

File No. 140416

Committee Item No. 2
Board Item No. 26

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date June 2, 2014

Board of Supervisors Meeting Date 6.10.14

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER (Use back side if additional space is needed)

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Completed by: Andrea Ausberry Date May 29, 2014

Completed by:  Date 6.3.14

1 [Police Code - Hospitality Industry Worker Retention]

2
3 Ordinance amending the Police Code to require large hospitality industry employers to
4 retain employees for up to 90 days upon a change in control of the hospitality
5 establishment; and to provide judicial remedies for violation of the Ordinance.

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

10
11 Be it ordained by the People of the City and County of San Francisco:

12
13 Section 1. The Police Code is hereby amended by adding Article 33E, to read as
14 follows:

15 **ARTICLE 33E: HOSPITALITY INDUSTRY WORKER RETENTION**

16 **SEC. 3300E.1. PURPOSE.**

17 Large hospitality establishments, such as large hotels, large restaurants, and food service
18 facilities in stadiums and arenas, are a major employment base for San Francisco, supporting close to
19 30,000 jobs, generating over \$10 billion in economic activity annually, and providing close to \$1
20 billion in tax and fee revenue to the City. These establishments are also a major draw for visitors to
21 San Francisco. An experienced and professional hospitality workforce benefits tourists and residents
22 alike by ensuring that patrons of San Francisco's hospitality establishments have a positive and safe
23 customer experience and promoting San Francisco as a world-class destination. These establishments
24 also provide good, stable employment for persons who are disproportionately low-income. Changes in
25 ownership or management of large hospitality establishments can result in displacement of this

1 workforce. A transitional retention period upon change in ownership, control, or operation of large
2 hospitality establishments promotes stabilization of this vital workforce and helps ensure that visitors
3 and residents of San Francisco continue to benefit from an experienced and professional hospitality
4 industry workforce.

5
6 **SEC. 3300E.2. DEFINITIONS.**

7 For purposes of this Article 33E, the following definitions apply:

8 "Change in Control" shall mean any sale, assignment, transfer, contribution, or other
9 disposition (including by consolidation, merger, or reorganization) of all or the majority of the assets
10 of, or a controlling interest in, the Incumbent Hospitality Employer or IHE Parent or any Hospitality
11 Establishment under the operation or control of either such Incumbent Hospitality Employer or IHE
12 Parent.

13 "City" shall mean the City and County of San Francisco.

14 "Eligible Hospitality Worker" shall mean any individual who has worked for the Incumbent
15 Hospitality Employer at the Hospitality Establishment subject to a Change in Control for at least 90
16 days prior to the execution of the Transfer Document. Notwithstanding the previous sentence, "Eligible
17 Hospitality Worker" does not include a managerial, supervisory, or confidential employee.

18 "Employment Commencement Date" shall mean the date on which an Eligible Hospitality
19 Worker retained by the Successor Hospitality Employer pursuant to this Article 33E commences work
20 for the Successor Hospitality Employer in exchange for compensation and benefits under the terms and
21 conditions established by the Successor Hospitality Employer and as required by law.

22 "Hospitality Establishment" shall mean a Large Hotel, Large Food Service Operation or Large
23 Restaurant.

24 "Incumbent Hospitality Employer" shall mean the Person that owns, controls, and/or operates
25 the Hospitality Establishment prior to the Change in Control.

1 "IHE Parent" shall mean any Person who owns or controls the Incumbent Hospitality
2 Employer.

3 "Large Food Service Operation" shall mean a food and/or beverage concession within or on
4 the grounds of a stadium, arena, theater, auditorium, convention center, or similar facility located in
5 the City with a seating capacity of 5,000 or more at which 100 or more persons have been employed at
6 food and/or beverage concession(s) during any payroll period during the 180 days of operation prior to
7 the Change in Control. For purposes of the 100-employee threshold in the preceding sentence, the
8 number of employees of separately-owned food and/or beverage concession(s) shall be aggregated if
9 operated in the same venue.

10 "Large Hotel" shall mean a "tourist hotel" as defined in Planning Code Section 790.46 that
11 has 100 or more guest rooms and/or suites of rooms. "Large Hotel" shall not include a "residential
12 hotel" as defined in Section 790.47 of the Planning Code.

13 "Large Restaurant" shall mean a "restaurant" as defined in Section 471.3 of the Health Code
14 that has employed 200 or more persons at a single establishment in the City during the 90 days of
15 operation prior to the Change in Control.

16 "Person" shall mean an individual, proprietorship, corporation, partnership, limited
17 partnership, limited liability partnership or company, trust, business trust, estate, association, joint
18 venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

19 "Successor Hospitality Employer" shall mean the Person that owns, controls, and/or operates
20 the Hospitality Establishment after the Change in Control.

21 "Transfer Document" shall mean the purchase agreement or other document(s) effecting the
22 Change in Control.

