

BOARD of SUPERVISORS



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MEMORANDUM

BUDGET AND FINANCE COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Farrell, Chair
Budget and Finance Committee

FROM: Linda Wong, Committee Clerk

DATE: November 18, 2014

SUBJECT: **COMMITTEE REPORT**

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting on Tuesday, November 18, 2014. This item was acted upon at the Special Budget and Finance Committee Meeting on Monday, November 17, 2014, at 12:00 p.m., by the vote indicated.

Item No. 41 File 140880

[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

AMENDED, on Page 3, Line 14, by deleting "one" and adding "20"; and Line 20, by adding "For the purpose of calculating the 20-employee threshold referenced herein, Employees performing work in other Formula Retail Establishments in the City that are owned or operated under the same trade name by the same Employer shall be counted" **by the following vote:**

Vote: Supervisor Mar - Aye
Supervisor Avalos - No
Supervisor Farrell - Aye

AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE by the following vote:

Vote: Supervisor Mar - Aye
Supervisor Avalos - Aye
Supervisor Farrell - Aye

RECOMMENDED AS AMENDED AS A COMMITTEE REPORT by the following vote:

Vote: Supervisor Mar - Aye
Supervisor Avalos - Aye
Supervisor Farrell - No

c: Board of Supervisors
Angela Calvillo, Clerk of the Board
Jon Givner, Deputy City Attorney
Rick Caldeira, Legislative Deputy Director

File No. 146880

Committee Item No. _____
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date November 17, 2014

Board of Supervisors Meeting

Date November 18, 2014

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input checked="" 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
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<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
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

OTHER

(Use back side if additional space is needed)

[illegible]

Completed by: Linda Wong

Date November 13, 2014

Completed by: L.W.

Date 11/18/14

[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
15 indirectly or through an agent or any other person, including through the services of a temporary
16 services or staffing agency or similar entity, employs or exercises control over the wages, hours or
17 working conditions of any individual. For the purpose of calculating the 20-employee threshold
18 referenced herein, Employees performing work in other Formula Retail Establishments in the
19 City that are owned or operated under the same trade name by the same Employer shall be
20 counted. For the purpose of calculating the 20-employee threshold referenced herein,
21 Employees performing work in other Formula Retail Establishments in the City that are owned
22 or operated under the same trade name by the same Employer shall be counted.
23 Notwithstanding the foregoing definition, "Employer" does not include a Nonprofit Corporation or
24 governmental entity.

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

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

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

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

9 "Incumbent Employer" shall mean the Employer that owns, controls, and/or operates the
10 Formula Retail Establishment prior to the Change in Control, provided that the Employer has
11 employed 200 or more Employees during the 90 days of operation prior to the Change in
12 Control. For the purpose of calculating the 200-employee threshold referenced herein,
13 Employees performing work in other Formula Retail Establishments in the City that are owned
14 or operated under the same trade name by the same Employer shall be counted.

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

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

24 "Part-time" shall mean fewer than 35 hours of work in each work week.
25

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

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

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.

11
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) if: (1) the Part-time Employee(s)
16 are qualified to do the additional work, as reasonably determined by the Employer and (2) the
17 additional work is the same or similar to work the Employee(s) have performed for the Formula Retail
18 Establishment. This Section 3300F.3 requires Employers to offer to Part-time Employees only the
19 number of hours required to give the Employee 35 hours of work in a week.

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

22 (c) A Part-time Employee may, but is not required to, accept the Employer's offer of additional
23 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 three ~~four~~ years as required under Section 3300F.8.

4 (e) The requirements imposed by this Section 3300F.3 shall apply to Property Services
5 Contractors as to work performed in San Francisco at a Formula Retail Establishment covered by this
6 Article 33F, under a contract with an Employer. An Employer shall include in any such contract
7 executed on or after the operative date of this Article 33F, (1) a provision requiring the Property
8 Services Contractor to comply with this Section and (2) a copy of this Section. The Employer shall
9 retain copies of such contracts for a period of not less than ~~three~~ ~~four~~ years following the expiration or
10 termination of the contract, and make such copies available to the Agency for inspection upon request.
11 In addition, Sections 3300F.7, 3300F.8, 3300F.9, 3300F.10, 3300F.11, and 3300F.12 of this Article
12 shall apply to a Property Services Contractor as if it is an Employer for purposes of notice, record
13 retention, compliance, investigation, and enforcement of the requirements of this Section 3300F.3.

