



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Item Number: TBD

Estimated Cost of Enforcing Proposed New Minimum Wage and Earned Sick Leave Laws

BACKGROUND

On March 12, 2014, the Office of Council President Todd Gloria issued a memorandum to the Mayor and City Council proposing an initiative to increase the minimum wage in the City and also provide all workers with access to earned sick leave. This memorandum was co-signed by three other members of the City Council (Sherri Lightner, Myrtle Cole and Marti Emerald).

The proposed initiative was subsequently docketed for discussion at meetings of the Committee on Economic Development and Intergovernmental Relations on March 24th, April 30th and June 11th. At the April 30th meeting, Council President Gloria proposed a measure that would increase the City's minimum wage to \$11.09 on July 1, 2015, \$12.09 on July 1, 2016, \$13.09 on July 1, 2017 and thereafter adjust it annually by the Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. City Average for All Items (CPI-W) beginning on January 1, 2018. Additionally, the proposal called for requiring employers to provide five days a year of earned sick leave based upon hours worked (one hour of earned sick leave for every 30 hours worked).

At the meeting on June 11th, Councilmember Kersey requested that the IBA develop a report estimating City compliance and enforcement costs for the proposed new minimum wage and earned sick leave laws. The City Attorney's Office was asked to continue to work with the Council President to complete ordinance language facilitating the proposal with any proposed modifications. The Committee acted to forward to proposal without recommendation to the full City Council for consideration on June 16th.

Citing his consideration of feedback received from numerous citizens and stakeholders, Council President Gloria announced a scaled back version of his original proposal on June 16th. This proposal called for increasing the City's minimum wage to \$9.75 on January 1, 2015, \$10.50 on January 1, 2016, \$11.50 on January 1, 2017 and to begin annually adjusting the required wage by the CPI-W on January 1, 2019. The provisions for earned sick leave were not changed.

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On June 16th, the City Council voted to 1) accept Council President Gloria's amended proposal and 2) approve a resolution declaring intent to place a proposition related to earned sick leave and minimum wage for employees working in the City on the November 2014 Ballot, or in the alternative, Council adoption of an ordinance, subject to compliance with all procedural requirements set forth in state law and the City Charter and other local law, and with direction to return to the City Council for final action.

This report endeavors to estimate the City's annual cost to administer and enforce the proposed new minimum wage and earned sick leave requirements. In developing this estimate, we present information gathered from other cities with minimum wage and earned sick leave laws. We also present the City's current expenditures to administer and enforce our living and prevailing wage laws given their similarities to the proposed new labor laws. Finally, in response to questions raised by some Councilmembers on June 16th, we estimate: 1) needed staffing and administration costs and 2) the compensation increase for City employees associated with this proposal.

FISCAL/POLICY DISCUSSION

California's Minimum Wage Law

On September 25, 2013, the California Legislature enacted legislation that was signed by the Governor and that raised the State's minimum wage for all industries. The current minimum wage in California is \$9.00 per hour and it will increase to \$10.00 per hour on January 1, 2016. Minimum wage rates are specified in section 1182.12 of the California Labor Code.

California's labor laws are administered by the Division of Labor Standards Enforcement (DLSE). The mission of the DLSE is "to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards." DLSE adjudicates wage claims, investigates discrimination and public works complaints, and enforces labor law and the Industrial Welfare Commission wage orders.

If a California city adopts a minimum wage law requiring higher wage rates than the State's minimum wage, then the city must administer and enforce their minimum wage law. In some instances, it may be possible for a city to work cooperatively with other regulatory agencies to better enforce related laws. For example, San Francisco's Office of Labor Standards Enforcement (OLSE) collaborates with DLSE's Bureau of Field Enforcement on cases that may involve violations of both city minimum wage law and State labor law. The OLSE also collaborates with San Francisco's Department of Public Health (DPH) to more effectively enforce their minimum wage law.

Other Cities with Adopted or Proposed Minimum Wage/Earned Sick Leave Laws

As shown in the table on the following page, at least six cities have already adopted minimum wage laws (San Francisco, Washington DC, San Jose, Seattle, Richmond and Albuquerque) and a few cities (notably Oakland and San Francisco) that have indicated their intent to place minimum wage proposals on the November 2014 ballot. Some of these cities initially require specified minimum wage rate increases and subsequently require annual cost of living adjustments based on changes in the CPI-W. A few of these cities also have laws requiring employers to pay a specified amount of earned sick leave to their employees. Other California

cities have adopted or are considering establishing industry-specific minimum wages – Los Angeles and Long Beach, for example, have provisions that apply specifically to hotel workers.

