



1 [Police Code - Formula Retail Employee Rights]

2  
3 Ordinance amending Articles 33F and 33G of the Police Code, which contain the  
4 formula retail employee rights ordinances, 1) to change from 20 to 40 the number of  
5 retail sales establishments worldwide a business must have to be covered by the  
6 ordinances employees in San Francisco required for a formula retail establishment to  
7 be covered by the ordinances; and 2) to allow collective bargaining agreements  
8 covering employees of formula retail establishments or employees of property service  
9 contractors to waive the protections of Articles 33F and 33G; 3) to provide employees  
10 scheduled to work on-call shifts with predictability pay if the employer modifies the  
11 scheduling of that shift with less than seven-days' notice; 4) to allow the Office of  
12 Labor Standards Enforcement to issue warnings and notices to correct to employers  
13 who have violated Articles 33F and 33G; 5) to provide part-time employees with three  
14 days to accept any additional hours offered to them by their employers; and 6) to allow  
15 employers to notify employees of the offer of additional hours by posting a notice in a  
16 conspicuous location in the workplace.

17  
18 NOTE: Unchanged Code text and uncodified text are in plain Arial font.  
19 Additions to Codes are in *single-underline italics Times New Roman font*.  
20 Deletions to Codes are in ~~italics Times New Roman font~~.  
21 Board amendment additions are in double-underlined Arial font.  
22 Board amendment deletions are in ~~Arial font~~.  
23 Asterisks (\* \* \* \*) indicate the omission of unchanged Code  
24 subsections or parts of tables.

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

Section 1. Background.

1 Ordinance No. 236-14, which created Article 33F of the Police Code, requires formula  
2 retail establishments to offer additional hours of work, when available, to current part-time  
3 employees. It also requires successor employers to retain employees for 90 days upon a  
4 change in control of the business. Ordinance No. 241-14, which created Article 33G of the  
5 Police Code, requires formula retail establishments to provide employees with two weeks'  
6 notice of work schedules, notice of changes to work schedules, and compensation for  
7 schedule changes made on less than seven days' notice and unused on-call shifts. It also  
8 provides part-time employees with the same starting rate of hourly pay, access to time off,  
9 and eligibility for promotions, as provided to full-time employees.

10  
11 Section 2. Article 33F of the Police Code is hereby amended by revising Sections  
12 3300F.2, 3300F.3, 3300F.10, and adding Section 3300F.19 to read as follows:

13 **SEC. 3300F.2. DEFINITIONS.**

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

15 \* \* \* \*

16 "Employer" shall mean any Person that owns or operates a Formula Retail  
17 Establishment with ~~20~~ ~~40~~ 20 or more Employees in the City, including corporate officers or  
18 executives, who directly or indirectly or through an agent or any other person, including  
19 through the services of a temporary services or staffing agency or similar entity, employs or  
20 exercises control over the wages, hours or working conditions of any individual. For the  
21 purpose of calculating the ~~20~~ ~~40~~ 20 -employee threshold referenced herein, Employees  
22 performing work in other Formula Retail Establishments in the City that are owned or operated  
23 under the same trade name by the same Employer shall be counted. Notwithstanding the  
24 foregoing definition, "Employer" does not include a Nonprofit Corporation or governmental  
entity.

1 \* \* \* \*

2 "Formula Retail Establishment" shall mean a business located in San Francisco that  
3 falls under the Planning Code's definition of "Formula Retail Use," as amended from time to  
4 time, except that the business must have at least ~~20~~40 retail sales establishments located  
5 worldwide.

6 \* \* \* \*

7  
8 **SEC. 3300F.3. OFFERING ADDITIONAL WORK TO PART-TIME EMPLOYEES.**

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

17 (b) An Employer has discretion to divide the additional work hours among Part-time  
18 Employees consistent with this ~~s~~Section 3300F.3.

19 (c) A Part-time Employee may, but is not required to, accept the Employer's offer of  
20 additional work hours under this Section 3300F.3. The Employee shall have 72 hours to  
21 accept the additional hours, after which time the Employer may hire new Employees to work  
22 the additional hours. The 72 hours referred to in the previous sentence begins either when  
23 the Employee receives the written offer of additional hours or whenever the Employer posts  
24 the offer of additional hours described in subsection (d), whichever is later. An Employee who  
25 wishes to accept the additional hours must do so in writing.

