

1 [Police Code - Property Services Contractors at Formula Retail Establishments]

2

3 **Ordinance amending the Police Code to require Formula Retail Establishments that**
4 **have entered into contracts with Property Services Contractors that are in effect**
5 **between April 1, 2015, and July 3, 2015, to provide such contractors with copies of**
6 **Police Code, Articles 33F, and 33G, which establish certain rights of employees of such**
7 **contractors.**

8

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

13

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

15

16 Section 1. Article 33 F of the Police Code is hereby amended by adding Section
17 3300F.20 to read as follows (Sections 3300F.2 and 3300F.3 reprinted herein without revision,
18 for reference):

19

* * * *

20

SEC. 3300F.2. DEFINITIONS.

21

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

22

* * * *

23

24 “Employer” shall mean any Person that owns or operates a Formula Retail
25 Establishment with 20 or more Employees in the City, including corporate officers or
executives, who directly or indirectly or through an agent or any other person, including

1 through the services of a temporary services or staffing agency or similar entity, employs or
2 exercises control over the wages, hours or working conditions of any individual. For the
3 purpose of calculating the 20-employee threshold referenced herein, Employees performing
4 work in other Formula Retail Establishments in the City that are owned or operated under the
5 same trade name by the same Employer shall be counted. Notwithstanding the foregoing
6 definition, "Employer" does not include a Nonprofit Corporation or governmental entity.

7 * * * *

8 "Formula Retail Establishment" shall mean a business located in San Francisco that
9 falls under the Planning Code's definition of "Formula Retail Use," as amended from time to
10 time, except that the business must have at least 20 retail sales establishments located
11 worldwide.

12 * * * *

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

16
17 **SEC. 3300F.3. OFFERING ADDITIONAL WORK TO PART-TIME EMPLOYEES.**

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

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

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

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

8 (e) The requirements imposed by this Section 3300F.3 shall apply to Property
9 Services Contractors as to work performed in San Francisco at a Formula Retail
10 Establishment covered by this Article 33F, under a contract with an Employer. An Employer
11 shall include in any such contract executed on or after the operative date of this Article 33F,
12 (1) a provision requiring the Property Services Contractor to comply with this Section and (2) a
13 copy of this Section. The Employer shall retain copies of such contracts for a period of not
14 less than three years following the expiration or termination of the contract, and make such
15 copies available to the Agency for inspection upon request. In addition, Sections 3300F.7,
16 3300F.8, 3300F.9, 3300F.10, 3300F.11, and 3300F.12 of this Article shall apply to a Property
17 Services Contractor as if it is an Employer for purposes of notice, record retention,
18 compliance, investigation, and enforcement of the requirements of this Section 3300F.3.

19
20 * * * *

21 **SEC. 3300F.20. PROVIDING COPIES OF THIS ARTICLE TO PROPERTY SERVICES**
22 **CONTRACTORS.**

23 *For any contract described in Section 3300F.3(e) between a Property Services Contractor and*
24 *an Employer that is in effect as of April 1, 2015, the Employer shall provide a copy of this Article 33F*
25 *to the Property Services Contractor on or before April 15, 2015. For any such contract executed*

1 between April 1, 2015 and July 3, 2015, the Employer shall provide a copy of this Article 33F to the
2 Property Services Contractor within ten days of the date the parties execute the contract. This section
3 3300F.20 shall expire by operation of law one year after the effective date of this Article 33F. After
4 that date, the City Attorney shall cause this Section 3300F.20 to be removed from the Police Code.

5
6
7 Section 2. Article 33G of the Police Code is hereby amended by revising Section
8 3300G.5 and adding Section 3300G.19 to read as follows (Sections 3300G.3 and 3300G.4
9 reprinted herein without revision, for reference):

10
11 * * * *

12 **SEC. 3300G.3. DEFINITIONS.**

13 For purposes of this Article 33G, the following definitions apply:

14 * * * *

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

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

1 time, except that the business must have at least 20 retail sales establishments located
2 worldwide.

3 * * * *

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

7
8 **SEC. 3300G.4. ADVANCE NOTICE OF WORK SCHEDULES AND CHANGES IN**
9 **WORK SCHEDULES.**

10 (a) Initial Estimate of Minimum Hours.

11 (1) Prior to the start of employment, an Employer shall provide a new Employee
12 with a good faith estimate in writing of the Employee’s expected minimum number of
13 scheduled shifts per month, and the days and hours of those shifts. The estimate shall not
14 include On-Call Shifts. The estimate shall not constitute a contractual offer and the Employer
15 shall not be bound by the estimate.

16 (2) Prior to the start of employment, the Employee may request that the
17 Employer modify the proposed work schedule provided under subsection (a)(1) of this Section
18 3300G.4. The Employer shall consider any such request, and in its sole discretion may
19 accept or reject the request, provided that the Employer shall notify the Employee of its
20 determination prior to the start of employment.

