

County of Santa Clara

Office of the County Executive

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DATE: November 25, 2019

TO: Honorable Members of the Board of Supervisors
Jeffrey V. Smith, M.D., J.D., County Executive

FROM: David Campos, Deputy County Executive ^{DS} DC
Betty Duong, Manager, Officer of Labor Standards Enforcement ^{DS} BD

SUBJECT: OLSE Food Permit Enforcement Program Phase I

On November 7, 2017 (Item No. 15), the Board of Supervisors approved a Food Permit Pilot, under the direction of the Office of Labor Standards Enforcement (OLSE), to encourage payment of existing judgments by conditioning the issuance, renewal, or retention of food facility permits on compliance with labor standards. On May 21, 2019 (Item No. 58), the BOS approved the report from OLSE relating to the Food Permit Pilot Implementation Plan.

This off agenda report outlines OLSE's activities and engagement with workers and retail food vendors in the Pilot (or Phase I) sites from Fall 2019 leading up to the implementation of formal enforcement actions to begin on December 2, 2019.

I. OLSE Outreach and Engagement Activities

A. OLSE Grand Opening and Kick Off – September 23, 2019

OLSE opened its doors to the public and introduced the Food Permit Enforcement Program on September 23, 2019 with a press conference and kick-off event at Luna Mexican Kitchen, an exemplary retail food vendor and supporter of the Program. The event was widely attended by members of the press and received coverage in seventeen media outlets in English, Spanish and Chinese.¹ OLSE's website www.sccfairworkplace.org also went live on this day. OLSE began to receive calls and visitors that evening.

¹ <https://www.sccgov.org/sites/olse/Pages/home.aspx>

B. Food Permit Enforcement Program Announcement – October 15, 2019

OLSE sent a total of 2,155 letters to all retail food permittees in Mountain View, Sunnyvale, and Zip Codes 95112 and 95113 announcing the Food Permit Enforcement Program. The letter provided details of the Program, the availability of free resources for businesses seeking compliance information, OLSE's contact information, and an invitation to a Retail Food Vendor Information Session.

C. Retail Food Vendor Information Session – November 12, 2019

The City of Sunnyvale and OLSE co-hosted a Retail Food Vendor Information Session on November 12, 2019 at Sunnyvale City Hall. The event was attended by approximately 15 retail food vendors.

D. Food Permit Program Outreach and Education – November 5, 2019

The Labor Standards Outreach and Education Initiative is a robust outreach and engagement campaign through which OLSE, in collaboration with community-based organization (CBO) contractors, inform workers and businesses in the Phase I sites about the Food Enforcement Program, and provide workers' rights training and compliance information. The Board of Supervisors approved the agreement for outreach and education services on November 5, 2019 (Item No. 43).

II. OLSE Enforcement Procedure

A. Case Intake

OLSE's docket is drawn from complaints made directly by members of the public or from final judgments issued by state and federal agencies that investigate and adjudicate violations of labor law or by courts adjudicating claims of labor violations. Since the formal launch of OLSE on September 23, members of the public have contacted OLSE for assistance addressing a variety of circumstances. These circumstances have included both those squarely within the scope of Phase I of the Food Permit Program (i.e., final judgments against food facilities in the pilot jurisdictions) and those that fall outside Phase I's scope.

Non-Payment of an Existing Judgment

OLSE will create a case file for an employer in a Phase I jurisdiction that holds a food facility permit when partner agency data or OLSE's investigation of an individual complaint indicates the employer has failed to pay an outstanding judgment under which the employer is liable for wage theft, or violations of laws prohibiting sexual harassment, sexual assault, human and labor trafficking, and retaliation.

In partnership, DEH and OLSE will send a Notice to Comply letter to the employer identifying the judgment and explaining that the employer's failure to comply with the judgment violates the condition of its food facility permit requiring the employer to comply with all applicable federal, state, and local laws. This procedure is further described below.

Alleged Violations Without a Judgment

For complaints of labor violations against permitted food facilities that have not been adjudicated and have not been reduced to final judgment or administrative decision, OLSE's intake

investigator will refer the complainant to the OLSE Attorney Advice Line, appropriate agency to file a claim, CBO partner for services, or all of the above.

However, if the complaint is related to potential sex or labor trafficking, OLSE will immediately refer the matter to the Legal Enforcement to Investigate Human Trafficking (LEIHT) Task Force for investigation.

Violations Outside Phase I's Scope

If the complainant describes circumstances that fall outside Phase I's scope, the intake investigator will refer the complainant to the OLSE Attorney Advice Line, appropriate agency to file a claim, CBO partner for services, or all of the above.

B. Engagement with the Employer Regarding Violations Within Phase I Scope

1. Notice of Existing Judgment – may be sent as early as December 2, 2019

When OLSE learns of an outstanding judgment against a permitted food facility for violation of laws prohibiting pay equity, wage theft, sexual harassment, sexual assault, or retaliation in a Phase I jurisdiction, OLSE will engage the permittee-employer by sending it a Notice of Existing Judgment that informs the employer of the existing judgment, explains the potential consequences to its permit if it does not comply with the judgment, and offers to resolve the matter informally. OLSE may follow up on the Notice of Existing Judgment by directly contacting the permitholder by phone to confirm receipt of the notice, establish a contact, and answer any questions the permitholder may have.

Although the Notice of Existing Judgment and OLSE's subsequent follow-up outreach effort are courtesies well beyond what the permitholder is entitled to under the law, it helps OLSE to fulfill its mission to provide a level playing field for businesses by assisting employers seeking to comply with the law to come into compliance and to avoid unnecessary suspensions or revocations.

2. Notice to Comply – may be sent as early as December 20, 2019

Unless the employer responds to the Notice of Existing Judgment by complying with the judgment or entering into a Compliance Agreement (as described further below), OLSE and DEH will together send a Notice to Comply to the food facility permitholder. As currently envisioned, the Notice to Comply will identify the judgment, explain that the underlying violation and the failure to comply with the judgment are violations of the condition of the employer's food facility permit, and demand that the permitholder respond within 15 days to (1) prove that the permitholder is in full compliance with the judgment, or (2) prove that the judgment is not final or does not apply to the permitholder, or (3) acknowledge the outstanding judgment and request assistance or additional time to come into compliance with the judgment. The Notice to Comply will inform the employer that its food facility permit may be suspended or revoked if the employer fails to comply with the judgment or prove that the judgment is not final or does not apply. If the permitholder requests assistance or additional time, DEH and OLSE can meet with the permitholder to discuss the issue and negotiate a Compliance Agreement that gives the permitholder more time to comply with the judgment. OLSE and DEH will collaborate with County Counsel during this process, including when assessing the permitholder's response and any proffered evidence, and meeting with permitholders.

3. Notice of Violation – *may be sent as early as January 10, 2019*

If the permitholder does not respond to the Notice to Comply, prove that it is in compliance with the judgment, prove that the judgment is not final or does not apply, or enter into a Compliance Agreement, then DEH and OLSE will together send the permitholder a Notice of Violation. The Notice of Violation will inform the permitholder that its permit will be suspended or revoked and the effective date of that suspension or revocation, and will further inform the permitholder of its right to request a hearing within 15 days before the Office of the County Hearing Officer.

If a permitholder requests a hearing by the deadline specified in the Notice of Violation, then the Office of the County Hearing Officer will hold a hearing at which DEH and OLSE, in partnership with County Counsel, will explain the permitholder's violation of the conditions of the permit and request suspension or revocation, and the permitholder will have the opportunity to present its own evidence and argument as to why its permit should not be suspended or revoked. After the hearing, the Hearing Officer will issue a decision that will decide whether to suspend or revoke the permit and how long any suspension will last. The permitholder may challenge a Hearing Officer's decision in the Superior Court.

DEH and OLSE anticipate that they will issue Notices of Violations under Phase I of the Program under the following scenarios:

a. Non-Response

DEH and OLSE will issue a Notice of Violation if the permitholder does not respond to the Notice to Comply. Particularly during Phase I, and in coordination with DEH, OLSE may elect to make additional outreach efforts to permitholders to assist them to comply with outstanding judgments before suspending or revoking their permits.

b. Non-Payment

The Notice to Comply will demand that the food facility permitholder come into complete compliance with the judgment. When a permitholder's failure to comply with the judgment by the deadline specified in the Notice to Comply is paired with a permitholder's failure to request a settlement meeting, DEH and OLSE may conclude that the permitholder has not complied and will not comply with the judgment, and therefore issue a Notice of Violation.

C. Settlement Conference

All notices will invite permitholders to contact OLSE if they require assistance or more time to come into compliance with an outstanding judgment—for example, because they do not have the cash or revenue necessary to pay off the judgment immediately. In these circumstances, OLSE and DEH, in collaboration with County Counsel, will host a settlement meeting with the permitholder and determine whether it can help the permitholder to comply with the judgment, such as arranging a monthly payment plan or otherwise extending the deadline to comply. The County will memorialize any such agreement in a Compliance Agreement that authorizes permit suspension or revocation if the permitholder violates the agreement. Upon request, OLSE will endeavor to arrange translation for permitholders who may require them at this settlement conference.