	2014 (Current)	2015	2016	2017	2018	Annual Indexing?	Earned Sick Leave	Adopted or Proposed	Year Adopted or Vote Sought
State of California	\$9.00	\$9.00	\$10.00	\$10.00	\$10.00	No	No	Adopted	2013
San Diego	\$9.00	\$9.75	\$10.50	\$11.50	\$11.50	Yes (2019 - CPI-W)	Yes	Proposed	2014
San Francisco	\$10.74	\$12.25	\$13.00	\$14.00	\$15.00	Yes (2019 - CPI-W)	Yes	Proposed	2014
Seattle (Large Businesses)	\$9.32	\$11.00	\$13.00	\$15.00	CPI-W	Yes (2018 - CPI-W)	No	Adopted	2014
Seattle (Small Businesses)	\$9.32	\$11.00	\$12.00	\$13.00	\$14.00	Yes (2019 - CPI-W)	No	Adopted	2014
Washington DC	\$9.50	\$10.50	\$11.50	CPI-W	CPI-W	Yes (2017 - CPI-W)	Yes	Adopted	2013
San Jose	\$10.15	CPI-W	CPI-W	CPI-W	CPI-W	Yes (2014 - CPI-W)	No	Adopted	2012
Oakland	\$9.00	\$12.25	CPI-W	CPI-W	CPI-W	Yes (2016 - CPI-W)	Yes	Proposed	2014
Richmond	\$9.00	\$9.60	\$11.52	\$12.30	\$13.00	Yes (2019 - CPI-W)	No	Adopted	2014
Albuquerque	\$8.60	CPI-W	CPI-W	CPI-W	CPI-W	Yes (2014 - CPI-W)	No	Adopted	2012

Of the six cities in the table with adopted minimum wage laws, only two have a significant history of administering and enforcing their laws. San Francisco adopted their minimum wage law in February of 2004 (amendments are proposed for the November 2014 ballot as shown in the above table) and a law requiring earned sick leave in 2007. Washington DC adopted their minimum wage law in 1993 (amended in 2013 as shown in the above table) and a law requiring earned sick leave in 2008. A brief description of each city's administration and enforcement program is presented below.

San Francisco - Office of Labor Standards Enforcement (OLSE)

<i>San Francisco - Office of Labor Standards Enforcement (OLSE)</i>					
	CURRENT	FY 2011	FY 2012	FY 2013	FY 2014
Assigned Staff:	5.50 FTEs				
Annual Budget:	\$1.4 M				
Registered Businesses:	125,000				
Total Employees:	611,000				
Ave. Annual # of Complaints:	71	79	75	60	TBD
Wage Recoveries for Employees:		\$714,441	\$1,001,369	\$1,483,048	TBD
Penalties Recovered by City:		\$57,289	\$92,002	\$153,828	TBD

San Francisco’s OLSE has a total budget of approximately \$3.7 million and 19.00 staff; however, this staff administers several other local labor laws including their Prevailing Wage Ordinance, Living Wage Ordinance, Health Care Security Ordinance, Family Friendly Workplace Ordinance and Fair Chance Ordinance. It is important to note that the staffing and budget detail in the above table only reflects the portion of the OLSE dedicated to enforcement of San Francisco’s Minimum Wage Ordinance (MWO) and Paid Sick Leave Ordinance (PSLO).

In researching the OLSE, the IBA spoke with the OLSE’s Manager and their budget analyst. We additionally reviewed a comprehensive annual report on their MWO and other literature on the OLSE’s administration of MWO/PSLO. San Diego may wish to consider emulating San Francisco’s OLSE model as a means of effectively administering our local minimum wage and earned sick leave laws. San Francisco has many similarities with San Diego in terms of being a major California city with some similar industry sectors (i.e., tourism) and roughly the same number of employers and employees. We also understand that Seattle has spent significant time analyzing OLSE operations as a model for their emerging MWO enforcement program.

The OLSE's enforcement of MWO/PSLO is driven by complaints from employees or other interested parties. When an employee submits a complaint to the agency, and an initial review suggests that the allegation merits further investigation, the OLSE assigns a compliance officer to the case. The compliance officer guides the case through the investigation and remediation processes and serves as a point of contact for claimants and the employer for the duration of the case. OLSE compliance officers have the language skills and the cultural competencies to develop working relationships with employees and employers in a wide range of communities. Importantly, the OLSE investigates potential violations against all employees of an employer suspected of violating the MWO or PSLO.

When the OLSE initiates an investigation, the compliance officer conducts a site visit to observe business operations and conduct interviews with other employees who may be similarly situated. The compliance officer also interviews the employer/manager and witnesses and requests the employer's payroll records for all individuals employed during the audit period (typically three years). The compliance officer then completes an audit to identify any MWO/PSLO violations against employees during the audit period. The OLSE's approach results in robust enforcement and provides strong protections for workers who are reluctant to file a complaint themselves.

If the OLSE finds MWO/PSLO violations, the agency works to recover back wages, interest, and penalties owed to all employees for the three year period preceding the complaint and to bring the business into compliance with the MWO/PSLO going forward. In the vast majority of cases, the OLSE is able to reach a settlement with the employer for back wages, interest, and penalties without proceeding to an Administrative Hearing. Since the MWO went into effect, the OLSE has only taken five cases to an Administrative Hearing.

Other noteworthy characteristics of the OLSE's administration and enforcement include:

- Multi-lingual staff members with diverse cultural backgrounds.
- Support from the City Attorney's Office, when needed, for the most egregious instances of wage theft.
- Funding to contract with grassroots workers' rights organizations to conduct outreach and education in San Francisco's low wage and immigrant communities.
- Work cooperatively with other regulatory agencies (DLSE or DPH) to leverage enforcement capabilities/resources and better enforce related labor laws.
- Ability to satisfactorily settle the vast majority of employer violations on behalf of impacted employees without having to proceed to an administrative hearing.

Washington DC - Labor Standards Bureau: Office of Wage and Hour (OWH)

<i>Washington DC - Office of Wage and Hour (OWH)</i>					
	CURRENT	FY 2011	FY 2012	FY 2013	FY 2014
Assigned Staff:	11.00 FTEs				
Annual Budget:	\$1.5 M				
Registered Businesses:	32,500				
Total Employees:	N/A				
Number of Employee Audits Conducted:		N/A	3707	2326	307*
Wage Recoveries for Employees:		\$485,782	\$486,895	\$577,154	\$377,370*
Penalties Recovered by City**:		\$0	\$0	\$0	\$0
<i>* Audits & Wage Recoveries through March 2014; fiscal year runs from October through September</i>					
<i>** OWH resolves most disputes through investigations and elects not to enforce penalty provisions</i>					

Washington DC's OWH has a total budget of approximately \$1.5 million and 11.00 staff. OWH staff is comprised of 6.00 Compliance Specialists, 3.00 Compliance Support Staff, 1.00 Administrative Law Judge and 1.00 Receptionist. As was noted earlier, Washington DC adopted their initial minimum wage law in 1993 and an earned sick leave law in 2008 (Accrued Sick and Safe Leave Act of 2008). Their minimum wage law was amended in 2013 to be effective July 1, 2014 as shown in the table on page 3.

OWH's enforcement is currently complaint driven; however, they used to perform proactive audits when the office had additional personnel. Washington DC does not have any exemptions to their minimum wage law. They do have tiered requirements for earned sick leave that is determined by the number of hours worked and the number of employees an employer has. We believe that a large number of labor law exemptions will complicate administration and increase the costs of enforcement.

Like San Francisco's OLSE, OWH appears to be very successful at recovering wages on behalf of impacted employees when a violation is identified (the Office states it has a wage recovery rate of approximately 99%). A significant difference between OWH and OLSE is that OWH elects not to issue fines to non-compliant employers even though the law allows them to do so. Fines can help an agency partially offset the cost of enforcement. OWH indicates that their major goal is to collect wages due employees and resolve potential violations through investigation, mediation and court proceedings in a fair and equitable manner for all parties involved.

Once a complaint is received by OWH, a Compliance Specialist conducts an audit of the alleged employer's payroll for the preceding three years to determine if there are other violations of labor law impacting other employees. One substantiated complaint is sufficient to trigger an employer audit which will typically involve auditing payrolls for the preceding three years. The department is currently re-evaluating its enforcement procedures in an effort to become more efficient and further improve their performance metrics.

