

1 [Police Code - Formula Retail Employee Rights]

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3 **Ordinance amending Articles 33F and 33G of the Police Code, which contain the**
4 **formula retail employee rights ordinances, 1) to change from 20 to 40 the number of**
5 **retail sales establishments worldwide a business must have to be covered by the**
6 **ordinances employees in San Francisco required for a formula retail establishment to**
7 **be covered by the ordinances; and 2) to allow collective bargaining agreements**
8 **covering employees of formula retail establishments or employees of property service**
9 **contractors to waive the protections of Articles 33F and 33G; 3) to provide employees**
10 **scheduled to work on-call shifts with predictability pay if the employer modifies the**
11 **scheduling of that shift with less than seven-days' notice; 4) to allow the Office of**
12 **Labor Standards Enforcement to issue warnings and notices to correct to employers**
13 **who have violated Articles 33F and 33G; 5) to provide part-time employees with three**
14 **days to accept any additional hours offered to them by their employers; and 6) to allow**
15 **employers to notify employees of the offer of additional hours by posting a notice in a**
16 **conspicuous location in the workplace.**

17

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

22

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

24

25 Section 1. Background.

1 Ordinance No. 236-14, which created Article 33F of the Police Code, requires formula
2 retail establishments to offer additional hours of work, when available, to current part-time
3 employees. It also requires successor employers to retain employees for 90 days upon a
4 change in control of the business. Ordinance No. 241-14, which created Article 33G of the
5 Police Code, requires formula retail establishments to provide employees with two weeks'
6 notice of work schedules, notice of changes to work schedules, and compensation for
7 schedule changes made on less than seven days' notice and unused on-call shifts. It also
8 provides part-time employees with the same starting rate of hourly pay, access to time off,
9 and eligibility for promotions, as provided to full-time employees.

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11 Section 2. Article 33F of the Police Code is hereby amended by revising Sections
12 3300F.2, 3300F.3, 3300F.10, and adding Section 3300F.19 to read as follows:

13 **SEC. 3300F.2. DEFINITIONS.**

14 For purposes of this Article 33F, the following definitions apply:

15 * * * *

16 "Employer" shall mean any Person that owns or operates a Formula Retail
17 Establishment with ~~20~~ 40 20 or more Employees in the City, including corporate officers or
18 executives, who directly or indirectly or through an agent or any other person, including
19 through the services of a temporary services or staffing agency or similar entity, employs or
20 exercises control over the wages, hours or working conditions of any individual. For the
21 purpose of calculating the ~~20~~ 40 20 -employee threshold referenced herein, Employees
22 performing work in other Formula Retail Establishments in the City that are owned or operated
23 under the same trade name by the same Employer shall be counted. Notwithstanding the
24 foregoing definition, "Employer" does not include a Nonprofit Corporation or governmental
25 entity.

1 * * * *

2 "Formula Retail Establishment" shall mean a business located in San Francisco that
3 falls under the Planning Code's definition of "Formula Retail Use," as amended from time to
4 time, except that the business must have at least ~~20~~40 retail sales establishments located
5 worldwide.

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8 **SEC. 3300F.3. OFFERING ADDITIONAL WORK TO PART-TIME EMPLOYEES.**

9 (a) Subject to the limitations herein, before hiring new Employees or using contractors
10 or a temporary services or staffing agency to perform work in a Formula Retail Establishment,
11 an Employer shall first offer the additional work to existing Part-time Employee(s) if: (1) the
12 Part-time Employee(s) are qualified to do the additional work, as reasonably determined by
13 the Employer and (2) the additional work is the same or similar to work the Employee(s) have
14 performed for the Formula Retail Establishment. This Section 3300F.3 requires Employers to
15 offer to Part-time Employees only the number of hours required to give the Employee 35
16 hours of work in a week.

17 (b) An Employer has discretion to divide the additional work hours among Part-time
18 Employees consistent with this ~~s~~Section 3300F.3.

19 (c) A Part-time Employee may, but is not required to, accept the Employer's offer of
20 additional work hours under this Section 3300F.3. The Employee shall have 72 hours to
21 accept the additional hours, after which time the Employer may hire new Employees to work
22 the additional hours. The 72 hours referred to in the previous sentence begins either when
23 the Employee receives the written offer of additional hours or whenever the Employer posts
24 the offer of additional hours described in subsection (d), whichever is later. An Employee who
25 wishes to accept the additional hours must do so in writing.

1 (d) When this Section 3300F.3 requires an Employer to offer additional work hours to
2 existing Part-time Employees, the Employer shall make the offer either in writing or by posting
3 the offer in a conspicuous location in the workplace where notices to Employees are
4 customarily posted. Employers are encouraged to post the electronic notice on their internal
5 web sites in a conspicuous location. The Employer and shall retain each written offer no less
6 than three years as required under Section 3300F.8.

7 (e) The requirements imposed by this Section 3300F.3 shall apply to Property
8 Services Contractors as to work performed in San Francisco at a Formula Retail
9 Establishment covered by this Article 33F, under a contract with an Employer. An Employer
10 shall include in any such contract executed on or after the operative date of this Article 33F,
11 (1) a provision requiring the Property Services Contractor to comply with this Section and (2) a
12 copy of this Section. The Employer shall retain copies of such contracts for a period of not
13 less than three years following the expiration or termination of the contract, and make such
14 copies available to the Agency for inspection upon request. In addition, Sections 3300F.7,
15 3300F.8, 3300F.9, 3300F.10, 3300F.11, and 3300F.12 of this Article 33E shall apply to a
16 Property Services Contractor as if it is an Employer for purposes of notice, record retention,
17 compliance, investigation, and enforcement of the requirements of this Section 3300F.3.

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19 **SEC. 3300F.10. INVESTIGATION AND ADMINISTRATIVE ENFORCEMENT BY**
20 **THE AGENCY.**

21 (a) Authority. The Agency is authorized to take appropriate steps to enforce and
22 coordinate enforcement of this Article 33F, including the investigation of any possible
23 violations of this Article.

24 (b) Determination of Violation and Penalties.

1 (1) Where the Agency has reason to believe that a violation has occurred, it
2 may order any appropriate temporary or interim relief to mitigate the violation or maintain the
3 status quo pending completion of a full investigation, provided, however, that during the first
4 three months following the operative date of this Article 33F, the Agency shall not order any
5 relief but may issue warnings and notices to correct.

6 (2) After investigating a possible violation of this Article 33F, and providing the
7 Employer, Incumbent Employer or Successor Employer the opportunity to respond to the
8 allegations, if the Agency determines that a violation has occurred, it may issue a
9 Determination of Violation. The Determination of Violation shall identify the violation and the
10 factual basis for the determination. The Agency shall serve the Determination of Violation on
11 the Employer, Incumbent Employer or Successor Employer by United States mail and the
12 date of service shall be the date of mailing. In the Determination of Violation, the Agency may
13 order any appropriate relief, provided, however, that during the first three months following the
14 operative date of this Article 33F, the Agency shall issue only warnings and notices to correct.
15 Thereafter, the Agency may order relief including, but not limited to, requiring a Formula Retail
16 Employer to offer additional hours of work to Part-time Employees as required under Section
17 3300F.3, reinstatement, payment of lost wages to the Eligible Employee or person whose
18 rights under this Article were violated, and the payment of an additional sum as an
19 administrative penalty that does not exceed the amount of the award for lost wages. To
20 compensate the City for the costs of investigating and remedying the violation, the Agency
21 may also order the violating Employer, Incumbent Employer or Successor Employer to pay to
22 the City an amount that does not exceed its enforcement costs.

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25 **SEC. 3300F.19. WAIVER UNDER COLLECTIVE BARGAINING AGREEMENT.**

1 For Employees of Formula Retail Establishments or Property Service Contractors covered
2 by a bona fide collective bargaining agreement, all or any portion of the applicable requirements of
3 this Article 33F shall not apply to the extent that such requirements are expressly waived in the
4 collective bargaining agreement in clear and unambiguous terms.

5
6 Section 3. Article 33G of the Police Code is hereby amended by revising Sections
7 3300G.3, 3300G.4, and 3300G.10, and adding Section 3300G.18 to read as follows:

8 **SEC. 3300G.3. DEFINITIONS.**

9 For purposes of this Article 33G, the following definitions apply:

10 * * * *

11 “Employer” shall mean any Person that owns or operates a Formula Retail
12 Establishment with ~~20~~ 40 20 or more Employees in the City, including corporate officers or
13 executives, who directly or indirectly or through an agent or any other person, including
14 through the services of a temporary services or staffing agency or similar entity, employs or
15 exercises control over the wages, hours, or working conditions of any individual. For the
16 purpose of calculating the ~~20~~ 40 20 -employee threshold referenced herein, Employees
17 performing work in other Formula Retail Establishments in the City that are owned or operated
18 under the same trade name by the same Employer shall be counted. Notwithstanding the
19 foregoing definition, “Employer” does not include a Nonprofit Corporation or governmental
20 entity.