1 (d) When this Section 3300F.3 requires an Employer to offer additional work hours to  
2 existing Part-time Employees, the Employer shall make the offer either in writing or by posting  
3 the offer in a conspicuous location in the workplace where notices to Employees are  
4 customarily posted. Employers are encouraged to post the electronic notice on their internal  
5 web sites in a conspicuous location. The Employer and shall retain each written offer no less  
6 than three years as required under Section 3300F.8.

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

18 \* \* \* \*

19 **SEC. 3300F.10. INVESTIGATION AND ADMINISTRATIVE ENFORCEMENT BY**  
20 **THE AGENCY.**

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

24 (b) Determination of Violation and Penalties.

1 (1) Where the Agency has reason to believe that a violation has occurred, it  
2 may order any appropriate temporary or interim relief to mitigate the violation or maintain the  
3 status quo pending completion of a full investigation, provided, however, that during the first  
4 three months following the operative date of this Article 33F, the Agency shall not order any  
5 relief but may issue warnings and notices to correct.

6 (2) After investigating a possible violation of this Article 33F, and providing the  
7 Employer, Incumbent Employer or Successor Employer the opportunity to respond to the  
8 allegations, if the Agency determines that a violation has occurred, it may issue a  
9 Determination of Violation. The Determination of Violation shall identify the violation and the  
10 factual basis for the determination. The Agency shall serve the Determination of Violation on  
11 the Employer, Incumbent Employer or Successor Employer by United States mail and the  
12 date of service shall be the date of mailing. In the Determination of Violation, the Agency may  
13 order any appropriate relief, provided, however, that during the first three months following the  
14 operative date of this Article 33F, the Agency shall issue only warnings and notices to correct.  
15 Thereafter, the Agency may order relief including, but not limited to, requiring a Formula Retail  
16 Employer to offer additional hours of work to Part-time Employees as required under Section  
17 3300F.3, reinstatement, payment of lost wages to the Eligible Employee or person whose  
18 rights under this Article were violated, and the payment of an additional sum as an  
19 administrative penalty that does not exceed the amount of the award for lost wages. To  
20 compensate the City for the costs of investigating and remedying the violation, the Agency  
21 may also order the violating Employer, Incumbent Employer or Successor Employer to pay to  
22 the City an amount that does not exceed its enforcement costs.

23 \* \* \* \*

24  
25 **SEC. 3300F.19. WAIVER UNDER COLLECTIVE BARGAINING AGREEMENT.**

1            For Employees of Formula Retail Establishments or Property Service Contractors covered  
2 by a bona fide collective bargaining agreement, all or any portion of the applicable requirements of  
3 this Article 33F shall not apply to the extent that such requirements are expressly waived in the  
4 collective bargaining agreement in clear and unambiguous terms.

5  
6            Section 3. Article 33G of the Police Code is hereby amended by revising Sections  
7 3300G.3, 3300G.4, and 3300G.10, and adding Section 3300G.18 to read as follows:

8            **SEC. 3300G.3. DEFINITIONS.**

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

10           \* \* \* \*

11           “Employer” shall mean any Person that owns or operates a Formula Retail  
12 Establishment with ~~20~~ 40 20 or more Employees in the City, including corporate officers or  
13 executives, who directly or indirectly or through an agent or any other person, including  
14 through the services of a temporary services or staffing agency or similar entity, employs or  
15 exercises control over the wages, hours, or working conditions of any individual. For the  
16 purpose of calculating the ~~20~~ 40 20 -employee threshold referenced herein, Employees  
17 performing work in other Formula Retail Establishments in the City that are owned or operated  
18 under the same trade name by the same Employer shall be counted. Notwithstanding the  
19 foregoing definition, “Employer” does not include a Nonprofit Corporation or governmental  
20 entity.

21           \* \* \* \*

22           “Formula Retail Establishment” shall mean a business located in San Francisco that  
23 falls under the Planning Code's definition of “Formula Retail Use,” as amended from time to  
24 time, except that the business must have at least ~~20~~ 40 retail sales establishments located  
worldwide.

\* \* \* \*

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

(a) Initial Estimate of Minimum Hours.

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

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

(b) Two Weeks' Notice of Work Schedules.

