

File No. 240905

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date November 13, 2024

Board of Supervisors Meeting

Date _____

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Completed by: Brent Jalipa

Date November 7, 2024

Completed by: Brent Jalipa

Date _____

1 [Administrative Code - Worker Justice Fund]

2

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:

18

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:

22

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

24 * * * *

25

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.

18
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.

6
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.

11
12 APPROVED AS TO FORM:
13 DAVID CHIU, City Attorney

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

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LEGISLATIVE DIGEST

[Administrative Code - Worker Justice Fund]

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

Existing Law

The City's Labor and Employment Code establishes rules that govern the employment and work practices of businesses within the City limits, and of contractors, lessees, and others that do business with the City. Employers and contractors (referred to in this digest together as "employers") who violate these rules may be required to compensate the workers who suffered the violations, pay penalties or liquidated damages to those workers, or pay penalties or liquidated damages to the City. The City's Office of Labor Standards Enforcement (OLSE) enforces violations of the Labor and Employment Code. When the City receives penalty payments from employers who have violated these worker protection laws, the City generally appropriates those funds to help pay for the costs of OLSE's enforcement activities.

If an employer fails to pay workers the money it owes under a final determination by OLSE or a hearing officer, a final adjudication in court, or a written agreement between the employer and the City, then the workers may attempt to recover the funds from the employer. But in some situations, the workers never receive payment from the employer. In those situations, the City does not compensate the worker, and the City has no special funding to provide such compensation.

When an employer owes its current or former workers money for violations of the Labor and Employment Code, OLSE sometimes agrees to receive the money from the employer and distribute it to workers. On rare occasions, OLSE is not able to locate all the workers who are entitled to payment, and the City holds the funds for those workers, sometimes for several years.

Amendments to Current Law

The ordinance would establish the Worker Justice Fund. Any money paid to the City as penalties or liquidated damages would automatically be appropriated into the Fund. The Fund would also receive any money appropriated by the Board, designated in a written agreement, or donated for the purpose of compensating workers for damages under the Labor and Employment Code.

The City would use the Fund to provide financial restitution and timely payment to workers whose employers have violated worker protection laws in the Labor and Employment Code. The City would use the Fund to pay those workers in several specific situations: (1) where the worker has not received full payment from their employer one year after a final determination by OLSE or a hearing officer or a final adjudication in court; (2) where the worker has not received full payment from their employer within one year after a deadline established in a written agreement between the employer and the City; (3) where the worker has not received full payment from their employer when the worker's employer entered a written agreement with the City that includes a long-term payment plan; and (4) where the worker has not received full payment from their employer under a final determination by OLSE or a hearing officer, a final adjudication in court, or a written agreement, if OLSE or the City Attorney has determined that it is infeasible or impracticable to collect the money from the employer.

OLSE would administer the Fund in consultation with the Controller. OLSE would identify workers who are eligible to receive money from the Fund, and would make diligent efforts to identify those workers throughout the year. Once a year between July 1 and August 15, OLSE would determine a final list of all workers who were eligible to receive money from the Fund in the preceding fiscal year (ending June 30). The City would then pay those workers from the Fund. If the Fund does not contain enough money to pay all the workers on the list, then OLSE would pay workers in groups based on a priority order set forth in the ordinance.

The ordinance would also require OLSE to report to the Mayor and the Board of Supervisors every year about the use of money in the Fund.

The ordinance would require OLSE to work with the Treasurer-Tax Collector to initiate the process to "escheat" money that the City has held for three or more years on behalf of workers if the workers have not contacted the City to claim that money. The escheatment process would allow the City to use that unclaimed money for other purposes, and the ordinance states that the Board of Supervisors intends to transfer all of the escheated money to the Fund.

The ordinance would also state the Board's intent to continue to fund OLSE's budget at least at its current level so OLSE may continue its work while also administering the Fund.