21 * * * *

22 “Formula Retail Establishment” shall mean a business located in San Francisco that
23 falls under the Planning Code's definition of “Formula Retail Use,” as amended from time to
24 time, except that the business must have at least ~~20~~ 40 retail sales establishments located
25 worldwide.

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2 **SEC. 3300G.4. ADVANCE NOTICE OF WORK SCHEDULES AND CHANGES IN**
3 **WORK SCHEDULES.**

4 (a) Initial Estimate of Minimum Hours.

5 (1) Prior to the start of employment, an Employer shall provide a new Employee
6 with a good faith estimate in writing of the Employee's expected minimum number of
7 scheduled shifts per month, and the days and hours of those shifts. Theis estimate shall ~~not~~
8 include On-Call Shifts. The estimate shall not constitute a contractual offer and the Employer
9 shall not be bound by the estimate.

10 (2) Prior to the start of employment, the Employee may request that the
11 Employer modify the proposed work schedule provided under subsection (a)(1) of this Section
12 3300G.4. The Employer shall consider any such request, and in its sole discretion may
13 accept or reject the request, provided that the Employer shall notify the Employee of its
14 determination prior to the start of employment.

15 (b) Two Weeks' Notice of Work Schedules.

16 An Employer shall provide its Employees with at least two weeks' notice of their work
17 schedules by doing one of the following at least every 14 days (on a "Biweekly Schedule"): (1)
18 posting the work schedule in a conspicuous place at the workplace that is readily accessible
19 and visible to all Employees, or (2) transmitting the work schedule by electronic means, so
20 long as all Employees are given access to the electronic schedule at the workplace. For new
21 Employees, an Employer shall provide the new Employee on his or her first day of
22 employment with an initial work schedule that runs through the date that the next Biweekly
23 Schedule for existing Employees is scheduled to be posted or distributed; thereafter, the
24 Employer shall include the new Employee in an existing Biweekly Schedule with other
25 Employees. For all Employees, the work schedule shall include any On-Call Shifts, where

1 applicable. If the Employer changes the work schedule after it is posted and/or transmitted,
2 such changes shall be subject to the notice and compensation requirements set forth in
3 subsection (c) of this Section 33300G.4.

4 (c) Notice and Compensation For Schedule Changes.

5 (1) Notice Required. An Employer shall provide an Employee notice of any
6 change to the Employee's schedule that has been posted or transmitted pursuant to
7 subsection (b) of this Section 3300G.4. The Employer shall provide such notice by in-person
8 conversation, telephone call, or email, text message, or other electronic communication. This
9 notice requirement shall not apply to any schedule changes that the Employee requests, such
10 as Employee-requested sick leave, time off, shift trades, or additional shifts.

11 (2) Predictability Pay For Schedule Changes. Subject to the exceptions in
12 subsection (e) of this Section 3300G.4, an Employer shall provide an Employee with the
13 following compensation per shift for each previously scheduled shift that the Employer moves
14 to another date or time or cancels, or each previously unscheduled shift that the Employer
15 requires the Employee to come into work:

16 (A) With less than seven days' notice but 24 hours or more notice to the
17 Employee, one hour of pay at the Employee's regular hourly rate;

18 (B) With less than 24 hours' notice to the Employee, two hours of pay at
19 the Employee's regular hourly rate for each shift of four hours or less; and

20 (C) With less than 24 hours' notice to the Employee, four hours of pay at
21 the Employee's regular hourly rate for each shift of more than four hours.

22 Where the Employee is required to come into work, the compensation mandated by
23 this subsection (c)(2) shall be in addition to the Employee's regular pay for working that shift.
24 This subsection (c)(2) shall not apply to On-Call Shifts.

1 (d) Pay for On-Call Shifts. Subject to the exceptions in subsection (e) of this Section
2 3300G.4, an Employer shall provide an Employee with the following compensation for each
3 On-Call Shift for which the Employee is required to be available but is not called in to work:

4 (1) Two hours of pay at the Employee's regular hourly rate for each On-Call
5 Shift of four hours or less; and

6 (2) Four hours of pay at the Employee's regular hourly rate for each On-Call
7 Shift of more than four hours.