An Employer shall provide its Employees with at least two weeks' notice of their work schedules by doing one of the following at least every 14 days (on a "Biweekly Schedule"): (1) posting the work schedule in a conspicuous place at the workplace that is readily accessible and visible to all Employees, or (2) transmitting the work schedule by electronic means, so long as all Employees are given access to the electronic schedule at the workplace. For new Employees, an Employer shall provide the new Employee on his or her first day of employment with an initial work schedule that runs through the date that the next Biweekly Schedule for existing Employees is scheduled to be posted or distributed; thereafter, the Employer shall include the new Employee in an existing Biweekly Schedule with other Employees. For all Employees, the work schedule shall include any On-Call Shifts, where



1 applicable. If the Employer changes the work schedule after it is posted and/or transmitted,  
2 such changes shall be subject to the notice and compensation requirements set forth in  
3 subsection (c) of this Section 33300G.4.

4 (c) Notice and Compensation For Schedule Changes.

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

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

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

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

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

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

1 (d) Pay for On-Call Shifts. Subject to the exceptions in subsection (e) of this Section  
2 3300G.4, an Employer shall provide an Employee with the following compensation for each  
3 On-Call Shift for which the Employee is required to be available but is not called in to work:

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

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

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

11 (e) Exceptions. The requirements in subsections (c) and (d) of this Section  
12 3300G.4 shall not apply under any of the following circumstances:

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

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

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

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

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

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

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

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

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

19 \* \* \* \*

20  
21 **SEC. 3300G.10. INVESTIGATION AND ADMINISTRATIVE ENFORCEMENT BY**  
22 **THE AGENCY.**

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

1 (b) Determination of Violation and Penalties.

2 (1) Where the Agency has reason to believe that a violation has occurred, it  
3 may order any appropriate temporary or interim relief to mitigate the violation or maintain the  
4 status quo pending completion of a full investigation, provided, however, that during the first  
5 three months following the operative date of this Article 33G, the Agency shall not order any  
6 relief but may issue warnings and notices to correct.

7 (2) After investigating a possible violation of this Article 33G, and providing the  
8 Employer the opportunity to respond to the allegations, if the Agency determines that a  
9 violation has occurred, it may issue a Determination of Violation. The Determination of  
10 Violation shall identify the violation and the factual basis for the determination. The Agency  
11 shall serve the Determination of Violation on the Employer by United States mail and the date  
12 of service shall be the date of mailing. In the Determination of Violation, the Agency may  
13 order any appropriate relief, provided, however, that during the first three months following the  
14 operative date of this Article 33G, the Agency shall issue only warnings and notices to correct.  
15 Thereafter, the Agency may order relief including, but not limited to, requiring the Employer to  
16 offer payment of lost wages to the Employee or person whose rights under this Article were  
17 violated, and the payment of an additional sum as an administrative penalty in the amount of  
18 \$50 to each Employee or person whose rights under this Article were violated for each day  
19 that the violation occurred or continued. To compensate the City for the costs of investigating  
20 and remedying the violation, the Agency may also order the violating Employer to pay to the  
21 City an amount that does not exceed its enforcement costs.

22 \* \* \* \*

23  
24 **SEC. 3300G.18. WAIVER UNDER COLLECTIVE BARGAINING AGREEMENT.**

1           For Employees of Formula Retail Establishments or Property Service Contractors covered  
2 by a bona fide collective bargaining agreement, all or any portion of the applicable requirements of  
3 this Article 33G shall not apply to the extent that such requirements are expressly waived in the  
4 collective bargaining agreement in clear and unambiguous terms.

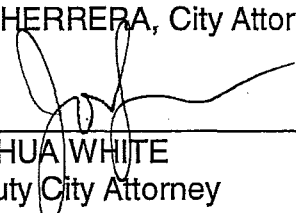
5  
6           Section 4. Effective Date.

7           This ordinance shall become effective 30 days after enactment. Enactment occurs  
8 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
9 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
10 Mayor's veto of the ordinance.

11  
12           Section 5. In enacting this ordinance, the Board intends to amend only those words,  
13 phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams,  
14 or any other constituent part of the Police Code that are explicitly shown in this ordinance as  
15 additions, deletions, Board amendment additions, and Board amendment deletions in  
16 accordance with the "Note" that appears under the official title of the ordinance.

17  
18 APPROVED AS TO FORM:  
19 DENNIS J. HERRERA, City Attorney

20 By:

  
\_\_\_\_\_  
21 JOSHUA WHITE  
22 Deputy City Attorney

23 n:\egana\as2015\1500494\01020594.doc  
24  
25

**LEGISLATIVE DIGEST**

[Police Code - Formula Retail Employee Rights]

**Ordinance amending Articles 33F and 33G of the Police Code, which contain the formula retail employee rights ordinances, 1) to change from 20 to 40 the number of retail sales establishments worldwide a business must have to be covered by the ordinances; 2) to allow collective bargaining agreements covering employees of formula retail establishments or employees of property service contractors to waive the protections of Articles 33F and 33G; 3) to provide employees scheduled to work on-call shifts with predictability pay if the employer modifies the scheduling of that shift with less than seven-days' notice; 4) to allow the Office of Labor Standards Enforcement to issue warnings and notices to correct to employers who have violated Articles 33F and 33G; 5) to provide part-time employees with three days to accept any additional hours offered to them by their employers; and 6) to allow employers to notify employees of the offer of additional hours by posting a notice in a conspicuous location in the workplace.**

Existing Law

The Board of Supervisors enacted two ordinances on November 25, 2014 that, collectively, have been referred to as the Formula Retail Workers' Bill of Rights (the "underlying ordinances").

One of the ordinances, No. 241-14, is entitled, "Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance." It requires formula retail establishments to provide employees with two weeks' notice of work schedules, notice of changes to work schedules, and compensation for schedule changes made on less than seven days' notice and unused on-call shifts. The ordinance also provides part-time employees with the same starting rate of hourly pay, access to time off, and eligibility for promotions, as provided to full-time employees. The other ordinance, No. 236-14, requires formula retail establishments to offer additional hours of work, when available, to current part-time employees. The ordinance also requires successor employers to retain employees for 90 days upon a change in control of the business.

Both ordinances define "formula retail establishment" to mean a business located in San Francisco that falls under the Planning Code's definition of "Formula Retail Use," except that the business must have at least 20 retail sales establishments located worldwide.

Ordinance No. 236-14 requires employers offering additional hours of work to part-time employees to do so in writing. Ordinance No. 236-14 does not specify the time frame within which the employee must accept the offer. Nor does the ordinance specify whether the acceptance must be in writing.

FILE NO. 150269

Ordinance No. 241-14 does not require employers to provide employees scheduled to work on-call shifts with predictability pay so long as the employer provides the employee with 24 hours' or more of notice that the on-call shift has been cancelled or moved to another date or time.

Amendments to Current Law

**Amendments To Both Ordinances:**

The proposed legislation would change the definition of "formula retail establishment" to mean a business located in San Francisco falls under the Planning Code's definition of "Formula Retail Use," except that the business must have at least 40 retail sales establishments located worldwide.

The proposed legislation would allow unions representing formula retail employees or property service contractors to waive the protections of the underlying ordinances as part of a collective bargaining agreement.

The proposed legislation would require that, during the first three months following the operative date of the ordinances, the Office of Labor Standards and Enforcement could issue only warnings and notices to correct and not any other relief for violations of the ordinances.

**Amendments to Ordinance No. 236-14**

The proposed legislation would provide that part-time employees who are offered additional hours of work would have 72 hours to accept the offer. The proposed legislation would also require employees wishing to accept the offer to do so in writing.

The proposed legislation would allow employers to notify employees of the offer of additional hours by posting a notice in a conspicuous location in the workplace.

**Amendments to Ordinance No. 241-14**

The proposed legislation would require employers to provide employees scheduled to work on-call shifts with predictability pay if the employer modifies the scheduling of that shift with less than seven-days' notice.

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**Wong, Linda (BOS)**

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**From:** Gosiengfiao, Rachel (BOS)  
**Sent:** Tuesday, May 12, 2015 3:17 PM  
**To:** Wong, Linda (BOS)  
**Subject:** FW: File No. 150269  
**Attachments:** SF File 150269 Letter.pdf

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**From:** Tang, Katy (BOS)  
**Sent:** Tuesday, May 12, 2015 3:11 PM  
**To:** Gosiengfiao, Rachel (BOS)  
**Subject:** FW: File No. 150269

for the Board's records

**From:** Angie Manetti [<mailto:amanetti@calretailers.com>]  
**Sent:** Thursday, April 02, 2015 5:20 PM  
**To:** Mar, Eric (BOS); Farrell, Mark (BOS); Christensen, Julie (BOS); Tang, Katy (BOS); Breed, London (BOS); Kim, Jane (BOS); Yee, Norman (BOS); Wiener, Scott; Campos, David (BOS); Cohen, Malia (BOS); Avalos, John (BOS); Fannon, Una (MYR)  
**Cc:** Bill Dombrowski; Pamela Williams  
**Subject:** File No. 150269

Good afternoon,

Please find attached a letter on behalf of the California Retailers Association regarding the predictive scheduling policies adopted in San Francisco.