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<p>Item 1 File 24-0905</p>	<p>Department: City Administrator, Office of Labor Standards</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed ordinance would amend the Administrative Code to establish a Worker Justice Fund to provide financial restitution to workers who have not received payment from their employers for violations of the City’s Labor and Employment Code, such as minimum wage, paid sick leave, and the health care security ordinance. • The ordinance would require the Office of Labor Standards Enforcement (OLSE) to administer the fund and make payments to workers. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The proposed ordinance would require OLSE to identify workers who have been victims of Labor and Employment Code violations, screen their claims, determine that the employer is unable to make restitution payments to workers, and determine the appropriate restitution payments to be paid from the Worker Justice Fund. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed ordinance would result in OLSE losing penalty revenue as a funding source for its operations, which would instead be used to make payments to workers. In FY 2025-26, the first full fiscal year in which the proposed ordinance would be effective, OLSE’s budgeted penalty revenues are \$925,000. • OLSE states it will also require four additional positions to administer the fund at an annual cost of approximately \$820,000. However, we note that it may be possible to use existing position and spending authority within OLSE’s budget to cover some of the workload associated with administering the fund, in which case the new staff funding may be reduced. The total annual impact on the General Fund is therefore between \$1.3 to \$1.7 million. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • According to OLSE, had the Worker Justice Fund requirements been in effect during the past three fiscal years, 449 workers would have received \$2.3 million from the fund. The amount per year ranged from \$0.2 million to \$1.6 million. Actual penalty revenues over the past five fiscal years were \$1.4 million, on average, per year. The Board of Supervisors could consider diverting a smaller portion of the OLSE penalty revenues to the Worker Justice Fund. This would reduce the amount of General Fund support required to backfill the penalty revenues diverted to the Worker Justice Fund. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Because the proposed ordinance would create a new program that would require new spending from the General Fund, we consider approval to be a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

BACKGROUND

Labor Regulators

Labor laws are enforced at the local level by the San Francisco Office of Labor Standards Enforcement, at the state level by the California Labor Commissioner’s Office (LCO), and at the federal level by the Department of Labor. The California LCO (also known as the Division of Labor Standards Enforcement) is a state office within the California Department of Industrial Relations. Specifically, the LCO adjudicates wage claims on behalf of workers who file claims for nonpayment of wages, overtime, or vacation pay. A May 2024 state audit of the California LCO found that it is not providing timely adjudication of wage claims primarily because of insufficient staffing.¹ The audit found that the LCO is taking a median of 854 days to issue decisions — more than six times longer than the maximum 135 days specified in state law. Further, the audit found that the LCO Judgment Enforcement Unit is not successful in collecting judgments from employers; the enforcement unit collected the entire amount owed in only 12 percent of cases from January 2018 through November 2023.

Office of Labor Standards Enforcement

San Francisco’s Office of Labor Standards Enforcement (OLSE) was established in 2001 by ordinance, tasked with enforcing 40 San Francisco labor laws adopted by San Francisco voters and the Board of Supervisors. The office also educates workers about their rights and helps them file complaints if their rights have been violated; and guides employers by helping them understand and follow San Francisco labor laws. In contrast to the state LCO, the San Francisco OLSE collected 99 percent of monies assessed from FY 2017-18 through FY 2022-23.

The San Francisco Labor and Employment Code covers worker protection ordinances, such as minimum wage, paid sick leave, and the health care security ordinance.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the Administrative Code to establish a Worker Justice Fund to provide financial restitution to workers for violations of the City’s Labor and Employment Code. The ordinance would require OLSE to administer the fund and make payments to workers.

¹ California State Auditor, 2023-104 The California Labor Commissioner’s Office: Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers, <https://www.auditor.ca.gov/reports/2023-104/>, May 20, 2024

The fund is intended to provide payment to workers when an employer is unable to make restitution payments for reasons such as business closure, bankruptcy, or insufficient assets. Workers may also receive payment if their employer is on a restitution payment plan that exceeds one year.

The ordinance defines a worker who is eligible to receive restitution from the fund as someone who has not received full payment of any portion of the money due from their employer within one year after either OLSE made a judgement determination, final adjudication of a lawsuit filed by the City Attorney, or the employer failed to make an agreed upon payment.

Worker Justice Fund Deposits and Spending

Under the proposed ordinance, the Worker Justice Fund would receive monies from penalty and liquidated damage revenues received by the City for violations of the San Francisco Labor and Employment Code, excluding monies designated for employees and monies needed to pay for the City's enforcement costs. Penalty payments are levied by OLSE on employers who violate labor laws.² The fund could also receive money by appropriations and donations.

The Worker Justice Fund would be a "category eight" fund, meaning it would be subject to an automatic appropriation, accumulation of interest, and a fund balance that carries forward into the following fiscal year. Automatic appropriation means that the Board of Supervisors would not have to approve spending from the fund; instead, spending would be approved by the Controller and OLSE.

New Duties of OLSE

The proposed ordinance would require OLSE to identify workers who have been victims of Labor and Employment Code violations, screen their claims, determine that the employer is unable to make restitution payments to workers, and determine the appropriate restitution payments to be paid from the Worker Justice Fund. The OLSE estimates that over the last three fiscal years, a total of 449 workers would have been eligible to seek restitution from the fund for an approximate total of \$2.3 million; this equates to about 150 workers annually seeking an annual average of \$780,000. The annual number of workers and total claim amount that would actually materialize once the fund is established is likely to be higher, according to OLSE. The OLSE believes that having a dedicated funding source for uncompensated labor violations will likely increase the number and complexity of claims it will need to investigate.

In addition, OLSE would be required to annually report to the Mayor and Board of Supervisors on activities in the Worker Justice Fund beginning in April 2026.

² Depending on the labor law, penalties can be \$50 per violation per worker per day, or the cost of the OLSE investigation. Other penalties can be assessed for failure to produce documents, maintain records, or post required labor information posters, according to OLSE.

Worker Payment Priority

Further, the ordinance establishes a payment period from July 1 through August 15 annually that adheres to the following procedure:

- If the fund balance is sufficient to pay all eligible workers the full amount due, then OLSE shall pay that amount;
- If the fund balance is insufficient to pay all eligible workers, then OLSE shall make payments to groups of eligible employees based on the violation they have experienced using the following order of priority:
 - (1) minimum wage and personal services minimum contractual rate;
 - (2) paid sick leave, domestic workers’ equal access to paid sick leave, public health emergency leave, and paid parental leave;
 - (3) health care security and health care accountability; and
 - (4) miscellaneous prevailing wages and minimum compensation.

If there are insufficient funds to pay all eligible workers in one of the priority groups listed above, then OLSE is required to divide the payments proportionally based on the amount due to each eligible worker in the group.

OLSE notes that the appropriation of all penalty revenue to the fund, and the proposed prioritization of payments differs from existing law. For example, under the current San Francisco Labor and Employment Code (LEC), unclaimed penalty revenue from minimum wage violations may only be used to enforce minimum wage violations (LEC Section 1.17).³ The same is true for penalty revenue from Parental Leave violations (LEC 14.8.b.3). If the proposed ordinance is approved, these two Code sections would need to be amended in order to be consistent with the requirements of the Worker Justice Fund.

FISCAL IMPACT

The proposed ordinance would result in OLSE losing penalty revenue as a source for its operations and would require additional General Fund spending for new positions to implement the requirements of the Worker Justice Fund. In FY 2025-26, the first full fiscal year in which the proposed ordinance would be effective, OLSE’s budgeted penalty revenues are \$925,000. In addition, OLSE says it will require four additional positions at an annual cost of approximately \$800,000. However, we note that it may be possible to use existing position and spending authority within OLSE’s budget to cover some of the workload associated with administering the Worker Justice Fund, in which case the new staff funding may be reduced. We estimate total annual impact on the General Fund is therefore \$1.3 to \$1.7 million.

³ The Minimum Wage Ordinance was adopted as a ballot measure and would need to be amended via ballot measure, according to OLSE.

Section 2 of the proposed ordinance directs the Treasurer-Tax Collector (TTX) to escheat (take ownership) of unclaimed funds that the City has retained on behalf of workers for three or more years and transfer the monies to the Worker Justice Fund as seed funding. According to Tajel Shah, Treasurer-Tax Collector Deputy Director, no additional funding is required by TTX to undertake this process. However, OLSE reports that the escheatment process would require additional workload on their part to conduct research and create a list of workers, identify amounts owed, and distribute funds or forward an escheatment list to TTX.

OLSE Budget

The OLSE generates revenue from penalty revenues and work orders from other City Departments. The remaining cost of its work is funded by the General Fund. Exhibit 1 below shows OLSE’s budgeted and actual revenues and expenditures in FY 2023-24.

Exhibit 1: OLSE Budgeted Revenue and Expenditures, FY 2023-24

	Budget	Actual	Difference
Revenue			
General Fund	\$4,521,635	\$3,456,403	\$1,065,232
Work Orders	1,734,806	1,429,418	305,388
Penalty Revenue	798,286	1,502,705	(704,419)
Total Revenue	\$7,054,727	\$6,388,526	\$666,200
Expenditures			
Salary & Benefits	5,582,810	5,023,401	559,409
Services & Supplies	1,334,740	1,226,107	108,633
Work Orders	137,177	139,019	(1,842)
Total Expenditures	\$7,054,727	\$6,388,526	\$666,200

Source: Financial System

Note: Negative revenue values indicate actual revenues were more than budgeted. Negative expenditure values indicate actual spending was more than budgeted. Penalty revenues collected from employers do not include worker restitution monies.

As shown above, in FY 2023-24, OLSE’s expenditure budget was \$7,054,727, which was funded by \$798,286 in budgeted penalty revenues, \$1,734,806 in work order revenues, and \$4,521,635 in General Fund support. Actual penalty revenues collected from employers were \$704,419 higher, totaling \$1,502,705. Higher net revenue of \$399,031 (from higher penalty revenue offset by less work order revenue) combined with lower actual expenditures of \$666,200 resulted in \$1,065,232 less General Fund support than budgeted.

The proposed ordinance would divert all penalty revenues not assigned to employees, removing this as a revenue source for OLSE. If the fund were in effect during FY 2023-24, the \$1,502,705 in actual penalty revenue for FY 2023-24 would have been diverted to the Worker Justice Fund,

requiring some combination of the General Fund backfilling that revenue loss or for OLSE to reduce spending and associated labor enforcement activities.⁴

In FY 2024-25 and FY 2025-26, OLSE penalty revenue is budgeted at \$925,000 in each fiscal year. If the proposed ordinance is approved, that funding source will have to be backfilled by the General Fund in order for OLSE to maintain its level of service.

Additional OLSE Staffing

OLSE estimates that it would require four full-time equivalent (FTE) Senior Analyst positions to administer the Worker Justice Fund at a total cost of \$817,336 in FY 2025-26. According to the office, the staffing is based on the following: complexity of case settlements, establishing and managing the Worker Justice Fund, anticipated increase in case referrals, creation of an annual list of eligible workers, administration of payments, and annual reporting requirements. However, since the total amount of new claims is unknown and OLSE underspent its salary and benefit budget by \$559,409 in FY 2023-24, we recommend the Board consider approving two instead of four new positions until the workload is better known. Adding positions to the OLSE budget would require separate legislative action, including possibly supplemental appropriation authority.

POLICY CONSIDERATIONS

Size of Worker Justice Fund

As noted above, according to OLSE, had the Worker Justice Fund requirements been in effect during the past three fiscal years, 449 workers would have received \$2.3 million from the fund. The amount per year ranged from \$0.2 million to \$1.6 million. Actual penalty revenues over the past five fiscal years were \$1.4 million, on average, per year. The Board of Supervisors could consider diverting a smaller portion of the OLSE penalty revenues to the Worker Justice Fund, such as a fixed deposit every year of 50 percent of actual penalty revenues or only the penalty revenues that exceed budgeted amounts every year. This would reduce the amount of General Fund support required to backfill the penalty revenues diverted to the Worker Justice Fund.

RECOMMENDATION

Because the proposed ordinance would create a new program that would require new spending from the General Fund, we consider approval to be a policy matter for the Board of Supervisors.

⁴ Between FY 2019-20 and FY 2023-24, actual annual penalty revenue was \$1.4 million, on average. The budget for such revenue was \$525,000 through FY 2022-23, when it was increased to \$798,286.

BOARD of SUPERVISORS



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MEMORANDUM

TO: Patrick Mulligan, Director, Office of Labor Standards Enforcement
Greg Wagner, City Controller, Office of the Controller

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: September 23, 2024

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed Ordinance:

File No. 240905

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

If you have comments or reports to be included with the file, please forward them to Victor Young at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

c: Angela Chiu, Office of Labor Standards Enforcement
ChiaYu Ma, Office of the Controller

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



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

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor inquiries..."
- 5. City Attorney Request
- 6. Call File No. from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

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

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: