

File No. 140918

Committee Item No. 2

Board Item No. 4

### COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance

Date September 10, 2014

Board of Supervisors Meeting

Date September 16, 2014

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
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#### OTHER (Use back side if additional space is needed)

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Completed by: Victor Young Date September 5, 2014

Completed by: L.W. Date September 11, 2014

AMENDED IN COMMITTEE  
9/10/14

FILE NO. 140918

ORDINANCE NO.

RO#15009  
SA#25-08

[Appropriation - Legal Services for Unaccompanied Children and Families - Mayor's Office of Housing - ~~\$2,400,000~~ \$2,127,600 - FYs 2014-2015 and 2015-2016]

Ordinance appropriating ~~\$2,400,000~~ \$2,127,600 from the General Fund Reserve to the Mayor's Office of Housing, ~~\$1,200,000~~ \$1,063,800 in FY2014-2015 and ~~\$1,200,000~~ \$1,063,800 in FY2015-2016, for legal services for unaccompanied children and families on the San Francisco Immigration Court's expedited removal docket.

Note: **Unchanged Code text and uncodified text** are in plain Arial font.  
**Additions to Codes** are in *single-underline italics Times New Roman font*.  
**Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
**Board amendment additions** are in double underlined Arial font.  
**Board amendment deletions** are in ~~strikethrough Arial font~~.  
**Asterisks ( \* \* \* )** indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The sources of funding outlined below are herein appropriated to reflect the funding available in FY2014-2015 and FY2015-2016.

**USES Appropriation**

Fund	Index/Project Code	Subobject	Description	Amount
1G AGF ACP	GENRESERVE	99999R	GENERAL FUND	\$2,400,000
GF- CONTINUING			RESERVE	<u>\$2,127,600</u>
PROJECTS				
<b>Total USES Appropriation</b>				<u><u>\$2,400,000</u></u>

\$2,127,600

Section 2. The uses of funding outlined below are herein appropriated in FY2014-2015 and FY2015-2016 for legal services for unaccompanied children and families on the San Francisco Immigration Court's expedited removal docket.

**Uses Appropriation**

Fund	Index/Project Code	Subobject	Description	Amount
1G AGF AAP	MYR171GACP /	03801	LEGAL SERVICES	\$2,400,000
GF- ANNUAL PROJECT	PMOLSOUN			<u>\$2,127,600</u>
<b>Total USES Appropriation</b>				<b>\$2,400,000</b>
				<u><u>\$2,127,600</u></u>

Section 3. ~~\$1,200,000~~ \$1,063,800 shall be placed on Controller's Reserve until FY2015-2016.

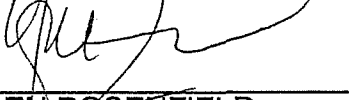
Section 4. The Controller is authorized to record transfers between funds and adjust the accounting treatment of sources and uses appropriated in this Ordinance as necessary to conform with Generally Accepted Accounting Principles.

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APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

By:   
THOMAS OWEN  
Deputy City Attorney

FUNDS AVAILABLE:  
BEN ROSENFELD, Controller

By:   
BEN ROSENFELD  
Controller

<b>Item 2</b> <b>File 14-0918</b>	<b>Department:</b> Mayor's Office of Housing and Community Development
<b>EXECUTIVE SUMMARY</b>	
<b>Legislative Objective</b>	
<ul style="list-style-type: none"> <li>• Ordinance appropriating \$2,400,000 from the City's General Fund Reserve for legal services for unaccompanied juveniles and family units on the San Francisco's Immigration Court's expedited removal docket.</li> </ul>	
<b>Key Points</b>	
<ul style="list-style-type: none"> <li>• The juvenile caseload in San Francisco's Immigration Court has increased by 183% or 541 cases, from 296 cases in FY 2010-11 to 837 cases in FY 2012-13. The increase in juvenile cases in the San Francisco Immigration Court reflects the nationwide increase in unaccompanied juveniles apprehended by U.S. Custom and Border Protection.</li> <li>• Unaccompanied juveniles or family units appearing in immigration court do not have a legal right to representation, although a number of legal service providers in San Francisco offer their services for these juveniles or family units at no or reduced costs. According to Syracuse University's TRAC Immigration Project, unrepresented immigrant juveniles were ordered deported in nine out of ten cases nationally. In contrast, the court allowed the juvenile to remain in the United States in almost half of the cases receiving legal representation.</li> <li>• U.S. Customs and Border Protection estimates that 90,000 unaccompanied juveniles and 75,427 family units, totaling 165,427, will be apprehended nationwide in federal FY 2013-14 (October 1, 2013 through September 30, 2014). The Budget and Legislative Analyst estimates that 2,531 of these unaccompanied juveniles and family units will be referred to expedited removal proceedings in San Francisco Immigration Court.</li> </ul>	
<b>Fiscal Impact</b>	
<ul style="list-style-type: none"> <li>• The proposed ordinance would appropriate \$1,200,000 in FY 2014-15 and \$1,200,000 in FY 2015-16 from the City's General Fund Reserve, totaling \$2,400,000, to pay for legal services for unaccompanied juveniles and family units. Appropriation of \$2,400,000 would reduce the City's General Fund Reserve balance from \$58,020,643 to \$55,620,643.</li> <li>• The estimated annual costs to provide legal services (both attorney and support staff costs) for the 20% of unaccompanied juveniles and family units who are referred to San Francisco Immigration Court and reside in San Francisco are \$1,250,000. If only attorney costs are included, then the estimated costs to provide these legal services are reduced by \$136,200 to \$1,063,800 per year. As an alternative to the requested appropriation of \$2,400,000, the Board of Supervisors could consider appropriating funds of \$1,063,800 per year to pay only for attorney costs.</li> </ul>	
<b>Recommendations</b>	
<ul style="list-style-type: none"> <li>• The Board of Supervisors could consider appropriating funds of \$1,063,800 per year to pay only for attorney costs. This would reduce the requested appropriation by \$272,400, from \$2,400,000 to \$2,127,600.</li> <li>• Approval of the proposed ordinance is a policy matter for the Board of Supervisors.</li> </ul>	

**MANDATE STATEMENT & BACKGROUND**

**Mandate Statement**

According to Charter Section 9.105, amendments to the appropriation ordinance, as finally adopted by the Board of Supervisors, may be initiated by a member of the Board of Supervisors and adopted in the same manner as other ordinances.

**Background**

The juvenile caseload in San Francisco’s Immigration Court<sup>1</sup> has increased substantially over the last three years. From federal Fiscal Year (FY) 2005-6 through FY 2010-11,<sup>2</sup> the number of juvenile cases filed in San Francisco’s Immigration Court ranged from 251 to 313 cases per year, with an average of 286 cases per year. The number of cases began to increase in FY 2010-11, resulting in a 183% increase in FY 2012-13 compared to FY 2010-11, as shown in Table 1 below.

**Table 1: Juvenile Caseload in the San Francisco Immigration Court**

Federal Fiscal Year:	FY 2010-11	FY 2011-12	FY 2012-13	Percent Increase	FY 2013-14 (nine months)
Total Juvenile Cases *	296	477	837	183%	865

Source: Syracuse University TRAC (Transactional Records Access Clearinghouse) Immigration Project

\* Includes unaccompanied and other juvenile cases but not family unit cases

The increase in juvenile cases in the San Francisco Immigration Court reflects the nationwide increase in unaccompanied juveniles apprehended by U.S. Customs and Border Protection, which increased by 22,810 from 15,949 in federal FY 2010-11 to 38,759 in federal FY 2012-13, an increase of 143%. U.S. Customs and Boarder Protection reported 62,998 unaccompanied juveniles during the first 10 months of federal FY 2013-14 (through July 31).

Under federal law, unaccompanied juveniles, who have entered the United States illegally and are apprehended by U.S. Customs and Border Protection, are given the option of voluntarily returning to their home country if they are from Mexico or Canada.<sup>3</sup> For unaccompanied juveniles from other countries and those from Mexico or Canada that do not choose to voluntarily return to their country, the U.S. Department of Homeland Security initiates removal proceedings against them by filing a case with the U.S. Executive Office for Immigration Review, a branch of the U.S. Department of Justice.

<sup>1</sup> The San Francisco Immigration Court falls under the jurisdiction of the Office of the Chief Immigration Judge, which is a component of the Executive Office for Immigration Review under the U.S. Department of Justice. The Executive Office for Immigration Review is a separate organization from U.S. Citizenship and Immigration Services, which is under the jurisdiction of the U.S. Department of Homeland Security.

<sup>2</sup> The federal fiscal year is from October 1 through September 30.