Thank you,

--  
Angie Manetti  
Director of Governmental Affairs  
California Retailers Association  
980 Ninth Street, Suite 2100  
Sacramento, CA 95814  
P: [\(916\) 443-1975](tel:(916)443-1975)  
F: [\(916\) 443-4218](tel:(916)443-4218)  
E: [amanetti@calretailers.com](mailto:amanetti@calretailers.com)





April 2, 2015

The Honorable London Breed  
President, San Francisco Board of Supervisors  
San Francisco City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

***RE: File No. 150269 Formula Retail Workers Bill of Rights***

Dear Supervisor Breed:

As you know, last December the Mayor returned to the Board of Supervisors unsigned, two proposed ordinances regulating certain employment practices of "formula retailers". Mayor Lee urged the Board to recognize that because of the various businesses impacted, a more nuanced approach to the legislation was necessary. As a result, amendments are pending in the Budget Committee to Police Code, Articles 33F and 33G, increasing the employee threshold for the business to be covered and excluding from coverage certain unionized employers.

During the coming weeks we hope that a dialogue can be opened regarding a number of provisions that seriously impact the ability of many businesses to manage its workforce. Our industry is dynamic and highly competitive. As such, retailers must identify efficiencies in order to maximize productivity thereby enhancing the customer experiences, which causes each retailer to approach their needs and challenges differently. The notice and record keeping requirements when offering additional work hours to part-time employees, the 14 day requirement for posting schedules and the penalty threshold dates for changed schedules pose different problems for different business types.

We hope that over the next few weeks, we can engage in an open dialogue and work towards a solution to this rigid approach, which fails to contemplate the unique needs of our industry.

Page 2

Sincerely,

A handwritten signature in black ink, appearing to read 'AM', with a decorative flourish at the end.

Angie Manetti  
Director, Government Affairs

cc: The Honorable Ed Lee  
Supervisor Eric Mar  
Supervisor Mark Farrell  
Supervisor Julie Christensen  
Supervisor Katy Tang  
Supervisor Jane Kim  
Supervisor Norman Yee  
Supervisor Scott Wiener  
Supervisor David Campos  
Supervisor Malia Cohen  
Supervisor John Avalos



File # 150269  
Received in  
Committee  
5/13/15  
fw

**SCOTT FALKENHAIN**  
VICE PRESIDENT, OPERATIONS

March 25, 2015

San Francisco Board of Supervisors  
c/o Supervisor Mark Farrell  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689

Dear Supervisor Farrell:

On behalf of AMC Entertainment, I would like to respectfully express our opposition to the Predictable Scheduling and Fair Treatment for Formula Retail Employee Ordinance. We believe that the ordinance will cause undue hardship to our associates, our theatre management teams and our guests. With that in mind, we request that you veto the Scheduling Ordinance.

AMC operates two locations in San Francisco which employ well over one hundred associates. As the ordinance is intended to be fair practice for employers to give associates two weeks' worth of scheduling in advance, we believe that it will actually have the opposite effect than intended.

Our industry's business hours and labor models are based on the performance of film product in the marketplace. Several factors that dictate both:

1. Bookings – our locations are booked with features on Monday or Tuesday for a Friday opening. Our management teams make their attendance and operating plans based on the anticipated performance of the upcoming titles. The most accurate forecasting of a film's performance is only made available days prior to that Friday opening date.
2. Competitive Film Zones – one of our locations operates in a competitive film zone. Due to its proximity to another exhibitor's theatre, film product will only play at one of the locations. While most theatres have some advance notice of release dates, this location will not know definitively which product it will get until the Monday or Tuesday prior to the Friday opening.
3. Print Counts – another indicator of business levels is the number of auditoriums in which we are allowed to play a feature - also not finalized until the opening week. For example, *Furious 7* booked in one auditorium will generate far less attendance than *Furious 7* booked in five auditoriums. Additionally, if a film performs differently than expected, capacity is adjusted in real time to accommodate actual business levels.
4. Operating Hours – operating hours can vary from week to week and can only be finalized once booking and attendance projections are finalized. And, as often is the case, we find it necessary to expand operating hours in real time to ensure adequate capacity to meet guest demand.

Our associates are comprised of primarily high school and college students. We currently accommodate dozens of schedule requests each week in an effort to meet associates' ever changing schedules. The flexible work schedule is a key benefit that is explained during the recruitment process and that many of our associates appreciate.

Given all the variables that go into our weekly planning strategy, scheduling is already a complex process. Requiring us to provide fair and accurate schedules two weeks in advance is not possible.

We understand the need to provide associates with a fair schedule as far in advance as possible and we do that within the constraints of our business at 350 theatres week in, week out.

The Predictable Scheduling and Fair Treatment Act may very well have the opposite effect than is intended: AMC will have to schedule by erring on the side of caution so as not to increase exposure to penalties. This will significantly limit our ability to scale appropriately based on marketplace performance, negatively affecting our guests' enjoyment. And, in our experience, when the guest isn't happy, they stop going to the movies!

In closing, we cannot fairly create an associate schedule two weeks in advance in our industry and for the reasons outlined above I ask that you veto this ordinance.

Respectfully,



Scott Falkenhain  
Vice President, Operations

cc: Mayor Edwin M. Lee  
President London Breed  
Supervisor John Avalos  
Supervisor David Campos  
Supervisor Julie Christensen  
Supervisor Malia Cohen  
Supervisor Jane Kim  
Supervisor Eric Mar  
Supervisor Katy Tang  
Supervisor Scott Wiener  
Supervisor Norman Yee  
Angela Calvillo, Clerk of the Board of Supervisors



March 23, 2015

Supervisor Mark Farrell  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 224  
San Francisco, Ca. 94102-4689

Dear Supervisor Mark Farrell:  
San Francisco Board of Supervisors:

My name is Ted Mundorff, CEO of Landmark Theatres and I write to you as a business owner in the San Francisco. I would like to explain why the theatres should be excluded from *Article 33G: Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance*.

The reasons are short and simple.

- Theatres do not know what title(s) they will play until almost four days before a scheduled film week. This information is critical in forming a base schedule for the floor staff employees and cannot be done until the titles are finalized.
- There are great fluctuations in the theatre industry that we cannot predict. Attendance for any film week can fluctuate significantly from theatre to theatre, film to film, and day to day. Weather, critics' reviews, local news, sporting events and other factors impact attendance. The unpredictability can make daily staffing at any theatre impossible to do without making some adjustments to meet business needs.
- Because of the two bullets above, this ordinance will add significant payroll to this industry based on the way it is structured and the variability of our attendance.

What will happen if the Ordinance passes for the theatre industry?

1. Theatre Exhibitors will staff what we think is needed for a two week schedule. Because of the volatility of attendance we will be forced to staff for what we believe will be the mid-range of attendance for those weeks. Since we are penalized for making changes we will hold the employee schedules firm.
  - a. If the movies perform better than expected, we are going to be understaffed. This provides a lesser experience, hurting the business. Patrons will have to wait longer for their popcorn and tickets. The theatre won't be as clean. Employees will be strained and unable to meet customer service demands. This will result in loss of patronage. The grosses for the theatre will eventually fall and our baseline schedule will get smaller and smaller until it collapses.

- b. If the movies underperform we will leave it overstaffed because we are forced to pay either way. Payroll becomes too much and are forced to raise prices to compensate for the overstaffing. When we raise prices patrons will find another way to get this entertainment like Netflix or Video on Demand. The grosses will begin to fall and marginal theatres will close.
- c. If we continue to react based on attendance to staff to the proper levels, payroll will become too much. Because we have to pay for every change, we are forced to raise ticket prices to compensate for the adjustments. Again, when we raise prices patrons will find another way to get this entertainment like Netflix or Video on Demand. The grosses will begin to fall and marginal theatres will close.

