



Seattle City Council

Central Staff - Memorandum

Date: April 1, 2016
To: Civil Rights, Utilities, Economic Development & Arts Committee
From: Patricia Lee, Calvin Chow, Tony Kilduff
Subject: Response to SLI 36-1-A-3: Dedicated Funding Source for Local Labor Laws

Executive Summary

Since 2012 the City has enacted four local labor laws: Paid Sick and Safe Leave, Fair Chance Employment, Minimum Wage and Wage Theft. In 2015 the City established an Office of Labor Standards (OLS) to provide education, outreach, administration, implementation and enforcement of these laws.

The City Council's Statement of Legislative Intent (SLI) 36-1-A-3, approved as part of the City of Seattle's 2016 Adopted Budget, expresses Council's intent to increase funding for OLS's education and outreach to workers and businesses and to add additional OLS staff investigators. The SLI requests the Executive provide staffing and appropriate resources to support Council Central Staff's analysis of possible revenue sources to provide additional resources to OLS.

The OLS is funded entirely by the City's General Subfund. When compared to the 2016 Adopted Budget, including items requested in the 1st Quarter Supplemental, the City Budget Office (CBO) and OLS have estimated a 2017 budget for OLS that would:

- Increase OLS funding from \$2.2 million to \$4.8 million
- Increase OLS's total staff from 11 FTEs to 22 FTEs
- Increase OLS enforcement staff from 7 FTEs to 12 FTEs
(Enforcement staff includes a paralegal, intake personnel, case investigators and a lead/manager)
- Add 1 FTE in the Law Department
- Increase Outreach funding from \$950,000 to \$1.5 million

Based on these estimates, there would be an approximate \$2.6 million increase in OLS's budget in 2017. This increase would either come from the City General Subfund or another identified revenue source.

The funding analysis assumes OLS's entire 2017 projected budget of \$4.8 million would be funded from the new source. This memo discusses three potential revenue sources if Council chooses to establish a new dedicated funding source for \$4.8 million of annual revenue.

The three potential revenue sources to raise \$4.8 million annually are:

1. Establish an employee hours tax of \$0.0086 per hour or \$16.50 per FTE.
2. Increase the City Business License Fee from \$110 to \$190 and from \$55 to \$95 annually. Businesses with more than \$20,000 in gross receipts worldwide currently pay \$110, those with less than \$20,000 pay \$55. This would generate \$4.8 million annually.

A variation of this is SEIU's proposal to apply a 1¢ per employee-hour to all licensed businesses and add that to the existing Business License Fee, and dedicate the additional revenue raised to support OLS's regulatory functions.

3. Request voter approval of a 2.1% increase to the Business and Occupation Tax rates, for example, from 0.215% to 0.220% for Retail business and from 0.415% to 0.424% for Service businesses, to generate \$4.8 million for OLS.

STATEMENT OF LEGISLATIVE INTENT (SLI) 36-1-A-3: DEDICATED FUNDING SOURCE FOR LOCAL LABOR LAWS

The City Council's SLI 36-1-A-3, approved as part of the City of Seattle's 2016 Adopted Budget, addresses work on the City's labor laws and expresses Council's intent to increase funding for:

- non-City organizations to perform outreach to businesses and workers for the purpose of providing education and ensuring compliance with the City's labor laws; and
- additional staff investigators at the Office for Labor Standards (OLS).

Council intends for these objectives to be reached by establishing a new, dedicated funding source. The SLI requests the Executive provide staffing and appropriate resources to support an analysis by Council Central Staff on potential ways to raise these dedicated funds. This memo reflects information from the City Budget Office (CBO) and OLS. The SLI is attached to this memo as Attachment 1.

This memo addresses three main areas of inquiry:

- The estimated funding needed to achieve the outcomes identified in the SLI;
- The revenue options for this funding; and
- Implementation and timeline.

I. ESTIMATED FUNDING NEEDED

In order to determine the future funding needs, this section provides information on Seattle's local labor laws, budget and staffing for the OLS, benchmarking to other jurisdictions, and options for Council's consideration.

A. Local Labor laws currently implemented and enforced by OLS.

The City has enacted four local labor laws. Table 1 identifies the four laws and provides a synopsis of the benefit or protection they were enacted to provide.

