



AGENDA MEMORANDUM

TO: Colleagues on the City Council and
Members of the Public

FROM: Councilmember
Nikki Fortunato Bas

SUBJECT: Department of Workplace and
Employment Standards

DATE: April 30, 2020

Colleagues on the City Council and Members of the Public,

I support and respectfully request you to consider the attached supporting material for the following item:

Staff Recommends That The City Council Adopt An Ordinance 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).

Introduction

In November 2018, 76% of voters approved Measure Z and the creation of a new City department charged with enforcing Oakland's labor and employment laws and uplifting standards for Oakland workers. The new Department of Workplace and Employment Standards (DWES) presents an opportunity for the City of Oakland to meet the needs of everyday Oakland residents, help workers access economic opportunity, and establish Oakland as a leader in upholding workers' rights.

In passing Measure Z, Oakland voters articulated their desire for a dedicated home in the City for workers and for labor standards enforcement. During the FY 2019-21 budget process, the City allocated funds to establish this department and hire a Chief Enforcement Officer who will serve as the department head. This ordinance, which provides further guidelines in advancing Measure Z's purpose, is the next step in ensuring that DWES is established in a timely manner by July 1, 2020, as required by the Measure.

Oakland Needs Strong Labor Standards Enforcement Now More Than Ever

Income inequality is on the rise. As Oakland's economy has experienced unprecedented growth in the past decade, so has its share of low-wage jobs. Seven out of the eleven largest industries in Oakland are classified by the federal Department of Labor as "low-wage, high-violation

industries” that have low rates of compliance and high rates of wage theft¹. Many of our city’s fastest growing sectors – hospitality, food and drink, building services, personal services, and social services – are also designated by the Department of Labor as low-wage, high-violation industries.² While there are few existing data sources for estimating wage theft at the local level, we do know that 19% of all low-wage workers in California experience minimum wage violations, with affected workers losing an average of \$3,400 in unpaid wages per year.³ When low-wage workers fail to receive the full amount of wages they are owed, there are ripple effects that can lead to food insecurity, housing insecurity, and homelessness. Moreover, wage theft can have wide-ranging public impacts, including stripping the local economy of consumer spending and tax revenues.

The COVID-19 pandemic has cast a much-needed spotlight on low-wage frontline service workers and revealed the need for local governments to protect and enforce the rights of the most vulnerable in our workforce. Frontline service workers, which include delivery personnel, grocery clerks, restaurant and hospitality workers, rideshare drivers, janitors, warehouse workers, and security officers, are the backbone of our economy. Reports of employers failing to provide essential workers with legally mandated paid sick leave and of workers facing retaliation when they do take their sick leave illustrate the need for robust enforcement during this unprecedented health crisis.⁴ Indeed, the COVID-19 crisis has punctuated the close link between public health and economic security. An effective Department of Workplace and Employment Standards will ensure that the City is focused on supporting workers and implementing labor protections that are critical to safeguarding the health and wellbeing of everyone in our community during and beyond this pandemic.

Oakland has been a leader in passing bold and groundbreaking labor and employment laws. Still, wage theft remains widespread, and women, immigrant and foreign-born, Black, and Latino workers are disproportionately represented in low-road industries – making labor standards enforcement an urgent racial and gender justice issue.⁵ The Department of Workplace and Employment Standards is modeled after best practices to center these workers and ensure job quality across sectors.

Best Practices, Leadership and Strategic, Proactive Enforcement

To be successful, DWES will be modeled on best practices in labor standards enforcement (see *attached fact sheet*).

¹ American Community Survey, 2018 5-Year Estimates; U.S. Department of Labor Wage and Hour Division, <https://www.dol.gov/agencies/whd/data/charts/low-wage-high-violation-industries>.

² California Employment Development Department, analysis by Beacon Economics for 2019 Oakland/East Bay Economic Forecast Report.

³ David Cooper and Teresa Kroeger, “Employers steal billions from workers’ paychecks each year,” Economic Policy Institute, May 10, 2017, <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>.

⁴ Sam Harnett, “Even With New Federal Coronavirus Bill, Most Workers Get No Additional Sick Leave,” Apr. 8, 2020, <https://www.kqed.org/news/11810843/even-with-new-federal-coronavirus-bill-most-workers-get-no-additional-sick-leave>.

⁵ David Cooper and Teresa Kroeger, “Employers steal billions from workers’ paychecks each year,” Economic Policy Institute, May 10, 2017, <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>.

Leadership

A critical step in ensuring that the department lives up to the guiding principles articulated in this ordinance is prioritizing strong, experienced leadership. Similar to other accomplished labor standards offices such as San Francisco's Office of Labor Standards Enforcement and Seattle's Office of Labor Standards, Oakland must seek a Chief Enforcement Officer with a background in and demonstrated commitment to worker advocacy, experience working collaboratively with community-based organizations, labor unions, and government agencies, and knowledge of labor standards, employment law, and public policy.

As identified in Measure Z, DWES will oversee enforcement of the following laws:

- City Minimum Wage and Sick Leave,
- Living Wage,
- Worker Retention at Large-Scale Hospitality,
- Hotel Minimum Wage and Working Conditions,
- Prevailing Wage,
- Local Employment Program, and
- 15% Apprenticeship Program.

The Department will operate under the leadership of a Chief Enforcement Officer and must be established by July 1, 2020.

Strategic, Proactive Enforcement

There is broad consensus among labor standards enforcement experts that in order to maximize limited government resources and reach the most vulnerable workers, agencies must supplement complaint-driven enforcement with strategic enforcement. With workers reluctant to come forward, increasingly complex employment relationships, and limited staffing capacity, fewer complaints are being presented and resolved. While it is still important for agencies to respond to complaints in a timely and effective manner, workers in many of the industries with the highest rates of noncompliance are often the most reluctant to file complaints due to immigration status, lack of knowledge about their rights, and fears of employment security. Whereas the complaint-driven model represents a reactive approach to enforcement, strategic enforcement prioritizes proactively investigating industries where workers are less able to exercise their legal rights and deploying targeted enforcement actions that improve industry-wide compliance.⁶

Strategic enforcement requires high levels of organizational planning, training, and resources. Strong leadership at the new Department of Workplace and Employment Standards along with close collaboration among stakeholders can chart an effective path towards a longer term goal of strategic, proactive enforcement.

Best practices demonstrate that strategic enforcement involves the following⁷:

⁶ David Weil, "Creating a strategic enforcement approach to address wage theft," *Journal of Industrial Relations*, vol. 60, no. 3 (2018); David Weil, "Improving Workplace Conditions through Strategic Enforcement: A Report to the Wage and Hour Division,"

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/strategicEnforcement.pdf>.

⁷ For more on best practices, see <https://www.clasp.org/tags/labor-standards-enforcement-series>.

- Pro-active, workplace-wide investigations that focus on targeted industries where noncompliance is high..
- A co-enforcement model that values close collaboration with community and labor groups.
- Dedicated legal resources from the City Attorney, settlements that include forward-looking workplace transformation, and use of all available collections tools to enforce judgments and return unpaid wages to workers.
- Strategic collaboration with other enforcement agencies, including the District Attorney, City Attorney, Department of Labor Standards Enforcement, Bureau of Field Enforcement, and local permitting and licensing agencies.
- Consistent and careful recordkeeping and data collection.

Funding

In approving funds for DWES and for the position of Chief Enforcement Officer, the City Administration is working towards making this new department a reality. The FY 2019-2021 budget allocated \$336,004 for FY 2020-2021 to fund the Chief Enforcement Officer position, as well as administrative overhead costs associated with creating a new City department.⁸ In addition, in March 2019 the City amended the Master Fee Schedule to include a \$23 regulatory fee on businesses to cover the costs of expanded minimum wage, paid sick leave, and Measure Z enforcement.⁹ To fund expanded enforcement of hotel minimum wage and working standards, the Administration is also recommending an increase to the existing Minimum Wage & Labor Standards Enforcement Fee and creation of a new Hotel Workplace Regulatory Fee, which I support. I understand that the Administration plans to delay introduction of these changes until next fiscal year due to the current economic downturn and the adverse effects of the health pandemic on the hospitality industry. I urge the Council to monitor our local economy closely and implement these changes as soon as possible to fully fund worker and employment standards enforcement to protect the most vulnerable workers in our City.

Recommendation

I support the Council to Adopt An Ordinance 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,



Nikki Fortunato Bas, Councilmember

⁸ https://cao-94612.s3.amazonaws.com/documents/FY-2019-21-Adopted-Budget_Resolution-Amendments-and-Directives_vFINAL.pdf

⁹ Agenda Report from Director of Finance to City Administrator, "Amending the Master Fee Schedule," March 4, 2019.

The Department of Workplace & Employment Standards: A Home for Oakland Workers

What We Envision

In November 2018, Oakland voters decided to create the Department of Workplace and Employment Standards (DWES), a new city agency charged with enforcing local labor and employment laws. **DWES presents an opportunity for the City of Oakland to meet the needs of everyday Oakland residents, help workers access economic opportunity, and establish Oakland as a leader in upholding workers' rights.** We envision a DWES that:

- **Welcomes and centers vulnerable low wage workers**, especially those who are among the most marginalized – women, people of color, immigrants, undocumented workers, and part-time workers.
- **Recognizes the pervasiveness of wage theft** among low-wage workers by conducting impactful investigations, delivering swift restitution, and holding bad actors accountable.
- **Proactively involves stakeholders** and implements Oakland's vast and forward-thinking workplace and employment laws including minimum wage, paid sick day, living wage, and local employment protections.

What We Need

In order to achieve this vision, **the City of Oakland needs to invest in DWES** in the following ways:

- **Hire a visionary and qualified Chief Officer** who has a worker-advocate background, is trusted by labor and community allies, and has the knowledge and experience to implement a bold strategic enforcement program.
- **Robust funding and staffing** for additional enforcement positions, including allocations during the mid-cycle budget and fast-tracked hiring to ensure that allotted FTEs do not remain vacant.¹
- **Involve labor standards enforcement experts, community-based groups, and labor unions** to shape the structure, leadership, and approach of the new department. Those who work regularly with vulnerable workers are the best equipped to ensure that the new department effectively enforces labor laws.

What We Know

Experts agree that effective labor standards enforcement involves the following:

- **Pro-active, strategic enforcement.** Academics have identified the traditional complaint-based strategy as a limited approach to labor standards enforcement. With constrained budgets, stretched staffing levels, increasingly complex employment relationships, and workers reluctant to come forward (particularly undocumented and/or precariously employed workers), fewer complaints are being presented and resolved. Today, forward-thinking agencies are supplementing the complaint-based strategy with strategic enforcement. With the strategic enforcement model, agencies focus their efforts on industries where workers are less able to exercise their legal rights, and deploy targeted enforcement actions that can improve industry-wide compliance. Strategic enforcement requires high levels of organizational planning, training, and resources. It entails²:

- Using industry, labor market, and field research to identify “high-priority, low complaint” industries where there are high rates of subcontracting, independent contracting, underground employment, and reliance on vulnerable workers.
- Understanding industry structures and business relationships in order to target entire business entities rather than individual workplaces, and to hold upstream employers jointly liable.
- Conducting pro-active, workplace-wide investigations and audits that can be initiated without formal complaint.
- Utilizing all available enforcement tools to promote ongoing compliance.

example { The Seattle Office of Labor Standards has an agency mandate to conduct directed investigations into specified high-risk industries that employ vulnerable workers.³ In New York City, the Office of Labor Policy & Standards (OLPS) has focused its strategic enforcement efforts on the home health care industry, opening investigations into 42 home care agencies affecting an estimated 50,000 workers. While OLPS has settled or litigated most of the cases, it has also referred several joint employment cases to the state Attorney General.⁴

- **A co-enforcement model that values close collaboration with community and labor groups.**

Community-based organizations (CBOs), worker centers, legal services providers, and labor unions play a critical role in conducting education and outreach and providing support to marginalized communities as they file complaints and navigate the claims process. Agencies utilizing co-enforcement also rely on CBOs to track and relay on-the-ground developments in priority and underground industries, identify low-road employers and unethical and illegal employment practices, and assist with investigations. One way to ensure that agency resources are being optimized is to ensure that enforcement efforts align with community-based worker outreach initiatives. Properly administered co-enforcement programs are proven to improve compliance with labor laws, particularly in industries with large immigrant workforces where violations are endemic and difficult to eradicate.⁵

example { A landmark co-enforcement success story is the 2014 Yank Sing restaurant case in San Francisco. The city’s Office of Labor Standards (OLSE) worked closely with two community-based organizations (Chinese Progressive Association and Asian Law Caucus) along with the state’s Bureau of Field Enforcement to win a \$4.25 million settlement as well as complete workplace policy transformation for nearly 300 low-wage immigrant restaurant workers.⁶

- **Dedicated legal resources from the City Attorney and use of all available collections tools to enforce judgements.⁷** For example, to promote compliance and collect on unpaid wages, enforcement agencies can leverage relationships with agencies that issue business permits and licenses.

example { Both San Francisco and Santa Clara County’s OLSEs have innovative initiatives to combat wage theft in the restaurant industry. In partnership with their respective public health agencies, both OLSEs have the authority to suspend or revoke food health permits for restaurants that do not comply with labor standards or refuse to pay back wages.⁸

- **Strategic collaboration with other enforcement agencies.** In order to enforce the full spectrum of local and state labor and employment laws, local enforcement agencies must collaborate with the state’s Department of Labor Standards Enforcement and Bureau of Field Enforcement, the City Attorney, and the District Attorney.⁹

- **Consistent and careful recordkeeping and data collection.** Diligent recordkeeping and reports to the City Council with clear performance metrics ensure that workers are benefiting, and taxpayer money is spent wisely. In addition, given that few publicly available data sources exist for local labor market research, labor standards enforcement agencies can play an important role in commissioning research reports on labor market dynamics, which can in turn be used to inform strategic enforcement initiatives.

SOURCES

- 1 San Francisco's Office of Labor Standards Enforcement currently employs 27 FTEs with 3 positions pending. Seattle's Office of Labor Standards employs 28 FTEs. Sources: Seattle OLS 2019 Organizational Chart, https://www.seattle.gov/Documents/Departments/LaborStandards/OLS_OrgChart2019.pdf; presentation by Greg Asay, Deputy Director at San Francisco OLSE, 2019 Paid Sick Leave Roundup Webinar, Center for Law and Social Policy; December 11, 2019. For more on staffing levels and ratios, see Miranda Dietz et al, "Enforcement of Labor Standards," *When Mandates Work: Raising Labor Standards at the Local Level*, 2014.
- 2 David Weil, "Improving Workplace Conditions Through Strategic Enforcement," May 2010, <https://www.dol.gov/whd/resources/strategicEnforcement.pdf>; David Weil, "Creating a strategic enforcement approach to address wage theft," *Journal of Industrial Relations*, April 2018; Tanya L. Goldman, "The Labor Standards Enforcement Toolbox: Introduction to Strategic Enforcement," Rutgers Center for Innovation in Worker Organization & Center for Law and Social Policy, August 2018, https://www.clasp.org/sites/default/files/publications/2018/09/2018_introductiontostrategicenforcement.pdf.
- 3 City of Seattle Chapter 140 Administrative Rules for Conducting Directed Investigations, <https://www.seattle.gov/Documents/Departments/LaborStandards/Directed%20Investigations%2Fact%20Sheet%2010-30-17%20final.pdf>.
- 4 Presentation by Benjamin Holt, Deputy Commissioner of New York City Office of Labor Policy & Standards, 2019 Paid Sick Leave Roundup Webinar, Center for Law and Social Policy, December 11, 2019; "NYC DCA Announces Investigation of 42 Home Care Agencies from Harlem to Hollis, September 5, 2018, <https://www.harlemworldmagazine.com/nyc-dca-announces-investigation-of-42-home-care-agencies-from-harlem-to-hollis/>.
- 5 Janice Fine, "New Approaches to Enforcing Labor Standards: How Co-enforcement Partnerships between Government and Civil Society Are Showing the Way Forward," University of Chicago Legal Forum, 2018; Janice Fine and Jennifer Gordon, "Strengthening Labor Standards Enforcement with Workers' Organizations," *Policy & Society*, 2010; Seema Patel and Catherine Fisk, "California Co-Enforcement Initiatives that Facilitate Worker Organizing," *Harvard Law & Policy Review*, 2018.
- 6 "Dim Sum palace Yank Sing to pay \$4 million settlement for allegedly abusing workers," *San Francisco Business Times*, November 19, 2014, <https://www.bizjournals.com/sanfranciscoblog/2014/11/yank-sing-dim-sum-san-francisco-settlement-labor.html>
- 7 Jenn Round, "The Labor Standards Enforcement Toolbox: Introduction to Strategic Enforcement," Rutgers Center for Innovation in Worker Organization & Center for Law and Social Policy, August 2018, https://www.clasp.org/sites/default/files/publications/2018/09/2018_collections.pdf.
- 8 Miranda Dietz et al, "Enforcement of Labor Standards," 2014; Santa Clara County Food Permit Enforcement Program, <https://www.sccgov.org/sites/olse/enforcement/Pages/Food-Permit-Enforcement-Program.aspx>
- 9 Tia Koonse et al, "Enforcing City Minimum Wage Laws in California: Best Practices and City-State Partnerships," UCLA and UC Berkeley Labor Centers, October 2015, <http://laborcenter.berkeley.edu/pdf/2015/minimum-wage-enforcement.pdf>.