23
24 **SEC. 3300E.3. CONTINUED EMPLOYMENT OF ELIGIBLE HOSPITALITY WORKERS.**
25

1 (a) The Incumbent Hospitality Employer shall, within 10 days after the execution of the
2 Transfer Document, provide to the Successor Hospitality Employer the name, contact information, date
3 of hire, and employment occupation classification of each Eligible Hospitality Worker. For purposes
4 of this subsection (a), contact information shall include but need not be limited to the Eligible
5 Hospitality Worker's phone number and email address.

6 (b) The Successor Hospitality Employer shall maintain a retention list of Eligible Hospitality
7 Workers identified by the Incumbent Hospitality Employer as set forth in subsection (a) of this Section
8 3300E.3 and shall be required to retain workers from that list for a period beginning on the execution
9 of the Transfer Document and continuing for 90 days after the Hospitality Establishment is fully
10 operational and open to the public under the Successor Hospitality Employer. If there is a gap between
11 the date of the execution of the Transfer Document and delivery of the retention list pursuant to
12 subsection (a) of this Section 3300E.3, the Successor Hospitality Employer may, if needed, hire
13 employees other than Eligible Hospitality Workers during the interim period for the interim period
14 only.

15 (c) If the Successor Hospitality Employer extends an offer to an Eligible Hospitality Worker to
16 be retained as an employee, the offer must be made in writing and the Successor Hospitality Employer
17 shall retain written verification of that offer for no less than three years from the date the offer was
18 made. The verification shall include the name, address, date of hire, and employment occupation
19 classification of each Eligible Hospitality Worker to whom the offer was made.

20
21 **SEC. 3300E.4. TRANSITION EMPLOYMENT PERIOD.**

22 (a) A Successor Hospitality Employer shall retain each Eligible Hospitality Worker hired
23 pursuant to this Article 33E for no less than 90 days following the Eligible Hospitality Worker's
24 Employment Commencement Date. During this 90-day transition employment period, Eligible
25

1 Hospitality Workers shall be employed under the terms and conditions established by the Successor
2 Hospitality Employer in accordance with the law.

3 (b) If within the period established in Section 3300E.3(b) the Successor Hospitality Employer
4 determines that it requires fewer Eligible Hospitality Workers than were employed by the Incumbent
5 Hospitality Employer, the Successor Hospitality Employer shall retain Eligible Hospitality Workers by
6 seniority within each job classification to the extent that comparable job classifications exist or
7 pursuant to an applicable collective bargaining agreement, if any. Any nonclassified Eligible
8 Hospitality Workers shall be retained by seniority and according to experience or pursuant to the terms
9 of an applicable collective bargaining agreement, if any.

10 (c) During the 90-day transition employment period established in Section 3300E.4(a), the
11 Successor Hospitality Employer shall not discharge without cause an Eligible Hospitality Worker
12 retained pursuant to this Article.

13
14 **SEC. 3300E.5. NOTICE OF CHANGE IN CONTROL.**

15 (a) The Incumbent Hospitality Employer shall post notice of the Change in Control at the
16 location of the affected Hospitality Establishment within five business days after the execution of the
17 Transfer Document. Notice shall remain posted during any closure of the Hospitality Establishment
18 and until the Hospitality Establishment is fully operational and open to the public under the Successor
19 Hospitality Employer.

20 (b) Notice shall include, but is not limited to, the name of the Incumbent Hospitality Employer
21 and its contact information, the name of the Successor Hospitality Employer and its contact
22 information, and the effective date of the Change in Control. For purposes of this subsection (b),
23 contact information shall include but need not be limited to the name, address, phone number and
24 email address of a representative of the Incumbent Hospitality Employer and Successor Hospitality
25 Employer.

1 (c) Notice shall be posted in a conspicuous place or places at the Hospitality Establishment so
2 as to be readily viewed by Eligible Hospitality Workers and other employees.

3
4 **SEC. 3300E.6. REMEDIES FOR VIOLATION.**

5 (a) Civil Action. The City Attorney, any person aggrieved by a violation of this Article 33E, or
6 any other person or entity acting on behalf of the public as provided for under applicable state law,
7 may bring a civil action in a court of competent jurisdiction against the Incumbent Hospitality
8 Employer, Successor Hospitality Employer, or other person violating this Article and, upon prevailing,
9 shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation
10 including, without limitation, the payment of any back wages unlawfully withheld, the payment of an
11 additional sum as liquidated damages in the amount of \$50 to each Eligible Hospitality Worker or
12 person whose rights under this Article were violated for each day that the violation occurred or
13 continued, reinstatement in employment and/or injunctive relief, and shall be awarded reasonable
14 attorneys' fees and costs. Back pay shall be calculated at a rate of compensation not less than the
15 higher of (1) the average regular rate of pay received by the Eligible Hospitality Worker during the last
16 three years of the Eligible Hospitality Worker's employment in the same occupation classification, or
17 (2) the most recent regular rate received by the Eligible Hospitality Worker while employed by either
18 the Incumbent Hospitality Employer or the Successor Hospitality Employer. Provided, however, that
19 any person or entity enforcing this Article on behalf of the public as provided for under applicable state
20 law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and
21 reasonable attorneys' fees and costs. Nothing in this Article shall be interpreted as restricting,
22 precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Municipal
23 Code or state law. Jeopardy shall not attach as a result of any civil enforcement action taken pursuant
24 to this Article.
25

1 (b) Interest. In any civil action brought under this Article, the court shall award interest on all
2 amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the
3 California Civil Code.

4
5 **SEC. 3300E.7. EXEMPTION FOR COLLECTIVE BARGAINING AGREEMENT.**

6 All or any portion of the applicable requirements of this Article 33E may be waived in a bona
7 fide collective bargaining agreement, provided that such waiver is explicitly set forth in such agreement
8 in clear and unambiguous terms.

9
10 **SEC. 3300E.8. NO LIMITATION OF OTHER RIGHTS AND REMEDIES.**

11 This Article 33E does not in any way limit the rights and remedies that the law otherwise
12 provides to Eligible Hospitality Workers, including but not limited to the rights to be free from
13 wrongful termination and unlawful discrimination.

14
15 **SEC. 3300E.9. SEVERABILITY.**

16 If any part or provision of this Article 33E, or the application of this Article in any
17 circumstance, is enjoined or held invalid by a court of competent jurisdiction, the remainder of this
18 Article, including the application of such part or provision in other circumstances, shall not be affected
19 by such action and shall continue in full force and effect. To this end, the parts and provisions of this
20 Article, and their application in particular circumstances, are severable.

21
22 **SEC. 3300E.10. NO CONFLICT WITH FEDERAL OR STATE LAW.**

23 Nothing in this Article 33E shall be interpreted or applied so as to create any requirement,
24 power, or duty in conflict with any federal or state law.

1 SEC. 3300E.11. UNDERTAKING FOR THE GENERAL WELFARE.

2 In enacting and implementing this Article 33E, the City is assuming an undertaking only to
3 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
4 obligation for breach of which it is liable in money damages to any person who claims that such breach
5 proximately caused injury.

6
7 Section 2. 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 DENNIS J. HERRERA, City Attorney

14 By: Francesca Gessner
15 FRANCESCA GESSNER
16 Deputy City Attorney

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LEGISLATIVE DIGEST

[Police Code - Hospitality Industry Worker Retention]

Ordinance amending the Police Code to require large hospitality industry employers to retain employees for up to 90 days upon a change in control of the hospitality establishment; and to provide judicial remedies for violation of the ordinance.

Existing Law

Existing City law establishes worker retention requirements for grocery store workers (Police Code Article 33D), certain service employees (Police Code Article 33C), and certain City contractors (Administrative Code Chapter 21C). There is no existing City law pertaining to retention of hospitality industry workers.

Amendments to Current Law

This ordinance covers large hospitality establishments located in the City, which are defined as: (1) large tourist hotels with 100 or more guest rooms; (2) large food service operations consisting of a food and/or beverage concession within or on the grounds of a stadium, arena, theater, auditorium, convention center, or similar facility located in the City with a seating capacity of 5,000 or more at which 100 or more persons are employed at food and/or beverage concession(s); and (3) large restaurants with 200 or more employees.

The ordinance requires successor hospitality employers, following their assuming control of the hospitality establishment, to provide a transitional 90-day employment period for the former employer's workers. During that period, the employees may not be terminated without cause. If the successor employer requires fewer hospitality workers than the former employer, hiring of the former employer's workers will be based on seniority. The ordinance does not apply to supervisory, managerial, and confidential employees.

The ordinance provides judicial remedies for violation of the ordinance, including an order to hire or reinstate the aggrieved employee(s) and an award of back pay. A successful plaintiff shall be awarded reasonable attorneys' fees.

Background Information

Large hospitality establishments, such as large hotels, large restaurants, and food service facilities in stadiums and arenas, are a major employment base for San Francisco. Changes in control of large hospitality establishments can result in displacement of this workforce. A transitional retention period upon change in control of large hospitality establishments promotes stabilization of this vital workforce and helps ensure that visitors and residents continue to benefit from an experienced and professional hospitality industry workforce.

President, District 3
BOARD of SUPERVISORS



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Fax No. 554-7454
TDD/TTY No. 544-5227
Los Dep.

DAVID CHIU
邱信福
市參事會主席

PRESIDENTIAL ACTION

Date: 5/14/2014

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,

Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No. _____
(Primary Sponsor)

Title. _____

Transferring (Board Rule No. 3.3)

File No. 140416 Kim
(Primary Sponsor)

Title. Police Code - Hospitality Worker Retention

From: Neighborhood Services & Safety Committee

To: Land Use & Economic Development Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor _____

Replacing Supervisor _____

For: _____ Meeting
(Date) (Committee)

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2014 MAY 14 PM 2:10

David Chiu

David Chiu, President
Board of Supervisors

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

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

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

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

Sponsor(s):

Supervisors Kim, Cohen, Campos, Mar, *Avalos*

Subject:

Hospitality Industry Worker Retention

The text is listed below or attached:

[]

Signature of Sponsoring Supervisor: *[Signature]*

For Clerk's Use Only: