

File No. 140880

Committee Item No. 1
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date November 12, 2014

Board of Supervisors Meeting

Date _____

Cmte Board

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<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
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<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
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Completed by: Linda Wong Date November 7, 2014
Completed by: _____ Date _____

[Police Code - Hours and Retention Protections for Formula Retail Employees]

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.

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 ~~strikethrough 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 33F, consisting of Sections 3300F.1 through 3300F.18, to read as follows:

ARTICLE 33F: HOURS AND RETENTION PROTECTIONS

FOR FORMULA RETAIL EMPLOYEES

SEC. 3300F.1. PURPOSE.

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

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

1 (c) Many part-time workers in our City are not currently given the opportunity to work enough
2 hours to allow them to make a decent living. Approximately one-quarter of part-time workers in the
3 workforce overall are working part-time involuntarily, and the rate of involuntary part-time work is
4 highest among workers in low-wage jobs.

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

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

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

18
19 **SEC. 3300F.2. DEFINITIONS.**

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

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

22 "Change in Control" shall mean any sale, assignment, transfer, contribution, or other
23 disposition (including by consolidation, merger, or reorganization) of all or the majority of the assets
24 of, or a controlling interest in, the Incumbent Employer or Formula Retail Parent or any Formula
25

1 Retail Establishment under the operation or control of either such Incumbent Employer or Formula
2 Retail Parent.

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

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

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

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

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

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

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

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

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

6 "Nonprofit Corporation" shall mean a nonprofit corporation, duly organized, validly existing
7 and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign
8 corporation) in good standing under the laws of the State of California, which corporation has
9 established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal
10 Revenue Code, as amended from time to time, and all rules and regulations promulgated under such
11 Section.

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

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

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

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

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

1
2 **SEC. 3300F.3. OFFERING ADDITIONAL WORK TO PART-TIME EMPLOYEES.**

3 (a) Subject to the limitations herein, before hiring new Employees or using contractors or a
4 temporary services or staffing agency to perform work in a Formula Retail Establishment, an Employer
5 shall first offer the additional work to existing Part-time Employee(s) if: (1) the Part-time Employee(s)
6 are qualified to do the additional work, as reasonably determined by the Employer and (2) the
7 additional work is the same or similar to work the Employee(s) have performed for the Formula Retail
8 Establishment. This Section 3300F.3 requires Employers to offer to Part-time Employees only the
9 number of hours required to give the Employee 35 hours of work in a week.

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

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

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

17 (e) The requirements imposed by this Section 3300F.3 shall apply to Property Services
18 Contractors as to work performed in San Francisco at a Formula Retail Establishment covered by this
19 Article 33F, under a contract with an Employer. An Employer shall include in any such contract
20 executed on or after the operative date of this Article 33F, (1) a provision requiring the Property
21 Services Contractor to comply with this Section and (2) a copy of this Section. The Employer shall
22 retain copies of such contracts for a period of not less than four years following the expiration or
23 termination of the contract, and make such copies available to the Agency for inspection upon request.
24 In addition, Sections 3300F.7, 3300F.8, 3300F.9, 3300F.10, 3300F.11, and 3300F.12 of this Article
25

1 shall apply to a Property Services Contractor as if it is an Employer for purposes of notice, record
2 retention, compliance, investigation, and enforcement of the requirements of this Section 3300F.3.

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

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

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

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

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

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

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

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.

3
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
25

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.

11
12 **SEC. 3300F.7. NOTICE OF EMPLOYEE RIGHTS.**

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

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

23
24 **SEC. 3300F.8. REQUIREMENTS GOVERNING RETENTION OF RECORDS.**
25

1 (a) Employers shall retain employment and payroll records pertaining to current and former
2 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.

15
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.

1
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 33F, and providing the
11 Employer, Incumbent Employer or Successor Employer the opportunity to respond to the allegations, if
12 the 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. To compensate the
21 City for the costs of investigating and remedying the violation, the Agency may also order the violating
22 Employer, Incumbent Employer or Successor Employer to pay to the City an amount that does not
23 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) Following the filing of the Appeal and service of a copy on the Agency, the Agency
8 shall promptly afford Appellant an opportunity to meet and confer in good faith regarding possible
9 resolution of the Determination of Violation in advance of further proceedings under this subsection
10 (c), with the intention that such meeting occur within 30 days of the date the Appeal is filed if feasible.

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 who is not part of the Agency and immediately
17 notify the Agency and Appellant, and their respective counsel or authorized representative if any, of the
18 appointment. The appointed hearing officer shall be an Administrative Law Judge with not fewer than
19 two years' experience in labor or employment law and/or wage and hour matters, or an attorney with
20 not fewer than five years' experience in labor or employment law and/or wage and hour matters.

21 (5) The hearing officer shall promptly set a date for a hearing. The hearing must
22 commence within 45 days of the date of the Controller's notice of appointment of the hearing officer,
23 and conclude within 75 days of such notice. The hearing officer shall conduct a fair and impartial
24 evidentiary hearing in conformance with the time limitations set forth in this subsection (c)(5) and in
25 any applicable rules and regulations, so as to avoid undue delay in the resolution of any Appeal. The

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, and/or the amount of lost wages, interest, or 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 (10) A Property Services Contractor, and an Employer that has a contract with the
18 Property Services Contractor, shall be jointly and severally liable for all amounts due pursuant to a
19 Determination of Violation finding a violation by the Property Services Contractor under this Article or
20 a court judgment thereon. The Agency shall first exhaust all reasonable remedies to collect the amount
21 due from the Property Services Contractor before pursuing the claim against the Employer.

22 (d) Compliance. Where prompt compliance with a Determination of Violation is not
23 forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including
24 referring the action to the City Attorney to consider initiating a civil action pursuant to Section
25 3300F.12.

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

8
9 **SEC. 3300F.11. AUTHORITY OF AGENCY TO IMPOSE ADMINISTRATIVE FINES.**

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

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

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

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

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

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

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

5 (b) Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative
6 Fines," as it may be amended from time to time, is hereby incorporated in its entirety and shall govern
7 the imposition, enforcement, collection, and review of administrative citations issued to enforce the
8 provisions of this section 3300F.11 or any rule or regulation adopted relating to the provisions
9 enumerated in subsections (a)(1)-(6) of this Section 3300.F11.

10
11 **SEC. 3300F.12. CIVIL ENFORCEMENT.**

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

23
24 **SEC. 3300F.13. AGENCY MAY ADOPT REGULATIONS.**
25

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

7
8 **SEC. 3300F.14. WAIVER UNDER COLLECTIVE BARGAINING AGREEMENT.**

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

12
13 **SEC. 3300F.15. NO LIMITATION OF OTHER RIGHTS AND REMEDIES.**

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

17
18 **SEC. 3300F.16. SEVERABILITY.**

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

1
2 **SEC. 3300F.17. NO CONFLICT WITH FEDERAL OR STATE LAW.**

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

5
6 **SEC. 3300F.18 UNDERTAKING FOR THE GENERAL WELFARE.**

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

11
12 **SEC. 3300F.19. OPERATIVE DATE.**

13 *This Article 33F shall become operative 90 days after its effective date.*

14
15 **Section 2. Effective and Operative Dates.**

16 (a) Effective Date. This ordinance shall become effective 30 days after enactment.
17 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance
18 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
19 Supervisors overrides the Mayor's veto of the ordinance.

20 (b) Operative Date. As stated in Section 3300F.19 of the Police Code, this ordinance
21 shall become operative 90 days after the effective date.

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

24 By:

25 *Francesca Gessner*
FRANCESCA GESSNER
Deputy City Attorney

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LEGISLATIVE DIGEST
(Substituted 11/04/2014)

[Police Code - Hours and Retention Protections for Formula Retail Employees]

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.

Existing Law

Existing City law establishes worker retention requirements for grocery store workers (Police Code Article 33D), certain service employees (Police Code Article 33C), certain City contractors (Administrative Code Chapter 21C), and hospitality industry employers (Police Code Article 33E). There is no existing City law pertaining to retention of formula retail workers.

No existing law requires Formula Retail businesses to offer additional hours of work to current part-time employees before they hire new employees or use a temporary services or staffing agency to perform work for the business.

Amendments to Current Law

Businesses Subject To the Proposed Ordinance

This proposed ordinance applies to Formula Retail Establishments with 20 or more Employees in the City. The legislation defines the term "Formula Retail Establishment" as a business that engages in retail sales or services that are regulated as a "Formula Retail Use" under the Planning Code. The legislation provides that if the Board of Supervisors amends the Planning Code's definition of "Formula Retail Use," the definition of "Formula Retail Establishment" will also change to reflect that used in the Planning Code for "Formula Retail Use."

Requirement To Offer Additional Hours Of Work To Current Part-time Employees

The ordinance requires Formula Retail employers to first offer to current part-time employees any additional hours of work before hiring new employees or using subcontractors or a temporary services or staffing agency to do work for the Formula Retail business. The employer must make the offer in writing. This requirement would also apply to janitorial or security services contractors or subcontractors of a Formula Retail employer ("Property

Services Contractors”) as to work performed in San Francisco at a Formula Retail Establishment covered by the ordinance under a contract with the Formula Retail employer.

The requirement applies to employers when (1) the current workers are qualified to do the work, as reasonably determined by the employer and (2) the work is the same or similar to the work the employees have performed at the Formula Retail business. The employer is required to offer only the number of hours that the employee requires in order to work 35 hours a week.

Requirement To Retain Employees For 90 Days Upon Sale Or Other Transfer of a Formula Retail Establishment

If a Formula Retail business changes ownership, the new Formula Retail employer (“Successor Employer”) must retain for 90 days the employees who worked for the old Formula Retail employer (“Incumbent Employer”) for at least six months (other than supervisory, managerial, or confidential employees).

The ordinance requires the Incumbent and Successor Employers to do the following:

- When the transfer document (which effects the sale or other transfer of ownership) between the Incumbent and Successor Employers is fully executed, the Incumbent Employer must give the Successor Employer a “Retention List,” identifying the Incumbent Employer’s employees and their date of hire, rate of pay, average number of hours worked in the previous six months, employment occupation classification, and contact information.
- The Incumbent and Successor Employers (as applicable, depending on the ownership at the time that the duty arises) must post notice of the transfer of ownership at the affected location for 30 days and provide notice of the employees’ rights under the ordinance with their first paycheck after the transfer.
- The Successor Employer must make a written offer of employment to the individuals on the Retention List under the same terms of employment with respect to job classification, compensation and number of work hours that governed those individuals and the Incumbent Employer, and as otherwise required by law.
- The Successor Employer (1) must retain the employees for 90 days, (2) may not discharge any without cause during the 90 days, and (3) may not employ any other individual for the job classification for a period of time that begins on the date of the transfer and that ends 90 days after the Successor Employers opens the business to the public.

- The obligation to hire employees from the Retention List applies whether the Successor Employer operates the business in the same location or relocates it elsewhere in San Francisco.
- The obligation to hire employees from the Retention List remains in effect during any delay in the opening of the business by the Successor Employer because of remodeling, relocating the business, or other reason, but terminates three years from the date of the transfer.
- If the Successor Employer does not need to employ all the individuals on the Retention List, it shall retain those needed based on the date of hire by the Incumbent Employer or under an applicable collective bargaining agreement.

Requirements For Employers To Post, Maintain, And Make Records Available To The City

- Employers must post notice when a Formula Retail business is sold or otherwise transferred to another employer and must provide notice to employees of their rights under the ordinance with their first paycheck after the transfer
- Employers must post a notice of employees' rights under the Article at the workplace
- Employers must retain for four years a copy of the written offer of additional hours made to part-time employees
- Successor Employers must retain a copy of offers of employment made to the individuals on the Retention List after the sale or transfer of a business for at least four years
- Successor Employers must retain the Retention List for at least four years
- Employers must give the City access to employment and payroll records relating to their obligations under the ordinance, with appropriate notice by the City and at a mutually agreeable time

Anti-Retaliation Prohibited

It shall be unlawful for a Formula Retail Employer or any other party to take adverse action against any person in retaliation for exercising their rights under the ordinance.

Enforcement

The Office of Labor Standards Enforcement (the "Agency") is responsible for implementing and enforcing the ordinance.

Agency Determination of Violation. The Agency may investigate possible violations of the ordinance. If after investigating the matter and providing the employer the opportunity to respond to the allegations, the Agency finds that an employer has violated the ordinance, the Agency may issue a Notice of Determination and order the employer to remedy the violation.

Among the remedies the Agency may order are requiring the employer who has failed to offer additional hours of work to part-time employees to do so, reinstatement of employment, payment of lost wages, and payment of an additional sum as an administrative penalty up to the amount of the award for lost wages.

An employer determined in violation of the ordinance by the Agency may appeal that decision and the appeal will be heard by a hearing officer appointed by the Controller's Office.

Administrative Citations. The Agency may impose an administrative fine for specific violations of the ordinance of up to \$500 per Eligible Employees employed by the employer, including the failure of the old Employer to provide the new employer with the Retention List that identifies current employees entitled to the 90-day retention period, the failure of Employers to provide notice of a transfer of the business, the failure to post notice of workers' rights under the ordinance, the failure to make an offer of additional available hours to part-time employees in writing, and the failure to make employment and payroll records available to the Agency so that it may monitor and enforce the ordinance.

Civil Court Enforcement. The City Attorney, any person aggrieved by a violation of the ordinance, any entity a member of which is aggrieved by a violation, or any other person or entity acting on behalf of the public, may bring a civil action in court against an Employer for violating the ordinance.

Waiver Under Collective Bargain Agreement. The requirements of the ordinance may be waived by the explicit provisions of a collective bargaining agreement.

Operative Date. The ordinance would become operative 90 days after its effective date.

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President, District 3
BOARD of SUPERVISORS



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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

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. 140880 Mar
(Primary Sponsor)

Title. Formula Retail Employer Requirements

From: Land Use & Economic Development Committee

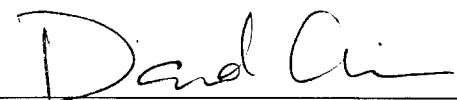
To: Budget & Finance Committee

☐ Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor _____

Replacing Supervisor _____

For: _____ Meeting
(Date) (Committee)


David Chiu, President
Board of Supervisors

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. **140880**
- ☐ 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):


Mar, Chiu, Avalos, Campos

Subject:

Police Code - Hours and Retention Protections for Formula Retail Employees

The text is listed below or attached:

Please see attached.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