14
15 **SEC. 3300F.4. RETENTION OF EMPLOYEES UPON CHANGE IN CONTROL.**

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

22 (b) The Successor Employer shall employ each Eligible Employee identified on the Retention
23 List to work in the Formula Retail Establishment, under the same terms of employment with respect to
24 job classification, compensation, and number of work hours that governed the Eligible Employee and
25 Incumbent Employer, and as otherwise required by law. The Successor Employer shall continue to

1 employ the Eligible Employees in the Retail Formula Establishment for a period of 90 days from the
2 Employee Commencement Date, consistent with the following provisions:

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

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

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

9 (4) The requirement that the Successor Employer employ Eligible Employees from the
10 Retention List shall remain in effect notwithstanding any delay in the Successor Employer's opening
11 the Formula Retail Establishment due to relocation, remodeling, or other reason, provided that this
12 requirement shall terminate three years from the date that the Transfer Document is fully executed.

13
14 **SEC. 3300F.5. TRANSITION EMPLOYMENT PERIOD.**

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

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

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

1
2 **SEC. 3300F.6. NOTICE OF CHANGE IN CONTROL.**

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

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

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

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

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

20
21 **SEC. 3300F.7. NOTICE OF EMPLOYEE RIGHTS.**

22 (a) The Agency shall, no later than the operative date of this Article 33F, publish and make
23 available to Employers, in English, Spanish, Chinese, Tagalog, and any other language spoken by more
24 than 5% of the San Francisco work force, a notice suitable for posting by Employers in the workplace
25 informing Employees of their rights under this Article. The Agency shall update this notice on

1 December 1 of any year in which there is a change in the languages spoken by more than 5% of the San
2 Francisco workforce.

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

7
8 **SEC. 3300F.8. REQUIREMENTS GOVERNING RETENTION OF RECORDS.**

9 (a) Employers shall retain employment and payroll records pertaining to current and former
10 Employees for no less than ~~three~~ four years.

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

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

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

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

23
24 **SEC. 3300F.9. RETALIATION PROHIBITED.**

1 It shall be unlawful for a Formula Retail Employer or any other Person to take adverse action
2 against any person in retaliation for exercising rights protected under this Article 33F. Rights
3 protected under this Article include, but are not limited to: the right to file a complaint or inform any
4 person about any party's alleged noncompliance with this Article; and the right to inform any person of
5 his or her potential rights under this Article and to assist him or her in asserting such rights.
6 Protection of this Section 3300F.9 shall apply to any person who mistakenly, but in good faith, alleges
7 noncompliance with this Article. Taking adverse action against a person within 90 days of the person's
8 exercise of rights protected under this Article shall raise a rebuttable presumption that the party taking
9 the adverse action did so in retaliation for the exercise of such rights.

10
11 **SEC. 3300F.10. INVESTIGATION AND ADMINISTRATIVE ENFORCEMENT BY THE**
12 **AGENCY.**

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

15 (b) Determination of Violation and Penalties.

16 (1) Where the Agency has reason to believe that a violation has occurred, it may order
17 any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending
18 completion of a full investigation, provided, however, that during the first six months following
19 the operative date of this Article 33G, the Agency must issue warnings and notices to correct.

