

[Police Code - Hospitality Industry Worker Retention]

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

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 33E, to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2                    In enacting and implementing this Article 33E, the City is assuming an undertaking only to  
3                    promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an  
4                    obligation for breach of which it is liable in money damages to any person who claims that such breach  
5                    proximately caused injury.  
6

7                    Section 2. Effective Date. This ordinance shall become effective 30 days after  
8                    enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
9                    ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
10                  of Supervisors overrides the Mayor's veto of the ordinance.  
11

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

14                  By: \_\_\_\_\_  
15                          FRANCESCA GESSNER  
                                Deputy City Attorney

16                  n:\legana\as2014\1400415\00920397.docx  
17  
18  
19  
20  
21  
22  
23  
24  
25