Providing information to employers and employees is critical to having a good minimum wage or earned sick leave program. OWH uses their website as a resource for businesses to obtain various posters, fact sheets and laws to be posted or distributed in the workplace. Additionally, OWH mails information to each registered business in Washington DC.

City Living Wage & Prevailing Wage Programs: Current Budget, Staffing and Responsibilities

<i>City of San Diego's Purchasing & Contracting Department - LWO and PWO Administration</i>		
	FY 15	Related Information
Living Wage Program - Assigned Staff:	3.00 FTEs	1.00 Supervising Analyst; 2.00 Senior Analysts
Living Wage Program - Annual Budget:	\$353,163	1.00 Senior Analyst Added in FY 15 Budget
Living Wage Ordinance Adopted:	2005	LWO became effective July 1, 2006
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Prevailing Wage Program - Assigned Staff:	7.00 FTEs	1.00 Supervising Analyst; 6.00 Associate Analysts
Prevailing Wage Program - Annual Budget:	\$780,336	All 7.00 Assigned Staff Added in FY 15 Budget
Prevailing Wage Ordinance Adopted:	2013	PWO became effective January 1, 2014
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City's Registered Businesses:	112,863	Includes Businesses Located Outside of the City
Total Employees:	519,270	Employees with Registered Businesses

In preliminarily discussing where the proposed minimum wage and earned sick leave laws might best be administered if adopted, City management indicated uncertainty about which City department should assume this responsibility. The IBA believes the Purchasing & Contracting Department is the logical choice as it currently administers/enforces the City's two existing local labor laws - the Living Wage Ordinance (LWO) and the Prevailing Wage Ordinance (PWO). Staffing and budgetary information for these programs in FY 2015 is shown in the above table.

The absence of a City contract is the most significant difference between the administration and enforcement of LWO/PWO and the proposed minimum wage/earned sick leave laws. The LWO applies to most City service contracts and the PWO applies to most City construction contracts. Proposed minimum wage and earned sick leave laws would apply citywide to all employers/employees irrespective of whether they are doing business with the City or not. A City contract is an effective means of apprising an employer of the City's labor laws and subsequently enforcing those laws. Without a contract, City management will have to make significant and diversified outreach efforts to inform employees (519,000) and employers (113,000) working within city limits of their rights and responsibilities if new minimum wage and earned sick leave laws are adopted.

As is the current practice in most cities with minimum wage and earned sick leave laws (including San Francisco and Washington DC), the IBA believes enforcement of these laws should be complaint driven, and focused on effective outreach and investigation of all employee complaints. We believe this work is similar in nature to the work performed by existing LWO and PWO staff. Management has summarized the following responsibilities for each program:

Prevailing Wage Program Responsibilities:

- Provide and explain compliance requirements
- Monitor payment of prevailing wages
- Monitor subcontractor and vendor payments
- Monitor monthly employment reports; examine contractors employment workforce
- Investigate illegal substitutions
- Conduct formal compliance audits
- Respond to PRAs and subpoenas regarding certified payroll
- Assist in the preparation of reports
- Conduct internal/external prevailing wage training and outreach for all stakeholders

Living Wage Program Responsibilities:

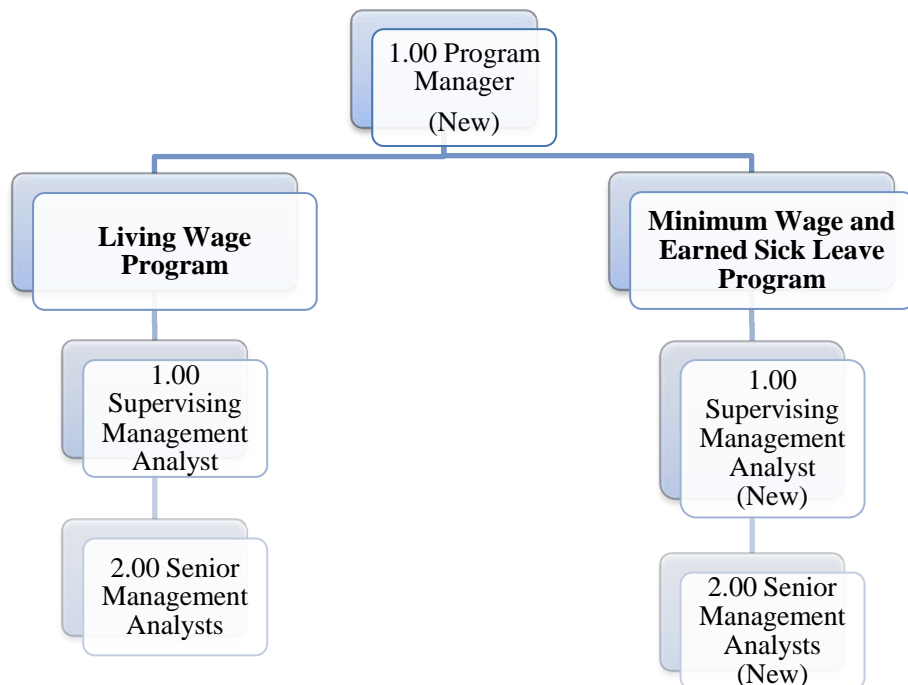
- Determination of LWO applicability
- Enforcement of Municipal Code requirements
- Monitoring of service contracts for compliance with LWO
- Investigation and resolution of complaints
- Performance of proactive service contract compliance reviews
- Compilation of annual compliance reports
- Provision of information in response to requests from workers, employers and others
- Records maintenance
- Posting and distribution of informational materials
- Administer the Equal Benefits Program, Service Worker Retention Ordinance and Contractor Standards Ordinance

Many of the above listed responsibilities (providing and explaining compliance requirements, investigation and resolution of complaints, conducting formal compliance audits, distribution of informational materials, records maintenance, etc.) would also be critical to developing effective administration and enforcement of the proposed minimum wage and earned sick leave laws. Given these similarities and the possibility for operating synergies, we believe the responsibility for administering the proposed programs should be organizationally located in the department with responsibility for the LWO and PWO - currently the Purchasing & Contracting Department.

Estimated Cost to Administer Proposed Minimum Wage and Earned Sick Leave Requirements

At the conclusion of discussions with staff regarding where in the City the responsibility for administering and enforcing the proposed new labor laws should be located, it was suggested that these responsibilities might best be paired with LWO administration responsibilities. The Living Wage Program is well managed, has the longest track record of performance and has done a good job of record keeping and annual reporting. Unlike LWO administration, PWO administrative staff were just added this year and must align their work with the State's prevailing wage laws which have unique and specific requirements typically covered in prevailing wage regulations issued by the California Department of Industrial Relations.

Based on our conversations with staff and our review of programs in other jurisdictions, we suggest that an emerging minimum wage and earned sick leave program might benefit from joint administration with the City's Living Wage Program. This should allow new administrative staff to benefit from the experience of existing LWO staff who have performed similar duties. It could also allow for efficiencies in developing common resources (website development, printed informational materials, mailers, etc.). Assuming management agrees with this organizational structure, the IBA believes the proposed minimum wage and earned sick leave program could be reasonably staffed with 4.00 new FTEs to include: 1.00 Program Manager (who would also be responsible for LWO administration), 1.00 Supervising Management Analyst and 2.00 Senior Management Analysts. The consolidated work unit might look like this:



In addition to the staffing costs, we recommend the new minimum wage and earned sick leave program have an initial non-personnel expense budget of \$150,000 to cover miscellaneous and necessary expenses. These expenses would include, but not be limited to, development of an effective website, printing informational materials, employer mailings and possibly small contracts with community-based organizations to provide additional outreach to targeted worker groups and low wage communities. We also recommend the new administrative program borrow from some of the noteworthy practices employed by San Francisco’s OLSE to achieve operating efficiencies. For example, it may be possible to work cooperatively with other regulatory agencies (like the DLSE or the County’s DPH) to leverage enforcement capabilities/resources and better enforce related labor laws.

Assuming mid-year implementation in FY 2015, the estimated cost to implement the proposed minimum wage and earned sick leave program is shown in the table below:

<i>Estimated Cost for Monitoring & Enforcement</i>		
	FY 2015 *	FY 2016
1.0 Program Manager	\$85,500	\$171,000
1.0 Supervising Management Analyst	\$64,500	\$129,000
2.0 Senior Management Analysts	\$116,000	\$232,000
Non-Personnel Costs	<u>\$150,000</u>	<u>\$150,000</u>
Total Est. Monitoring & Enforcement Cost	<u>\$416,000</u>	<u>\$682,000</u>

*Assumes the effective date for proposed minimum wage and earned sick leave is January 1, 2015; therefore estimated personnel costs are halved for FY 2015.

