

BOARD of SUPERVISORS



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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
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[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.

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

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

Section 1. The Police Code is hereby amended by adding Article 57, consisting of Sections 5700 through 5705, to read as follows:

ARTICLE 57: SUPERMARKET CLOSURE ORDINANCE

SEC. 5700. FINDINGS.

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

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

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) and the Board of
9 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 Board of Supervisors, and the Supermarket's
14 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
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. Solutions may include, but are not limited to, identifying strategies and
6 resources to allow the Supermarket to remain open, helping the residents organize and open a
7 cooperative, and identifying another Supermarket operator capable of continuing grocery sales.

8
9 **SEC. 5704. ENFORCEMENT.**

10 (a) The Director of OEWD may issue regulations necessary or appropriate to implement
11 this Article 57.

12 (b) Any person affected by a Supermarket's failure to comply with the requirements of this
13 Article 57 may institute proceedings for damages, injunctive relief, declaratory relief, or writ of
14 mandate to remedy the violation, in any court of competent jurisdiction. It shall be a defense to an
15 action brought under this Section 5704 that compliance with this Article 57 would have required the
16 disclosure of information that is proprietary, a trade secret, or is otherwise protected from disclosure
17 under Government Code Section 7930.205, Civil Code Section 3426 et seq., or Evidence Code Section
18 1060, as such provisions may be amended from time to time.

19
20 **SEC. 5705. UNDERTAKING FOR THE GENERAL WELFARE.**

21 In enacting and implementing this Article 57, the City is assuming an undertaking only to
22 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
23 obligation for breach of which it is liable in money damages to any person who claims that such breach
24 proximately caused injury.

Section 2. 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.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/
ANNE PEARSON
Deputy City Attorney

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LEGISLATIVE DIGEST

[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 requiring supermarkets to provide notice of their intent to close permanently to their customers, the public, or to the City.

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, 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. It would be a defense to an action brought under the ordinance that compliance would have required disclosure of proprietary information or trade secrets.

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