20 (2) After investigating a possible violation of this Article 33F, and providing the
21 Employer, Incumbent Employer or Successor Employer the opportunity to respond to the allegations, if
22 the Agency determines that a violation has occurred, it may issue a Determination of Violation. The
23 Determination of Violation shall identify the violation and the factual basis for the determination. The
24 Agency shall serve the Determination of Violation on the Employer, Incumbent Employer or Successor
25 Employer by United States mail and the date of service shall be the date of mailing. In the

1 Determination of Violation, the Agency may order any appropriate relief, provided, however, that
2 during the first six months following the operative date of this Article 33G, the Agency must
3 issue warnings and notices to correct. Thereafter, the Agency may order relief including, but
4 not limited to, requiring a Formula Retail Employer to offer additional hours of work to Part-time
5 Employees as required under Section 3300F.3, reinstatement, payment of lost wages to the Eligible
6 Employee or person whose rights under this Article were violated, and the payment of an additional
7 sum as an administrative penalty that does not exceed the amount of the award for lost wages. To
8 compensate the City for the costs of investigating and remedying the violation, the Agency may also
9 order the violating Employer, Incumbent Employer or Successor Employer to pay to the City an
10 amount that does not exceed its enforcement costs.

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

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

19 (2) Following the filing of the Appeal and service of a copy on the Agency, the Agency
20 shall promptly afford Appellant an opportunity to meet and confer in good faith regarding possible
21 resolution of the Determination of Violation in advance of further proceedings under this subsection
22 (c), with the intention that such meeting occur within 30 days of the date the Appeal is filed if feasible.

23 (3) After the expiration of 30 days following the date the Appeal is filed, any party may
24 request in writing, with concurrent notice to all other parties, that the Controller appoint a hearing
25

1 officer to hear and decide the appeal. If no party requests appointment of a hearing officer, the Notice
2 of Violation shall be deemed final on the 60th day after the date the Appeal is filed.

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

9 (5) The hearing officer shall promptly set a date for a hearing. The hearing must
10 commence within 45 days of the date of the Controller's notice of appointment of the hearing officer,
11 and conclude within 75 days of such notice. The hearing officer shall conduct a fair and impartial
12 evidentiary hearing in conformance with the time limitations set forth in this subsection (c)(5) and in
13 any applicable rules and regulations, so as to avoid undue delay in the resolution of any Appeal. The
14 hearing officer shall have the discretion to extend the times under this subsection (c)(5), and any time
15 requirements under any applicable rules and regulations, only upon a determination of good cause.

16 (6) Appellant shall have the burden of proving by a preponderance of the evidence that
17 the basis for the Determination of Violation, and/or the amount of lost wages, interest, or penalty
18 payments at issue in the Appeal, is incorrect.

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

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

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

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

10 (d) Compliance. Where prompt compliance with a Determination of Violation is not
11 forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including
12 referring the action to the City Attorney to consider initiating a civil action pursuant to Section
13 3300F.12.

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

21
22 **SEC. 3300F.11. AUTHORITY OF AGENCY TO IMPOSE ADMINISTRATIVE FINES.**

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

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

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

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

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

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

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

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

22
23 **SEC. 3300F.12. CIVIL ENFORCEMENT.**

24 The City Attorney, any person aggrieved by a violation of this Article 33F, any entity a member
25 of which is aggrieved by a violation of this Article, or any other person or entity acting on behalf of the

1 public as provided for under applicable state law, may bring a civil action in a court of competent
2 jurisdiction against an Employer, an Incumbent Employer or a Successor Employer for violating any
3 requirement of this Article and, upon prevailing, shall be entitled to such legal or equitable relief as
4 may be appropriate to remedy the violation including, without limitation, the payment of lost wages, the
5 payment of an additional sum as a civil penalty not to exceed the amount awarded for lost wages, and
6 reinstatement in employment and/or injunctive relief, and shall be awarded reasonable attorneys' fees
7 and costs; provided, however, that any person or entity enforcing this Article on behalf of the public as
8 provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive
9 or restitutionary relief, and reasonable attorneys' fees and costs.

10
11 **SEC. 3300F.13. AGENCY MAY ADOPT REGULATIONS.**

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

18
19 **SEC. 3300F.14. WAIVER UNDER COLLECTIVE BARGAINING AGREEMENT.**

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

23
24 **SEC. 3300F.145. NO LIMITATION OF OTHER RIGHTS AND REMEDIES.**

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

4
5 **SEC. 3300F.156. SEVERABILITY.**

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

13
14 **SEC. 3300F.1617. NO CONFLICT WITH FEDERAL OR STATE LAW.**

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

17
18 **SEC. 3300F.1718. UNDERTAKING FOR THE GENERAL WELFARE.**

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

23
24 **SEC. 3300F.1819. OPERATIVE DATE.**

25 This Article 33F shall become operative ~~90~~180 days after its effective date.

Section 2. Effective and Operative Dates.

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

(b) Operative Date. As stated in Section 3300F.18 of the Police Code, this ordinance shall become operative ~~90~~180 days after the effective date.

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

By:


JOSHUA WHITE
Deputy City Attorney

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LEGISLATIVE DIGEST
(revised November 17, 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.

AMENDED IN COMMITTEE

11/17/14

FILE NO. 140880

- 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 three 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 three years
- Successor Employers must retain the Retention List for at least three 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.

AMENDED IN COMMITTEE

11/17/14

FILE NO. 140880

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.

Operative Date. The ordinance would become operative 180 days after its effective date.

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Formula Retail Employer Requirements: Economic Impact Report

Office of Economic Analysis
Item #140880

November 12, 2014



Introduction

- The proposed legislation would change the way chain stores and other large multi-establishment companies (known as *formula retailers*) in San Francisco manage the hours and hiring of part-time employees.
- First, it would require most formula retailers to offer additional hours of work to incumbent, qualified, part-time employees, until they reach 35 hours of work per week, before hiring any new part-time employees. This requirement would also apply to any janitorial or security contractor of a formula retailer.
- Secondly, it would require a formula retailer that was transferred to a new owner to offer continued employment to incumbent employees, for a period of 90 days after the transfer.
- The City's Planning Code already regulates when and where formula retail establishments may start operations. This legislation would be the first ordinance that regulated other aspects of their operations.
- These requirements would apply to all businesses that the cities defines as "formula retail", regardless of whether or not formula retail controls applied in the neighborhood the business is located in.

Industries Subject to Formula Retail Controls

- Pending the adoption of legislation that has been unanimously approved by the Board of Supervisors as of the date of this report, businesses are classified as formula retail based on their industry, number of establishments, formula retail status of their parent, and other evidence of standardization in decor, merchandise and signage.
- Businesses in the following major industries in the city may be classified as formula retail:
 - Retail trade
 - Food services (including restaurants and bars)
 - Financial services (including banks and credit unions)
 - Personal services
 - Movie theaters

Insurance Requirements under the Affordable Care Act

- The Federal Affordable Care Act (ACA) seeks to ensure universal health care coverage by expanding both employee and employer requirements to provide health insurance for an employee and his or her dependents.
- Under the ACA's *large employer mandate*, due to come into effect in January 2015, an employer with more than 50 full-time employees is required to provide health insurance for its full-time employees (those working more than 30 hours per week), or pay a penalty.
- Under the ACA's *individual mandate*, already in effect, an individual not covered by federal health insurance plans, an employer-provided plan, or a grandfathered plan, must purchase their own health insurance or pay a penalty. Some low wage workers are eligible for federal income tax credits that will reduce their effective cost for insurance under the individual mandate.
- It is highly likely that every business classified as formula retail by the city would be subject to the ACA's employer mandate for its full-time employees. Thus, one effect of the legislation will be to shift responsibility for purchasing insurance from employees to the employer, once an employee works more than 30 hours per week.

Requirements under the City's Health Care Security Ordinance

- Employer requirements under the ACA will affect how businesses respond to, and may expand, existing requirements that stem from the City's Health Care Security Ordinance (HCSO), passed in 2006.
- Under the HCSO, businesses with more than 20 employees are responsible for making health care payments on behalf of each employee who works more than 8 hours a week, by providing health insurance, paying into the City's Healthy San Francisco program, paying into an employee's Health Reimbursement Account, or a combination.
- For employers with more than 100 employees (anywhere), the required health care payment for 2014 is \$2.44. This rate would apply to virtually all formula retailers.
- This amount is based on 75% of the average public sector employer cost for employee health insurance in the ten largest counties in California.
- The Office of Economic Analysis is not able to determine if the cost of complying with the employer mandate would exceed the payment already required by the HCSO, because of uncertainties in exactly what level of coverage is required, and uncertainties in current and future premiums.
- However, because of the existing HCSO requirement, the additional cost burden of meeting the ACA employer requirement is likely to be small for most formula retail employers.

Economic Impact Factors

- If the proposed legislation does increase health care costs for formula retailers—and this is not clear—it will discourage them from adding new staff, either full- or part-time.
- However, workers not hired by formula retailers will be available for work by non-formula retailers, who represent the majority of the hiring in the affected industries, according to a recent report by the Planning Department.
- Therefore, while formula retailers' compensation costs could rise, if they do, compensation costs for non-formula retailers are likely to slightly fall, encouraging them to hire additional workers.
- Consequently, even if the legislation does slightly increase health care costs for formula retail, the impact on employment opportunities in the city is likely to be negligible.

Potential Mitigations: Flexibility for Business Circumstances

- The proposed legislation provides some flexibility regarding how new work must be offered. The incumbent part-time employees must be qualified, as the employer reasonably determines. Furthermore, the work must be similar to work an employee has already performed.
- However, there are other areas of flexibility that may be considered.
- For example, every employee of a business open less than 35 hours a week would be classified as part-time under this legislation, yet the business could not make any employee full-time without changing its hours of operation. As now drafted, the business would not be able to hire new part-time workers.
- Secondly, many businesses have a need to increase their workforce at specific times, such as lunch time during the day, weekends, or during seasonal periods of the year. The legislation currently affords no flexibility to a business that does not only need to add hours, but temporary headcount.

Potential Mitigations: Classifying Businesses

- The proposed legislation would apply to businesses classified as formula retail, even if they are located in an area of the city, such as downtown, with no land use controls based on formula retail.
- If the policy objective here is to improve the benefits of employees of businesses best able to bear those higher costs, it may be more straightforward to classify business by their employment size alone, rather than their formula retail status.
- Employment size is relatively easy to track: formula retail status would be more difficult to track on an ongoing basis.
- As stated earlier, formula retail classification depends on the number of related establishments, the standardization of merchandise, facade, signage and decor, the industry, and the formula retail status of the parent.
- As any of these can change at any time, administration using this classification would be more cumbersome than a straightforward classification based on employment.

Conclusions

- The proposed legislation can be expected to have the effect, on formula retailers, of shifting responsibility for paying for health insurance under the Affordable Care Act from part-time workers to the employer.
- However, because of existing requirements to make payments for employee health care under the City's Health Care Security Ordinance, the net impact on these employers is likely to be small.
- Moreover, because formula retailers represent a minority of employment in the affected industries in the city, and other businesses may benefit from the additional requirements placed on formula retailers, the net citywide economic impact is likely to be negligible.
- Although the legislation is unlikely to have a major quantifiable economic impact, either positive or negative, the administrative burden on employers and the City could be reduced in two ways:
 1. By allowing an exemption for businesses who are open less than 35 hours a week or have a need for more workers, not merely more hours of work.
 2. By defining affected employers simply on their number of employees, instead of their formula retail status.

Staff Contacts

Ted Egan, Ph.D, Chief Economist, ted.egan@sfgov.org

Asim Khan, Ph.D., Principal Economist, asim.khan@sfgov.org



SAN
FRANCISCO
CHAMBER OF
COMMERCE

Our City. Your Business.

Received Time Nov. 13, 2014 8PM No. 2583

Bos 11, B+F
COB, Clerk,
Leg Rep

① File 141024
② File 140860

FACSIMILE TRANSMITTAL SHEET

TO:	Angela Calvillo, Clerk of the Board	FROM:	Jim Lazarus
COMPANY:		PHONE:	415.352.8810
FAX NUMBER:	415.554-5163	DATE:	11/13/14
PHONE NUMBER:		TOTAL NO. OF PAGES INCLUDING COVER:	4
RE:	Formula Retail Employer Requirements		

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Please distribute to all Supervisors



November 13, 2014

TO: Sup. David Chiu

Sup. Eric Mar

Sup. Mark Farrell

FROM: Jim Lazarus

RE: Formula Retail Employer Requirements

This is to follow-up on an earlier memo I sent suggesting changes to Sup. Chiu's Fair Scheduling Ordinance and Sup. Mar's Hours and Retention Ordinance. We appreciate the opportunity to continue to discuss amendments to these two ordinances and look forward to next week's special Budget Committee meeting where significant amendments can be made. As you know, there remain many key points in both ordinances that are troublesome to the Chamber and our members. And we urge you to seriously consider the impacts outlined in Ted Egan's report, such as no new hires in small businesses with less than a 35 hour work week, lack of flexibility to adjust staffing based on time of day/day of week demand.

Because time seems to be of the essence, we set forth below an outline of amendments we urge you to include in any final versions of your legislation;

- 1) In both ordinances "Employer" had been limited to a formula retail establishment with 20 or more employees in the City. This was deleted at yesterday's Budget Committee meeting and we urge the committee to restore that language. Many formula retailers are in fact very small independent franchisees that have limited human resources capabilities and few employees to cover shift changes. Basically, they do not have the flexibility to comply with these proposed mandates.
- 2) "Formula Retail Establishment" should be limited to a business that not only meets the Planning Code definition but has 20 or more world-wide locations and annual gross receipts in the City of at least \$1 million and derives at least 50% of those gross receipts from the sale of goods,

products, food or beverages subject to California sales tax. This is true "retail" and may have the scheduling issues these ordinances are trying to address.

- 3) Sec. 3300F.3 of Sup. Mar's ordinance requires employers to offer additional work to part time employees before hiring additional workers. This will cost jobs and disrupt the long established staffing plans of many businesses. Instead, we suggest a requirement that employers be required to maintain a list of part-time employees willing to work additional hours. However, employers would retain the option of offering additional work hours or hiring additional workers, which is a core management right.
- 4) Sec. 3300F.4 of Sup. Mar's ordinance regarding "Retention of Employees Upon Change of Control" should track language in the existing Hospitality and Grocery Industry Ordinances. We also believe that this provision should only apply to retailers with at least 200 employees at a single city location and should exempt the Hospitality and Grocery Establishments covered by the early legislation. Specific language can be provided.
- 5) Sec. 3300G.4 of Sup. Chiu's ordinance on "Advance Notice of Work Schedules", we suggest that Employers be allowed to post or provide electronically a work schedule not less than 10 rather than 14 calendar days prior to the first scheduled work day. Employers shall give at least 5 days notice to work an unscheduled shift. For restaurant and bars, only 48 hour notice of a shift change would be required. Failure to give at least the 5 day or 48 hour notice, shall result in an Employer requirement to pay an Employee one hour of extra pay at the Employee's regular hourly rate. Failure to give at least 2 days notice, or in the case of restaurant and bars, 24 hours notice, shall result in two hours of extra pay at the regular rate of pay.

Regarding written notice of scheduled shifts on hiring, this is an onerous requirement for many smaller employers who do not use written employment contracts or hiring letters. This is especially true if no language is inserted to limit the legislation's definition of "formula retailer". We suggest that Sec. 3300G.4 (a)(1) be amended to delete the requirement of a pre-hire written work schedule.

- 6) Regarding "on-call shifts", add an exception in Sec. 3300G4(d) of Sup. Chiu's legislation for employees hired specifically to work on call work or the Employee requests "on-call" status.
- 7) Employee rights, recorded keeping, enforcement sections, etc. should conform to provisions in the Family Friendly Flex-time Ordinance, including the waiver under collective bargaining agreements.
- 8) Delete any reference to janitorial or security contractors. There has been absolutely no outreach to these industries and they have no knowledge that these employment rules may apply to them when working for a formula retail business.

Finally, please don't be surprised if additional amendments aren't suggested at the special meeting of the Budget Committee. This is complicated legislation, especially with two pieces that need to be brought into conformity with each other. In fact, if legally possible under the public notice requirements, if we can reach agreement, we urge you to consider sending out of committee one piece of legislation.

We look forward to discussing these important amendments with you.

Cc: Clerk of the Board, to be distributed to all Supervisors; Mayor Lee; Todd Rufo, Director, OEWD; Regina Dick-Endrizzi Executive Director, Office of Small Business

President, District 3
BOARD of SUPERVISORS



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LN, B+F Front Desk
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Fax No. 554-7454
TDD/TTY No. 544-5227

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

David Chiu, President
Board of Supervisors

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2014 OCT 30 PM 3:01

Wong, Linda (BOS)

From: Dick-Endrizzi, Regina (MYR)
Sent: Friday, November 14, 2014 3:20 PM
To: Wong, Linda (BOS)
Cc: Calvillo, Angela (BOS)
Subject: Small Business Commission official response to BOS File No. 141024 & 140880
Attachments: 140880 legislative response _ Hours and Tentention Protections for Fromul Retail Employees.pdf; 141024 legislative response _ Fair Scheduling and Treatment of Formula Retail.pdf

Kindly,

Regina Dick-Endrizzi | Executive Director | Office of Small Business
regina.dick-endrizzi@sfgov.org | D: 415.554.6481 | O: 415.554.6134 | c: 415.902-4573

www.sfgov.org/osb | www.facebook.com/SFOSB | www.twitter.com/sfosb

From: Dick-Endrizzi, Regina (MYR)
Sent: Friday, November 14, 2014 2:50 PM
To: David Chiu (david.chiu@sfgov.org); Roxas, Samantha (BOS); Calvillo, Angela (BOS); Mar, Eric (BOS); Nickolas Pagoulatos (nickolas.pagoulatos@sfgov.org)
Cc: Wong, Linda (HSA)
Subject: Small Business Commission official response to BOS File No. 141024 & 140880

Dear Supervisor Chiu, Mar and Angela,
Attached is the Small Business Commission official response to BOS File No. 141024.

Kindly,

Regina Dick-Endrizzi | Executive Director | Office of Small Business
regina.dick-endrizzi@sfgov.org | D: 415.554.6481 | O: 415.554.6134 | c: 415.902-4573
City Hall, Suite 110 | San Francisco, CA 94102

www.sfgov.org/osb | www.facebook.com/SFOSB | www.twitter.com/sfosb



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,

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.

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Greg Suhr, Chief, Police Department
Donna Levitt, Division Manager, Office of Labor Standards Enforcement
Ben Rosenfield, City Controller, Office of the Controller

FROM: Linda Wong, Assistant Clerk, Budget and Finance Committee, Board of Supervisors

DATE: November 7, 2014

SUBJECT: SUBSTITUTED LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed substituted legislation, introduced by Supervisor Mar on November 4, 2014:

File No. 140880

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.

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Christine Fountain, Police Department

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Linda Wong, Assistant Clerk, Budget and Finance Committee, Board of Supervisors

DATE: November 7, 2014

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Committee

The Board of Supervisors' Budget and Finance Committee has received the following substituted legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 140880

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.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

____ **No Comment**

____ **Recommendation Attached**

Chairperson, Small Business Commission

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Andrea Ausberry, Assistant Clerk, Land Use and Economic Development
Committee, Board of Supervisors

DATE: August 20, 2014

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Economic Development Committee

The Board of Supervisors' Land Use and Economic Development Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 140880

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.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

_____ **No Comment**

_____ **Recommendation Attached**

Chairperson, Small Business Commission

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Greg Suhr, Chief, Police Department
Donna Levitt, Division Manager, Office of Labor Standards Enforcement
Ben Rosenfield, City Controller, Office of the Controller

FROM: Andrea Ausberry, Assistant Clerk, Land Use and Economic Development
Committee, Board of Supervisors

DATE: August 20, 2014

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation, introduced by Supervisor Mar on July 29, 2014:

File No. 140880

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.

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Christine Fountain, Police Department
Monique Zmuda, Office of the Controller

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. 1400283 ~~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:

