

File No. 240333

Committee Item No. 2

Board Item No. 9

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Government Audit and Oversight
Board of Supervisors Meeting:

Date: October 17, 2024
Date: November 5, 2024

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OTHER

- FYI Referral 041024
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Prepared by: Monique Crayton
Prepared by: Monique Crayton
Prepared by: _____

Date: October 11, 2024
Date: October 25, 2024
Date: _____

1 [Police Code - Notice of Supermarket Closure]

2

3 **Ordinance amending the Police Code to require large supermarkets to provide six**
4 **months' notice to their customers and the City before permanently closing, and to**
5 **explore ways to allow for the continued sale of groceries at the location.**

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.
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 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 57, consisting of
14 Sections 5700 through 5705~~6~~, to read as follows:

15

16 **ARTICLE 57: SUPERMARKET CLOSURE ORDINANCE**

17

18 **SEC. 5700. FINDINGS.**

19 (a) Supermarkets are the main points of distribution for food and daily necessities for the
20 residents of San Francisco and are essential to the vitality of a community. The closure of a
21 supermarket can have widespread effects on a community's wellbeing by reducing access to food and
22 creating food insecurity.

23 (b) Food insecurity contributes to poor health and health disparities through multiple
24 pathways: stress, trauma, poor diet quality, and malnutrition. Food insecurity increases the risk of
25

1 multiple chronic conditions, including diabetes, heart disease, and hypertension; exacerbates existing
2 physical and mental health conditions; and can impair child development.

3 (c) Supermarket closures can have an especially dire impact on senior citizens, people with
4 disabilities, and people who lack the means to travel by car or public transportation to supermarkets
5 located outside their neighborhood.

6 (d) To safeguard the interests of workers, including the employees of some supermarkets,
7 federal and state laws require large businesses to notify their employees of their intent to close or
8 transfer ownership of the business.

9 (e) The Board of Supervisors recognizes that a supermarket owner may conclude that it is
10 to its economic advantage to close when it is no longer profitable to continue the supermarket in
11 operation. This Article 57 does not preclude the owner from making such a decision.

12 (f) Nevertheless, given the life-sustaining services a supermarket provides to residents in
13 the neighborhood, and the important role it plays in strengthening and stabilizing the community it
14 serves, an owner has a responsibility as an integral part of that community to undertake a reasonable
15 effort to work with neighborhood residents and the City to explore opportunities to remain open for
16 business, or to identify a replacement supermarket. Through this Article 57, the City seeks to leverage
17 community and City resources to ensure that neighborhoods are not left devoid of supermarkets and
18 residents are not left without access to supermarkets; that supermarkets continue to serve the
19 community even when there is the possibility of a supermarket closure.

20
21 **SEC. 5701. DEFINITIONS.**

22 For purposes of this Article 57, the following definitions apply:

23 “Close for Business” or “Close” or “Closure” means to permanently discontinue operation as
24 a Supermarket at a given location.

1 “Supermarket” has the meaning set forth in Health Code Section 440, as may be amended from
2 time to time.

3 “Supermarket Owner” means the individual or entity that owns the Supermarket, or their agent.

4
5 **SEC. 5702. NOTIFICATION OF INTENT TO CLOSE.**

6 (a) A Supermarket shall not Close for Business unless the Supermarket Owner has:

7 (1) Provided six months’ written notice of the Supermarket’s intention to Close to
8 the Director of the Office of Economic and Workforce Development (OEWD), the Executive Director
9 of the Human Services Agency (HSA), and the Board of Supervisors; and

10 (2) Provided six months’ notice of the Supermarket’s intention to Close to its
11 customers and the public by posting prominent notices at all entries and exits to the Supermarket.

12 (b) Notwithstanding subsection (a), a Supermarket may Close after having provided less
13 than six months’ notice to the Director of OEWD, the Executive Director of HSA, the Board of
14 Supervisors, and the Supermarket’s customers and the public if:

15 (1) The Closure is caused by business circumstances that were not reasonably
16 foreseeable as of the time that notice would have been required; or

17 (2) The Closure is due to a natural disaster or emergency; or

18 (3) As of the time that notice would have been required, the Supermarket was
19 actively seeking capital or business which, if obtained, would have enabled the Supermarket to avoid or
20 postpone the Closure, and the Supermarket reasonably and in good faith believed that giving the notice
21 required would have precluded the Supermarket from obtaining the needed capital or business.

22 (c) A Supermarket relying on subsection (b) to provide less than six months’ notice shall
23 give as much notice as is practicable, and at that time shall articulate in writing the basis for having
24 reduced the notification period.

1 **SEC. 5703. GOOD FAITH EFFORTS TO ENSURE CONTINUITY OF SERVICES.**

2 During the period between the issuance of the notices required under Section 5702 and the
3 Supermarket's Closure, the Supermarket shall meet and work in good faith with neighborhood
4 residents and OEWD to find a workable solution to allow for the continued availability of groceries at
5 the Supermarket location. In addition, the Supermarket shall meet and work in good faith with
6 neighborhood residents to find a workable solution by, at a minimum, attending at least one
7 community meeting convened by a neighborhood association, nonprofit association that
8 represents the interests of neighborhood residents, or City department or official. Solutions
9 may include, but are not limited to, identifying strategies and resources to allow the Supermarket to
10 remain open, helping the residents organize and open a cooperative, and identifying another
11 Supermarket operator capable of continuing grocery sales.

12
13 **SEC. 5704. ENFORCEMENT.**

14 ~~(a) The Director of OEWD may issue regulations necessary or appropriate to~~
15 ~~implement this Article 57.~~

16 ~~(b) Any person who had purchased groceries or other food items from the~~
17 ~~Supermarket in the year prior to its closure, or any nonprofit organization representing the~~
18 ~~interests of such persons affected by a Supermarket's failure to comply with the requirements~~
19 ~~of this Article 57 may institute proceedings for damages, injunctive relief, declaratory relief, or writ of~~
20 ~~mandate to remedy the violation, in any court of competent jurisdiction. It shall be a defense to an~~
21 ~~action brought under this Section 5704 that compliance with this Article 57 would have required the~~
22 ~~disclosure of information that is proprietary, a trade secret, or is otherwise protected from disclosure~~
23 ~~under Government Code Section 7930.205, Civil Code Section 3426 et seq., or Evidence Code Section~~
24 ~~1060, as such provisions may be amended from time to time.~~

REVISED LEGISLATIVE DIGEST
(Amended in Committee – October 17, 2024)

[Police Code - Notice of Supermarket Closure]

Ordinance amending the Police Code to require large supermarkets to provide six months' notice to their customers and the City before permanently closing, and to explore ways to allow for the continued sale of groceries at the location.

Existing Law

Currently, there is no law in effect that requires supermarkets to provide notice of their intent to close permanently to their customers, the public, or to the City.

However, since April 2024, when the ordinance was introduced, the California State Legislature enacted legislation (S.B. 89) requiring that covered supermarkets provide at least 45 days written notice of an impending closure to supermarket employees and their authorized representatives, except where the closure is necessitated by a physical calamity or caused by business circumstances that were not reasonably foreseeable at the time that notice would have been required. Violations of S.B. 89, which will go into effect on January 1, 2025, will be subject to a civil penalty not to exceed \$10,000 for each closure, to be assessed and collected in a civil action brought by any person injured by the violation or in a civil action brought by the Attorney General, a district attorney, or a city attorney where the covered establishment was located. In addition, employees are entitled to recover \$100 per day the until the notice violation is cured.

Amendments to Current Law

This ordinance would require large supermarkets to provide six months' notice of their intent to close permanently to the Board of Supervisors, the Director of the Office of Economic and Workforce Development, their customers, the Executive Director of the Human Services Agency and the public. For purposes of the notice requirement, a supermarket is defined to mean a food product and marketing establishment that sells a variety of food and is greater than 20,000 square feet in size.

A supermarket owner would be exempted from the notice requirement if the store closure is due to an emergency or circumstances that were not foreseeable at the time that notice would have been required, and where the owner is actively seeking financing to keep the store open, and believes that compliance with the notice requirement would compromise those efforts.

The ordinance would be enforceable by a private right of action. The proposed ordinance also provides that the City Attorney has the authority to institute civil proceedings for injunctive and monetary relief. It would be a defense to an action brought under the ordinance that compliance would have required disclosure of proprietary information or trade secrets.

Background

This legislative digest reflects amendments made at the October 17, 2024 meeting of the Government Audit and Oversight Committee. Specifically, on that date, the committee amended the ordinance to add the Executive Director of the Human Services Agency to the list of departments that must be notified of a store's planned closure, and to provide explicit authorization to the City Attorney to enforce the ordinance through civil proceedings.

In addition, the digest was updated to reflect the enactment of S.B. 89.

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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

TO: William Scott, Police Chief, SF Police Department
Sarah Dennis-Phillips, Executive Director, Office of Economic and Workforce Development

FROM: Monique Crayton, Assistant Clerk, Public Safety and Neighborhood Services Committee, Board of Supervisors

DATE: April 10, 2024

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Dean Preston on April 2, 2024.

File No. 240333

Police Code - Notice of Supermarket Closure.

If you have any additional comments or reports to be included with the file, please forward them to Monique Crayton at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at monique.crayton@sfgov.org.

CC:
Offices of Chair Stefani and Supervisor Preston
Lisa Ortiz, Police Department
Diana Aroche, Police Department
Lili Gamero, Police Department
Rima Malouf, Police Department
Carl Nicita, Police Department
Anne Taupier, Office of Economic and Workforce Development
Alesandra Lozano, Office of Economic and Workforce Development

President, District 3
BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Tel. No. 554-7450
Fax No. 554-7454
TDD/TTY No. 544-6546

Aaron Peskin

PRESIDENTIAL ACTION

Date: July 10, 2024

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. 240333 Preston
(Primary Sponsor)

Title. [Police Code - Notice of Supermarket Closure]

From: Public Safety & Neighborhood Services Committee

To: Government Audit & Oversight Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor: _____ Replacing Supervisor: _____

For: _____ Meeting
(Date) (Committee)

Start Time: _____ End Time: _____

Temporary Assignment: Partial Full Meeting



Aaron Peskin, President
Board of Supervisors



October 7, 2024

Hon. Dean Preston
Supervisor, District 5
San Francisco City Hall

VIA E-MAIL

RE: SUPPORT for File # 240333: Notice of Supermarket Closure Legislation

Dear Supervisor Preston,

On behalf of the Japantown Community Benefit District (JCBD), I would like to express our strong support for the proposed legislation requiring Notice of Supermarket Closure.

As you know well, the JCBD has been working closely with our Fillmore and Western Addition neighbors, specifically the late Rev. Arnold Townsend, Booker T. Washington, and Ella Hill Hutch, to address the challenges posed by the sudden announcement earlier this year of the sale and closure of the Fillmore Street Safeway. This closure significantly impacted many Japantown residents, small businesses, and workers who sometimes rely on the store daily for groceries, banking, and pharmacy services. It served as an important and vital hub that connected our communities.

We understand that the legislation will apply only to large-scale supermarkets and not smaller grocery stores. This is something that we made sure both Nijiya Market and Super Mira understood.

Thank you for advocating on behalf of the residents and workers in the Fillmore District, Western Addition, and Japantown.

Sincerely,

A handwritten signature in black ink, appearing to read 'Grace Horikiri', is written over a horizontal line.

Grace Horikiri
Executive Director
Japantown Community Benefit District

cc: Nihonmachi Community Coalition, Fillmore Coalition

Hon. Dean Preston
Supervisor, District 5
San Francisco City Hall
VIA E-MAIL

RE: SUPPORT for File# 240333: Notice of Supermarket Closure Legislation

October 7, 2024

Dear Supervisor Preston,

On behalf of the Japantown Task Force, I would like to express our strong support for the proposed legislation requiring Notice of Supermarket Closure. As you know well, JTF has been working closely with our Fillmore and Western Addition neighbors to address the challenges posed by the sudden announcement earlier this year of the sale and closure of the Fillmore Street Safeway which Japantown residents and workers rely on for groceries, banking, and pharmacy services.

Our understanding is that the legislation will apply only to large scale supermarkets and not smaller grocery stores. We very much appreciate your leadership in seeking the feedback from the two existing grocery stores in Japantown. JTF met in-person with and briefed managers at Nijiya Supermarket and Super Mira about the proposed legislation. None of the managers we spoke with expressed any concern about the legislation.

Thank you for advocating on behalf of the residents and workers in Japantown, the Fillmore District, and the Western Addition generally, on this and so many other issues.

Yours sincerely,



Emily M. Murase, PhD
Executive Director

cc: Nihonmachi Community Coalition, Fillmore Coalition.



235 Montgomery St., Ste. 760, San Francisco, CA 94104
tel: 415.392.4520 • fax: 415.392.0485
sfchamber.com

August 27, 2024

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102

RE: File #240333: Police Code - Notice of Supermarket Closure

Dear Members of the Board of Supervisors,

We write to you today to share feedback on Supervisor Dean Preston's proposed ordinance on grocery store closures - File #240333. While we understand the intent behind the proposed ordinance, we believe that if it is not amended as described below it will discourage new grocery stores from opening, and could even push existing grocery stores to close. In its current form, the ordinance adds more layers of bureaucracy at a time when small businesses in San Francisco need less. We suggest the following changes to better balance the intended protections with the realities of operating a business.

We request you consider the following changes to the proposed ordinance:

1. Reduce required notice from six to two months in Section 5702: The current requirement of a six-month notice period prior to the closure of a grocery store places an undue burden on businesses, particularly smaller grocery stores.
2. Strike Section 5703, the "Good Faith Efforts" provision: this requirement could lead to expensive legal challenges and uncertainties, hurting businesses that are already struggling.
3. Strike Section 5704(b), the "Private Right of Action" Provision: creating a private right of action invites unnecessary lawsuits from the public and easily leads to litigation abuse.

We believe these amendments will create a more balanced approach to grocery store closure notification and will benefit both the community and business owners. We urge you to consider these changes to ensure that the ordinance supports sustainable business practices while honoring the proposal's original legislative intent. We welcome the opportunity to work with you to support our businesses and residents.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney Fong", written over a faint circular stamp or watermark.

Rodney Fong
President & CEO
The San Francisco Chamber of Commerce



Japanese American Citizens League

Masao Satow Building • 1765 Sutter Street • San Francisco, California 94115
Phone: (415) 921-5225 • Facsimile: (415) 931-4671 • Email: policy@jacl.org

Oct. 11, 2024

Hon. Dean Preston
Supervisor, District 5
San Francisco City Hall
VIA E-MAIL

RE: SUPPORT for File # 240333: Notice of Supermarket Closure Legislation

Dear Supervisor Preston,

On behalf of the Japanese American Citizens League's NorCal-Western Nevada-Pacific Regional Office (JAACL NCWNP), I express our support of the proposed legislation regarding Notice of Supermarket Closure.

We were taken aback with the abrupt announcement that Safeway would be closing its store in the Western Addition. JAACL NCWNP staff stood in solidarity with & support of residents at a neighborhood rally to protest the sale and closure of the Fillmore Street Safeway. JAACL National Headquarters is located in the Western Addition, and our staff – like others who live and work in the area -- rely on that Safeway for groceries, banking and pharmacy services.

Our understanding is that the legislation you have proposed will apply to large scale supermarkets and not smaller grocery stores.

Thank you for advocating on behalf of the families, seniors, residents and workers of the Fillmore, Japantown and the Western Addition area on this and other issues.

Sincerely,

Patty Wada
Regional Director
JAACL NCWNP

cc: Nihonmachi Community Coalition

October 16, 20204



The Honorable Dean Preston
Chair, Government Audit and
Oversight Committee
City and County of San Francisco
1Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: Grocery Store Closures

Dear Supervisor Preston,

On behalf of San Francisco grocers, we appreciate your interest in the success of our industry. Specific to the proposed ordinance regarding store closures, we also appreciate the conversations with your office regarding the impacts on current and future grocers.

While we both agree adjustments would improve the policy, we further believe any changes should be made and posted before moving the ordinance forward. With the committee process being the primary point for public input full awareness of language changes serves all sides. Our preference is the item not be moved to the full Board of Supervisors until that time.

As we have shared in discussions, we believe the length of the notice, process for community engagement, enforcement mechanism, and scope of retailers must be adjusted. The unique nature of food retailing and importance of grocery to thriving neighborhoods requires a policy with no unintended consequences and no disincentive to locate or further invest in San Francisco.

The current notice period of six months creates its own challenges for the viability of stores. In our experience shortly after a closure notice is consumers begin to shop alternatives. In addition, retention and recruitment of employees to maintain store operation becomes difficult.

While in nearly all cases of a store closure employees are offered continued employment in other locations, some choose to leave sooner and hiring replacements for a location slated for closure would be difficult at best. The length of notice, which is not seen in any other industry, hastens the deterioration of store viability making it less likely for the store to reverse course and become sustainable or for a new grocer to be adopted by previous customers. It is worth noting that recently passed state law only requires a 45-day notice.

We have no doubt that grocers will fully comply if passed, but the lack of definition to the process for community engagement leaves hitting the mark to comply with the ordinance fuzzy. Clarity, definition and limits would help compliance as well as giving the public a clear roadmap for engagement. Lack of definition could also lead to grocers being susceptible to vague private action enforcement.

The Honorable Dean Preston
October 16, 20024
Page 2

As proposed the city or any third party can bring enforcement action for non-compliance. While empowering enforcement on bad actors is important, an open ended ability to bring enforce cases coupled with lack of clarity in the engagement process could lead to numerous and duplicative legal action. An openly litigious environment does not serve the intended goal of retaining grocers serving San Francisco.

The current proposal is focused solely on traditional grocery stores, but in a dynamic city like San Francisco consumers rely on numerous other types of retailers for their primary food shopping. This dependence on non-traditional food retailers means a similar neighborhood impact with a store closure. Other primary food retailers should be included to maintain the intended protection for the public.

Thank you for your consideration and we appreciate the engagement. We do believe it is important the committee hearing process include a full discussion of any ordinance adjustments before being considered by the full Board of Supervisors. We look forward to continuing our partnership to support grocers in San Francisco.

Sincerely,



Tim James
Director, Local Government Relations
California Grocers Association

cc: Members, San Francisco Board of Supervisors
Mayor London Breed, City and County of San Francisco

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



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

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor inquires..."
- 5. City Attorney Request
- 6. Call File No. from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

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

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: