems can be addressed. Most civil and human rights commissions have been in operation for decades, and therefore have settled on secure funding sources.

New York

Budget and Workload

The New York Commission on Human Rights enforces New York City's own Human Rights Law. The budget for the Commission in the 2018 fiscal year was \$14,759,132 with 156 full-time positions. A significant portion of the budget funds personnel at \$11,054,152. The budget for the New York Commission on Human Rights has seen a gradual increase over the past few years following the Great Recession. Commission funds increased by approximately \$4,000,000 in 2016, furthermore prior to 2016, most of the Commission's budget was funded by federal CDBG money. Funds for the Commission now come completely from city tax-levy money.

The New York agency is significantly larger than other city agencies due to increased funding and volume of complaints due to the absence of a FEHA equivalent law preempting local enforcement efforts. The New York CHR received 9,772 inquiries, resulting in 747 official complaints filed in 2017. As opposed to many commissions, the New York commission can launch its own investigations, absent of a complaint. In 2017 the New York Commission initiated 450 investigations.

Penalties/Fines

New York collects an administrative fee of up to \$125,000 for a standard violation and \$250,000 for an aggravated violation; these funds are transferred to the city's general fund.

Practices

The CHR made significant outreach efforts in 2017, targeting hard-to-reach communities and informing them about the Commission and its' functions. These efforts resulted in an 85 percent increase in inquiries since 2015. This effort demonstrated the effect that outreach can have on volume of inquiries received.

San Francisco

Budget and Workload

The San Francisco Human Rights Commission enforces the City's own anti-discrimination laws as well as its Fair Chance Ordinance and Sanctuary City Ordinance, which protect those with criminal histories and

the disclosure of information regarding citizenship status respectively. The proposed budget for the Commission in the 2018 fiscal year is \$3,384,600 with 13.36 full-time positions. \$1,498,544 of the total will go towards funding personnel costs. San Francisco has been consistent in gradually increasing its funding and personnel allocations for the Commission in recent years. The City is likely looking to restore services that may have been lost after the 2011-2012 fiscal year which saw a significant reduction in funding for the commission. In comparison to Los Angeles, the budget for the San Francisco Human Rights Commission cover the wider jurisdiction of both the City and County of San Francisco. The San Francisco process is also very similar to the process proposed in the draft ordinance. In total the San Francisco Human Rights Commission received 637 inquiries in 2017, 65 of those resulted in official complaints.

Penalties

San Francisco mandates a court award three times the amount of special and general damages, in addition to an administrative penalty of \$200 – \$400, attorneys' fees and cost of action. In addition, discrimination in housing is classified as a misdemeanor and punishable by a fine of not more than \$2,000 and/or imprisonment for a period not to exceed six months.

Practices

Similarly to Los Angeles, San Francisco is preempted from FEHA enforcement, and therefore limited in its enforcement role. In order to provide additional protections, San Francisco includes expanded definitions of FEHA protected classes. FEHA protects individuals from discrimination based on income status, however San Francisco expands protection by including Section 8 voucher recipients. The additional protection was upheld as not being preempted by FEHA by the courts. To those individuals who file complaints that are under protections preempted by FEHA, the San Francisco Commission provides mediation or resolution services to individuals. The objective of these services is to provide an expedient alternative to the lengthy DFEH process.

Chicago

Budget and Workload

The Chicago Commission on Human Relations enforces the Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance. Additionally, the Chicago CHR is also tasked with providing aid victims of hate crimes and also provides protections for discrimination in credit transactions and bonding as well.

The full budget for the 2018 fiscal year was \$2,434,265 with 20 full-time positions. The full budget for personnel was \$2,068,911. In contrast to the other cities reviewed, Chicago currently uses federal CDBG funds to support their Commission. Eight positions are funded by CDBG at \$1,268,746. Funding and staffing for the Commission have been consistent for several years.

The Human Rights Compliance program, which enforces anti-discrimination laws, is staffed by a majority of the Commissions personnel at 13 full-time positions. This reflects the commitment of the Commission to enforcement of the Human Rights Ordinance. The Chicago Human Rights Ordinance mandates that investigations be completed 180 after receipt of the complaint. Similar to a DFEH practice, this may result in rushed investigations due to lack of resources or increased workload of investigators.

Penalties

Chicago provides for a fee of \$100-\$1000 accrued daily. There is no provision for cost recovery, collected funds go directly to the city's general fund.

Preliminary Cost Estimate for Civil and Human Rights Commission

Staffing	Count	Cost ¹
Commission:		
Volunteer Commissioners ²	5	\$ 1,125
Executive and Admin Staff³:		
Executive Director ⁴	1	133,313
Management Analyst	1	63,626
Commission Executive Assistant I	1	50,190
Administrative Clerk	1	36,974
Position Total	4	284,103
Related Costs Estimate⁵		263,704
TOTAL POSITION COST		\$ 548,932

Expenses	Account	Cost
Printing and Binding	2120	\$ 400
Office and Administrative	6010	52,496
Operating Supplies	6020	1,000
Equipment	7300	5,580
TOTAL EXPENSE COST		\$ 59,476

GRAND TOTAL	\$ 608,408
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Notes:

¹Salary amounts reflect the nine-month cost.

²Assumed commissioners are paid \$25 per meeting and that the Commission would meet monthly

³Assumed the middle step (Step 8) for all classes

⁴Used salary range for Executive Officer of Ethics Commission. 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 purposes only.

⁵Cost Allocation Plan 40 special rate used to illustrate the cost to the City for fringe benefits and central services.

Civil and Human Rights Ordinance Complaint Process

