

File No. 141024

Committee Item No. 2

Board Item No. 6

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date November 17, 2014

Board of Supervisors Meeting

Date November 25, 2014

#### Cmte Board

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#### OTHER

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Completed by: Linda Wong

Date November 13, 2014

Completed by: L.W.

Date 11/18/14

BOARD of SUPERVISORS



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## MEMORANDUM

### BUDGET AND FINANCE COMMITTEE

### SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Farrell, Chair  
Budget and Finance Committee

FROM: Linda Wong, Committee Clerk

DATE: November 18, 2014

SUBJECT: **COMMITTEE REPORT**

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting on Tuesday, November 18, 2014. This item was acted upon at the Special Budget and Finance Committee Meeting on Monday, November 17, 2014, at 12:00 p.m., by the vote indicated.

#### **Item No. 42 File 141024**

**[Police Code - Fair Scheduling and Treatment of Formula Retail Employees]**  
Ordinance amending the Police Code to require Formula Retail Establishments to provide employees with two weeks notice of work schedules, notice of changes to work schedules, and compensation for schedule changes made on less than seven days notice and unused on-call shifts; and to provide part-time employees with the same starting rate of hourly pay, access to time off, and eligibility for promotions, as provided to full-time employees.

**AMENDED**, on Page 5, Line 9, by deleting "one" and adding "20"; and Line 15, by adding "For the purpose of calculating the 20-employee threshold referenced herein, Employees performing work in other Formula Retail Establishments in the City that are owned or operated under the same trade name by the same Employer shall be counted" by the following vote:

Vote: Supervisor Mar - Aye  
Supervisor Avalos - No  
Supervisor Farrell - Aye

**AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE by the following vote:**

Vote: Supervisor Mar - Aye  
Supervisor Avalos - Aye  
Supervisor Farrell - Aye

**RECOMMENDED AS AMENDED AS A COMMITTEE REPORT by the following vote:**

Vote: Supervisor Mar - Aye  
Supervisor Avalos - Aye  
Supervisor Farrell - No

c: Board of Supervisors  
Angela Calvillo, Clerk of the Board  
Jon Givner, Deputy City Attorney  
Rick Caldeira, Legislative Deputy Director

[Police Code - Fair Scheduling and Treatment of Formula Retail Employees]

1  
2  
3 **Ordinance amending the Police Code to require Formula Retail Establishments to**  
4 **provide employees with two weeks' notice of work schedules, notice of changes to**  
5 **work schedules, and compensation for schedule changes made on less than seven**  
6 **days' notice and unused on-call shifts; and to provide part-time employees with the**  
7 **same starting rate of hourly pay, access to time off, and eligibility for promotions, as**  
8 **provided to full-time employees.**

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

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

17       Section 1. The Police Code is hereby amended by adding Article 33G, consisting of  
18       Sections 3300G.1 through 3300G.18, to read as follows:

19                   **ARTICLE 33G: PREDICTABLE SCHEDULING AND FAIR TREATMENT**

20                                   **FOR FORMULA RETAIL EMPLOYEES**

21       **SEC. 3300G.1. TITLE.**

22                   *This Article shall be known as the "Predictable Scheduling and Fair Treatment for Formula*  
23       *Retail Employees Ordinance."*

1 SEC. 3300G.2. FINDINGS AND PURPOSE.

2 (a) Formula retail establishments are a major employment base in the City and County of San  
3 Francisco ("City"). As of September 2014, there were approximately 1,250 formula retail  
4 establishments in the City, accounting for 12% of all retailers. There are approximately 35,000  
5 persons employed by these formula retail establishments in the City, accounting for approximately 5 to  
6 6% of the City's total wage and salary employment. The City has a strong interest in ensuring that the  
7 jobs these formula retail establishments provide allow employees to meet their basic needs and achieve  
8 economic security.

9 (b) Erratic and on-call scheduling practices have become pervasive in formula retail  
10 establishments, particularly in stores and restaurants and bars, which together represent 83% of  
11 formula retail establishments in the City. Nationally, almost two-thirds of food service employees and  
12 half of formula retail store employees receive their work schedules one week or less in advance. The  
13 majority of these employees experience significant fluctuations in their work hours from week to week  
14 and month to month. According to a recent survey of employees at chain stores and large stores, only  
15 40% of those surveyed have consistent minimum hours per week, one quarter of the employees are  
16 scheduled for on-call shifts, and the vast majority find out from a supervisor if they are needed for the  
17 on-call shift only two hours before the shift starts.

18 (c) Erratic scheduling practices also impact janitors and security guards who contract  
19 with formula retail establishments. A recent study by sociologists at the University of Chicago  
20 indicated that 66 percent of janitors nationwide experience fluctuating schedules, 50 percent  
21 report that their employer decides the timing of their work without their input, and 40 percent  
22 report schedule changes with less than one-week notice.

23 (de) Many formula retail establishments use computer software that automatically generates  
24 work schedules for their employees. The schedules generated by such software are frequently erratic  
25 and unpredictable, and provide employees with minimal notice of their upcoming shifts. Companies

1 seldom encourage managers to adjust those schedules to accommodate the needs of their employees. A  
2 recent national study shows that although companies could use the software to provide predictable  
3 schedules and greater notice to their employees, few have done so. An August 2014 New York Times  
4 article described how Starbucks Coffee uses this software to create the schedules of its 130,000  
5 baristas, often resulting in an unpredictable and erratic work schedule for employees. Soon after the  
6 article's publication, Starbucks announced that it planned to change its policy to give employees more  
7 advance notice of their work schedules and give managers more latitude to accommodate the needs of  
8 employees.

9 (e) Many employees of San Francisco formula retail establishments are impacted by  
10 unpredictable scheduling practices such as frequent and last-minute changes to their work schedules  
11 and use of "on-call" scheduling. In a recent survey of food retail employees in four regions of  
12 California – including the San Francisco Bay Area – 25% of employees reported employers requiring  
13 availability for on-call shifts, and almost half of employees reported having little or no input on their  
14 work schedules. Unpredictable scheduling practices and last-minute work schedule changes cause  
15 workers who are already struggling with low wages to live in a constant state of insecurity about when  
16 they will work or how much they will earn on any given day.

17 (f) Unpredictable work scheduling practices are detrimental to San Francisco employees and  
18 their families because they (1) lead to income instability, making it hard for employees to plan their  
19 finances and obtain economic security; (2) create work-family conflicts that make it difficult for  
20 employees to plan their child care, care giving duties, and transportation; and (3) prevent part-time  
21 employees from pursuing educational opportunities or holding a second or third job that such workers  
22 may need to make ends meet. Retail industry research in New York City found that more than half of  
23 family caregivers in the retail industry must be available for on-call shifts, forcing them to arrange for  
24 child or elder care at the last minute. Women are more likely than men to work part-time and  
25

1 experience unpredictability in their work schedules; one study found that women were 64% of the  
2 frontline part-time workforce among retail workers.

3 (gf) As of September 2014, according to the Bureau of Labor Statistics, there were 7.3 million  
4 “involuntary part-time workers” in the United States. These individuals were working part-time  
5 because their hours had been cut back or because they were unable to find a full-time job. According  
6 to Census data, since 2006, the number of “involuntary part-time employees” in California nearly  
7 tripled to 1.1 million employees. According to the Bureau of Labor Statistics, less than half of the retail  
8 workforce nationwide works full time, and the number of those working fewer than 20 hours per week  
9 has grown by 14% in the past decade. In 2012, nearly 111,000 employees in the City – approximately  
10 23% of the City’s workforce – were employed part-time. Employers sometimes treat part-time  
11 employees less favorably than full-time employees. For example, the majority of full-time employees  
12 nationally earn more per hour than their part-time counterparts.

13 (hg) Half of formula retailers in the City each have more than 1,000 locations nationwide,  
14 whereas only 5% of formula retailers in the City have less than 20 locations nationwide. Given the  
15 number of employees working for formula retail establishments in the City, these businesses are well  
16 positioned to implement fair and predictable scheduling practices for their employees. Even some  
17 small local businesses in the City that do not meet the definition of “formula retail” have implemented  
18 predictable scheduling practices such as giving employees 14 days’ advance notice of their schedules.

19 (ij) The purpose of this Article 33G is to provide formula retail employees with more  
20 predictable, stable work schedules that are essential to their ability to earn a living and ensure a  
21 healthy and decent life for themselves and their families, and to ensure that part-time employees in  
22 formula retail establishments are treated fairly and equally compared to their full-time counterparts.

23  
24 **SEC. 3300G.3. DEFINITIONS.**

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

1 "Agency" shall mean the City's Office of Labor Standards Enforcement.

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

3 "Employee" shall have the same meaning as the definition of "Employee" in Section 12R.3 of  
4 the Minimum Wage Ordinance (Administrative Code Chapter 12R), as amended from time to time,  
5 except that Employee shall also mean any Person who, in a particular week, is scheduled for an On-  
6 Call Shift for at least two hours for an Employer within the geographic boundaries of the City,  
7 regardless of whether the person is required to report to work for such shift.

8 "Employer" shall mean any Person that owns or operates a Formula Retail Establishment with  
9 20 or more Employees in the City, including corporate officers or executives, who directly or  
10 indirectly or through an agent or any other person, including through the services of a temporary  
11 services or staffing agency or similar entity, employs or exercises control over the wages, hours, or  
12 working conditions of any individual. For the purpose of calculating the 20-employee threshold  
13 referenced herein, Employees performing work in other Formula Retail Establishments in the  
14 City that are owned or operated under the same trade name by the same Employer shall be  
15 counted. For the purpose of calculating the 20-employee threshold referenced herein,  
16 Employees performing work in other Formula Retail Establishments in the City that are owned  
17 or operated under the same trade name by the same Employer shall be counted.  
18 Notwithstanding the foregoing definition, "Employer" does not include a Nonprofit Corporation or  
19 governmental entity.

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

23 "Full-time" shall mean 35 or more hours of work in each work week.



1           "On-Call Shift" shall mean any shift for which an Employee must, less than 24 hours in  
2 advance of the start of the shift, either contact the Employer or wait to be contacted by the Employer to  
3 learn whether the Employer requires the Employee to report to work for the shift.

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

7           "Part-time" shall mean fewer than 35 hours of work in each work week.

8           "Property Services Contractor" shall mean any contractor or subcontractor of an  
9 Employer that provides janitorial and/or security services to the Employer at a Formula Retail  
10 Establishment in San Francisco covered by this Article 33G.

11  
12           **SEC. 3300G.4. ADVANCE NOTICE OF WORK SCHEDULES AND CHANGES IN WORK**  
13 **SCHEDULES.**

14           (a) Initial Estimate of Minimum Hours.

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

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

24           (b) Two Weeks' Notice of Work Schedules.  
25

1           An Employer shall provide its Employees with at least two weeks' notice of their work schedules  
2 by doing one of the following at least every 14 days (on a "Biweekly Schedule"): (1) posting the work  
3 schedule in a conspicuous place at the workplace that is readily accessible and visible to all  
4 Employees, or (2) transmitting the work schedule by electronic means, so long as all Employees are  
5 given access to the electronic schedule at the workplace. For new Employees, an Employer shall  
6 provide the new Employee on his or her first day of employment with an initial work schedule that runs  
7 through the date that the next Biweekly Schedule for existing Employees is scheduled to be posted or  
8 distributed; thereafter, the Employer shall include the new Employee in an existing Biweekly Schedule  
9 with other Employees. For all Employees, the work schedule shall include any On-Call Shifts, where  
10 applicable. If the Employer changes the work schedule after it is posted and/or transmitted, such  
11 changes shall be subject to the notice and compensation requirements set forth in subsection (c) of this  
12 Section 3330G.4.

13           (c) Notice and Compensation For Schedule Changes.

14           (1) Notice Required. An Employer shall provide an Employee notice of any change to  
15 the Employee's schedule that has been posted or transmitted pursuant to subsection (b) of this Section  
16 3300G.4. The Employer shall provide such notice by in-person conversation, telephone call, or email,  
17 text message, or other electronic communication. This notice requirement shall not apply to any  
18 schedule changes that the Employee requests, such as Employee-requested sick leave, time off, shift  
19 trades, or additional shifts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16                   (g) The requirements imposed by this Section 3300G.4 shall apply to Property  
17 Services Contractors as to work performed in San Francisco at a Formula Retail  
18 Establishment covered by this Article 33G, under a contract with an Employer. An Employer  
19 shall include in any such contract executed on or after the operative date of this Article 33G,  
20 (1) a provision requiring the Property Services Contractor to comply with this Article and (2) a  
21 copy of this Article. The Employer shall retain copies of such contracts for a period of not less  
22 than three years following the expiration or termination of the contract, and make such copies  
23 available to the Agency for inspection upon request. In addition, Sections 3300G.6, 3300G.7,  
24 3300G.9, 3300G.10, and 3300G.11 of this Article shall apply to a Property Services  
25

1 Contractor as if it is an Employer for purposes of notice, record retention, compliance,  
2 investigation, and enforcement of the requirements of this Section 3300G.4.

3  
4 **SEC. 3300G.5. EQUAL TREATMENT FOR PART-TIME EMPLOYEES.**

5 (a) Hourly Wage. Employers shall provide Part-Time Employees with the same starting hourly  
6 wage as that provided to starting Full-Time Employees who hold jobs that require equal skill, effort,  
7 and responsibility, and that are performed under similar working conditions, provided that hourly pay  
8 differentials between Part-Time and Full-Time Employees are permissible if such differentials are  
9 based on reasons other than the Part-Time status of the Employee, such as a seniority system, merit  
10 system, system which measures earnings by quantity or quality of production, performance or  
11 responsibilities. This subsection (a) shall not affect the minimum hourly requirements for receipt of  
12 benefits including but not limited to health care benefits.

13 (b) Access to Time Off. Employers shall provide Part-Time Employees with the same access to  
14 Employer-provided paid and unpaid time off as that afforded to Full-Time Employees for the same job  
15 classification. A Part-Time Employee's eligibility for Employer-provided paid or unpaid time off may  
16 be pro-rated based on the number of hours that the Part-Time Employee works. This subsection (b)  
17 shall not apply to Employers that are subject to the Minimum Compensation Ordinance, Administrative  
18 Code Chapter 12P.

19 (c) Eligibility for Promotions. Employers shall provide Part-Time Employees with the same  
20 eligibility for promotions as that afforded to Full-Time Employees for the same job classification,  
21 provided that an Employer may condition eligibility for promotion on the Employee's availability for  
22 Full-Time employment and on reasons other than the Part-Time status of the Employee, such as nature  
23 and amount of work experience.

24 (g) The requirements imposed by this Section 3300G.5 shall apply to Property  
25 Services Contractors as to work performed in San Francisco at a Formula Retail

1 Establishment covered by this Article 33G, under a contract with an Employer. An Employer  
2 shall include in any such contract executed on or after the operative date of this Article 33G,  
3 (1) a provision requiring the Property Services Contractor to comply with this Article and (2) a  
4 copy of this Article. The Employer shall retain copies of such contracts for a period of not less  
5 than three years following the expiration or termination of the contract, and make such copies  
6 available to the Agency for inspection upon request. In addition, Sections 3300G.6, 3300G.7,  
7 3300G.9, 3300G.10, and 3300G.11 of this Article shall apply to a Property Services  
8 Contractor as if it is an Employer for purposes of notice, record retention, compliance,  
9 investigation, and enforcement of the requirements of this Section 3300G.5.

10  
11 **SEC. 3300G.6. NOTICE OF EMPLOYEE RIGHTS.**

12 (a) The Agency shall, no later than the operative date of this Article 33G, publish and make  
13 available to Employers, in English, Spanish, Chinese, Tagalog, and all languages spoken by more than  
14 5% of the San Francisco workforce, a notice suitable for posting by Employers in the workplace  
15 informing applicants and Employees of their rights under this Article. The Agency shall update this  
16 notice on December 1 of any year in which there is a change in the languages spoken by more than 5%  
17 of the San Francisco workforce.

18 (b) Employers shall post the notice described in subsection (a) in a conspicuous place at every  
19 workplace, job site, or other location in San Francisco under the Employer's control frequently visited  
20 by its Employees who perform work at the Employer's Formula Retail Establishment(s). The notice  
21 shall be posted in English, Spanish, Chinese, Tagalog, and any language spoken by at least 5% of the  
22 Employees at the workplace, job site, or other location at which it is posted.

23  
24 **SEC. 3300G.7. REQUIREMENTS GOVERNING RETENTION OF RECORDS.**

1           (a) Employers shall retain work schedules and payroll records pertaining to Employees for  
2 three ~~four~~ years, and shall allow the Agency access to such records, with appropriate notice and  
3 during business hours, to monitor compliance with the requirements of this Article 33G.

4           (b) The Director of the Agency or the Director's designee shall have access to all places of  
5 labor subject to this Article 33G during business hours to inspect books and records, interview  
6 employees, and investigate such matters necessary or appropriate to determine whether an Employer  
7 has violated any provisions of this Article.

8           (c) Where an Employer does not maintain or retain adequate records documenting compliance  
9 with this Article 33G or does not allow the Agency reasonable access to such records, it shall be  
10 presumed that the Employer did not comply with this Article, absent clear and convincing evidence  
11 otherwise.

12  
13 **SEC. 3300G.8. CONFLICT WITH FAMILY FRIENDLY WORKPLACE ORDINANCE.**

14           If there is an unavoidable conflict between any requirement of this Article 33G and any  
15 requirement of the San Francisco Family Friendly Workplace Ordinance, Chapter 12Z of the  
16 Administrative Code, the requirements of this Article the San Francisco Family Friendly  
17 Workplace Ordinance, Chapter 12Z of the Administrative Code shall prevail.

18  
19 **SEC. 3300G.9. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

20           (a) It shall be unlawful for an Employer or any other Person to interfere with, restrain, or deny  
21 the exercise of, or the attempt to exercise, any right protected under this Article 33G.

22           (b) It shall be unlawful for an Employer to discharge, threaten to discharge, demote, suspend,  
23 or otherwise take adverse employment action against any Employee in retaliation for exercising rights  
24 protected under this Article 33G. Such rights include but are not limited to:

1                   (1) the right to request a modification to the initial proposed work schedule provided  
2 under Section 3300G.4(a);

3                   (2) the right to inform any person about an Employer's alleged violation of this Article;

4                   (3) the right to file a complaint with the Agency alleging a violation of this Article;

5                   (4) the right to cooperate with the Agency or other persons in the investigation or  
6 prosecution of any alleged violation of this Article;

7                   (5) the right to oppose any policy, practice, or act that is unlawful under this Article;

8 and

9                   (6) the right to inform any person of his or her rights under this Article.

10  
11 **SEC. 3300G.10. INVESTIGATION AND ADMINISTRATIVE ENFORCEMENT BY THE**  
12 **AGENCY.**

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

15                   (b) Determination of Violation and Penalties.

16                   (1) Where the Agency has reason to believe that a violation has occurred, it may order  
17 any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending  
18 completion of a full investigation.

19                   (2) After investigating a possible violation of this Article 33G, and providing the  
20 Employer the opportunity to respond to the allegations, if the Agency determines that a violation has  
21 occurred, it may issue a Determination of Violation. The Determination of Violation shall identify the  
22 violation and the factual basis for the determination. The Agency shall serve the Determination of  
23 Violation on the Employer by United States mail and the date of service shall be the date of mailing. In  
24 the Determination of Violation, the Agency may order any appropriate relief, provided, however, that  
25 during the first six months following the operative date of this Article 33G, the Agency must



1 issue warnings and notices to correct. Thereafter, the Agency may order relief including, but  
2 not limited to, requiring the Employer to offer payment of lost wages to the Employee or person whose  
3 rights under this Article were violated, and the payment of an additional sum as an administrative  
4 penalty in the amount of \$50 to each Employee or person whose rights under this Article were violated  
5 for each day that the violation occurred or continued. To compensate the City for the costs of  
6 investigating and remedying the violation, the Agency may also order the violating Employer to pay to  
7 the City an amount that does not exceed its enforcement costs.

8 (c) Appeal Procedure. An Employer may appeal from a Determination of Violation in  
9 accordance with the following procedures:

10 (1) Any appeal from a Determination of Violation (referred to in this subsection (c) as  
11 "Appeal") shall be filed in writing by the party filing the Appeal (referred to as "Appellant") within 15  
12 days of the date of service of the Determination of Violation. Appellant shall file the Appeal with the  
13 City Controller and serve a copy on the Agency. Failure by the Appellant to file a timely, written  
14 Appeal shall constitute concession to the violation, and the violation shall be deemed final upon  
15 expiration of the 15-day period.

16 (2) Following the filing of the Appeal and service of a copy on the Agency, the Agency  
17 shall promptly afford Appellant an opportunity to meet and confer in good faith regarding possible  
18 resolution of the Determination of Violation in advance of further proceedings under this subsection  
19 (c), with the intention that such meeting occur within 30 days of the date the Appeal is filed if feasible.

20 (3) After the expiration of 30 days following the date the Appeal is filed, any party may  
21 request in writing, with concurrent notice to all other parties, that the Controller appoint a hearing  
22 officer to hear and decide the appeal. If no party requests appointment of a hearing officer, the Notice  
23 of Violation shall be deemed final on the 60th day after the date the Appeal is filed.

24 (4) Within 15 days of receiving a written request for appointment of a hearing officer,  
25 the Controller shall appoint an impartial hearing officer who is not part of the Agency and immediately

1 notify the Agency and Appellant, and their respective counsel or authorized representative if any, of the  
2 appointment. The appointed hearing officer shall be an Administrative Law Judge with not fewer than  
3 two years experience in labor or employment law and/or wage and hour matters, or an attorney with  
4 not fewer than five years' experience in labor or employment law and/or wage and hour matters.

5 (5) The hearing officer shall promptly set a date for a hearing. The hearing must  
6 commence within 45 days of the date of the Controller's notice of appointment of the hearing officer,  
7 and conclude within 75 days of such notice. The hearing officer shall conduct a fair and impartial  
8 evidentiary hearing in conformance with the time limitations set forth in this subsection (c)(5) and in  
9 any applicable rules and regulations, so as to avoid undue delay in the resolution of any Appeal. The  
10 hearing officer shall have the discretion to extend the times under this subsection (c)(5), and any time  
11 requirements under any applicable rules and regulations, only upon a determination of good cause.

12 (6) Appellant shall have the burden of proving by a preponderance of the evidence that  
13 the basis for the Determination of Violation, and/or the amount of lost wages, interest, or penalty  
14 payments at issue in the Appeal, is incorrect.

15 (7) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a  
16 written decision affirming, modifying, or dismissing the Determination of Violation. The decision of the  
17 hearing officer shall consist of findings and a determination. The hearing officer's findings and  
18 determination shall be the final administrative determination.

19 (8) Appellant may appeal a final administrative determination only by filing in San  
20 Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure,  
21 section 1094.5, et seq., as applicable and as may be amended from time to time.

22 (9) Failure to appeal a Determination of Violation shall constitute a failure to exhaust  
23 administrative remedies, which shall serve as a complete defense to any petition or claim brought by  
24 the Employer against the City regarding the Agency's Determination of Violation.

1 (d) Compliance. Where prompt compliance with a Determination of Violation is not  
2 forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including  
3 referring the action to the City Attorney to consider initiating a civil action pursuant to Section  
4 3300G.11.

5 (e) Reporting Violations. An Employee or any individual who has reason to believe that a  
6 violation of this Article 33G has occurred may report to the Agency any suspected violation of this  
7 Article. The Agency shall encourage reporting pursuant to this subsection (e) by keeping confidential,  
8 to the maximum extent permitted by applicable laws, the name and other identifying information of the  
9 individual reporting the suspected violation; provided, however, that with the authorization of the  
10 reporting individual, the Agency may disclose his or her name and identifying information as necessary  
11 to enforce this Article or for other appropriate purposes.

12 (f) Report to the Board of Supervisors. By no later than January 31, 2016, January 31, 2017,  
13 and January 31, 2018, and then January 31st of every even-numbered year thereafter, the Agency shall  
14 provide a written report to the Board of Supervisors regarding this Article 33G. The report shall  
15 include, but not be limited to, a discussion of the implementation and enforcement of this Article,  
16 including the number of violations and the penalties assessed in the prior year (prior two years,  
17 starting with the report due by January 31, 2020). The report may also include recommendations for  
18 possible improvements to this Article.

19  
20 **SEC. 3300G.11. CIVIL ENFORCEMENT.**

21 The City Attorney or any Employee or applicant for employment aggrieved by a violation  
22 of this Article 33G may bring a civil action in a court of competent jurisdiction against an Employer,  
23 for violating any requirement of this Article and, upon prevailing, shall be entitled to such legal or  
24 equitable relief as may be appropriate to remedy the violation including, without limitation, the  
25 payment of lost wages, the payment of an additional sum as a civil penalty not to exceed the amount

1 awarded for lost wages, and reinstatement in employment and/or injunctive relief, and shall be  
2 awarded reasonable attorneys' fees and costs; provided, however, that any person or entity  
3 enforcing this Article on behalf of the public as provided for under applicable state law shall,  
4 upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable  
5 attorneys' fees and costs.  
6

7 **SEC. 3300G.12. AGENCY MAY ADOPT REGULATIONS.**

8 The Agency may promulgate appropriate guidelines or rules to implement this Article 33G.  
9 Such guidelines or rules shall be consistent with this Article and may be relied on by Employers,  
10 Employees, and other persons to determine their rights and responsibilities under this Article. Such  
11 guidelines or rules may establish procedures for ensuring fair, efficient, and cost-effective  
12 implementation and enforcement of this Article, including supplementary procedures for helping to  
13 inform Employees of their rights under this Article and for monitoring Employer compliance.  
14

15 **SEC. 3300G.13. WAIVER UNDER COLLECTIVE BARGAINING AGREEMENT.**

16 ~~\_\_\_\_\_ A bona fide collective bargaining agreement may waive all or any portion of the~~  
17 ~~applicable requirements of this Article 33G, provided the agreement explicitly states the~~  
18 ~~waiver in clear and unambiguous terms. In the event of a conflict between a requirement of~~  
19 ~~this Article and a requirement of a collective bargaining agreement, the requirement of the~~  
20 ~~collective bargaining agreement shall control.~~  
21

22 **SEC. 3300G.1314. NO LIMITATION OF OTHER RIGHTS AND REMEDIES.**

23 This Article 33G does not in any way limit the rights and remedies that the law otherwise  
24 provides to Employees, including but not limited to the rights to be free from wrongful termination and  
25 unlawful discrimination.

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**SEC. 3300G.1415. SEVERABILITY.**

*If any section, subsection, sentence, clause, phrase, or word of this Article 33G, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Article. The Board of Supervisors hereby declares that it would have passed this Article and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Article or application thereof would be subsequently declared invalid or unconstitutional.*

**SEC. 3300G.1516. NO CONFLICT WITH FEDERAL OR STATE LAW.**

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

**SEC. 3300G.1617. UNDERTAKING FOR THE GENERAL WELFARE.**

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

**SEC. 3300G.1718. OPERATIVE DATE.**

*This Article 33G shall become operative ~~90~~ 180 days after its effective date.*

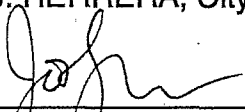
Section 3. Effective and Operative Dates.

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(a) 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.

(b) Operative Date. As stated in Section 3300G.~~1718~~ of the Police Code, this ordinance shall become operative ~~90~~ 180 days after the effective date.

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

By:   
\_\_\_\_\_  
JOSHUA WHITE  
Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Police Code - Fair Scheduling and Treatment of Formula Retail Employees]

**Ordinance amending the Police Code to require formula retail establishments to provide employees with two weeks' notice of work schedules, notice of changes to work schedules, and compensation for schedule changes made on less than seven days' notice and unused on-call shifts, and to provide part-time employees with the same starting rate of hourly pay, access to time off, and eligibility for promotions, as provided to full-time employees.**

Existing Law

No City law requires Formula Retail Establishments to provide advance notice of employee work schedules and schedule changes, compensation for schedule changes and on-call shifts, or equal treatment of part-time employees.

Amendments to Current Law

This proposed ordinance applies to "Formula Retail Establishments," defined as businesses located in San Francisco that fall under the Planning Code's definition of "Formula Retail Use," with 20 or more employees in San Francisco and with 20 or more locations worldwide. If the Planning Code's definition of "Formula Retail Use" is changed, the definition of "Formula Retail Establishment" would automatically change to duplicate the "Formula Retail Use" definition.

This proposed ordinance also applies to "Property Services Contractors," defined as contractors or subcontractors of Formula Retail Establishments that provide janitorial and/or security services to Formula Retail Establishments.

The ordinance would require Formula Retail employers to provide their employees in the City with the following:

- Initial Estimate of Minimum Hours: Prior to the start of employment, provide an initial estimate of the employee's expected minimum number of scheduled shifts per month, and the days and hours of those shifts.
- Two Weeks' Notice of Schedules: Provide all employees with two weeks' advance notice of work schedules ("Biweekly Schedules").
- Notice of Schedule Changes: Provide advance notice of any changes to the employee's Biweekly Schedule.
- Predictability Pay: For each schedule change the employer makes on less than seven days' notice, the employer must provide the following compensation (in addition to the employee's regular pay for working the shift): (a) one hour of pay for each shift change made with less than seven days' notice but 24 hours' or more notice, and (b) between

AMENDED IN BOARD  
11/18/14

FILE NO. 141024

two and four hours of pay, depending on the duration of the shift, for each shift change made with less than 24 hours' notice.

- On-Call Shift Pay: For each on-call shift for which the employee is required to be available but is not in fact called in to work, the employer must provide between two and four hours of pay, depending on the duration of the on-call shift.

The ordinance provides that the advance notice requirement, as well as the predictability pay and on-call shift pay requirements, do not apply under certain specified circumstances.

The ordinance also requires Formula Retail Establishments to provide equal treatment to part-time employees regarding (1) starting hourly wage, (2) access to employer provided time off, and (3) eligibility for promotions, subject to certain qualifications.

Formula Retail Establishments would be required to post a notice of employees' rights under the ordinance at the workplace and retain employee work schedules and payroll records for three years.

The ordinance prohibits a Formula Retail Establishment or any other party from taking adverse action against any person in retaliation for exercising their rights under the ordinance.

The Office of Labor Standards Enforcement ("OLSE") would be responsible for implementing and enforcing the ordinance. Following an investigation, OLSE could issue a Determination of Violation and order any appropriate relief including requiring the employer to pay lost wages and an additional administrative penalty of \$50 to each employee or person whose rights were violated for each day that the violation occurred or continued. An employer that OLSE determined was in violation of the ordinance could appeal that decision, with the appeal heard by a hearing officer appointed by the Controller's Office.

The City Attorney could bring a civil action in court against an Employer for violating the ordinance.

The ordinance would become operative 180 days after its effective date.

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## Carroll, John (BOS)

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**From:** Board of Supervisors (BOS)  
**Sent:** Tuesday, November 18, 2014 1:17 PM  
**To:** Somera, Alisa (BOS)  
**Cc:** Carroll, John (BOS); Lamug, Joy  
**Subject:** File 140880 and 141024 FW: BOMA San Francisco Commentary - Formula Retail Employer Requirements

**Importance:** High

**Categories:** 141024, 140880

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**From:** John Bozeman [mailto:johnb@boma.com]  
**Sent:** Tuesday, November 18, 2014 10:49 AM  
**To:** Chiu, David (BOS); Mar, Eric (BOS); Farrell, Mark (BOS); Tang, Katy (BOS); BreedStaff (BOS); Kim, Jane (BOS); Yee, Norman (BOS); Wiener, Scott; Campos, David (BOS); Cohen, Malia (BOS); Avalos, John (BOS)  
**Cc:** True, Judson; Pagoulatos, Nickolas (BOS); Stefani, Catherine; Kelly, Margaux (BOS); Tang, Katy (BOS); Summers, Ashley (BOS); Board of Supervisors (BOS); Brown, Vallie (BOS); Veneracion, April (BOS); Scanlon, Olivia (BOS); Taylor, Adam (BOS); Ronen, Hillary; Chan, Yoyo (BOS); Hsieh, Frances (BOS)  
**Subject:** BOMA San Francisco Commentary - Formula Retail Employer Requirements  
**Importance:** High

Good Morning Supervisors,

At your meeting today, you will have the opportunity to consider two items that address employee management and retention at Formula Retail establishments in San Francisco. Amendments to the ordinances at yesterday's Budget and Finance Committee meeting - without consultation to the small business community or BOMA San Francisco - were approved and **both pieces of legislation now apply to janitorial and security employers who contract with formula retailers, even if those contractors do not qualify as formula retailers.**

**On behalf of the small business community and our membership, I respectfully request that you strongly consider sending both measures back to the Budget and Finance Committee for further review and discussion with employers directly impacted by the legislation.**

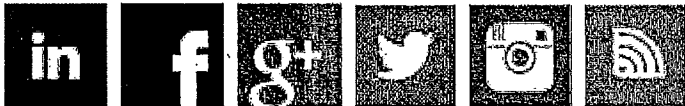
There are two ordinances are:

- **Agenda Item 41; File # 140880**
  - Police Code - Hours and Retention Protections for Formula Retail Employees
    - Abstract
      - Ordinance amending the Police Code to regulate the operation of Formula Retail Establishments, including requiring employers to offer additional hours of work, when available, to current part-time employees; and requiring successor employers to retain employees for 90 days upon a change in control of the business.
- **Agenda Item 42, File # 141024**
  - Police Code - Fair Scheduling and Treatment of Formula Retail Employees
    - Abstract
      - Ordinance amending the Police Code to require Formula Retail Establishments to provide employees with two weeks notice of work schedules, notice of changes to work schedules, and compensation for schedule changes made on less than seven days notice and unused on-call shifts; and to provide part-time employees with the same starting

rate of hourly pay, access to time off, and eligibility for promotions, as provided to full-time employees.

Thank you for your kind consideration.

John M. Bozeman  
Manager, Government and Public Affairs  
Building Owners and Managers Association of San Francisco  
233 Sansome Street, 8th Floor  
San Francisco, CA 94104  
Cell: (415) 686-9652



1415-RBM-04

**Youth Commission**  
City Hall ~ Room 345  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4532



(415) 554-6446  
(415) 554-6140 FAX  
[www.sfgov.org/youth\\_commission](http://www.sfgov.org/youth_commission)

**YOUTH COMMISSION**  
**MEMORANDUM**

**TO:** Linda Wong, Committee Clerk, Budget and Finance Committee  
**FROM:** Youth Commission  
**DATE:** Wednesday November 5, 2014  
**RE:** Referral response to BOS File No. 141024

---

At our regular meeting of **Monday, November 3, 2014** the Youth Commission voted unanimously to support the following motion:

**To support BOS File No. 141024, Ordinance amending the Police Code to require Formula Retail Establishments to provide employees with two weeks' notice of work schedules, notice of changes to work schedules, and compensation for schedule changes made on less than seven days' notice and unused on-call shifts, and to provide part-time employees with the same starting rate of hourly pay, access to time off, and eligibility for promotions, as provided to full-time employees.**

\*\*\*

**During discussion on this item, the youth commission proposed and unanimously approved the following comments regarding this legislation:**

The Youth Commission recommends that Board of Supervisors request the Office of Labor Standards and Enforcement to include data concerning cases reported by, and the ordinance's effects on, transitional age youth workers 18-24 as well as young workers under 18 years old in OLSE's annual evaluation and report to the Board of Supervisors on the ordinance.

Please inform us of forward movement on this item.

If you have any questions about these recommendations or anything related to the Youth Commission, please don't hesitate to contact our office at (415) 554-6446 or your Youth Commissioner.

A handwritten signature in cursive script, appearing to read "Michel Li".

---

Chair, Michel Li  
Adopted on November 3, 2014  
2014-2015 San Francisco Youth Commission

**Wong, Linda (BOS)**

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**From:** Youthcom  
**Sent:** Wednesday, November 05, 2014 4:36 PM  
**To:** Wong, Linda (BOS); BOS-Supervisors; Lee, Edwin (Ma  
**Cc:** Calvillo, Angela (BOS); Major, Erica; Pagoulatos, Nicko  
**Subject:** YC Referral Response to BOS File No. 141024  
**Attachments:** 1415-RBM-04.pdf

**YOUTH COMMISSION  
MEMORANDUM**

**TO:** Linda Wong, Committee Clerk, Budget and Finance Committee  
**FROM:** Youth Commission  
**DATE:** Wednesday November 5, 2014  
**RE:** Referral response to BOS File No. 141024

---

At our regular meeting of **Monday, November 3, 2014** the Youth Commission voted unanimously to support the following motion:

**To support BOS File No. 141024, Ordinance amending the Police Code to require Formula Retail Establishments to provide employees with two weeks' notice of work schedules, notice of changes to work schedules, and compensation for schedule changes made on less than seven days' notice and unused on-call shifts, and to provide part-time employees with the same starting rate of hourly pay, access to time off, and eligibility for promotions, as provided to full-time employees.**

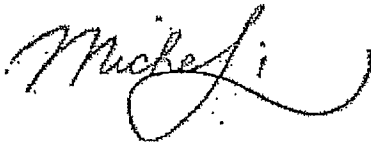
\*\*\*

**During discussion on this item, the youth commission proposed and unanimously approved the following comments regarding this legislation:**

The Youth Commission recommends that Board of Supervisors request the Office of Labor Standards and Enforcement to include data concerning cases reported by, and the ordinance's effects on, transitional age youth workers 18-24 as well as young workers under 18 years old in OLSE's annual evaluation and report to the Board of Supervisors on the ordinance.

Please inform us of forward movement on this item.

If you have any questions about these recommendations or anything related to the Youth Commission, please don't hesitate to contact our office at (415) 554-6446 or your Youth Commissioner.



---

Chair, Michel Li  
Adopted on November 3, 2014  
2014-2015 San Francisco Youth Commission

Adele Failes-Carpenter  
Director  
San Francisco Youth Commission  
Office: (415) 554-7112 | Fax: (415) 554-6140

Visit the official [Youth Commission site](#) and [YC facebook page](#).  
Sign up for [our newsletter](#).

Complete a Board of Supervisors [Customer Satisfaction form](#).

**Wong, Linda (BOS)**

---

**From:** Egan, Ted (CON)  
**Sent:** Monday, November 10, 2014 4:03 PM  
**To:** Wong, Linda (BOS)  
**Cc:** Rosenfield, Ben (CON)  
**Subject:** Item #141024

Linda,

We will not be filing an economic impact report for item 141024, "Fair Scheduling and Treatment of Formula Retail Employees". Upon further research we have determined it would not have a material economic impact on the city.

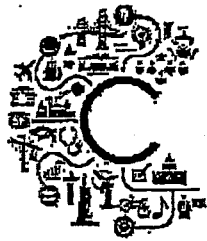
On Wednesday morning we will file a report on the other matter, #140880, "Hours and Retention Protections for Formula Retail Employees"

Thank you,  
Ted

Ted Egan, Ph.D.  
Chief Economist, Office of Economic Analysis  
Controller's Office, City and County of San Francisco  
City Hall Room 316  
San Francisco CA 94117  
(415) 554-5268







**SAN FRANCISCO CHAMBER OF COMMERCE**

Our City. Your Business.

Received Time Nov. 13, 2014 1:48PM No. 2583

Bos 11, B+F  
COB, Clerk,  
Leg Rep

File 141024  
File 140880

**FACSIMILE TRANSMITTAL SHEET**

TO: <i>Angela Calvillo; Clerk of the board</i>	FROM: <i>Jim Lazarus</i>
COMPANY:	PHONE: <i>415.352.8810</i>
FAX NUMBER: <i>415.554-5163</i>	DATE: <i>11/13/14</i>
PHONE NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER: <i>4</i>

RE: *Formula Retail Employee Requirements*

URGENT  FOR REVIEW  PLEASE COMMENT  PLEASE REPLY  PLEASE RECYCLE

NOTES/COMMENTS:

*Please distribute to all Supervisors*



November 13, 2014

TO: Sup. David Chiu

Sup. Eric Mar

Sup. Mark Farrell

FROM: Jim Lazarus

RE: Formula Retail Employer Requirements

This is to follow-up on an earlier memo I sent suggesting changes to Sup. Chiu's Fair Scheduling Ordinance and Sup. Mar's Hours and Retention Ordinance. We appreciate the opportunity to continue to discuss amendments to these two ordinances and look forward to next week's special Budget Committee meeting where significant amendments can be made. As you know, there remain many key points in both ordinances that are troublesome to the Chamber and our members. And we urge you to seriously consider the impacts outlined in Ted Egan's report, such as no new hires in small businesses with less than a 35 hour work week, lack of flexibility to adjust staffing based on time of day/day of week demand.

Because time seems to be of the essence, we set forth below an outline of amendments we urge you to include in any final versions of your legislation;

- 1) In both ordinances "Employer" had been limited to a formula retail establishment with 20 or more employees in the City. This was deleted at yesterday's Budget Committee meeting and we urge the committee to restore that language. Many formula retailers are in fact very small independent franchisees that have limited human resources capabilities and few employees to cover shift changes. Basically, they do not have the flexibility to comply with these proposed mandates.
- 2) "Formula Retail Establishment" should be limited to a business that not only meets the Planning Code definition but has 20 or more world-wide locations and annual gross receipts in the City of at least \$1 million and derives at least 50% of those gross receipts from the sale of goods,

products, food or beverages subject to California sales tax. This is true "retail" and may have the scheduling issues these ordinances are trying to address.

- 3) Sec. 3300F.3 of Sup. Mar's ordinance requires employers to offer additional work to part time employees before hiring additional workers. This will cost jobs and disrupt the long established staffing plans of many businesses. Instead, we suggest a requirement that employers be required to maintain a list of part-time employees willing to work additional hours. However, employers would retain the option of offering additional work hours or hiring additional workers, which is a core management right.
- 4) Sec. 3300F.4 of Sup. Mar's ordinance regarding "Retention of Employees Upon Change of Control" should track language in the existing Hospitality and Grocery Industry Ordinances. We also believe that this provision should only apply to retailers with at least 200 employees at a single city location and should exempt the Hospitality and Grocery Establishments covered by the early legislation. Specific language can be provided.
- 5) Sec. 3300G.4 of Sup. Chiu's ordinance on "Advance Notice of Work Schedules", we suggest that Employers be allowed to post or provide electronically a work schedule not less than 10 rather than 14 calendar days prior to the first scheduled work day. Employers shall give at least 5 days notice to work an unscheduled shift. For restaurant and bars, only 48 hour notice of a shift change would be required. Failure to give at least the 5 day or 48 hour notice, shall result in an Employer requirement to pay an Employee one hour of extra pay at the Employee's regular hourly rate. Failure to give at least 2 days notice, or in the case of restaurant and bars, 24 hours notice, shall result in two hours of extra pay at the regular rate of pay.

Regarding written notice of scheduled shifts on hiring, this is an onerous requirement for many smaller employers who do not use written employment contracts or hiring letters. This is especially true if no language is inserted to limit the legislation's definition of "formula retailer". We suggest that Sec. 3300G.4 (a)(1) be amended to delete the requirement of a pre-hire written work schedule.

- 6) Regarding "on-call shifts", add an exception in Sec. 3300G4(d) of Sup. Chiu's legislation for employees hired specifically to work on call work or the Employee requests "on-call" status.
- 7) Employee rights, recorded keeping, enforcement sections, etc. should conform to provisions in the Family Friendly Flex-time Ordinance, including the waiver under collective bargaining agreements.
- 8) Delete any reference to janitorial or security contractors. There has been absolutely no outreach to these industries and they have no knowledge that these employment rules may apply to them when working for a formula retail business.

Finally, please don't be surprised if additional amendments aren't suggested at the special meeting of the Budget Committee. This is complicated legislation, especially with two pieces that need to be brought into conformity with each other. In fact, if legally possible under the public notice requirements, if we can reach agreement, we urge you to consider sending out of committee one piece of legislation.

We look forward to discussing these important amendments with you.

Cc: Clerk of the Board, to be distributed to all Supervisors; Mayor Lee; Todd Rufo, Director, OEWD; Regina Dick-Endrizzi Executive Director, Office of Small Business

**Wong, Linda (BOS)**

---

**From:** Dick-Endrizzi, Regina (MYR)  
**Sent:** Friday, November 14, 2014 3:20 PM  
**To:** Wong, Linda (BOS)  
**Cc:** Calvillo, Angela (BOS)  
**Subject:** Small Business Commission official response to BOS File No. 141024 & 140880  
**Attachments:** 140880 legislative response \_ Hours and Tentention Protections for Fromul Retail Employees.pdf; 141024 legislative response \_ Fair Scheduling and Treatment of Formula Retail.pdf

Kindly,

**Regina Dick-Endrizzi | Executive Director | Office of Small Business**  
[regina.dick-endrizzi@sfgov.org](mailto:regina.dick-endrizzi@sfgov.org) | D: 415.554.6481 | O: 415.554.6134 | c: 415.902-4573

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**From:** Dick-Endrizzi, Regina (MYR)  
**Sent:** Friday, November 14, 2014 2:50 PM  
**To:** David Chiu ([david.chiu@sfgov.org](mailto:david.chiu@sfgov.org)); Roxas, Samantha (BOS); Calvillo, Angela (BOS); Mar, Eric (BOS); Nickolas Pagoulatos ([nickolas.pagoulatos@sfgov.org](mailto:nickolas.pagoulatos@sfgov.org))  
; Wong, Linda (HSA)  
**Subject:** Small Business Commission official response to BOS File No. 141024 & 140880

Dear Supervisor Chiu, Mar and Angela,  
Attached is the Small Business Commission official response to BOS File No. 141024.

Kindly,

**Regina Dick-Endrizzi | Executive Director | Office of Small Business**  
[regina.dick-endrizzi@sfgov.org](mailto:regina.dick-endrizzi@sfgov.org) | D: 415.554.6481 | O: 415.554.6134 | c: 415.902-4573  
City Hall, Suite 110 | San Francisco, CA 94102

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SMALL BUSINESS COMMISSION  
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

November 12, 2014

Ms. Angela Calvillo, Clerk of the Board  
Board of Supervisors  
City Hall room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102-4694

**Re: File No. 141024 [Police Code - Fair Scheduling and Treatment of Formula Retail Employees]**

**Small Business Commission Recommendation: Recommend the Budget and Finance Committee not to pass the item out of committee and continue for a minimum of two week (less time if issues are resolved), to work with the business community on points of concern with the legislation.**

Dear Ms. Calvillo:

On November 10, 2014, the Small Business Commission (SBC) voted unanimously (5-0) on BOS File No. 141024 to recommend the Budget and Finance Committee not pass this ordinance out of committee and to continue the item for a minimum of two weeks to work with the business community on points of concern with the legislation.

The Small Business Commission requests that Supervisor Chiu and his staff work with the key business stakeholders to resolve the points of concern, several of which are noted in this letter. The Small Business Commission finds this request to delay action for a week or two is a reasonable request since the business community has stated that they want to work together to resolve their concerns. The business community has successfully demonstrated their ability to work together with the recent ground breaking Fair Chance Ordinance, the Family Friendly Ordinance and the Minimum Wage Ordinance.

Over the past several years the City has made a conscious effort to align similar regulatory requirements when establishing new employer mandates. Not only does this accomplish the City's goal to streamline and create efficiencies, it makes it easier for OLSE to track and enforce, and helps to ensure a greater level of compliance from the employer.

Requested changes to BOS File No. 141024:

1. Align with the Family Friendly Workplace Ordinance (FFWO) and Fair Chance Ordinance (FFO) in the following areas:
  - a. Section 3300G.7: change the required record keeping from 4 years to 3 years.



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CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

- b. Simplify record keeping and reporting requirements as was done with FFWO.
  - c. Remove the private right to action, as was done with FFWO and FCO. It is fine to allow the City to bring action against an employer.
  - d. Ensure the administrative enforcement by OLSE is clear, straight-forward and objective as in the FFWO and FCO.
2. The revised Formula Retail regulations have not pass out of the Board of Supervisors or signed into law. The new regulations will include more business sectors currently not classified as Formula Retail and many of these newly classified businesses are not the businesses this legislation is attempting to address. The Small Business Commission's first recommendation is for the Board of Supervisors not to hear this legislation until the Formula Retail regulations become law. As this is unlikely, the Small Business Commission then recommends, as with the Family Friendly Ordinance, for the first 12 months OLSE will issue warnings and notices to correct the violations and not assess penalties.
  3. The definition of part-time worker is consistent with the Affordable Care Act (1 to 29 hours). The ACA defines a full-time worker as 30 or more.
  4. Amend SEC 3300G.4 (a) (1) to read "Prior to the start of employment, an Employer shall provide a new Employee with a starting schedule."
  5. Amend the requirement of the employer to post the employee schedule from 14 days to 10 days and for the restaurant industry 7 days.  
The Commission appreciates an employee's interest in having as much scheduling notification a possible. Many of the businesses cover by this legislation have a large number of employees working at one location. It is very common for employees to request time off or schedule changes with less than a 14 day notice. Thus, a schedule that is produced 14 days out will likely get changed or adjusted several times over. A 10/7 day notice is a good balance and will reduce the number of times and employee will receive a modified schedule.
  6. Amend the predictability pay from 7 day notice to a 3 day notice, except for restaurant and catering industries, which should be 24 hours.  
The proposed schedule of predictability pay is problematic for the Small Business Commission. The Commission acknowledges the goal of predictability pay penalties and appreciates that an employer will not be penalize for granting an employee's schedule change request with 7 days or less notice. The Commission knows the reality of operating a business. It knows the reality of the frequency of having to change and adjust schedules due to employee initiated requests. For businesses with a high number of employees at single location, the majority of the employees are not going to be in the position to know if a schedule is being changed for one of the approved reasons stated in SEC3300G.4 (e)(4) and (5) or not. This is also a key reason for the request to remove the



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OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

private right to action by an employee and to amend the predictability pay 7 days to 3 days/ 24 hour notice. This change will reduce the number of challenges an employee might bring to the employer and OLSE that are legitimate schedule changes.

7. Add an exception under SEC 3300G.4 (e) for "on-call shifts" that are hired specifically for or employee request "on-call" status.

These types of shifts are important for performance artist, students, and individuals that DO want the flexibility of a less predictable schedule.

For simplicity, the Small Business Commission recommends merging both pieces of legislation into one.

The Small Business Commission's above list of recommendations may not be inclusive of all the recommendations for consideration the business community may have. Therefore, the Small Business Commission recommends Supervisor Chiu and his staff work with the business community to ensure all matters that need consideration are dealt with and mitigated.