<sup>3</sup> William Wilberforce Trafficking Victims Reauthorization Act of 2008

### Legal Representation to Unaccompanied Minors

Unaccompanied juveniles or family units appearing in immigration court do not have a legal right to representation, although a number of legal service providers in San Francisco offer their services for these juveniles or family units at no or reduced cost. In prior years, when the number of unaccompanied juveniles appearing in immigration court was less, an average of 65% of these cases in San Francisco Immigration Court received legal representation. The percentage of these cases receiving legal representation decreased to 35% in federal FY 2012-13, as shown in Table 2 below.

**Table 2: Number of Unaccompanied Juvenile Cases Receiving Legal Representation in San Francisco Immigration Court**

	Represented	Not Represented	Total	Percent Represented
FY 2012-13	294	543	837	35%
<b>Average</b>				
<b>FY 2005-06 to FY 2011-12</b>	<b>204</b>	<b>109</b>	<b>313</b>	<b>65%</b>
FY 2011-12	313	164	477	66%
FY 2010-11	210	86	296	71%
FY 2009-10	209	104	313	67%
FY 2008-09	155	96	251	62%
FY 2007-08	147	110	257	57%
FY 2006-07	192	97	289	66%
FY 2005-06	204	107	311	66%

Source: Syracuse University TRAC Immigration Project

The outcomes for juveniles in immigration court proceedings vary significantly based on whether they have legal representation or not. According to Syracuse University's TRAC Immigration Project data, unrepresented immigrant juveniles were ordered deported in nine out of ten cases nationally. In contrast, the court allowed the juvenile to remain in the United States in almost half of the cases receiving legal representation.<sup>4</sup>

### DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would appropriate \$2,400,000 from the City's General Fund Reserve to the Mayor's Office of Housing and Community Development (MOHCD) to pay for legal services of unaccompanied juveniles and family units on the San Francisco Immigration Court's expedited removal docket.<sup>5</sup>

<sup>4</sup> New Data on Unaccompanied Children in Immigration Court, Syracuse University, Transactional Records Access Clearinghouse, July 15, 2014

<sup>5</sup> In July 2014, the Department of Justice directed immigration courts nationally to expedite the processing of the surge of juvenile cases ("expedited removal docket").

### Estimates of the Number of Unaccompanied Juveniles and Families in San Francisco

The proposed ordinance would appropriate \$1,200,000 in FY 2014-15 and \$1,200,000 in FY 2015-16, totaling \$2,400,000 to pay for legal representation for unaccompanied juveniles and family units on the San Francisco Immigration Court's expedited removal docket.

According to the Budget and Legislative Analyst's September 2, 2014 report on the *Estimated Cost of Providing Legal Representation to Unaccompanied Juveniles and Families in San Francisco Immigration Court*, estimated annual costs to provide legal services for unaccompanied juveniles and family units residing in San Francisco in FY 2014-15 are approximately \$1,250,000. Table 3 below shows the estimated number of removal proceedings for unaccompanied juveniles and family units in San Francisco Immigration Court in federal FY 2013-14. Table 4 below shows the estimated costs, totaling \$1,250,000 per year, to provide legal services to these unaccompanied juveniles and family units.

**Table 3: Estimated Number of Unaccompanied Juveniles and Family Units in San Francisco in FY 2013-14**

Federal FY 2013-14	Number of Unaccompanied Juveniles	Number of Family Units	Total
Total Apprehended Nationwide <sup>1,2</sup>	90,000	75,427	165,427
Percent Referred to Immigration Court Nationwide <sup>3</sup>	<u>x 34.8%</u>	<u>x 34.8%</u>	<u>x 34.8%</u>
Immigration Court Removal Proceedings	31,308	26,239	57,547
Percent Referred to San Francisco Immigration Court <sup>4</sup>	<u>x 4.4%</u>	<u>x 4.4%</u>	<u>x 4.4%</u>
SF Immigration Court Removal Proceedings	1,377	1,154	2,531
Previously Receiving Legal Services <sup>5,6</sup>	(304)	(99)	(403)
<b>Number Needing Representation</b>	<b>1,073</b>	<b>1,055</b>	<b>2,128</b>

Source: Budget and Legislative Analyst's September 2, 2014 report on the *Estimated Cost of Providing Legal Representation to Unaccompanied Juveniles and Families in San Francisco Immigration Court*

<sup>1</sup> Estimate of unaccompanied juveniles is based on U.S. Customs and Border Protection estimates.

<sup>2</sup> Estimate of families is based on average monthly apprehensions of families from October 1, 2013 through July 31, 2014.

<sup>3</sup> Based on 34.8% of unaccompanied juveniles apprehended by U.S. Customs and Border Protection and referred to removal proceedings in immigration court nationwide from October 1, 2013 through June 30, 2014

<sup>4</sup> Estimate of the number of cases referred to removal proceedings in San Francisco Immigration Court is based on actual referral 4.4% from October 1, 2013 through June 30, 2014.

<sup>5</sup> Estimate of number of unaccompanied juveniles in San Francisco Immigration Court receiving legal representation is based on the average number of actual cases with legal representation in federal FY 2011-12 and FY 2012-13, reported by Syracuse University TRAC Immigration Project.

<sup>6</sup> Estimate of number of families in San Francisco Immigration Court receiving legal representation is based on an average of 59% of cases in immigration courts nationwide in FY 2012-13 receiving legal representation, times an estimated 168 family cases in San Francisco Immigration Court in FY 2012-13.



**Table 4: Estimated Annual Costs of Providing Legal Services to Unaccompanied Juveniles and Family Units in San Francisco Immigration Court**

Estimated Costs		Total Cost
Estimated Cases Needing Representation (Table 3)	2,128	
Caseload per Attorney *	<u>40</u>	
Total Number of Attorneys Needed (number of cases divided by caseload per attorney)	53.19	
Cost per Attorney *	<u>x \$100,000</u>	
Total Attorney Costs		\$5,319,000
Estimated Support Staff *	13.3	
Cost per Support Staff	<u>x \$70,000</u>	
Total Support Staff Costs		<u>\$931,000</u>
Total Attorney and Support Staff Costs		\$6,250,000
Percent Appearing in San Francisco Immigration Court and Residing in San Francisco *	<u>X 20%</u>	
<b>Total Estimated Annual Costs for Unaccompanied Juveniles and Family Units Residing in San Francisco</b>		<b>\$1,250,000</b>

Source: Budget and Legislative Analyst's September 2, 2014 report on the *Estimated Cost of Providing Legal Representation to Unaccompanied Juveniles and Families in San Francisco Immigration Court*

\* Average caseload and cost per attorney and support staff, and percentage of unaccompanied juveniles and family units appearing in San Francisco Immigration Court and residing in San Francisco, are based on Budget and Legislative Analyst survey of legal services providers in the Bay Area.

### Selection of Legal Services Providers

According to Mr. Brian Cheu, Director of Community Development, MOHCD will select legal services providers through a competitive process. The Notice of Funding Availability (NOFA) will be posted in the MOHCD website, distributed to MOHCD and City funded nonprofit organizations, and posted through San Francisco Public Library and City Hall resources. Depending on the date by which the Board of Supervisors approves the proposed supplemental appropriation, MOHCD expects to complete the selection process and award funds by the week of October 20, 2014.

### FISCAL IMPACT

According to the Controller's Office, the City's General Fund Reserve balance is \$58,020,643. Approval of the proposed appropriation of \$2,400,000 would reduce the General Fund Reserve balance to \$55,620,643. According to the proposed ordinance, \$1,200,000 of the \$2,400,000 would be placed on Controller's Reserve until FY 2015-16.

As noted in Table 4 above, the Budget and Legislative Analyst's estimated costs of \$1,250,000 per year to provide legal services to unaccompanied juveniles and family units appearing in San Francisco Immigration Court and residing in San Francisco include both attorney and support staff costs. If only attorney costs are included, then the estimated costs to provide these legal services are reduced by \$136,200 to \$1,063,800 per year.<sup>6</sup>

As an alternative to the requested appropriation of \$2,400,000, the Board of Supervisors could consider appropriating funds of \$1,063,800 per year to pay only for attorney costs. Appropriating funds to pay only attorney costs would reduce the requested two-year appropriation by \$272,400, from \$2,400,000 to \$2,127,600.

## RECOMMENDATIONS

1. The Board of Supervisors could consider appropriating funds of \$1,063,800 per year to pay only for attorney costs. This would reduce the requested appropriation by \$272,400, from \$2,400,000 to \$2,127,600.
2. Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

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<sup>6</sup> Equal to 20% of \$5,319,000 (see Table 4)