



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

November 12, 2014

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

Re: File No. 140880 [Police Code – Hours and Retention for Formula Retail Employees]

Small Business Commission Recommendation: **Recommend the Budget and Finance Committee not to pass the item out of committee and continue for a minimum of two week (less time if issues are resolved), to work with the business community on points of concern with the legislation.**

Dear Ms. Calvillo:

On November 10, 2014, the Small Business Commission (SBC) voted unanimously (5-0) on BOS File No. 140880 to recommend the Budget and Finance Committee not pass this ordinance out of committee and to continue the item for a minimum of two weeks to work with the business community on points of concern with the legislation.

The Small Business Commission requests that Supervisor Chiu and his staff work with the key business stakeholders to resolve the points of concern, several of which are noted in this letter. The Small Business Commission finds this request to delay action for a week or two is a reasonable request since the business community has stated that they want to work together to resolve their concerns. The business community has successfully demonstrated their ability to work together with the recent ground breaking Fair Chance Ordinance, the Family Friendly Ordinance and the Minimum Wage Ordinance.

Over the past several years the City has made a conscious effort to align similar regulatory requirements when establishing new employer mandates. Not only does this accomplish the City's goal to streamline and create efficiencies, it makes it easier for OLSE to track and enforce, and helps to ensure a greater level of compliance from the employer.

Requested changes to BOS File No. 140880:

1. Align with the Family Friendly Workplace Ordinance (FFWO) and Fair Chance Ordinance (FFO) in the following areas:
 - a. Section 3300G.7: change the required record keeping from 4 years to 3 years.
 - b. Simplify record keeping and reporting requirements as was done with FFWO.



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

- c. Remove the private right to action, as was done with FFWO and FCO. It is fine to allow the City to bring action against an employer.
 - d. Ensure the administrative enforcement by OLSE is clear, straight-forward and objective as in the FFWO and FCO.
2. The revised Formula Retail regulations have not pass out of the Board of Supervisors or signed into law. The new regulations will include more business sectors currently not classified as Formula Retail and many of these newly classified businesses are not the businesses this legislation is attempting to address. The Small Business Commission's first recommendation is for the Board of Supervisors not to hear this legislation until the Formula Retail regulations become law. As this is unlikely, the Small Business Commission then recommends, as with the Family Friendly Ordinance, for the first 12 months OLSE will issue warnings and notices to correct the violations and not assess penalties.
3. Amend the definition of "Incumbent Employer". Have the definition line up with Hospitality ordinance so that it applies to Formula Retail business with 200 or more employees at a single location. The Hospitality and Grocery establishments are already covered under pervious ordinances and there the Commission recommends exempting them from the legislation.
4. The definition of part-time worker is consistent with the Affordable Care Act (1 to 29 hours). The [ACA defines](#) a full-time worker as 30 or more
5. Amend SEC 3300F.3 (a). This section prevents employers from hiring for full or part-time vacancies. The Commission understands the intent of this section but cannot support restricting an employer's ability to hire. The Commission therefore, recommends removing the restriction to hire, have the employer maintain a list of part-time workers willing to work extra hours, to maintain the option of either hiring and/or offering additional work hours. This section as written is in contradiction to Supervisor Chiu's legislation and efforts to create more predictability in scheduling.
6. Amend SEC 3300F.4. The language for the retention of employees to track with the same language as the Hospitality ordinance.
7. Delete SEC 3300F.3 (e). The Commission recommends removal of this section. The businesses that provide janitorial or security services have not been consulted with, but more importantly this section is attempting to regulate business to business contractual relationships. The Commission is strongly recommends against the precedent this sets.

For simplicity, the Small Business Commission recommends merging both pieces of legislation into one.



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

The Small Business Commission's above list of recommendations may not be inclusive of all the recommendations for consideration the business community may have. Therefore, the Small Business Commission recommends Supervisor Chiu and his staff work with the business community to ensure all matters that need consideration are dealt with and mitigated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Regina Dick-Endrizzi'.

Regina Dick-Endrizzi
Director, Office of Small Business

cc. Supervisor Eric Mar, Board of Supervisors
Supervisor David Chiu, Board of Supervisors
Board of Supervisors
Nicole Wheaton, Mayor's Office
Todd Rufo, Director Office of Economic and Workforce Development
Linda Wong, Budget and Finance Committee Clerk



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

November 13, 2014: Addendum

At the November 12, 2014 Budget and Finance Committee hearing, the Office of Small Business wants to acknowledge two changes to what is noted above:

1. Item 1(a) has been addressed through a proposed amendment made at Committee.
2. Item 2 is primarily addressed in giving OLSE 6 months to draft regulations, administrative procedures and conduct outreach to the affected business followed by a 6 month grace period before enforcement begins.

A more targeted definition of a Formula Retailer employer still needs to be given consideration. The SF Chamber has a recommended definition that the Small Business Commission will support as it falls within the scope of the Commission's recommendations.

At this meeting the Budget and Finance Committee accepted (2-1) an amendment to change the definition of "Employer" by eliminating the 20 employee threshold. The Small Business Commission does not support this. Thank you Supervisor Chiu for voting not to support the amendment.

Formula Retail franchisees have a unique place in small business world. At the OSB Assistance Center we regularly see individuals who want to open a franchisee. While the business product, branding and marketing are formula retail. These individuals own and operate their businesses the same as a small business. These individuals require the same level of counseling and information as a non-formula retail small business. Franchisees have to conduct the site selection, lease negotiations and handle the conditional use process on their own, just like a small business. They can set their own wages, handle their own scheduling, and often have to retain their own HR and legal services. It is not uncommon for a franchisee seeking business assistance to be an immigrant wanting to own a franchise for the sole purpose of supporting their family.

Therefore, a direct request is being made to the Budget and Finance Committee at its Monday, November 17, 2014 special meeting to delete the proposed amendment and return the definition of "Employer" to the first drafted definition. In the event this is not done then it is requested of the Full Board not to accept the amendment.

Delete SEC 3300G.4 (a) (1). In the event the proposed amendment to the employer definition removes the "20 employee threshold", then it is recommended to delete the requirement of written notification of a schedule at the time of hire. Again for franchisees a written schedule of hours and shift a month out is onerous.