



AGENDA REPORT

TO: Steven Falk
Interim City Administrator

FROM: Edward D. Reiskin
Assistant City Administrator

SUBJECT: Creating the Department of
Workplace and Employment
Standards

DATE: April 30, 2020

City Administrator Approval

Date: 4-30-2020

RECOMMENDATION

Staff Recommends That the City Council Adopt An Ordinance Amending Chapter 2.29 Of The Oakland Municipal Code Entitled "City Agencies, Departments And Offices" To Create The Department Of Workplace And Employment Standards To Implement Measure Z (Hotel Minimum Wage And Working Conditions Ordinance, Oakland Municipal Code Chapters 5.93 And 2.44 And Sections 2.36.010(A) And 5.92.050).

EXECUTIVE SUMMARY

In November 2018, City of Oakland voters overwhelmingly passed the Hotel Minimum Wage and Working Conditions Ordinance, known as Measure Z, which amended the Oakland Municipal Code (OMC) to establish workplace protections and minimum hourly wages for hotel workers and to ensure vigorous enforcement of employment standards for both hotel and non-hotel workers. The measure builds upon the City's Minimum Wage and Sick Leave Ordinance, known as Measure FF and the City's Living Wage legislation, currently enforced by the Division of Contracts and Compliance under the Office of the City Administrator.

The proposed new Department of Workplace and Employment Standards (DWES) will be a centralized place to educate workers and employers; receive and process complaints; investigate compliance; and better enforce remedies of violations related to workplace and employment standards.

Measure Z includes, but is not limited to, the following hotel workplace and wage rate enhancements:

- Initially requiring a minimum wage of \$15 per hour with healthcare benefits or \$20 per hour without healthcare benefits, expressly for hotel workers, indexing annually;
- Requiring panic buttons and other workplace protections for certain hotel workers who work alone and may be subject to threatening behavior;
- Ensuring a humane workload and preservation of labor/work records;
- Prohibiting retaliation;
- Providing for a waiver of the humane workload and minimum wage provisions; and
- Requiring enforcement of measure provisions.

City Council
May 5, 2020

Measure Z expressly applies to hotels in Oakland with fifty (50) or more guest rooms or suites of rooms. In addition, the law applies to employers/vendors/service providers who contract with hotels. For instance, a hotel may contract with vendors who provide spa services and food & beverage services. The hotel vendors are subject to Measure Z compliance.

Staff recommends establishing the DWES to implement Measure Z's provisions. Issues related to workplace and employment are many and complex, which merits the establishment of a new department to develop a heightened level of focus and expertise to ensure the City can proactively address issues and enforce relevant laws in support of Oakland's workers. The DWES will work closely with the Office of the City Attorney and access existing operational structures under which current policies are monitored and enforced, as well as maintain open lines of communication with nonprofit entities to support the mission of the new department.

Due to the ongoing public health emergency and accompanying economic crisis associated with COVID-19, staff is recommending delaying the full implementation of some of the fiscal elements of the proposed structure until FY 2021-22. These fiscal elements include the funding of 9.0 FTE of new positions and associated operations and maintenance costs, and the enactment and increase of two regulatory fees that would provide the revenues to support these increased costs. During FY 2020-21 the enforcement of the laws and regulations will be phased into DWES as resources permit, pursuant to the midcycle budget adjustment process.

BACKGROUND / LEGISLATIVE HISTORY

Measure Z was successfully spurred by a growing national movement to strengthen worker protections at the local level. Several cities already have enforcement departments/offices, such as nearby City of San Francisco, Washington, D.C. and New York City.

Low wage workers in California lose an estimated \$2 billion in wages due to non-payment or underpayment each year.¹ A well-resourced DWES could process cases quickly through proactive investigations, strong community partnerships, and enforcement strategies tailored to Oakland's workforce and industry makeup. Approximately 24% of workers in Alameda County are employed in low-wage industries where irregularities in wages are most egregious.² Studies have demonstrated that low income workers are the greatest beneficiaries of labor standards. Labor Standards Enforcement can support the provision of services to underserved and unserved sectors of the population, wherein underpayment of wages or non-payment of wages can mean the difference between workers being able to pay rent and purchase groceries and access medical care and being homeless, sick and hungry. Strong labor compliance provides incentives for employers to provide equitable wages.

It is important to note that the City of Oakland is already engaged in labor standards work, enforcing Measures FF and Z, providing monitoring and enforcement of payment of prevailing wages on City construction projects, ensuring that employers under contract with the City are paying living wages to workers on professional services projects, and ensuring that Oakland residents are equitably included in employment opportunities as a part of City construction

¹ Economic Policy Institute, May 2017, <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>

² Low Wage Work in California Data Explorer, UC Berkeley Labor Center, <http://laborcenter.berkeley.edu/low-wage-work-in-california/>

projects through its Prevailing Wage, Local Employment Program and 15% Apprenticeship Program.

The tables below suggest the organizational structure for the new department once fully funded (**Table 1**), as well as functions (**Table 2**) and relevant social policies (**Table 3**), some of which would fall under the purview of the new department.

Table 1. Anticipated Organization of DWES

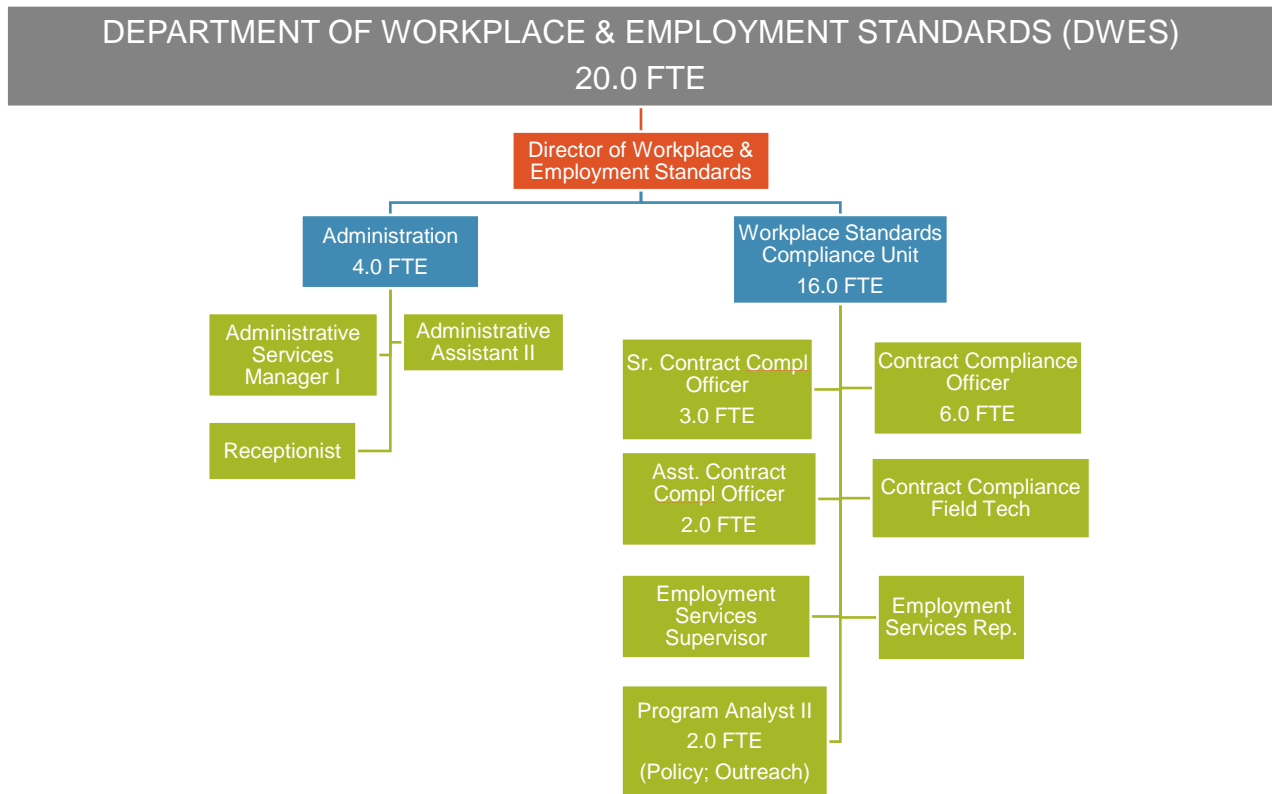


Table 2. DWES Service Areas

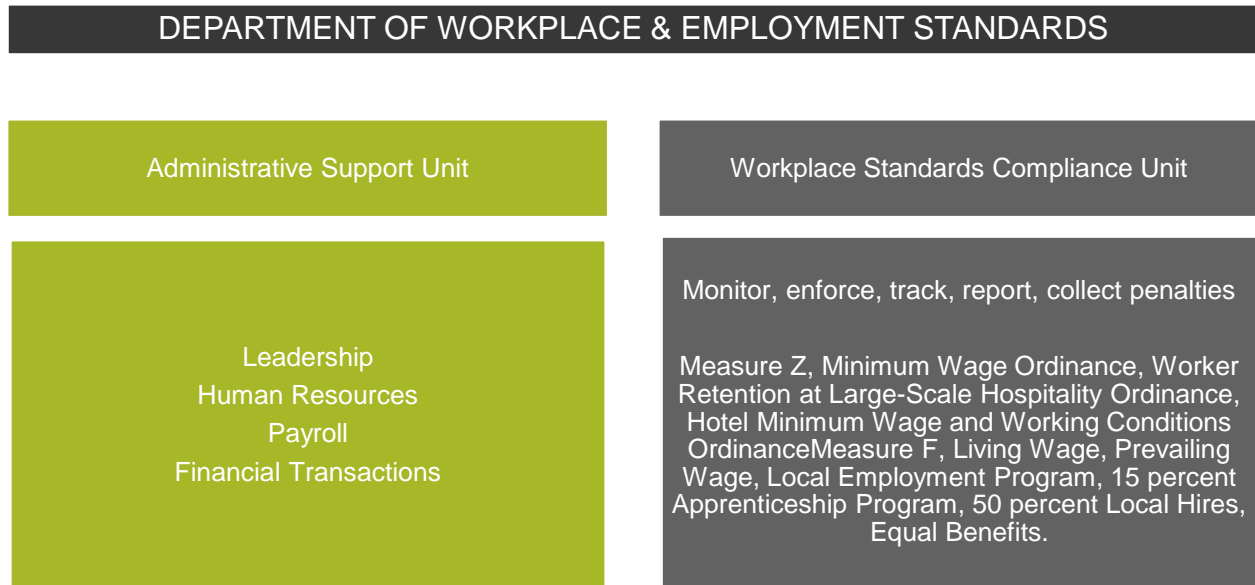


Table 3. Current Social Justice Policies and Programs

Contracts and Compliance Policy Work Programs		Legislative History	Operational Basis	Workforces/ Businesses Served
1	Equal Benefits. Attached to contracting process.	Local (Ordinance #12394)	<i>Internal</i>	<i>Both</i>
2	DBE (Disadvantaged Business Enterprise)	Federal (49 CFR Part 23)	<i>Internal</i>	<i>Both</i>
3	Prevailing Wage, attached to contracting process	State (Public Bid Law 1771-76)	<i>Internal</i>	<i>Both</i>
5	Living Wage. Attached to contracting process.	Local (Ordinance #184318)	<i>Internal</i>	<i>Both</i>
6	50% Local Employment Program (LEP)	Local (Ordinance #12389)	<i>Internal</i>	<i>Both</i>
7	15% Apprenticeship Program	Local (Ordinance #12389)	<i>Internal</i>	<i>Both</i>
8	50% Local Oakland Business Enterprise Policies	Local (Ordinance #12389)	<i>Internal</i>	<i>Business</i>
9	Purchasing Ordinance	Local (OMC Title 2 Chapter 2.04)	<i>Internal</i>	<i>Both</i>
10	Border Wall	Local Ordinance #13459 CMS	<i>Internal</i>	<i>Business</i>
11	Port of Oakland Local Impact Area Policies	Brooklyn Basin Agreement	<i>External</i>	<i>Business</i>
11	Measure FF City Wide	Local Ordinance #85423 CMS	<i>External</i>	<i>Workforce</i>
12	Measure Z Hotel Workers	5.93 OMC	<i>External</i>	<i>Workforce</i>
13	Army Base Jobs Policy / Oversight Commission	Local Ordinance 13140	<i>Both</i>	<i>Workforce</i>

Internal - Attached to internal contracting processes.

External - Not attached to contracting processes.

DWES will benefit from the City of Oakland's history of progressive monitoring and enforcement as staff has successfully applied employment and business social equity policies for more than 35 years yielding millions of dollars annually back to Oakland's workforce and business communities. Currently, most of Oakland's social justice policies are tied directly to the internal contracting process whereby vendors seeking to do business with the City of Oakland agree to comply with applicable policies noted below. Table 3 outlines the policy work programs currently operating under the division of Contracts and Compliance, Office of the City Administrator including federal, state and local legislation decreeing those policies. Policies referenced as external, internal, and both, stipulates the operational baseline. All internal policies are folded into the City's competitive process as a condition of contract awards; and serve as the operational baselines to ensure monitoring, enforcing, and assessing penalties. *For example*, State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771.

ANALYSIS AND POLICY ALTERNATIVES

The failure to pay workers the wages owed to them has become a defining trend in the current labor market. Instances of nonpayment of wages includes paying workers less than the minimum wage or prevailing wage, requiring workers to work "off the clock" without pay, failing to pay overtime, illegally deducting fees from wages owed, nonpayment of tips, or simply not paying the worker at all. Pay violations are significantly high in low wage industries across the economy, including retail, restaurants and grocery stores, domestic work, service industry, construction and janitorial services.

Measure Z was enacted because of the community's efforts to enhance monitoring and enforcement of worker employment standards in the city of Oakland. A strong labor standards enforcement office is integral to the broader effort to improve job quality, protect the rights and livelihoods of Oakland residents, and stem displacement of the most vulnerable residents. Oakland is part of a national movement to strengthen worker protections at the local level. Several cities already have labor standard enforcement offices, including San Francisco, Washington DC, Seattle, Los Angeles and New York City.

There is compelling evidence in the industry to support the strong enforcement of labor standards. Between 2009-2018 San Francisco's Labor Standards Office recovered \$45.1 million in wages, benefits, and liquidated damages for workers. In 2017-2018, they recovered approximately \$7 million for 6,378 workers. Between 2016 – 2018 Seattle's Office of Labor Standards has opened over 800 investigations and recovered \$3 million for 5,301 workers. While those cities are larger than Oakland and have developed their programs over years, the numbers suggest enforcement can have significant impact.

As is the case with external wage enforcement responsibilities, enforcement is "complaint-driven" as opposed to "proactive." While the preferred industry method is proactive enforcement, public entity resource needs can be prohibitive. The City of San Francisco, with both extensive and dedicated resources, has historically operated on a more complaint-driven basis and serves as a model for the City of Oakland.

Compliance staff follow the same baseline enforcement standards applied to enforcement as established best practices. Adjustments are made according to the scope of each policy or law.

For example, Measure Z requires Panic Buttons for safety, and Minimum Wage applies to non-Oakland businesses who have employees working in Oakland.

Included in the proposed new positions are an Outreach Coordinator and Policy Analyst that will enhance service delivery, focused on workforce support and community outreach for not only hotel workers but workers in all hourly wage industries.

An alternative explored was to include all of the existing functions of the Contracts and Compliance division of the City Administrator's office in the new department, in an effort to achieve efficiencies and synergies in administration and execution.

FISCAL IMPACT

Effective July 1, 2020, a new Department of Workplace and Employment Standards will be created within the City of Oakland. For the FY 2020-21 the enforcement of Measure Z provisions and other labor standards will transition to the new department and the City will begin the recruitment process for various positions within DWES. The Department will utilize the IT systems currently in place and will purchase new wage complaint tracking software.

To help fund the expanded enforcement and other services the DWES will provide, staff will recommend an increase to and modification of the Minimum Wage & Labor Standards Enforcement Fee to a per employee fee of \$5. Staff will also recommend the creation of a new Hotel Workplace Regulatory Fee, which will be levied at the rate of \$2.00 per occupied room night. Staff recommend that these fees be delayed till July 1, 2021 to avoid creating additional adverse impacts in the local hotel industry and economy.

PUBLIC OUTREACH / INTEREST

Outreach to Stakeholders. - Contracts and Compliance staff participated in more than five outreach events. The primary participants included hoteliers and Measure Z proponents. The City initially issued draft interpretive regulations. Following the public events and receipt and review of numerous written comments from the public during two comment periods, the City revised the regulations and issued final Interpretive Regulations.

Resources Available Online - The City of Oakland has created a web page³ dedicated to providing up-to-date information, tools and resources for employers and employees.

- Answers to Frequently Asked Questions (FAQs)
- Legally mandated notification posters for the workplace in English, Spanish, Chinese and Vietnamese
- Tools and resources for employers, including partner organizations that offer technical assistance and legal resources
- Measure Z ballot measure language

City staff also engaged with stakeholders in meetings and a workshop with other cities that have experience in establishing departments such as DWES.

³ <https://www.oaklandca.gov/topics/measure-ff-and-measure-z>

COORDINATION

The new Department of Workplace and Employment Standards will provide resources and capacity for the City to better collaborate with community and labor groups such as UNITE HERE 2850, Centro Legal de la Raza, and East Bay Alliance for a Sustainable Economy.

Additionally, staff envisions developing strategic partnerships with other enforcement agencies, including the California Department of Labor Standards Enforcement, Bureau of Field Enforcement, District Attorney and other City Departments.

SUSTAINABLE OPPORTUNITIES

Economic: A department dedicated to strong labor standards enforcement is an essential part of the City's broader effort to improve job quality and economic opportunity, and stem displacement of Oakland residents. It is estimated low-wage workers in California lose billions of dollars each year due to wage theft. Through the Department's investigations and enforcement, penalties and back pay can be collected and returned to workers and help support the Department's operations.

Environmental: This report does not directly address environmental sustainability.

Race & Equity: The Department of Workplace & Employment Standards presents an opportunity for the City to invest in the social equity policies supporting Oakland's most vulnerable and low wage workers, and to become a leader in local labor standards enforcement. Women, immigrant, undocumented, Black, Latino, and young workers are among the most marginalized and likely to be in low-wage jobs in high-violation industries, and are disproportionately affected by wage theft.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That the City Council Adopt An Ordinance Amending Chapter 2.29 Of The Oakland Municipal Code Entitled "City Agencies, Departments And Offices" To Create The Department Of Workplace And Employment Standards To Implement Measure Z (Hotel Minimum Wage And Working Conditions Ordinance, Oakland Municipal Code Chapters 5.93 And 2.44 And Sections 2.36.010(A) And 5.92.050).

Respectfully submitted,



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