

1 [Police Code - Formula Retail Employer Requirements]

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3 **Ordinance amending the Police Code to regulate the operation of formula retail**
4 **establishments, including requiring employers to offer additional hours of work, when**
5 **available, to current part-time employees, and requiring successor employers to retain**
6 **employees for 90 days upon a change in control of the business.**

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

11

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

13

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

16 **ARTICLE 33F: FORMULA RETAIL EMPLOYEE PROTECTIONS**

17 **SEC. 3300F.1. PURPOSE.**

18 (a) Formula retail establishments are a major employment base for San Francisco. There are
19 approximately 1,250 formula retail establishments in the City, accounting for approximately 12 percent
20 of all retailers. The City has a strong interest in ensuring that the jobs these formula retail
21 establishments create allow workers to meet basic needs and achieve economic security.

22 (b) Employers have increasingly moved to scheduling practices that relegate their employees
23 to involuntary part-time status, contributing to the economic insecurity of these employees.

24 (c) Many part-time workers in our City are not currently given the opportunity to work
25 enough hours to allow them to make a decent living. Approximately one-quarter of part-time workers

1 in the workforce overall are working part-time involuntarily, and the rate of involuntary part-time work
2 is highest among workers in low-wage jobs.

3 (d) Giving part-time employees of formula retail establishments the opportunity to work more
4 hours when the work is available advances the interests of the City as a whole by creating jobs that
5 keep workers and their families out of poverty, and will help these workers meet basic needs and avoid
6 economic hardship.

7 (e) Changes in ownership or control of formula retail establishments can result in displacement
8 of their workforce. The City has a strong interest in promoting stabilization of this workforce, which
9 reduces the need for social services and helps these workers avoid economic hardship. A transitional
10 retention period upon change in ownership or control of these establishments promotes stabilization of
11 this workforce.

12 (f) To safeguard the public welfare, health, safety, and prosperity of the City, it is essential that
13 workers in our community earn sufficient wages to ensure a decent and healthy life for themselves and
14 their families. Prompt and efficient enforcement of Article 33F will provide workers in the City with
15 economic security and the assurance that their rights will be respected.

16
17 **SEC. 3300F.2. DEFINITIONS.**

18 For purposes of this Article 33F, the following definitions apply:

19 “Agency” shall mean the City’s Office of Labor Standards Enforcement.

20 “Change in Control” shall mean any sale, assignment, transfer, contribution, or other
21 disposition (including by consolidation, merger, or reorganization) of all or the majority of the assets
22 of, or a controlling interest in, the Incumbent Formula Retail Employer or Formula Retail Parent or
23 any Formula Retail Establishment under the operation or control of either such Incumbent Formula
24 Retail Employer or Formula Retail Parent.

25 “City” shall mean the City and County of San Francisco.

1 "Eligible Employee" shall mean any Employee who has been employed by the Incumbent
2 Employer at the Formula Retail Establishment subject to a Change in Control for at least 90 days prior
3 to the date that the Transfer Document is fully executed "Eligible Employee" does not include a
4 managerial, supervisory, or confidential employee.

5 "Employee" shall have the same meaning as the definition of "Employee" in Section 12R.3 of
6 the Minimum Wage Ordinance (Administrative Code Chapter 12R).

7 "Employer" shall mean any Person that owns or operates a Formula Retail Establishment,
8 including corporate officers or executives, who directly or indirectly or through an agent or any other
9 person, including through the services of a temporary services or staffing agency or similar entity,
10 employs or exercises control over the wages, hours or working conditions of any individual.

11 "Employer" does not include a Nonprofit Corporation or governmental entity.

12 "Employment Commencement Date" shall mean the date on which an Eligible Employee
13 retained by the Successor Employer as required in this Article 33F commences employment triggering
14 the commencement of the 90-day retention period for the Successor Employer.

15 "Formula Retail Establishment" shall mean a business located in San Francisco that falls
16 under the Planning Code's definition of "Formula Retail Use," as amended from time to time.

17 "Formula Retail Parent" shall mean any Person who owns or controls the Incumbent
18 Employer.

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

20 "Incumbent Employer" shall mean the Employer that owns, controls, and/or operates the
21 Formula Retail Establishment prior to the Change in Control.

22 "Nonprofit Corporation" shall mean a nonprofit corporation, duly organized, validly existing
23 and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign
24 corporation) in good standing under the laws of the State of California, which corporation has
25 established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal

1 Revenue Code, as amended from time to time, and all rules and regulations promulgated under such
2 Section.

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

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 "Successor Employer" shall mean the Employer that owns, controls, and/or operates the
8 Formula Retail Establishment after the Change in Control.

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

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12 **SEC. 3300F.3. OFFERING ADDITIONAL WORK TO PART-TIME EMPLOYEES.**

13 (a) Subject to the limitations herein, before hiring new Employees or using contractors or a
14 temporary services or staffing agency to perform work in a Formula Retail Establishment, an Employer
15 shall first offer the additional work to existing Part-time Employee(s) who have been working for the
16 Formula Retail Establishment for a continuous period of at least six months if: (1) the Part-time
17 Employee(s) are qualified to do the additional work, as reasonably determined by the Employer and (2)
18 the additional work is the same or similar to work the Employee(s) have performed for the Formula
19 Retail Establishment. This Section 3300F.3 requires Employers to offer to Part-time Employees only
20 the number of hours required to give the Employee 40 hours of work in a week or 8 hours of work in a
21 day.

22 (b) An Employer has discretion to divide the additional work hours among Part-time
23 Employees consistent with this section.

24 (c) A Part-time Employee may, but is not required to, accept the Employer's offer of additional
25 work hours under this Section.

1 (d) When this Section requires an Employer to offer additional work hours to existing Part-time
2 Employees, the Employer shall make the offer in writing and shall retain each written offer no less than
3 four years as required under Section 3300F.8.

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5 **SEC. 3300F.4. RETENTION OF EMPLOYEES UPON CHANGE IN CONTROL.**

6 (a) The Incumbent Employer shall, concurrent with the date that the Transfer Document is fully
7 executed, provide to the Successor Employer a list (“Retention List”) that includes the name, contact
8 information, date of hire, rate of pay, average number of hours worked per week in the six months prior
9 to the Change in Control, and employment occupation classification of each Eligible Employee. For
10 purposes of this subsection (a), contact information shall include but need not be limited to the Eligible
11 Employee’s phone number, home address and email address.

12 (b) The Successor Employer shall employ each Eligible Employee identified on the Retention
13 List to work in the Formula Retail Establishment, under the same terms of employment with respect to
14 job classification, compensation, and number of work hours that governed the Eligible Employee and
15 Incumbent Employer, and as otherwise required by law. The Successor Employer shall continue to
16 employ the Eligible Employees in the Retail Formula Establishment for a period of 90 days from the
17 Employee Commencement Date, consistent with the following provisions:

18 (1) The Successor Employer shall make the offer of employment in writing;

19 (2) If the Eligible Employee declines to accept the offer of employment, the Successor
20 Employer’s obligation to offer employment to the Eligible Employee shall be deemed satisfied;

21 (3) The requirements of this Article 33F shall apply whether the Successor Employer
22 operates the Formula Retail Establishment in the same location or relocates to another location, so
23 long as that other location is in San Francisco; and

24 (4) The requirement that the Successor Employer employ Eligible Employees from the
25 Retention List shall remain in effect notwithstanding any delay in the Successor Employer’s opening

1 the Formula Retail Establishment due to relocation, remodeling, or other reason, provided that this
2 requirement shall terminate three years from the date that the Transfer Document is fully executed.

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4 **SEC. 3300F.5. TRANSITION EMPLOYMENT PERIOD.**

5 (a) If the Successor Employer determines that it requires fewer Eligible Employees than were
6 employed by the Incumbent Employer, the Successor Employer shall retain Eligible Employees by
7 seniority based on the date of hire by the Incumbent Employer or, if there is an applicable collective
8 bargaining agreement, pursuant to that agreement.

9 (b) During the 90-day transition employment period established in Section 3300F.4, the
10 Successor Employer may not discharge without cause an Eligible Employee retained pursuant to this
11 Article 33F.

12 (c) The Successor Employer may not employ any individual other than an Eligible Employee in
13 the Eligible Employee's job classification for the Formula Retail Establishment from the date that the
14 Transfer Document is fully executed until 90 days after the Successor Employer opens the business to
15 the public.

16
17 **SEC. 3300F.6. NOTICE OF CHANGE IN CONTROL.**

18 (a) The Incumbent Employer shall post public notice of the Change in Control at the location of
19 the affected Formula Retail Establishment within 24 hours of the date that the Transfer Document is
20 fully executed. The Incumbent Employer shall be responsible for keeping the public notice posted
21 before the Change in Control and the Successor Employer shall be responsible for doing so after the
22 Change in Control. The notice of Change in Control shall remain posted for at least 30 days.

23 (b) Notice shall include, but not be limited to, the name of the Incumbent Employer and its
24 contact information, the name of the Successor Employer and its contact information, the U.S. Postal
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1 and electronic mailing addresses that Eligible Employees may use to provide their updated contact
2 information, and the effective date of the Change in Control.

3 (c) Notice shall be posted in a conspicuous place at the Formula Retail Establishment so as to
4 be readily viewable by Eligible Employees and other employees, customers, and members of the public.

5 (d) Successor Employers shall maintain the Retention List of Eligible Employees entitled to
6 employment for the 90 day transition period, including updated contact information provided by
7 Eligible Employees, until the expiration of the retention rights of all Eligible Employees on the list.

8 (e) The Employer who pays the wages of Eligible Employees for the first time after the Transfer
9 Document is fully executed shall provide with the paycheck notice of the rights of Eligible Employees
10 under this Article.

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12 **SEC. 3300F.7. NOTICE OF EMPLOYEE RIGHTS.**

13 (a) By the effective date of the ordinance creating this Article 33, and not later than December
14 1 of each year thereafter, the Agency shall publish and make available to Formula Retail Employers, in
15 English, Spanish, Chinese, Tagalog, and any other language spoken by more than five percent of the
16 San Francisco work force, a notice suitable for posting by Formula Retail Employers in the workplace
17 informing Employees of their rights under this Article.

18 (b) Every Formula Retail Establishment shall post in a conspicuous place at any workplace or
19 job site where any Formula Retail Employee works the notice prepared by the Agency under subsection
20 (a informing Employees of their rights under this Article 33F in English, Spanish, Chinese, Tagalog
21 and any other language spoken by at least five percent of the Formula Retail Employees at the
22 workplace or job site.

23
24 **SEC. 3300F.8. REQUIREMENTS GOVERNING RETENTION OF RECORDS.**

1 (a) Employers shall retain employment and payroll records pertaining to current and former
2 Formula Retail Employees for no less than four years.

3 (b) Employers shall retain copies of written offers to current and former Part-time Employees
4 for additional work hours under Section 3300F.3 for no less than four years.

5 (c) Each Successor Employer shall retain a copy of offers of employment to Eligible Employees
6 required after a Change of Control as provided in Section 1300F.4 for no less than four years from the
7 date that the Successor Employer made the offer.

8 (d) Successor Employers shall retain the Retention List of Eligible Employees entitled to
9 employment for the 90-day transition period for no less than four years from the date the Successor
10 Employer received the list from the Incumbent Employer.

11 (e) Employers, Incumbent Employers and Successor Employers shall allow the Agency access
12 to records relating to their obligations under this Article 33F, with appropriate notice and at a
13 mutually agreeable time, to enable the Agency to monitor compliance with the requirements of this
14 Article.

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16 **SEC. 3300F.9. RETALIATION PROHIBITED.**

17 It shall be unlawful for a Formula Retail Employer or any other Person to take adverse action
18 against any person in retaliation for exercising rights protected under this Article 33F. Rights
19 protected under this Article include, but are not limited to: the right to file a complaint or inform any
20 person about any party's alleged noncompliance with this Article; and the right to inform any person of
21 his or her potential rights under this Article and to assist him or her in asserting such rights.

22 Protection of this Section 3300F.9 shall apply to any person who mistakenly, but in good faith, alleges
23 noncompliance with this Article. Taking adverse action against a person within 90 days of the person's
24 exercise of rights protected under this Article shall raise a rebuttable presumption that the party taking
25 the adverse action did so in retaliation for the exercise of such rights.

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2 **SEC. 3300F.10. INVESTIGATION AND ADMINISTRATIVE ENFORCEMENT BY THE**
3 **AGENCY.**

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

6 (b) Determination of Violation and Penalties.

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

10 (2) After investigating a possible violation of this Article, and providing the Employer,
11 Incumbent Employer or Successor Employer the opportunity to respond to the allegations, if the
12 Agency determines that a violation has occurred, it may issue a Determination of Violation. The
13 Determination of Violation shall identify the violation and the factual basis for the determination. The
14 Agency shall serve the Determination of Violation on the Employer, Incumbent Employer or Successor
15 Employer by United States mail and the date of service shall be the date of mailing. In the
16 Determination of Violation, the Agency may order any appropriate relief including, but not limited to,
17 requiring a Formula Retail Employer to offer additional hours of work to Part-time Employees as
18 required under Section 3300F.3, reinstatement, payment of lost wages to the Eligible Employee or
19 person whose rights under this Article were violated, and the payment of an additional sum as an
20 administrative penalty that does not exceed the amount of the award for lost wages. In order to
21 compensate the City for the costs of investigating and remedying the violation, the Agency may also
22 order the violating Employer, Incumbent Employer or Successor Employer to pay to the City an
23 amount that does not exceed its enforcement costs.

24 (c) Appeal Procedure. An Employer, Incumbent Employer or Successor Employer may appeal
25 from a Determination of Violation in accordance with the following procedures:

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

7 (2) The Agency shall promptly afford Appellant an opportunity to meet and confer in
8 good faith regarding possible resolution of the Determination of Violation in advance of further
9 proceedings under this subsection (c), with the intention that such meeting occur within 30 days of the
10 date the Appeal is filed.

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

15 (4) Within 15 days of receiving a written request for appointment of a hearing officer,
16 the Controller shall appoint an impartial hearing officer and immediately notify Agency and Appellant,
17 and their respective counsel or authorized representative if any, of the appointment. The appointed
18 hearing officer shall be an Administrative Law Judge or an attorney with not fewer than five years'
19 experience in labor law and/or wage and hour matters.

20 (5) The hearing officer shall promptly set a date for a hearing. The hearing must
21 commence within 45 days of the date of the Agency’s notice of appointment of the hearing officer, and
22 conclude within 75 days of such notice. The hearing officer shall conduct a fair and impartial
23 evidentiary hearing in conformance with the time limitations set forth in this subsection (c)(5) and in
24 any applicable rules and regulations, so as to avoid undue delay in the resolution of any appeal. The
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1 hearing officer shall have the discretion to extend the times under this subsection (c)(5), and any time
2 requirements under any applicable rules and regulations, only upon a determination of good cause.

3 (6) Appellant shall have the burden of proving by a preponderance of the evidence that
4 the basis for the Determination of Violation, including the amount of lost wages, interest, and penalty
5 payments at issue in the appeal, is incorrect.

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

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

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

17 (d) Compliance. Where prompt compliance with a Determination of Violation is not
18 forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including
19 referring the action to the City Attorney to consider initiating a civil action pursuant to Section
20 3300F.12.

21 (e) Reporting Violations. An Employee or Eligible Employee or any individual who has reason
22 to believe that a violation of this Article has occurred may report to the Agency any suspected violation
23 of this Article. The Agency shall encourage reporting pursuant to this subsection (e) by keeping
24 confidential, to the maximum extent permitted by applicable laws, the name and other identifying
25 information of the individual reporting the violation; provided, however, that with the authorization of

1 the reporting individual, the Agency may disclose his or her name and identifying information as
2 necessary to enforce this Article or for other appropriate purposes.

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4 **SEC. 3300F.11. AUTHORITY OF AGENCY TO IMPOSE ADMINISTRATIVE FINES.**

5 (a) The Labor Standards Enforcement Officer or a designee of that Officer may impose an
6 administrative fine of up to \$500 per Eligible Employee employed by the Employer, Incumbent
7 Employer, or Successor Employer for violating any of the following requirements of this Article 33F:

8 (1) The requirements under Section 3300F.4 that an Incumbent Employer provide a
9 Successor Employer a list identifying Eligible Employees and information regarding their employment,
10 and that the list be provided concurrent with the date of final execution of the Transfer Document;

11 (2) The requirement under Section 3300F.6 that the Incumbent Employer and Successor
12 Employer post notice of a Change in Control;

13 (3) The requirement under Section 3300F.6 that the Employer provide notice of the
14 rights of Eligible Employees under this Article with the first paycheck after the Transfer Document is
15 fully executed;

16 (4) The requirement under Section 3300F.7 that an Employer post notice of the rights
17 of Employees under this Article 33F, with each day that the notice is not posted deemed a separate
18 violation but only if the Agency gave the Employer notice that continued violations would authorize a
19 citation under this subsection (a); and

20 (5) The requirement under Section 3300F.8 that an Employer make available to the
21 Agency employment and payroll records.

22 (6) The requirement under Section 3300F.3 that an Employer make the offer of
23 additional hours in writing.

24 (b) Administrative Code Chapter 100, "Procedures Governing the Imposition of
25 Administrative Fines," as it may be amended from time to time, is hereby incorporated in its entirety

1 and shall govern the imposition, enforcement, collection, and review of administrative citations issued
2 to enforce the provisions of this section 3300F.11 or any rule or regulation adopted relating to the
3 provisions enumerated in subsections (a)(1)-(6) of this Section 3300.F11.

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5 **SEC. 3300F.12. CIVIL ENFORCEMENT.**

6 The City Attorney, any person aggrieved by a violation of this Article 33F, any entity a member
7 of which is aggrieved by a violation of this Article, or any other person or entity acting on behalf of the
8 public as provided for under applicable state law, may bring a civil action in a court of competent
9 jurisdiction against an Employer, an Incumbent Employer or a Successor Employer for violating any
10 requirement of this Article and, upon prevailing, shall be entitled to such legal or equitable relief as
11 may be appropriate to remedy the violation including, without limitation, the payment of lost wages, the
12 payment of an additional sum as a civil penalty not to exceed to the amount awarded for lost wages,
13 and reinstatement in employment and/or injunctive relief, and shall be awarded reasonable attorneys'
14 fees and costs, provided, however, that any person or entity enforcing this Article on behalf of the
15 public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable,
16 injunctive or restitutionary relief, and reasonable attorneys' fees and costs.

17
18 **SEC. 3300F.13. AGENCY MAY ADOPT REGULATIONS .**

19 The Agency may promulgate appropriate guidelines or rules to implement this Article 33F.
20 Such guidelines or rules shall be consistent with this Article 33F and may be relied on by Employers,
21 Employees, and other persons to determine their rights and responsibilities under this Article. Such
22 guidelines or rules may establish procedures for ensuring fair, efficient, and cost-effective
23 implementation and enforcement of this Article, including supplementary procedures for helping to
24 inform Employees of their rights under this Article and for monitoring Employer compliance.

1 **SEC. 3300F.14. WAIVER UNDER COLLECTIVE BARGAINING AGREEMENT.**

2 *A bona fide collective bargaining agreement may waive all or any portion of the applicable*
3 *requirements of this Article 33F, provided the agreement explicitly states the waiver in clear and*
4 *unambiguous terms.*

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6 **SEC. 3300F.15. NO LIMITATION OF OTHER RIGHTS AND REMEDIES.**

7 *This Article 33F does not in any way limit the rights and remedies that the law otherwise*
8 *provides to Employees, including but not limited to the rights to be free from wrongful termination and*
9 *unlawful discrimination.*

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11 **SEC. 3300F.16. SEVERABILITY.**

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

17
18 **SEC. 3300F.17. NO CONFLICT WITH FEDERAL OR STATE LAW.**

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

21
22 **SEC. 3300F.18 UNDERTAKING FOR THE GENERAL WELFARE.**

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

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

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

11 By: _____
12 PAULA JESSON
13 Deputy City Attorney

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