21 (b) Two Weeks’ Notice of Work Schedules.

22 An Employer shall provide its Employees with at least two weeks’ notice of their work
23 schedules by doing one of the following at least every 14 days (on a “Biweekly Schedule”): (1)
24 posting the work schedule in a conspicuous place at the workplace that is readily accessible
25 and visible to all Employees, or (2) transmitting the work schedule by electronic means, so

1 long as all Employees are given access to the electronic schedule at the workplace. For new
2 Employees, an Employer shall provide the new Employee on his or her first day of
3 employment with an initial work schedule that runs through the date that the next Biweekly
4 Schedule for existing Employees is scheduled to be posted or distributed; thereafter, the
5 Employer shall include the new Employee in an existing Biweekly Schedule with other
6 Employees. For all Employees, the work schedule shall include any On-Call Shifts, where
7 applicable. If the Employer changes the work schedule after it is posted and/or transmitted,
8 such changes shall be subject to the notice and compensation requirements set forth in
9 subsection (c) of this Section 3330G.4.

10 (c) Notice and Compensation For Schedule Changes.

11 (1) Notice Required. An Employer shall provide an Employee notice of any
12 change to the Employee's schedule that has been posted or transmitted pursuant to
13 subsection (b) of this Section 3300G.4. The Employer shall provide such notice by in-person
14 conversation, telephone call, or email, text message, or other electronic communication. This
15 notice requirement shall not apply to any schedule changes that the Employee requests, such
16 as Employee-requested sick leave, time off, shift trades, or additional shifts.

17 (2) Predictability Pay For Schedule Changes. Subject to the exceptions in
18 subsection (e) of this Section 3300G.4, an Employer shall provide an Employee with the
19 following compensation per shift for each previously scheduled shift that the Employer moves
20 to another date or time or cancels, or each previously unscheduled shift that the Employer
21 requires the Employee to come into work:

22 (A) With less than seven days' notice but 24 hours or more notice to the
23 Employee, one hour of pay at the Employee's regular hourly rate;

24 (B) With less than 24 hours' notice to the Employee, two hours of pay at
25 the Employee's regular hourly rate for each shift of four hours or less; and

1 (C) With less than 24 hours' notice to the Employee, four hours of pay at
2 the Employee's regular hourly rate for each shift of more than four hours.

3 Where the Employee is required to come into work, the compensation mandated by
4 this subsection (c)(2) shall be in addition to the Employee's regular pay for working that shift.
5 This subsection (c)(2) shall not apply to On-Call Shifts.

6 (d) Pay for On-Call Shifts. Subject to the exceptions in subsection (e) of this Section
7 3300G.4, an Employer shall provide an Employee with the following compensation for each
8 On-Call Shift for which the Employee is required to be available but is not called in to work:

9 (1) Two hours of pay at the Employee's regular hourly rate for each On-Call
10 Shift of four hours or less; and

11 (2) Four hours of pay at the Employee's regular hourly rate for each On-Call
12 Shift of more than four hours.

13 This subsection (d) shall not apply when the Employee is in fact called in for the On-
14 Call Shift or the Employer provides the Employee with 24 hours' or more notice that the On-
15 Call Shift has been cancelled or moved to another date or time.

16 (e) Exceptions. The requirements in subsections (c) and (d) of this Section 3300G.4
17 shall not apply under any of the following circumstances:

18 (1) Operations cannot begin or continue due to threats to Employees or
19 property, or when civil authorities recommend that work not begin or continue;

20 (2) Operations cannot begin or continue because public utilities fail to supply
21 electricity, water, or gas, or there is a failure in the public utilities, or sewer system;

22 (3) Operations cannot begin or continue due to an Act of God or other cause
23 not within the Employer's control, for example, an earthquake or a state of emergency
24 declared by the Mayor or the Governor;

1 (4) Another Employee previously scheduled to work that shift is unable to work
2 due to illness, vacation, or employer-provided paid or unpaid time off where the Employer did
3 not receive at least seven days' notice of the absence;

4 (5) Another Employee previously scheduled to work that shift has not reported
5 to work on time and/or is fired or sent home or told to stay home as a disciplinary action;

6 (6) The Employer requires the Employee to work overtime (i.e., mandatory
7 overtime); or

8 (7) The Employee trades shifts with another Employee or requests from the
9 Employer a change in shift(s), hours, or work schedule.

10 (f) Nothing in this Section 3300G.4 shall be construed to prohibit an Employer from
11 providing greater advance notice of Employees' work schedules and/or changes in schedules
12 than that required by this Section.

13 (g) The requirements imposed by this Section 3300G.4 shall apply to Property
14 Services Contractors as to work performed in San Francisco at a Formula Retail
15 Establishment covered by this Article 33G, under a contract with an Employer. An Employer
16 shall include in any such contract executed on or after the operative date of this Article 33G,
17 (1) a provision requiring the Property Services Contractor to comply with this Article and (2) a
18 copy of this Article. The Employer shall retain copies of such contracts for a period of not less
19 than three years following the expiration or termination of the contract, and make such copies
20 available to the Agency for inspection upon request. In addition, Sections 3300G.6, 3300G.7,
21 3300G.9, 3300G.10, and 3300G.11 of this Article shall apply to a Property Services
22 Contractor as if it is an Employer for purposes of notice, record retention, compliance,
23 investigation, and enforcement of the requirements of this Section 3300G.4.

24
25 **SEC. 3300G.5. EQUAL TREATMENT FOR PART-TIME EMPLOYEES.**

1 (a) Hourly Wage. Employers shall provide Part-Time Employees with the same
2 starting hourly wage as that provided to starting Full-Time Employees who hold jobs that
3 require equal skill, effort, and responsibility, and that are performed under similar working
4 conditions, provided that hourly pay differentials between Part-Time and Full-Time Employees
5 are permissible if such differentials are based on reasons other than the Part-Time status of
6 the Employee, such as a seniority system, merit system, system which measures earnings by
7 quantity or quality of production, performance or responsibilities. This subsection (a) shall not
8 affect the minimum hourly requirements for receipt of benefits including but not limited to
9 health care benefits.

10 (b) Access to Time Off. Employers shall provide Part-Time Employees with the same
11 access to Employer-provided paid and unpaid time off as that afforded to Full-Time
12 Employees for the same job classification. A Part-Time Employee's eligibility for Employer-
13 provided paid or unpaid time off may be pro-rated based on the number of hours that the Part-
14 Time Employee works. This subsection (b) shall not apply to Employers that are subject to
15 the Minimum Compensation Ordinance, Administrative Code Chapter 12P.

16 (c) Eligibility for Promotions. Employers shall provide Part-Time Employees with the
17 same eligibility for promotions as that afforded to Full-Time Employees for the same job
18 classification, provided that an Employer may condition eligibility for promotion on the
19 Employee's availability for Full-Time employment and on reasons other than the Part-Time
20 status of the Employee, such as nature and amount of work experience.

21 (~~g~~*d*) The requirements imposed by this Section 3300G.5 shall apply to Property
22 Services Contractors as to work performed in San Francisco at a Formula Retail
23 Establishment covered by this Article 33G, under a contract with an Employer. An Employer
24 shall include in any such contract executed on or after the operative date of this Article 33G,
25 (1) a provision requiring the Property Services Contractor to comply with this Article and (2) a

1 copy of this Article. The Employer shall retain copies of such contracts for a period of not less
2 than three years following the expiration or termination of the contract, and make such copies
3 available to the Agency for inspection upon request. In addition, Sections 3300G.6, 3300G.7,
4 3300G.9, 3300G.10, and 3300G.11 of this Article shall apply to a Property Services
5 Contractor as if it is an Employer for purposes of notice, record retention, compliance,
6 investigation, and enforcement of the requirements of this Section 3300G.5.

7
8 * * * *

9 **SEC. 3300G.19. PROVIDING COPIES OF THIS ARTICLE TO PROPERTY SERVICES**
10 **CONTRACTORS.**

11 *For any contract described in Sections 3300G.4(g) and 3300G.5(d) between a Property*
12 *Services Contractor and an Employer that is in effect as of April 1, 2015, the Employer shall provide a*
13 *copy of this Article 33G to the Property Services Contractor on or before April 15, 2015. For any such*
14 *contract executed between April 1, 2015 and July 3, 2015, the Employer shall provide a copy of this*
15 *Article 33G to the Property Services Contractor within ten days of the date the parties execute the*
16 *contract. This section 3300G.19 shall expire by operation of law one year after the effective date of*
17 *this Article 33G. After that date, the City Attorney shall cause this Section 3300G.19 to be removed*
18 *from the Police Code.*

19
20 Section 3. Effective Date.

21 This ordinance shall become effective 30 days after enactment. Enactment occurs
22 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
23 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
24 Mayor’s veto of the ordinance.

1 Section 4. In enacting this ordinance, the Board intends to amend only those words,
2 phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams,
3 or any other constituent part of the Police Code that are explicitly shown in this ordinance as
4 additions, deletions, Board amendment additions, and Board amendment deletions in
5 accordance with the "Note" that appears under the official title of the ordinance.

6
7 APPROVED AS TO FORM:
8 DENNIS J. HERRERA, City Attorney

9 By: _____
10 JOSHUA WHITE
11 Deputy City Attorney

12 n:\legana\as2014\1500378\00976224.doc