8 This subsection (d) shall not apply when the Employee is in fact called in for the On-
9 Call Shift ~~or the Employer provides the Employee with 24 hours' or more notice that the On-~~
10 ~~Call Shift has been cancelled or moved to another date or time.~~

11 (e) Exceptions. The requirements in subsections (c) and (d) of this Section
12 3300G.4 shall not apply under any of the following circumstances:

13 (1) Operations cannot begin or continue due to threats to Employees or
14 property, or when civil authorities recommend that work not begin or continue;

15 (2) Operations cannot begin or continue because public utilities fail to
16 supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system;

17 (3) Operations cannot begin or continue due to an Act of God or other
18 cause not within the Employer's control, ~~for example, an earthquake or a state of emergency~~
19 ~~declared by the Mayor or the Governor;~~

20 (4) Another Employee previously scheduled to work that shift is unable to
21 work due to illness, vacation, or employer-provided paid or unpaid time off where the
22 Employer did not receive at least seven days' notice of the absence;

23 (5) Another Employee previously scheduled to work that shift has not
24 reported to work on time and/or is fired or sent home or told to stay home as a disciplinary
25 action;

1 (6) The Employer requires the Employee to work overtime (i.e.,
2 mandatory overtime); or

3 (7) The Employee trades shifts with another Employee or requests from
4 the Employer a change in shift(s), hours, or work schedule.

5 (f) Nothing in this Section 3300G.4 shall be construed to prohibit an Employer from
6 providing greater advance notice of Employees' work schedules and/or changes in schedules
7 than that required by this Section.

8 (g) The requirements imposed by this Section 3300G.4 shall apply to Property
9 Services Contractors as to work performed in San Francisco at a Formula Retail
10 Establishment covered by this Article 33G, under a contract with an Employer. An Employer
11 shall include in any such contract executed on or after the operative date of this Article 33G,
12 (1) a provision requiring the Property Services Contractor to comply with this Article and (2) a
13 copy of this Article. The Employer shall retain copies of such contracts for a period of not less
14 than three years following the expiration or termination of the contract, and make such copies
15 available to the Agency for inspection upon request. In addition, Sections 3300G.6, 3300G.7,
16 3300G.9, 3300G.10, and 3300G.11 of this Article shall apply to a Property Services
17 Contractor as if it is an Employer for purposes of notice, record retention, compliance,
18 investigation, and enforcement of the requirements of this Section 3300G.4.

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21 **SEC. 3300G.10. INVESTIGATION AND ADMINISTRATIVE ENFORCEMENT BY**
22 **THE AGENCY.**

23 (a) Authority. The Agency is authorized to take appropriate steps to enforce and
24 coordinate enforcement of this Article 33G, including the investigation of any possible
25 violations of this Article.

1 (b) Determination of Violation and Penalties.

2 (1) Where the Agency has reason to believe that a violation has occurred, it
3 may order any appropriate temporary or interim relief to mitigate the violation or maintain the
4 status quo pending completion of a full investigation, provided, however, that during the first
5 three months following the operative date of this Article 33G, the Agency shall not order any
6 relief but may issue warnings and notices to correct.

7 (2) After investigating a possible violation of this Article 33G, and providing the
8 Employer the opportunity to respond to the allegations, if the Agency determines that a
9 violation has occurred, it may issue a Determination of Violation. The Determination of
10 Violation shall identify the violation and the factual basis for the determination. The Agency
11 shall serve the Determination of Violation on the Employer by United States mail and the date
12 of service shall be the date of mailing. In the Determination of Violation, the Agency may
13 order any appropriate relief, provided, however, that during the first three months following the
14 operative date of this Article 33G, the Agency shall issue only warnings and notices to correct.
15 Thereafter, the Agency may order relief including, but not limited to, requiring the Employer to
16 offer payment of lost wages to the Employee or person whose rights under this Article were
17 violated, and the payment of an additional sum as an administrative penalty in the amount of
18 \$50 to each Employee or person whose rights under this Article were violated for each day
19 that the violation occurred or continued. To compensate the City for the costs of investigating
20 and remedying the violation, the Agency may also order the violating Employer to pay to the
21 City an amount that does not exceed its enforcement costs.

22 * * * *

23
24 **SEC. 3300G.18. WAIVER UNDER COLLECTIVE BARGAINING AGREEMENT.**

1 For Employees of Formula Retail Establishments or Property Service Contractors covered
2 by a bona fide collective bargaining agreement, all or any portion of the applicable requirements of
3 this Article 33G shall not apply to the extent that such requirements are expressly waived in the
4 collective bargaining agreement in clear and unambiguous terms.

5
6 Section 4. Effective Date.

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

11
12 Section 5. In enacting this ordinance, the Board intends to amend only those words,
13 phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams,
14 or any other constituent part of the Police Code that are explicitly shown in this ordinance as
15 additions, deletions, Board amendment additions, and Board amendment deletions in
16 accordance with the "Note" that appears under the official title of the ordinance.

17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: _____
21 JOSHUA WHITE
22 Deputy City Attorney

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