

AMENDED IN COMMITTEE

3/1/18

FILE NO. 180084

ORDINANCE NO.

RO#18022
SA#05-22

1 [Public Employment - Amendment to the Annual Salary Ordinance for the Office of Public
2 Defender - Legal Unit to Defend Immigrants from Deportation - FY2017-2018]

3 Ordinance amending Ordinance No. 157-17 (Annual Salary Ordinance FYs 2017-2018
4 and 2018-2019) to reflect the addition of 44 seven new positions (3.50 1.75 FTEs) in
5 FY2017-2018 at the Office of the Public Defender for supporting immigration unit
6 expansion to defend immigrants from deportation.
7
8
9

10 Note: Additions are single-underlined italics Times New Roman;
11 deletions are ~~striketrough italics Times New Roman~~.
12 Board amendment additions are double underlined.
13 Board amendment deletions are ~~striketrough normal~~.

14 Be it ordained by the People of the City and County of San Francisco:
15

16 Section 1. The hereinafter designated section and item of Ordinance No. 157-17
17 (Salary Ordinance FYs 2017-2018 and 2018-2019) in FY 2017-18 FTE is hereby amended as
18 follows:
19

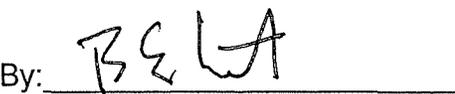
20 Department ID: 232082 (PDR Public Defender)
21 Fund ID: 10000 (GF Annual Account Ctrl Fund)
22 Project/Activity ID: 10001889 (PD Criminal Defense - GF)
23 Authority ID: 0001
24
25

	<u>Amendment #</u>	<u>of FTE</u>	<u>Class and Item No</u>	<u>Compensation Schedule</u>
1				
2	Add	2.0 1.0	8177 Attorney	\$4,416 B \$7,734
3	Add	0.5 0.25	8142 Public Defender's Investigator	\$3,226 B \$3,921
4	Add	0.5 0.5	8446 Court Alternative Specialist I	\$2,431 B \$2,954
5	Add	0.25	8173 Legal Assistant	\$2,884 B \$3,505
6	Add	0.25	8108 Senior Legal Process Clerk	\$2,226 B \$2,706
7				
8				

APPROVED AS TO CLASSIFICATION
DEPARTMENT OF HUMAN RESOURCES

APPROVED AS TO FORM
DENNIS HERRERA, City Attorney

By:  2/28/18

By: 

Micki Callahan
Human Resources Director

BUCK DELVENTHAL
Deputy City Attorney

**Items 4 and 5
Files 18-0084 and 18-0085**

**Department:
Public Defender's Office**

EXECUTIVE SUMMARY

Legislative Objectives

- File 18-0084 would amend the Annual Salary Ordinance to add 14 new positions in the Public Defender's Office to expand the immigration defense unit.
- File 18-0085 would appropriate \$1,280,468 of General Reserve to the Public Defender's Office, MOHCD, and the Department of Elections in FY 2017-18.

Key Points

- The Public Defender's Office currently has four Attorneys, one Legal Assistant, and one Senior Legal Process Clerk dedicated to handle cases in Immigration Court, and proposes to add 14 new positions (eight Attorneys, two Investigators, two Court Alternative Specialists, one Legal Assistant, and one Senior Legal Process Clerk) totaling 20 positions.
- The addition of eight Attorneys would allow the immigration defense unit to represent an estimated additional 227 detained immigrants each year.
- The Public Defender's Offices wants to add Investigators and Court Alternative Specialists to provide support to Attorneys and services to detained immigrants. Our recommendation to reduce these positions would mean that the Public Defender's Office would provide the necessary support and services within existing resources, including through services provided by community-based organizations, which are funded with \$4.2 million in FY 2017-18.

Fiscal Impact

- The supplemental appropriation ordinance appropriates \$462,968 in FY 2017-18 to add 14 new positions in the Public Defender's Office. The annual cost for these positions in FY 2018-19 is \$1,919,289.
- The appropriation of approximately \$1.3 million of General Reserve will result in a projected ending reserve balance of \$106.0 million.