Sincerely,

Regina Dick-Endrizzi  
Director, Office of Small Business

- cc. Supervisor David, President, Board of Supervisors  
Supervisor Eric Mar, Board of Supervisors  
Board of Supervisors  
Nicole Wheaton, Mayor's Office  
Todd Rufo, Director Office of Economic and Workforce Development  
Linda Wong, Budget and Finance Committee Clerk





SMALL BUSINESS COMMISSION  
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

November 13, 2014: Addendum

At the November 12, 2014 Budget and Finance Committee hearing, the Office of Small Business wants to acknowledge two changes to what is noted above:

1. Item 1(a) has been addressed through a proposed amendment made at Committee.
2. Item 2 is primarily addressed in giving OLSE 6 months to draft regulations, administrative procedures and conduct outreach to the affected business followed by a 6 month grace period before enforcement begins.

A more targeted definition of a Formula Retailer employer still needs to be given consideration. The SF Chamber has a recommended definition that the Small Business Commission will support as it falls within the scope of the Commission's recommendations.

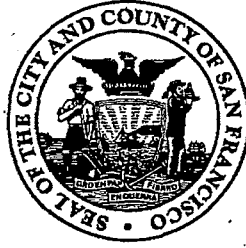
At this meeting the Budget and Finance Committee accepted (2-1) an amendment to change the definition of "Employer" by eliminating the 20 employee threshold. The Small Business Commission does not support this. Thank you Supervisor Chiu for voting not to support the amendment.

Formula Retail franchisees have a unique place in small business world. At the OSB Assistance Center we regularly see individuals who want to open a franchisee. While the business product, branding and marketing are formula retail. These individuals own and operate their businesses the same as a small business. These individuals require the same level of counseling and information as a non-formula retail small business. Franchisees have to conduct the site selection, lease negotiations and handle the conditional use process on their own, just like a small business. They can set their own wages, handle their own scheduling, and often have to retain their own HR and legal services. It is not uncommon for a franchisee seeking business assistance to be an immigrant wanting to own a franchise for the sole purpose of supporting their family.

Therefore, a direct request is being made to the Budget and Finance Committee at its Monday, November 17, 2014 special meeting to delete the proposed amendment and return the definition of "Employer" to the first drafted definition. In the event this is not done then it is requested of the Full Board not to accept the amendment.

The Committee amended File No 141024 to include Property Services Contractors that have contract with Formula Retail operators. The Commission did not support this inclusion with Supervisor Mar's legislation, and will not support with this legislation. These businesses have not been outreach to. More importantly this section is attempting to regulate business to business contractual relationships. The Commission is strongly recommends against the precedent this sets.

President, District 3  
BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel No. 554-7450  
Fax No. 554-7454  
TDD/TTY No. 544-5227

GAOT B:  
BOS II, COB, Comm Cle  
Leg Dep, Dep City Atty  
Frm +

DAVID CHIU  
邱信福  
市參事會主席

PRESIDENTIAL ACTION

Date: 10/29/2014  
To: Angela Calvillo, Clerk of the Board of Supervisors

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
OCT 30 PM 3 01

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. 141024 Chiu  
(Primary Sponsor)  
Title. Fair Scheduling for Formula Retail Employees

From: Government Audit & Oversight Committee  
To: Budget & Finance Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)  
Supervisor \_\_\_\_\_  
Replacing Supervisor \_\_\_\_\_  
For: \_\_\_\_\_ Meeting  
(Date) (Committee)

David Chiu, President

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Regina Dick-Endrizzi, Director  
Small Business Commission, City Hall, Room 448

FROM: Linda Wong, Assistant Clerk, Budget and Finance Committee, Board of Supervisors

DATE: November 7, 2014

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Budget and Finance Committee

The Board of Supervisors' Budget and Finance Committee has received the following substituted legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

**File No. 141024**

**Ordinance amending the Police Code to require Formula Retail Establishments to provide employees with two weeks' notice of work schedules, notice of changes to work schedules, and compensation for schedule changes made on less than seven days' notice and unused on-call shifts; and to provide part-time employees with the same starting rate of hourly pay, access to time off, and eligibility for promotions, as provided to full-time employees.**

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

\*\*\*\*\*  
RESPONSE FROM SMALL BUSINESS COMMISSION - Date: \_\_\_\_\_

No Comment

Recommendation Attached

\_\_\_\_\_  
Chairperson, Small Business Commission

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Ben Rosenfield, Controller, Office of the Controller  
Greg Suhr, Chief of Police, Police Department  
Donna Levitt, Division Manager, Office of Labor Standards Enforcement  
Micki Callahn, Director, Department of Human Resources  
Emily Murase, Executive Director, Department of the Status of Women  
Maria Su, Director, Department of Children, Youth and their Families

FROM: Linda Wong, Assistant Clerk, Budget and Finance Committee, Board of Supervisors

DATE: November 7, 2014

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Budget and Finance Committee has received the following proposed substituted legislation, introduced by Supervisor Chiu on November 4, 2014:

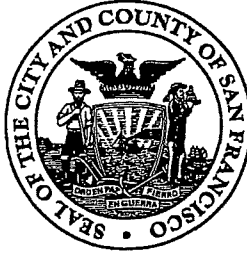
**File No. 141024**

**Ordinance amending the Police Code to require Formula Retail Establishments to provide employees with two weeks' notice of work schedules, notice of changes to work schedules, and compensation for schedule changes made on less than seven days' notice and unused on-call shifts; and to provide part-time employees with the same starting rate of hourly pay, access to time off, and eligibility for promotions, as provided to full-time employees.**

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Christine Fountain, Police Department  
Iris Wong, Department of the Status of Women

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Regina Dick-Endrizzi, Director  
Small Business Commission, City Hall, Room 448

FROM: Erica Major, Assistant Clerk, Government Audit and Oversight Committee,  
Board of Supervisors

DATE: October 6, 2014

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Government Audit and Oversight Committee

The Board of Supervisors' Government Audit and Oversight Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

**File No. 141024**

**Ordinance amending the Police Code to require Formula Retail Establishments to provide employees with two weeks' notice of work schedules, notice of changes to work schedules, and compensation for schedule changes made on less than seven days' notice and unused on-call shifts, and provide part-time employees with the same starting rate of hourly pay, access to time off, and eligibility for promotions as that provided to full-time employees.**

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

\*\*\*\*\*

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: \_\_\_\_\_

No Comment

Recommendation Attached

\_\_\_\_\_  
Chairperson, Small Business Commission

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Ben Rosenfield, Controller, Office of the Controller  
Greg Suhr, Chief of Police, Police Department  
Donna Levitt, Division Manager, Office of Labor Standards Enforcement  
Micki Callahan, Director, Department of Human Resources  
Emily Murase, Executive Director, Department on the Status of Women  
Maria Su, Director, Department of Children, Youth and Their Families

FROM: Erica Major, Assistant Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: October 6, 2014

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Chiu on September 30, 2014:

**File No. 141024**

**Ordinance amending the Police Code to require Formula Retail Establishments to provide employees with two weeks' notice of work schedules, notice of changes to work schedules, and compensation for schedule changes made on less than seven days' notice and unused on-call shifts, and provide part-time employees with the same starting rate of hourly pay, access to time off, and eligibility for promotions as that provided to full-time employees.**

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:  
Monique Zmuda, Deputy City Controller  
Christine Fountain, Police Department  
Iris Wong, Department on the Status of Women

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):

Supervisor David Chiu, *Eric Mar*

Subject:

Police Code - Fair Scheduling and Treatment of Formula Retail Employees

The text is listed below or attached:

See attached.

Signature of Sponsoring Supervisor: *David Chiu*

For Clerk's Use Only:

141024

