

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 20, 2024

Board of Supervisors Meeting Date _____

Cmte Board

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<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
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Completed by: Brent Jalipa Date November 7, 2024

Completed by: Brent Jalipa Date _____

[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.

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

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

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

SEC. 10.100-365. WATER DEPARTMENT REVENUE FUND.

* * * *

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 ~~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 14 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 (iviii) 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 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.

15
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.

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

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

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/
JON GIVNER
Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Amended in Committee, 11/13/2024)

[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. Fifty percent of 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 (including money

escheated by the City as described below), 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; (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; and (5) where the worker has not received full payment from their employer but the City has collected the money owed by the employer and later escheated that money to the City's General Fund.

OLSE would administer the Fund in consultation with the Controller. OLSE would make diligent efforts to identify workers who are eligible to receive money from the Fund. 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. 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, and would state the City's intent to prohibit employers who violate labor laws from seeking City contracts in the future.

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Item 1 File 24-0905 <i>(Continued from 11/13/24 meeting)</i>	Department: City Administrator, Office of Labor Standards
EXECUTIVE SUMMARY	
<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. 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 timely 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, as amended, would result in OLSE losing 50 percent of its 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, 50 percent OLSE’s budgeted penalty revenues are \$462,500. Under the revised ordinance, OLSE estimates it would require three additional positions to administer the fund at an annual cost of approximately \$610,000. We also 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 \$770,000 to \$1.1 million. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> According to OLSE, had the revised Worker Justice Fund requirements been in effect during the past three fiscal years, 248 workers would have received \$918,000 from the fund; or, an average of 83 workers annually receiving a total of about \$306,000 annually. This is less than the amount of penalty revenue that would be diverted to the fund, which we estimate is approximately \$700,000 per year. The Board should monitor the actual spending and fund balance of the Worker Justice Fund and reduce the amount of penalty revenue diverted to the Fund if the balance consistently exceeds one year of spending. <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. The ordinance was amended in the November 13, 2024 Budget & Finance Committee meeting to reduce the amount of penalty revenue diverted to the fund from 100 to 50 percent and remove prevailing wage and parental leave violations from the scope of eligible payments from the fund.

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, the employer failed to make an agreed upon payment, or the payment plan exceeds one year (or five years for violations of the Health Care Security Ordinance). A worker is also eligible if they have not received any restitution (regardless of the amount of time that has passed), and OLSE or the City Attorney have determined that it is infeasible or impracticable to collect from the employer. The ordinance has been amended to also include workers whose restitution funds have been escheated and appropriated to the Worker Justice Fund.

Worker Justice Fund Deposits and Spending

Under the proposed ordinance, the Worker Justice Fund would receive 50 percent of monies, as amended, 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; and has been amended to also include escheated funds (that is, taking ownership of unclaimed funds that the City has retained on behalf of workers for three or more years, following state law).

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 eligible 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. Under the revised ordinance with a narrower scope, the OLSE estimates that over the last three fiscal years, a total of 248 workers would have been eligible to seek restitution from the fund for an approximate total of \$918,000; this equates to about 83 workers annually seeking an annual average of \$306,000. The annual number of

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.

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 April 2026.

Worker Payment Priority

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, as amended:
 - (1) escheated funds due to eligible workers has been added as the first priority;
 - (2) minimum wage and personal services minimum contractual rate;
 - (3) paid sick leave, domestic workers' equal access to paid sick leave, and public health emergency leave (paid parental leave has been removed); and
 - (4) health care security and health care accountability, with a narrowed scope of only when the employer entered into a written agreement with the City Attorney to make payments to the City over more than five years on behalf of eligible workers.³

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. The ordinance has also been amended to specify the possibility that an employer may be debarred from contracting with the City, when appropriate, for violating worker protections specified in the Labor and Employment Code.

OLSE notes that the appropriation of penalty revenue to the fund, and the proposed prioritization of payments differs from existing law in the case of minimum wage. 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).⁴ If the proposed ordinance is approved, this Code section would need to be amended in order to be consistent with the requirements of the Worker Justice Fund.

³ Miscellaneous prevailing wages and minimum compensation have been stricken as the last prioritization category from the amended ordinance.

⁴ The Minimum Wage Ordinance was adopted as a ballot measure and would need to be amended via ballot measure, according to OLSE.

FISCAL IMPACT

The proposed ordinance would result in OLSE losing 50 percent of its 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, 50 percent of OLSE's budgeted penalty revenues would be \$462,500. In addition, OLSE says it will require three additional positions (down from four previously estimated for the prior version of this legislation) at an annual cost of approximately \$610,000. 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 the total annual impact on the General Fund is therefore between \$770,000 to \$1.1 million.

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, and the ordinance has been amended to provide three years for OLSE and TTX to undertake this process. According to Tajel Shah, Treasurer-Tax Collector Deputy Director, no additional funding is required for 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 50 percent of 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, 50 percent of the \$1,502,705 (or, \$751,353) 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.⁵ The ordinance specifies the intent of the Board of Supervisors to continue funding OLSE at its current level.

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, up to 50 percent of this funding source may 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 now require three (down from four) full-time equivalent (FTE) Senior Analyst positions to administer the Worker Justice Fund at a total cost of \$613,002 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 three 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 CONSIDERATION

Size of Worker Justice Fund

As noted above, according to OLSE, had the revised Worker Justice Fund requirements been in effect during the past three fiscal years, 248 workers would have received \$918,000 from the fund, requiring spending of \$306,000 per year, on average, from the Fund. Actual penalty revenues over the past five fiscal years were \$1.4 million, on average, per year. Diverting 50 percent of the penalty revenues (approximately \$700,000 per year) to the Worker Justice Fund will likely result in the Fund accumulating a fund balance increasing by \$400,000 per year. The

⁵ 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 should monitor the actual spending and fund balance of the Worker Justice Fund and reduce the amount of penalty revenue diverted to the Fund if the balance consistently exceeds one year of spending.

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.

Item 1 File 24-0905	Department: City Administrator, Office of Labor Standards
EXECUTIVE SUMMARY	
<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
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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):

Ronen, Walton, Peskin, Preston

Subject:

[Administrative Code - Worker Justice Fund]

Long Title or text listed:

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.

Signature of Sponsoring Supervisor: [s/Hillary Ronen]