Recommendations

1. Amend File 18-0084 to reduce the (a) 8177 Attorney from 2.00 FTE to 1.33 FTE; (b) 8142 Public Defender's Investigator from 0.50 FTE to 0.00 FTE; (c) 8446 Court Alternative Specialist I from 0.50 FTE to 0.00 FTE; (d) 8173 Legal Assistant from 0.25 FTE to 0.10 FTE; and (e) 8108 Senior Legal Process Clerk from 0.25 FTE to 0.00 FTE.
2. Amend File 18-0084 to define the new positions as limited tenure for three years.
3. Amend File 18-0085 to reduce the appropriation by \$248,412, from \$1,280,468 to \$1,032,056.
4. Place (a) \$60,000 in the Public Defender's budget on Budget and Finance Committee Reserve pending approval of a lease agreement; and (b) \$125,000 in the Department of Elections' budget on Budget and Finance Committee Reserve pending submittal of a plan for using the funding.
5. Approval of the proposed ordinances, as amended, is a policy matter for the Board of Supervisors, because the ordinances allocate General Fund monies and positions to represent cases in federal Immigration Court, which is a new function for the City.

MANDATE STATEMENT

City Charter Section 9.105 states that amendments to the Annual Appropriations Ordinance, after the Controller certifies the availability of funds, are subject to Board of Supervisors approval by ordinance.

BACKGROUND

The San Francisco Immigration Court, which falls under the jurisdiction of the Executive Office for Immigration Review under the U.S. Department of Justice, is the only immigration court in Northern California.

As of February 21, 2018, an estimated 3,726 San Francisco residents have cases pending in Immigration Court, of which 2,574 individuals, or 69 percent, have legal representation. Of the pending cases, 344 cases were filed within the prior 90 days, and 112 individuals in those cases, or 33 percent, have legal representation.¹

An analysis of immigration court records from 2012 to 2015, conducted by the California Coalition for Universal Representation, found that only 5 percent of unrepresented detainees obtained relief (i.e., asylum, cancellation of removal, or termination of case) compared to 35 percent of represented detainees as a result of their proceedings in the San Francisco Immigration Court.

DETAILS OF PROPOSED LEGISLATION

File 18-0084: Annual Salary Ordinance Amendment

The proposed ordinance would amend the Annual Salary Ordinance to add 14 new positions in the Public Defender’s Office, equal to 3.50 full-time equivalent (FTE) positions in FY 2017-18, as shown in Table 1 below.

Table 1: Proposed New Positions in the Public Defender’s Office

		Number of Positions	FY 2017-18 FTEs
8177	Attorneys	8	2.00
8142	Public Defender’s Investigator	2	0.50
8446	Court Alternative Specialist I	2	0.50
8173	Legal Assistant	1	0.25
8108	Senior Legal Process Clerk	1	0.25
Total		14	3.50

¹ TRAC Immigration Project. Individuals in Immigration Court by Their Address: Pending Cases With and Without Attorneys. County Subdivision: San Francisco. Accessed February 21, 2018. <http://trac.syr.edu/phptools/immigration/addressrep/>

File 18-0085: Supplemental Appropriation Ordinance

The proposed ordinance would appropriate \$1,280,468 from the General Reserve in FY 2017-18 to (1) the Public Defender’s Office to expand the immigration unit; (2) the Mayor’s Office of Housing and Community Development (MOHCD) to fund legal representation and rapid response social services; and (3) the Department of Elections to fund non-citizen voter outreach and education services.

Table 2: Sources and Uses of Funds

Source of Funds	Amount
General Reserve	\$1,280,468
Total Sources	\$1,280,468
Uses of Funds	
<i>Public Defender</i>	
Permanent Salaries and Fringe Benefits	\$462,968
Office Rent	60,000
Subtotal, Public Defender	\$522,968
<i>MOHCD</i>	
Immigration Court Defense	431,250
Social and Legal Services	201,250
Subtotal, MOHCD	\$632,500
<i>Department of Elections</i>	
Non-Citizen Voter Outreach and Education	125,000
Total Uses	\$1,280,468

The Public Defender’s Office Legal Unit for Immigration Services

The Public Defender’s Office currently has four Attorneys, one Legal Assistant, and one Senior Legal Process Clerk dedicated to handle cases in Immigration Court. The Public Defender’s Office implemented the unit dedicated to defense of cases in Immigration Court in May 2017. According to Ms. Angela Auyong, Public Defender Office Manager, the immigration defense unit has accepted approximately 85 new cases of detained immigrants since May 2017 and attorneys carry a caseload of about 8 to 9 active detained cases at a time, or approximately 28 cases annually.

According to Ms. Auyong, the immigration defense unit prioritizes all detained cases with San Francisco ties, including those who work, live, or have close family in the city, or who have been prior clients of the Public Defender’s Office. Cases are brought to the attention of the immigration defense unit by (1) direct calls from detainees, (2) referrals from the Immigration Court, or (3) referrals from other public defenders.

The Public Defender’s Office is proposing to expand the immigration defense unit with 14 new positions of eight Attorneys, two Public Defender Investigators, two Court Alternative Specialists, one Legal Assistant, and one Senior Legal Process Clerk to handle additional cases of detained immigrants in immigration court. If the Board of Supervisors approves the proposed amendment to the annual salary ordinance and the proposed supplemental appropriation

ordinance, the Public Defender would be able to represent an estimated additional 227 detained immigrants each year based on current caseload.

FISCAL IMPACT

14 New Positions in the Public Defender’s Office

The supplemental appropriation ordinance appropriates \$462,968 in FY 2017-18 to add 14 new positions in the Public Defender’s Office, as shown in Table 2 above. The estimated annual cost for these 14 new positions in FY 2018-19 is \$1,919,289.

The 14 new positions would result in 20 positions in the Public Defender’s Office to handle defense for detained immigrants as shown below:

	Current	Proposed	Total
8177 Attorneys	4	8	12
8142 Public Defender’s Investigator		2	2
8446 Court Alternative Specialist I		2	2
8173 Legal Assistant	1	1	2
8108 Senior Legal Process Clerk	1	1	2
Total	6	14	20

The Public Defender’s Office has not previously assigned Public Defender’s Investigators and Court Alternative Specialists to the unit handling immigrant defense. The job description for the Public Defender’s Investigator states that this position is responsible to investigate criminal complaints and assist in the defense of criminal cases in Superior Court. The job description for the Court Alternative Specialist states that this position evaluates the needs of individuals referred to an alternative sentencing program, including community service and rehabilitation. Because the immigrant defense cases are not criminal cases, and alternative sentencing is not specific to the disposition of these cases, the Budget and Legislative Analyst recommends deleting the requested two new Public Defender’s Investigators and two new Court Alternative Specialist positions.²

According to the Public Defender’s Office, the two Court Alternative Specialist positions are necessary because the detained immigrant population is vulnerable and “likely to have a history of surviving trauma and violence, and have a number of needs to help ease reentry into the community upon release from detention”. However, as noted below, the Board of Supervisors previously appropriated \$3,579,630 to community-based organizations in FY 2017-18 to provide immigration-related social and legal services, and the proposed ordinance appropriates an additional \$632,500 to community-based organizations in FY 2017-18 to provide these services, totaling \$4,212,130.

The Public Defender’s Office has requested one new Senior Legal Process Clerk, resulting in two Senior Legal Process Clerks for 12 Attorneys, a ratio of 6:1. The department-wide ratio of Senior

² If the two new Court Alternative Specialist positions are not approved, the department-wide ratio of Attorneys to Court Alternative Specialists would increase from 14:1 to 15:1. If the two new Public Defender’s Investigator positions are not approved, the department-wide ratio of Attorneys to Public Defender’s Investigators would increase from 6:1 to 7:1.

Legal Process Clerks to Attorneys in FY 2017-18 is 21:1. Therefore, the Budget and Legislative Analyst recommends deleting the requested additional Senior Process Clerk position, which would result in a ratio in the immigration defense unit of Senior Legal Process Clerks to Attorneys of 12:1.

Timeline to Hire New Positions

The Attorney positions are at-will positions exempt from the civil service hiring process. In the past, the Public Defender's Office has reported that the department can fill vacant attorney positions within about one month. The Legal Assistant is a civil service position, which typically takes at least three months to fill.

Since the Public Defender's Office cannot begin the hiring process until the requested appropriation is approved by the Board of Supervisors, and approval would occur on March 20, 2018, at the earliest, the Budget and Legislative Analyst assumes that the eight new Attorneys would start in late April 2018, and the recommended Legal Assistant would start in June 2018.

The Budget and Legislative Analyst recommends reducing the proposed supplemental appropriation by \$248,412 to account for the reduction in positions and delays in hiring as follows:

	Salary and Benefits per FTE	Proposed new FTEs in FY 2017-18	Recommended FTEs	FY 2017-18 Salary and Benefits
Attorneys	\$152,831	2.00	1.33	\$203,774
Public Defender's Investigator	118,830	0.50	0.00	—
Court Alternative Specialist I	92,364	0.50	0.00	—
Legal Assistant	107,816	0.25	0.10	10,782
Senior Legal Process Clerk	85,535	0.25	0.00	—
Total Recommended	—	3.50	1.43	\$214,556
Supplemental Appropriation				\$462,968
Reduction				(\$248,412)

Public Defender Office Rent

The supplemental appropriation ordinance would allocate \$60,000 to the Public Defender's Office for office rent for the immigration defense unit. According to Ms. Auyong, the Public Defender's Office does not have space for the additional employees in their current space. As of the date of this report, an available space to lease has not yet been identified, so the Budget and Legislative Analyst recommends placing \$60,000 on Budget and Finance Committee Reserve pending approval of a lease agreement.

MOHCD Grants to Community-Based Organizations for Social and Legal Services

The supplemental appropriation ordinance would appropriate \$632,500 to MOHCD for awarding grant funding to community-based organizations that provide immigration-related social and legal services. According to Mr. Brian Cheu, Director of Community Development at MOHCD, MOHCD would amend two existing grant agreements to award the additional funding because a new competitive procurement process could likely not be completed before the end of the current fiscal year. As shown in Table 3 below, the proposed amendments would

increase the FY 2017-18 grant award to (1) CARECEN by 14 percent and (2) Dolores Street Community Services by 37 percent.

Table 3: Existing and Amended Grant Awards

Grantee	Existing Award FY 2017-18	Proposed Amendment	FY 2017-18 Total	% Change
CARECEN				
<i>Lead agency for the San Francisco Immigration Legal Defense Collaborative</i>	\$3,029,630	\$431,250	\$3,460,880	14%
Dolores Street Community Services				
<i>Lead agency for the San Francisco Immigrant Legal Education Network</i>	\$550,000	\$201,250	\$751,250	37%
Total	\$3,579,630	\$632,500	\$4,212,130	18%

According to the Public Defender’s Office, the community-based organizations provide legal representation to approximately 300 detainees.

Mr. Cheu advises that, if the Mayor’s Office allocates additional funding for immigration-related social and legal services in the FY 2018-19 budget, MOHCD will issue a Request for Proposals (RFP) for the FY 2018-19 funding.

Department of Elections Non-Citizen Voter Outreach and Education

The supplemental appropriation ordinance includes \$125,000 for non-citizen voter outreach and education services related to the passage of Proposition N in November 2016, which will allow non-citizens who have children in the San Francisco Unified School District to vote in local school board elections.

The Department of Elections does not yet have a plan for using the supplemental appropriation. Therefore, the Budget and Legislative Analyst recommends placing \$125,000 on Budget and Finance Committee Reserve pending submittal to the Budget and Finance Committee of a plan for using the funding.

POLICY CONSIDERATION

General Reserve

Administrative Code Section 10.60(b) provides for a General Reserve of 2.5 percent of General Fund revenues in FY 2018-19. According to the FY 2017-18 Six-Month Budget Status Report, prepared by the Controller’s Office in February 2018, the proposed uses of approximately \$1.3 million of General Reserve for immigration-related legal services will result in a projected ending reserve balance of \$106.0 million, which will be carried forward to FY 2018-19.

Federal Immigration Policy

Detention and deportation of non-citizens depends on federal immigration policy, which is beyond the purview of the City and could change under a different federal administration. Therefore, the Budget and Legislative Analyst recommends that the new positions in the Public

Defender's Office are limited tenure for three years so that the Board of Supervisors may re-evaluate whether there is still a need for representation of detained cases in 2021.

State Grant Funding

According to Ms. Melissa Whitehouse, Mayor's Budget Director, the Mayor's Budget Office is currently in the process of trying to obtain state funding for Public Defender's Office salary and benefit costs since the San Francisco Immigration Court serves all of Northern California. As of the date of this report, it is not known to what extent the costs of the immigration defense unit at the Public Defender's Office could be offset by state funding.

RECOMMENDATIONS

1. Amend the proposed ordinance (File 18-0084) to reduce the (a) 8177 Attorney from 2.00 FTE to 1.33 FTE; (b) 8142 Public Defender's Investigator from 0.50 FTE to 0.00 FTE; (c) 8446 Court Alternative Specialist I from 0.50 FTE to 0.00 FTE; (d) 8173 Legal Assistant from 0.25 FTE to 0.10 FTE; and (e) 8108 Senior Legal Process Clerk from 0.25 FTE to 0.00 FTE.
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3. Amend the proposed ordinance (File 18-0085) to reduce the appropriation by \$248,412, from \$1,280,468 to \$1,032,056.
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5. Approval of the proposed ordinances, as amended, is a policy matter for the Board of Supervisors, because the ordinances allocate General Fund monies and positions to represent cases in federal Immigration Court, which is a new function for the City.

Wong, Linda (BOS)

From: Lee, Ivy (BOS)
Sent: Friday, February 23, 2018 11:34 AM
To: Wong, Linda (BOS); Lopez, Barbara (BOS)
Subject: RE: Co-Sponsors for File No. 180085 and 180084

Yes please! Thank you for the heads up Linda.

From: Wong, Linda (BOS)
Sent: Friday, February 23, 2018 11:34 AM
To: Lopez, Barbara (BOS) <barbara.lopez@sfgov.org>; Lee, Ivy (BOS) <ivy.lee@sfgov.org>
Subject: RE: Co-Sponsors for File No. 180085 and 180084

Hi Ivy/Barbara,

File nos. 180085 and 180084 are on the March 1st B&F Sub-Committee agenda. I just wanted to follow up with you to see if Supervisor Kim would like to sponsor the matters.

Please advise.

Thanks,
Linda

From: Wong, Linda (BOS)
Sent: Monday, February 05, 2018 3:08 PM
To: Lopez, Barbara (BOS) <barbara.lopez@sfgov.org>; Lee, Ivy (BOS) <ivy.lee@sfgov.org>
Subject: FW: Co-Sponsors for File No. 180085 and 180084

Hi Barbara/Ivy,

Please respond to this message confirming that Supervisor Kim would like to be added as co-sponsor to file nos. 180085 and 180084. (See below.)

Thank you.

Linda

From: Boilard, Chelsea (BOS)
Sent: Monday, February 05, 2018 9:20 AM
To: Wong, Linda (BOS) <linda.wong@sfgov.org>
Cc: Lopez, Barbara (BOS) <barbara.lopez@sfgov.org>; Pagoulatos, Nick (BOS) <nick.pagoulatos@sfgov.org>
Subject: Co-Sponsors for File No. 180085 and 180084

Hi Linda,

Files No. 180085 and 180084 are coming before Budget and Finance on March 1st. Can you please add Supervisor Jane Kim and Supervisor Norman Yee as co-sponsors? Bobbi Lopez and Nick Pagoulatos are cc'd above if there are any questions.

Thank you,

Wong, Linda (BOS)

From: Pagoulatos, Nick (BOS)
Sent: Tuesday, February 06, 2018 4:10 PM
To: Wong, Linda (BOS)
Subject: RE: File 180085 - Yee Co-sponsor

Hi Linda,

Yes, Supervisor Yee would like to sponsor both files.

Nick Pagoulatos
Legislative Assistant to Supervisor Norman Yee
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Direct: (415) 554-6521
Fax: (415) 554-6546

From: Wong, Linda (BOS)
Sent: Monday, February 5, 2018 3:01 PM
To: Choy, Jarlene (BOS)
Cc: Boilard, Chelsea (BOS); Yee, Norman (BOS)
Subject: RE: File 180085 - Yee Co-sponsor

Hi Jarlene,

Could you please confirm that Supervisor Yee would like to be added as a co-sponsor to file no. 180084 as well? Attached is a request from Chelsea Boilard.

Thank you in advance.

Regards,
Linda

From: Choy, Jarlene (BOS)
Sent: Monday, February 05, 2018 9:23 AM
To: Wong, Linda (BOS) <linda.wong@sfgov.org>
Cc: Boilard, Chelsea (BOS) <chelsea.boilard@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>
Subject: File 180085 - Yee Co-sponsor

Hi Linda,

Supervisor Yee spoke with Sup Fewer and would like to be added as a co-sponsor to the below file. Thank you.

180085 Version: 1

Name:

Appropriation - General Reserve - Support Immigration
Related Legal Services - FY2017-2018 - \$1,280,468

Introduction Form

By a Member of the Board of Supervisors or Mayor

BOARD OF SUPERVISORS
SAN FRANCISCO

2018 JAN 23 PM 4:56
Time stamp

or meeting date

hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

use check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Fewer, Ronen, Sheehy, Peskin

Subject:

Public Employment- Amendment to the Salary Ordinance for the Office of Public Defender- Fiscal Year 2017-2018

The text is listed:

See attached.

Signature of Sponsoring Supervisor:

For Clerk's Use Only