It is important to note that the above estimated costs for administration and enforcement will need to be addressed in the FY 2015 budget as soon as possible following approval by Council this summer or the voters in November 2014. This is important because time will be required to hire and train needed staff, develop and distribute informational materials, and provide outreach information about the new laws to employers and employees. Ideally, this will happen in advance of the proposed January 1, 2015 implementation date.

Estimated Annual Compensation Increases for City Employees

Below is a table with estimated compensation increases for City employees related to the minimum wage and earned sick leave proposals. These Citywide figures are based on Financial Management's (FM) projections, which are based on FY 2014 data for hourly wages and cumulative hours worked as of June 6, 2014. Based on this data set, the increases only apply to non-benefitted hourly employees (rather than full or part-time benefitted employees). We have reviewed related data, and FMs figures appear reasonable. However, the figures are subject to change with the constantly changing employee population.

The increased minimum wage proposal costs below include wage increases and related fringe costs, which include Supplemental Pension Savings Plan - Hourly (SPSP-H) and Medicare. The earned sick leave proposal costs are based on payouts of up to 40 hours annually and also include SPSP-H and Medicare amounts. Costs will increase with CPI changes beginning January 1, 2019, in accordance with the proposed ordinance.

Again, the amounts in the table assume payout of all earned sick leave up to the maximum required payout of 40 hours per year. Any earned sick leave in excess of amounts used during the year (in this case in excess of the 40 hours allowed for use) will be carried forward to the

next year. Depending on City policy, upon separation from employment, these amounts could be fully cashed-out, partially cashed-out or not cashed-out at all. Earned amounts in excess of 40 annual hours are estimated around \$12,000 annually based on the employee data set at June 6, 2014.

<i>Estimated Compensation Increases for City Employees</i>				
	FY 2015	FY 2016	FY 2017	FY 2018
Increased Minimum Wage Proposal	\$5,000	\$25,000	\$81,000	\$122,000
Earned Sick Leave Proposal	\$0 *	\$529,000	\$530,000	\$531,000
Total Estimated City Costs for Increases	\$5,000	\$554,000	\$611,000	\$653,000

*Although there is no payout for FY 2015 required in the proposed ordinance, the estimated value for sick leave earned during FY 2015 is approximately \$107,000.

CONCLUSION

In response to direction received from the Committee on Economic Development and Intergovernmental Relations Committee on June 11th and the City Council on June 16th, the IBA has estimated the City’s cost to effectively administer and comply with the proposed new minimum wage and earned sick leave laws. This report presents comparative information from other cities that have adopted similar laws. Additionally, we have made suggestions about where the administration of these programs best fits within the City’s organization and how the programs should be staffed to ensure reasonable enforcement of these important labor laws.

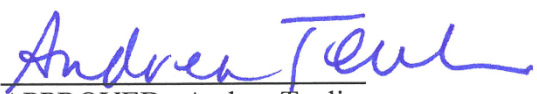
Based on the organizational structure and staffing we have suggested, we estimate the annual cost to administer and enforce the proposed minimum wage and earned sick leave laws to be approximately \$682,000 in FY 2016. We have also reviewed analysis performed by the City’s Financial Management Department to estimate annual compensation increases for City employees associated with this proposal and concur with their estimate of approximately \$554,000 in FY 2016. Combining these estimates, the total estimated annual cost is approximately \$1.2 million in the first full year of enforcement (FY 2016).

Assuming an effective date of January 1, 2015, the estimated cost of enforcement in FY 2015 is approximately \$421,000. If the proposed laws are adopted, funding will need to be addressed in the FY 2015 budget as soon as possible following approval either by the Council this summer or by the voters in November 2014. This is important because time will be required to hire and train needed staff, develop and distribute informational materials, and provide outreach information about the new laws to employers and employees. Ideally, this will happen in advance of the proposed January 1, 2015 implementation date.

It should also be noted that the City’s current draft ordinance provides that any employer who violates any requirement of the proposed labor laws shall be subject to a civil penalty for each violation of up to, but not to exceed, \$1,000 per violation. Civil penalties, whether imposed at this level or at a higher level, can help to partially offset the annual cost of administration and enforcement.



 Jeff Kavar
 Deputy Director



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