

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. 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 10.100-365 is to use those penalty payments, along with other appropriations
2 and donations, to the extent possible to make workers whole when they have suffered violations of the
3 City’s worker protection laws but have not received timely compensation from their employers.

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

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

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

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

4 _____ (i) the employer failed to timely challenge the Agency's determination by
5 filing an administrative appeal;

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

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

12 _____ (B) final adjudication of a lawsuit filed by the City Attorney on or after January
13 1, 2023 to enforce the Labor and Employment Code resulting in an order or judgment requiring the
14 employer to pay compensation to the worker; or

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

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

22 _____ (3) who has not received full payment of any money due from their employer in any of
23 the circumstances listed in subsections (c)(1) and (2), regardless of the amount of time that has passed,
24 provided that the Agency or City Attorney has determined that it is infeasible or impracticable to
25 collect the money from the employer.

1 (d) Administration of the Fund.

2 (1) The Agency shall approve all expenditures from the Fund, after consultation with
3 the Controller.

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

7 (3) The Agency shall make diligent efforts to identify Eligible Workers and shall receive
8 and review claims from workers to be Eligible Workers throughout the year, but shall not approve any
9 payments from the Fund to Eligible Workers except between July 1 and August 15 each year (the
10 “Payment Period”). During the Payment Period, the Agency shall review all claims it has received
11 and determine a final list of Eligible Workers in the preceding fiscal year and the amount of payment to
12 each Eligible Worker in that fiscal year. In determining the payment amount for each Eligible Worker,
13 the following process shall apply, as well as any additional procedures that the Agency establishes by
14 regulation:

15 (A) If the Fund balance is sufficient to pay all Eligible Workers the full amount
16 of money each Eligible Worker is due, then the Agency shall pay that amount to all Eligible Workers.

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

20 (i) The Agency shall first pay money assessed as owed to Eligible
21 Workers in a final determination or final adjudication described in subsection (c)(1) or a written
22 agreement described in subsection (c)(2) where the determination, adjudication, or agreement includes
23 violations of Articles 1 and 2 of Division I of the Labor and Employment Code (Minimum Wage and
24 Personal Services Minimum Contractual Rate). For Eligible Workers covered by this subsection (B)(i),
25 the Agency shall pay all money assessed as owed under the final determination, final adjudication, or

1 written agreement, including but not limited to money assessed as owed for violations of Articles 1 and
2 2 of Division I.

3 _____ (ii) If money remains in the Fund, the Agency shall then pay all money
4 due to Eligible Workers for violations of Articles 11 through 14 of Division I of the Labor and
5 Employment Code (Paid Sick Leave, Domestic Workers' Equal Access to Paid Sick Leave, Public
6 Health Emergency Leave, and Paid Parental Leave).

7 _____ (iii) If money remains in the Fund, the Agency shall then pay all money
8 due to Eligible Workers for violations of Article 21 of Division I of the Labor and Employment Code
9 (Health Care Security) and Article 121 of Division II of that Code (Health Care Accountability).

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

13 _____ (C) If money remains in the Fund following payments mandated by subsections
14 (d)(3)(A) and (B), it shall remain in the Fund for the following year.

15 _____ (D) If, following the group payment order of priority sequenced in subsection
16 (d)(3)(B), the Fund does not have sufficient funds to pay the full amount due to each Eligible Worker in
17 any one of the groups but has funds to pay a partial amount to each Eligible Worker in the group, then
18 the Agency shall divide the payments among the Eligible Workers in the group proportionally based on
19 the amount of money due to each Eligible Worker in that group.

20 _____ (4) To receive payment from the Fund, an Eligible Worker shall agree to assign to the
21 City any legal claims the Eligible Worker may have against the Eligible Worker's employer for the
22 amount of payment the Eligible Worker will receive from the Fund. The Agency's payment to any
23 Eligible Worker from the Fund shall not in any way limit the employer's legal obligations to the
24 Eligible Worker or to the Agency. The City may seek reimbursement from the employer for any money
25 paid from the Fund to Eligible Workers, and shall provide any funds recovered to the Eligible Worker

1 if the Eligible Worker has not received full payment of money they are due under a final determination,
2 final adjudication, or written agreement described in in subsection (c).

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

6 (e) **Reporting.** By no later than April 1 each year beginning in 2026, the Agency shall submit
7 to the Mayor and the Board of Supervisors a report providing the following information: (1) the
8 number of workers who received payment from the Fund during the preceding Payment Period; (2) the
9 number of workers who applied to receive payment from the Fund during the preceding Payment
10 Period and the amount of money they received, if any; (3) the total amount of funds distributed by the
11 Agency during the Payment Period; (4) the amount collected from employers to reimburse the Fund for
12 payments made by the Agency to Eligible Workers during the previous fiscal year; and (5) the amount
13 of money appropriated to the Fund during the previous fiscal year and the sources for any such
14 appropriations.

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

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19 Section 2. Escheatment of Funds. Within 90 days after the effective date of this
20 ordinance, the Agency shall coordinate with the Treasurer-Tax Collector to initiate the process
21 for escheatment of unclaimed funds that the City has retained for three or more years on
22 behalf of workers, following the procedures set forth in State law. The Board of Supervisors
23 intends to appropriate any monies escheated under this Section 2 to the Fund established in
24 Administrative Code Section 10.100-366.

1 Section 3. The purpose of this ordinance is to make workers financially whole without
2 reducing the capacity of the Agency to perform its critically important work. It is the intention
3 of the Board of Supervisors to continue to fund the Agency’s budget at least at its current level
4 so the Agency may continue its work, while also administering the Fund for the benefit of
5 workers.

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7 Section 4. Effective Date. This ordinance shall become effective 30 days after
8 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
9 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
10 of Supervisors overrides the Mayor’s veto of the ordinance.

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12 APPROVED AS TO FORM:
13 DAVID CHIU, City Attorney

14 By: /s/ _____
15 JON GIVNER
16 Deputy City Attorney

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