

1 [Administrative Code - Worker Justice Fund]

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3 **Ordinance amending the Administrative Code to establish the Worker Justice Fund to**
4 **provide financial restitution and timely payment to workers who have not received**
5 **payment from their employers for violations of City worker protection laws; to**
6 **authorize the Fund to receive monies paid to the City as penalties and liquidated**
7 **damages by employers as well as additional monies appropriated in the future; and to**
8 **require the Office of Labor Standards Enforcement to administer the Fund and make**
9 **payments to workers based on specified criteria.**

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

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

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19 Section 1. Article XIII of Chapter 10 of the Administrative Code is hereby amended by
20 adding Section 10.100-366, and renumbering existing Section 10.100-366 as new Section
21 10.100-365, to read as follows:

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23 **SEC. 10.100-365~~6~~. WATER DEPARTMENT REVENUE FUND.**

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SEC. 10.100-366. WORKER JUSTICE FUND.

1 (a) **Background.** Workers in San Francisco whose employers withhold wages and commit
2 other violations of the City’s worker protection laws too often do not receive justice. Historically, San
3 Francisco has demonstrated leadership in developing innovative solutions to ensure workers,
4 particularly low-wage workers, have strong labor rights, and realistic access to those rights. But, even
5 when workers fight back, navigate the complex legal claims process, and win a determination in their
6 favor, they are sometimes unable to collect the money that their employer owes them, for various
7 reasons, including, among others, that the business has closed, the employer has filed for bankruptcy or
8 fled, or the employer has no remaining assets to pay the workers what they are due. In those situations,
9 workers may be left empty-handed or under-compensated, with no meaningful remedies.

10 This is particularly devastating for low-wage workers who are living paycheck to paycheck,
11 with no financial cushion, struggling to make ends meet. Unfortunately, low-wage workers as a group
12 experience the highest incidence of wage theft, partly because unscrupulous employers who fail to pay
13 their workers often target and prey upon low-wage workers, who typically have less power in the
14 employer-employee relationship than other workers.

15 Other local governments that have a labor standards enforcement agency, including San Diego
16 County, have created restitution funds to address the challenge of collecting monies that are owed to
17 workers by employers who have violated their rights. San Francisco needs to do likewise.

18 The Labor and Employment Code, which was created in 2023 by consolidating many worker
19 protection ordinances previously located in other parts of the Municipal Code, establishes minimum
20 labor standards for workers in San Francisco and workers for City contractors (referred to as
21 “workers” or “employees” in the Labor and Employment Code, but referenced in this ordinance,
22 Section 10.100-366 of the Administrative Code, simply as “workers”). And a number of the laws in the
23 Labor and Employment Code provide in some circumstances for employers who violate those laws to
24 pay penalties to the City, in addition to paying damages or penalties to the workers. The Board of
25 Supervisors and the Mayor have discretion to appropriate the penalties that the City receives, and the

1 purpose of this Section 10.100-366~~5~~ is to use those penalty payments, along with other appropriations,
2 and donations, and funds in possession of the Office of Labor Standards Enforcement (the
3 “Agency”) that the City has escheated (“escheated funds”), to the extent possible to make workers
4 whole when they have suffered violations of the City’s worker protection laws but have not received
5 timely compensation from their employers.

6 (b) **Establishment of Fund.** The Worker Justice Fund (the “Fund”) is hereby established as a
7 category eight fund to receive (1) 50% of all monies paid to the City as penalties and liquidated
8 damages for violations of any Article in the Labor and Employment Code, except penalties and
9 liquidated damages designated for employees and monies intended to compensate the Agency or the
10 City for its enforcement costs or attorneys’ fees, (2) all monies otherwise appropriated including
11 escheated funds, designated in a written agreement with the City, or donated to the City, for the
12 purpose of compensating workers for damages incurred as a result of violations of the Labor and
13 Employment Code, and (3) all monies the City may ultimately be able to collect from employers, where
14 a worker has been paid out of the Fund and the worker has assigned to the City their legal claims for
15 the amount they received from the Fund.

16 (c) **Purpose and Uses of the Fund.** The purpose of the Fund is to provide financial restitution
17 and timely payment to workers whose employers have violated worker protection laws in the Labor and
18 Employment Code. For purposes of this Section 10.100-366, references to “violations” of “worker
19 protection laws in the Labor and Employment Code” includes violations of laws that were codified
20 elsewhere in the Municipal Code prior to their being transferred to the Labor and Employment Code
21 following its creation. The City shall use monies in the Fund to pay Eligible Workers who have not
22 received timely payment and for whom ~~the Office of Labor Standards Enforcement (the “Agency”)~~
23 has been unable to collect timely payment from the employer. For purposes of this Section 10.100-366,
24 an “employer” is a person or entity responsible for paying wages or benefits under the applicable
25 section of the Labor and Employment Code, and an “Eligible Worker” is a worker:

1 (1) who has not received full payment of any portion of the money due from their
2 employer within one year after either:

3 (A) the Agency made a final determination on or after January 1, 2023 that the
4 worker's employer violated the Labor and Employment Code and owes compensation to the worker,
5 and the determination has become final because:

6 (i) the employer failed to timely challenge the Agency's final
7 determination by filing an administrative appeal;

8 (ii) the employer failed to timely challenge a decision by an
9 administrative hearing officer affirming or modifying the Agency's final determination in whole or in
10 part; or

11 (iii) the employer has exhausted any further judicial challenges after
12 seeking judicial review of the Agency's final determination or an administrative hearing officer's
13 review of the Agency's final determination; or

14 (B) final adjudication of a lawsuit filed by the City Attorney on or after January
15 1, 2023 to enforce the Labor and Employment Code resulting in an order or judgment requiring the
16 employer to pay compensation to the worker; or

17 (C) the employer failed to make payment to the worker by a deadline established
18 in a written agreement between the Agency or the City Attorney and the employer that was entered into
19 on or after January 1, 2023; or

20 (2) whose employer entered into a written agreement with the Agency or the City
21 Attorney that includes a payment plan, where the final payment is due more than one year after the
22 written agreement is entered into, and where the final payment is due at least one year after the
23 establishment of the Fund; or

24 (3) who has not received full payment of any money due from their employer in any of
25 the circumstances listed in subsections (c)(1) and (c)(2), regardless of the amount of time that has

1 passed, provided that the Agency or City Attorney has determined that it is infeasible or impracticable
2 to collect the money from the employer; or

3 _____ (4) who has not received full payment of any money due from their employer as
4 a result of the employer's violation of any worker protection law in the Labor and Employment
5 Code, and on whose behalf the City has collected money due from the employer that the City
6 has escheated and appropriated to the Fund, and who after the escheatment has requested
7 from the City for payment of the escheated funds.

8 (d) Administration of the Fund.

9 _____ (1) The Agency shall approve all expenditures from the Fund, after consultation with
10 the Controller.

11 _____ (2) The Agency shall identify Eligible Workers for the Fund. The Agency shall
12 also establish a procedure for workers to submit a claim establishing that the worker is an
13 Eligible Worker. Submission of a claim form is not a prerequisite for the Agency to identify an
14 Eligible Worker.

15 _____ (23) The Agency shall make diligent efforts to identify Eligible Workers and shall
16 receive and review claims from workers to be Eligible Workers throughout the year, but shall not
17 approve any payments from the Fund to Eligible Workers except only between July 1 and August 15,
18 inclusive, each year (the "Payment Period"). During the Payment Period, the Agency shall review all
19 claims it has received and determine a final list of Eligible Workers in the preceding fiscal year and
20 the amount of payment to each Eligible Worker in that fiscal year (the "Payment Amount"). In
21 determining the payment amount Payment Amount for each Eligible Worker, the following process
22 shall apply, as well as any additional procedures that the Agency establishes by regulation:

23 _____ (A) If the Fund balance is sufficient to pay all Eligible Workers the full amount
24 of money each Eligible Worker is due as described in subsection (d)(2)(B), then the Agency shall
25 pay that amount to all Eligible Workers.

1 (B) If the Fund balance is not sufficient to pay all Eligible Workers the full
2 amount of money each Eligible Worker is due, then the Agency shall make payments to groups of
3 Eligible Employees in the following order.

4 (i) The Agency shall first pay in full the amount of escheated funds
5 due to Eligible Workers who qualify as such under subsection (c)(4).

6 (ii) If money remains in the Fund, the Agency shall first then
7 pay all money assessed as owed to Eligible Workers in a final determination, or final adjudication, or
8 written agreement described in subsections (c)(1) through (c)(3), not including penalties or
9 liquidated damages, or a written agreement described in subsection (c)(2) where the final
10 determination, final adjudication, or written agreement includes violations of Articles 1 and 2 of
11 Division I of the Labor and Employment Code (Minimum Wage and Personal Services Minimum
12 Contractual Rate). For Eligible Workers covered by this subsection (d)(2)(B)(i), the Agency shall pay
13 all money assessed as owed under the final determination, final adjudication, or written agreement,
14 including but not limited to money assessed as owed for violations of Articles 1 and 2 of Division I.

15 (iii) If money remains in the Fund, the Agency shall then pay all money
16 paid leave amounts due to Eligible Workers for violations of Articles 11 through 13 of Division I
17 of the Labor and Employment Code (Paid Sick Leave, Domestic Workers' Equal Access to Paid Sick
18 Leave, and Public Health Emergency Leave, and Paid Parental Leave).

19 (iv) If money remains in the Fund, the Agency shall then pay all money
20 due to Eligible Workers for violations of Article 21 of Division I of the Labor and Employment Code
21 (Health Care Security) and Article 121 of Division II of that Code (Health Care Accountability) where
22 the Eligible Worker's employer entered into a written agreement with the City Attorney that
23 includes a payment plan exceeding five years under which the employer agreed to make
24 payments to the City rather than directly to the workers.

1 _____ (iv) If money remains in the Fund, the Agency shall then pay all
2 money due to Eligible Workers for violations of Articles 102 and 111 of Division 2 of the Labor
3 and Employment Code (Miscellaneous Prevailing Wages, and Minimum Compensation).

4 _____ (C) If money remains in the Fund following payments mandated by subsections
5 (d)(23)(A) and (d)(2)(B), it shall remain in the Fund for the following year.

6 _____ (D) If, following the group payment order of priority sequenced in subsection
7 (d)(23)(B), the Fund does not have sufficient funds to pay the full amount due to each Eligible Worker
8 in any one of the groups but has funds to pay a partial amount to each Eligible Worker in the group,
9 then the Agency shall divide the payments among the Eligible Workers in the group proportionally
10 based on the amount of money due to each Eligible Worker in that group.

11 _____ (43) To receive payment from the Fund, an Eligible Worker shall agree to assign to the
12 City any legal claims the Eligible Worker may have against the Eligible Worker's employer for the
13 amount of payment the Eligible Worker will receive from the Fund. The Agency's payment to any
14 Eligible Worker from the Fund shall not in any way limit the employer's legal obligations to the
15 Eligible Worker or to the Agency. The City may seek reimbursement from the employer for any money
16 paid from the Fund to Eligible Workers, and shall provide any funds recovered to the Eligible Worker
17 if the Eligible Worker has not received full payment of money they are due under a final determination,
18 final adjudication, or written agreement described in ~~in~~ subsection (c).

19 _____ (45) An Eligible Worker shall receive payment from the Fund a maximum of one time
20 (i.e., during only one Payment Period) for each matter described in subsection (c) in which the Eligible
21 Worker is due money.

22 _____ (e) **Reporting.** By no later than April 1 each year beginning in 2026, the Agency shall submit
23 to the Mayor and the Board of Supervisors a report providing the following information: (1) the
24 number of workers who received payment from the Fund during the preceding Payment Period; (2) the
25 number of workers who applied to receive payment from the Fund during the preceding Payment

1 Period and the amount of money they received, if any; (3) the total amount of funds distributed by the
2 Agency during the Payment Period; (4) the amount collected from employers to reimburse the Fund for
3 payments made by the Agency to Eligible Workers during the previous fiscal year; and (5) the amount
4 of money appropriated to the Fund during the previous fiscal year and the sources for any such
5 appropriations.

6 (f) **Administrative Debarment.** If an Eligible Worker receives payment from the Fund,
7 either the Agency or the City Attorney may initiate administrative debarment and/or
8 suspension against the Eligible Worker's employer to the extent permitted by Administrative
9 Code Chapter 28. The Board of Supervisors intends for the City to pursue debarment and/or
10 suspension when deemed appropriate against employers who violate the worker protections
11 of the Labor and Employment Code.

12 (g) **Rules and Regulations.** The Agency may adopt rules or regulations to implement this
13 Section 10.100-366. Prior to doing so, the Agency shall post a draft of the rule or regulation on its
14 website for at least 30 days to allow for input from the public.

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16 Section 2. Escheatment of Funds. Within 90 days after the effective date of this
17 ordinance, the Agency shall coordinate with the Treasurer-Tax Collector to initiate the process
18 for escheatment of unclaimed funds that the City has retained for three or more years on
19 behalf of workers, following the procedures set forth in State law. The Board of Supervisors
20 recognizes that the escheatment process will take time and resources from the Agency and
21 the Treasurer-Tax Collector. The Board of Supervisors intends for the Agency and the
22 Treasurer-Tax Collector to complete the escheatment of unclaimed funds currently in the
23 Agency's possession within three years after the effective date of this ordinance in Board File
24 No. 240905. The Board of Supervisors intends to appropriate any monies escheated under
25 this Section 2 to the Fund established in Administrative Code Section 10.100-366.