Table 1. Seattle’s Local Labor Laws

| Labor Law | Synopsis | Effective Date |
|---------------------------------------|---|--|
| Paid Sick and Safe Time | Provides most employees paid leave due to medical, domestic violence, sexual assault or stalking issues | September 1, 2012 SMC 14.16 et. seq |
| Fair Chance Employment | Regulates when and how an employer can use criminal background information in making an employment decision | November 1, 2013 SMC 14.17 et. seq. |
| Minimum Wage and Minimum Compensation | Provides workers a local minimum wage that will reach \$15 an hour in 2017 or 2018 for large employers and \$15 an hour in 2019 or 2021 for smaller employers. Minimum compensation will reach \$15 an hour in 2019 | April 1, 2015 SMC 14.91 et. seq. |
| Wage Theft | Provides civil remedy for a worker not receiving full or accurate compensation | April 1, 2015 SMC 14.20 et. seq. |

B. OLS budget, including outreach funding and staffing

The OLS was created in 2015 as a division of the Office of Civil Rights (OCR) to enforce the City’s local labor laws. The Washington State Department of Labor and the U.S. Department of Labor enforce state and federal labor laws, respectively. The OLS Director reports to both the OCR Director and the Mayor.

The OLS staff provides education, outreach, administration, implementation and enforcement of the City’s four labor laws. In addition, they contract with community-based organizations for outreach to workers and with business organizations and associations for education and outreach to businesses. They will also staff the Labor Standards Advisory Commission (Commission), a 15-person advisory committee composed of employers, employees and workers that will be established in 2016. The Commission will advise the Director on labor standards and on the implementation of the City’s labor laws. The Commission is to provide an annual report to the Mayor and City Council.

Seattle’s four labor laws establish new benefits and requirements and have all been enacted during the past four years. Minimum wage and Paid Sick and Safe Leave differentiate benefits based on size of employer and all four laws require a very fact-specific inquiry, often including reviewing records and interviewing individuals to determine if a violation has occurred.

OLS currently has a target of 180 days for processing and closing cases. Currently OLS has 135 open investigations and 70 pending inquiries which may turn into investigations. Each investigator currently has approximately 25 cases they are working on at any one time.

Many OLS investigations are now company-wide and not just confined to the initial complaint, requiring a broader level of investigation. OLS has also contracted for outreach to both workers and businesses which will likely increase the number of inquiries and potential cases. Increasing the number of investigators will expedite investigations and provide capacity for additional cases to be handled.

The 2015 Wage Theft and Labor Standards Harmonization ordinance clarified that OLS has the authority to initiate investigations, i.e. “directed investigations” without a complaint from an employee. Council is aware that there are many reasons employees are fearful of voicing a complaint or inquiry and that enforcing compliance by waiting for employees to come forward is insufficient.

Given OLS’s current workload and staffing adding “directed investigations” will require additional staff. The 2017 projected costs and staffing estimates are based on enforcement of the four existing Seattle labor laws. If the City decides to enact additional labor laws, additional staffing and funding may be needed.

OLS is funded entirely from General Subfund revenues. OLS can recover remedies (which go to the workers) and penalties (which go to the City) if a violation is determined. To date, through February 2016, OLS has recovered a cumulative total of \$9,350 in penalties that went to the City’s General Subfund; and OLS investigations led to a cumulative total of \$233,000 of assessed remedies for workers. It has not yet been determined where penalties would go if there is a dedicated funding source for OLS.

Finally, given the growth in the size of OLS staffing, OLS will need to find new office space; it currently is co-located with OCR and shares some administrative costs. OLS will have to bear its own administrative costs after the move. Funding for the move and space tenant improvements has not yet been identified.

Table 2 summarizes OLS’s budget and staffing for 2015 and 2016; and it also reflects the budget and staffing the Executive has calculated would be necessary to effectively provide education, outreach, administration, implementation and enforcement of the City’s labor laws in 2017. Both business and labor support increased funding for education and outreach to businesses and workers.

Table 2. OLS’s Budget, including outreach funding, and staffing

| (\$1,000s) | 2015 Actual ¹ | | 2016 Adopted ² | | 2017 Projected | |
|--|--------------------------|----------|---------------------------|-----------|----------------|-----------|
| | \$ | FTEs | \$ | FTE | \$ | FTEs |
| Enforcement Staffing | \$393 | 4 | \$673 | 7 | \$1,306 | 12 |
| Outreach Staffing | \$213 | 2 | \$219 | 2 | \$480 | 4 |
| Managerial and Policy Positions | \$137 | 1 | \$296 | 2 | \$332 | 2 |
| Position in LAW Department | | | | | \$141 | 1 |
| Administration Positions and Expenses ³ | \$25 | | \$78 | | \$1,022 | 4 |
| Worker/Business Outreach ⁴ | \$559 | | \$950 | | \$1,500 | |
| | \$1,297 | 7 | \$2,216 | 11 | \$4,781 | 23 |

Notes:

1. 2015 costs are estimated.
2. 2016 costs/FTEs include requested additions in the 1st quarter supplemental ordinance to be considered by Council (\$191,000 for 2 emergency investigators that expire Dec. 31, 2016).
3. In 2015 and 2016, OLS shares admin positions with OCR and rent and Centralized Costs are included in OCR’s budget. Only costs directly added to OCR for OLS needs in 2015 and 2016 are reflected in this row. Remaining costs will be replicated and are not reflected here. In 2017, OLS will have its own administrative staff and will pay rent, IT charges, and other charges directly.
4. Includes one-time funding of \$159k for outreach (carryforward funding from FAS). OED receives \$210k for business outreach which is not directly tied to labor standards but is ongoing and is not reflected here.

The \$2.6 million increase in OLS funding projected for 2017 will either need to be funded from the City General Subfund or from another revenue source.

C. Comparable funding and staffing for Labor Standards offices in other jurisdictions.

There are four cities that have created a separate Office of Labor Standards: San Francisco, New York, Los Angeles, and Washington, D.C. None of these cities has a dedicated funding source.

Below is information on staffing and funding for each city. In considering other jurisdictions it is important to note that Seattle’s OLS has taken a proactive approach to providing education and assistance to businesses and workers and to enforcing compliance by making it easier for workers to make inquiries or report a potential violation and conducting company-wide investigations. In 2017 they will begin conducting Directed Investigations i.e. investigations initiated by the OLS Director.

San Francisco

San Francisco's Office for Labor Standards Enforcement (OLSE) was established in 2001 to enforce San Francisco's 12 local labor laws including prevailing wage laws which in Seattle are enforced by the Finance and Administrative Department. It also has three contracts with community-based organizations for education and outreach.

OLSE has a staff of 23 including two managers, 18 compliance officers, one administrative position, and two analysts. The annual budget is \$3 million

New York City

New York City will establish an Office for Labor Standards in spring 2016 to enforce the City's Paid Sick and Safe Leave and Commuter Benefit laws currently administered by the Department of Consumer Affairs. Under the Federal Internal Revenue Code employers can offer full-time employees the opportunity to use pre-tax income to purchase qualified transportation benefits; and beginning in January 2016, most employers must provide commuter benefits to employees in New York City.

Currently New York City has 14 full time staff, 10 of whom are enforcement staff and six are shared administrative staff with the Department of Consumer Affairs.

Los Angeles

Los Angeles will establish a new Office of Wage Standards in 2016 within the Department of Public Works - Bureau of Contract Administration. Los Angeles' fiscal year begins July 1, so budget and staffing information has not been established. Currently they have 6 FTEs and 29 FTEs have been requested to enforce Los Angeles three local labor laws.

Washington D.C.

The Office of Wage-Hour, is a division of Washington D.C.'s Bureau of Labor Standards in their Department of Employment Services. The Office has been in existence for many years and enforces nine labor laws. The oldest labor law, the Wage Payment and Collection Act was enacted in the 1970s. As new labor laws are enacted they are added to the Office- of Wage-Hour to enforce e.g. minimum wage, accrued sick and safe leave, commuter benefits.

Their staff of 13 FTEs consists of seven compliance officers, two managers and four administrative staff.

D. Questions and Options for Council

1. Does Council agree with the 2017 Projected OLS funding of \$4.8 million and 23 FTEs and outreach budget of \$1.5 million?

OPTIONS:

- a. Agree with the 2017 Projected OLS funding of \$4.8 million and 23 FTEs and outreach budget of \$1.5 million. This is a significant increase over the 2016 adopted budget funding level of \$2.2 million (including \$1.5 million for outreach) and 11 FTEs.
- b. Agree with the 2017 Projected OLS funding and add additional funding specifically for OLS staff training and education. OLS is working in an area in which very few jurisdictions operate since few jurisdictions have enacted their own labor laws and no other City has undertaken Directed Investigations. Adding funding for staff training and education would ensure staff has the necessary expertise required. If Council is inclined to pursue this option input from OLS and CBO on what this increased amount should be should be sought.
- c. Agree with the 2017 Projected OLS funding and increase the 2017 Projected OLS funding and build in capacity for future growth in recognition that the City is likely to increase the number of local labor laws in 2016 and in coming years, with a concomitant increase in OLS's workload. OLS has considered the passage of the Fair Scheduling ordinance in the 2017 Projected staffing figures, but additional local labor laws may be enacted in future years. If Council is inclined to pursue this option input from OLS and CBO on what this increased amount should be should be sought.
- d. Agree with the overall 2017 Projected but phase in the increase; so that perhaps OLS's budget is increased over 2017 and 2018. OLS has only been established since 2015 and it may be prudent to allow them to grow at a more incremental pace. Also OLS began contracting for outreach and education in mid-2015 and it is too soon to determine the effectiveness of that funding. If Council is inclined to pursue this option input from OLS and CBO should be sought on the advantages and disadvantages of a phased growth.

CRUEDA Committee Preference:

2. Is a dedicated funding source warranted?

The Projected expansion of OLS meets Council’s objective of increasing enforcement staff (from 7 FTEs to 12 FTEs) and outreach funding (from \$950,000 to \$1.5 million). Overall OLS staffing will go from 11 FTEs to 23 FTEs, including the Law position. This doubling of OLS staff and 58% increase in outreach funding results in a \$2.6 million increase in funding from OLS’s 2016 budget (\$2.2 million in 2016 to \$4.8 million in 2017.)

This \$2.6 million of additional funding, to accomplish Council’s objectives, while significant, and a cost to the City’s general subfund revenue, may not be at a level that warrants establishing a new dedicated funding source.

Even if the entire OLS 2017 Projected budget of \$4.8 million is funded entirely by a new dedicated funding source, the question remains whether the need for \$4.8 million in revenue warrants establishing a new funding source, even in the context of competing demands on general subfund resources.

OPTIONS

- a. Continue to fund OLS from the City’s general subfund
- b. Establish a dedicated funding source to fund the increase from OLS’s 2016 budget to the Projected 2017 budget, approximately \$2.6 million. This would result in OLS being partially funded by the general subfund and partially by the new dedicated fund source.
- c. Establish a dedicated funding source to fund OLS’s entire 2017 Projected budget of \$4.8 million. Provide a way to increase this dedicated funding source as OLS’s duties increase over time.

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II. WHAT ARE THE REVENUE OPTIONS FOR THIS FUNDING?

For purposes of this section, we are assuming Council agrees with the 2017 OLS Projected budget of \$4.8 million and that all of OLS’s budget would be funded from a new dedicated revenue source. If Council determines OLS’s entire budget should be funded from a new dedicated source, then a new Labor Laws Fund would be established and revenues deposited into this fund would be used only to fund OLS. Following are some of the potential revenue sources:

1. Employee Hours Tax

Under SMC Chapter 5, the City could establish an employee hours tax that would be based on the number of employee hours worked within the City. Employee hours tax revenues are a flexible General Subfund funding mechanism that can be used by the City for any municipal purpose. In order to raise \$4.8 million, Central staff agrees with CBO's calculation that the employees hours tax rate would need to be \$16.50 per FTE or \$0.0086 per hour.

By comparison, the City established an employee hours tax in 2006 in conjunction with the Bridging the Gap levy (see [Ordinance 122191](#)). The tax was \$25 per FTE and generated about \$5 million a year. The tax was established for transportation purposes and included an exemption for non-Single-Occupancy-Vehicle commuters which complicated compliance and enforcement and may be one reason for the low amount of revenue generated. Council repealed the employee hours tax in 2009 (see [Ordinance 123150](#)).

To minimize administration costs, a new employee hours tax could align with the existing requirements for Business Licenses and the applicability of the Business and Occupation Tax. For example, a new employee hours tax could include an exemption for employers with gross income of under \$80,000 (SMC 5.55.040.D.3) and/or exemptions for specific kinds of business operations (SMC 4.45.090), such as Adult Family Homes, Day Care Provided By Churches, Farmers-Agriculture, etc. Consistency between requirements would simplify reporting and may lead to better compliance.

We are not aware of any other city in Washington State that has an employee hours tax or a dedicated funding source for the enforcement of labor laws. However, both the City of Redmond and the City of Kirkland charge a business license fee on a per employee hour basis, which functions similar to an employee hours tax. Redmond uses a portion of these revenues for transportation purposes and Kirkland uses a portion of these revenues for business services. Neither Redmond nor Kirkland has a B&O Tax.

OPTIONS

- a. Establish an employee hours tax at a rate of \$16.50 per FTE or \$0.0086 per hour, with revenue deposited into a new Labor Laws Fund to be used only to fund OLS. Align exemptions with existing Business License and Business and Occupation Tax requirements. This option would generate an estimated \$4.8 million annually.
- b. Enact an employee hours tax with additional exemptions. Depending on the exemptions considered, this option may require a higher tax rate than Option A to raise the same amount of revenue.
- c. Do not establish an employee hours tax.

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2. Increase the City Business License Fee and dedicate the increased revenue to funding OLS’s regulatory functions.

The City’s Department of Finance and Administrative Services administers the Business License Fee. SMC 5.55.030 requires a Business License certificate be obtained by all persons engaged in business activity, professions, trades or occupations in the City of Seattle. The amount of the annual license depends on the worldwide gross income of the business: \$110 if the worldwide gross income is \$20,000 or more and half that (\$55) for worldwide gross income less than \$20,000.

This differs from Kirkland and Redmond where the Business License Fee is based on a per-FTE basis, similar to an employee hours tax. Neither has a B&O Tax.

Vancouver eliminated its gross receipts B&O tax and replaced it with a per-employee surcharge (capped at 400 FTE) in addition to a base “per-business” flat fee.

In order to generate \$4.8 annually from its Business License Fee, Seattle would have to increase it to \$190 for businesses with gross incomes of \$20,000 or more, and to \$95 for those with gross incomes less than \$20,000.

A variant on this has been proposed by the SEIU. Its proposal is to apply a 1 ¢ per employee-hour charge to all licensed businesses and to add that charge to the existing Business License Fee. The result would be a combination of the existing flat fee and a variable charge based on the number of employee hours. The resulting fee would be different for each business. As noted above, a per-hour charge of \$00.86 would raise the required \$4.8 million, so a 1 ¢ charge would over collect.

It is worth noting that there may be some limitations on the uses to which Business License Fees may be put.

OPTIONS

- a. Increase the Business License Fee by from \$110 to \$190 annually for businesses with income at or above the \$20,000 threshold, and from \$55 to \$95 annually for those below the threshold; use those proceeds to fund OLS’s regulatory functions.
- b. Apply a 1¢ per employee-hour to all licensed businesses and add that to the existing Business License Fee, and dedicate the additional revenue raised to support OLS’s regulatory functions.
- c. Do not increase the business license regulatory fee.

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3. Request voter approval of an increase to the Business and Occupation Tax

SMC 5.45 imposes a business license tax or “B&O” on all entities doing business in the City. The amount of the tax varies depending on the type of business and the business’ gross receipts and also on the type of business. Currently, the City imposes three different tax rates:

- 0.415% for sales and services;
- 0.215% for other select classification; and
- 0.150% for international investment management services

RCW 35.21.710 caps B&O tax rate that may be imposed councilmanically and the City is at that cap. It could seek voter approval to increase the all B&O tax rates by 2.1%, resulting in the following new rates for the different categories:

- 0.424% for sales and services;
- 0.220% for other select classification; and
- 0.153% for international investment management services

OPTIONS

- a. Request voter approval of a 2.1% increase to the B&O tax rate to generate \$4.8 million to fund OLS.
- b. Do not request voter approval of an increase to the B&O tax rate.

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III. An implementation strategy and timeline

It is anticipated that the CRUEDA Committee will schedule a discussion of this SLI response in April 2016. Council’s direction at that meeting, or after they receive the May revenue forecast, will inform whether Council prefers (a) to continue funding OLS from the General Subfund or (b) to establish a new dedicated funding source and (if so) which funding source. Council at that time may direct staff to draft legislation.

Attachment 1: [Statement of Legislative Intent 36-1-A-3](#)