Respectfully,



Ted Mundorff  
CEO/President, Landmark Theatres

Cc: Mayor Edwin M. Lee, President London Breed, Supervisor John Avalos, Supervisor David Campos, Supervisor Julie Christensen, Supervisor Malia Cohen, Supervisor Jane Kim, Supervisor Eric Mar, Supervisor Katy Tang, Supervisor Scott Wiener, Supervisor Norman Yee, Angela Calvillo, Clerk of the Board of Supervisors

# CINEMARK<sup>®</sup>

March 30, 2015

CENTURY  
THEATRES

CinéArts

Tinseltown

rave  
cinemas

Supervisor Mark Farrell  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, Ca. 94102-4689

Dear Supervisor Mark Farrell,

I am writing you to reiterate some key points in previous correspondence, from Mr. Milt Moritz, the head of our statewide trade association NATO (National Association of Theatre Owners of California/Nevada).

Cinemark presently operates 2 motion picture theatre complexes in the City of San Francisco. We have a 3 screen complex in West Portal, the Empire, as well as our 9 screen complex in the Westfield San Francisco Centre in downtown. We are proud to employ many individuals from diverse backgrounds at our theatres in San Francisco, the United States, and throughout Latin America.

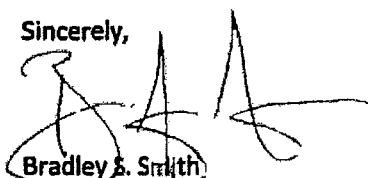
Over the years we have enabled many individuals to obtain degrees in higher education as well as being able to graduate from High School while also working at our theatres. The primary reason that employment at Cinemark works so well for students (and in many cases their parents) is because of the weekly flexibility we offer our employees. Between family obligations and school needs most of our employees have schedules that change weekly and, in some cases, daily. Our employees generally know on the Monday of the week what their upcoming obligations are and our current scheduling practices allows Cinemark to provide them hours while also meeting their scheduling needs.

We also need the ability to vary our staffing levels based on what films are opening any particular weekend and how they are projected to perform. The films that are going to open at any one theatre on Friday are usually not finalized until the Monday of the week the film will open. On that Monday, our general managers must create a staff schedule to fit the projected needs of those films, while also taking into account any requests from staff member to be on or off the schedule that next weekend. Because of films either over performing or underperforming, coupled with varying staff needs, including emergency situations, family needs and/or school needs the staff schedule is a *very fluid* document. This ultimately works very well for both the employee and the employer. Cinemark does not have an "on call" status but is usually able to provide hours to those who want them - when they want them.

Because of the uniqueness of our business and the attendance levels that fluctuate greatly from week to week and are also somewhat unpredictable, Cinemark is respectfully requesting that we be exempted from the SF Formula Retail Workers Bill of Rights. This exemption would allow us to continue to offer the flexible scheduling necessary in our business and to the advantage of many in our workforce.

Thanks you for your consideration on this matter.

Sincerely,



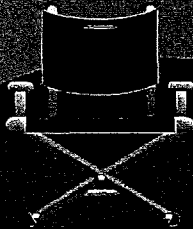
Bradley S. Smith  
SVP, Human Resources

# THE THEATER BUSINESS: HOW IT WORKS

HOLLYWOOD

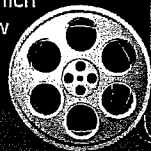
## MOVIE PRODUCTION

Films are financed and produced by the movie studios.



## DISTRIBUTION

Once movies are completed, films are turned over to studios' distribution/sales department who determine which theaters show the films.



## EXHIBITION

The theaters are known as exhibitors in the industry, where finished movies are seen.



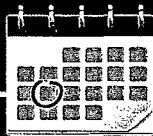
## FILM BOOKER

Each movie theater chain has their own bookers who negotiate with the distributors to determine which titles they receive.



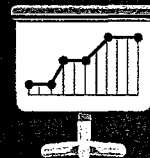
## STAFF SCHEDULING

A theater manager cannot finalize a schedule until that weekend's bookings are completed, nor can theaters advertise titles and show times until Wednesday of each week.



## EXPECTATION (TRACKING)

Tracking companies help theatres estimate how much a film is expected to generate in box-office receipts, but they are anything but foolproof.



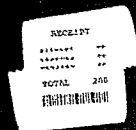
## THEATRE MANAGEMENT

The individual theaters receive tentative bookings on Mon/Tues before an upcoming weekend, but final bookings are not locked down until Tues PM.



## OPEN DAY BOX OFFICE

Box office opening receipts determine how many screens a particular movie will continue to be shown on or if another movie needs to replace it. Only after openings, film performances can be evaluated for staffing adjustments.



## STAFFING ADJUSTMENT (ATTENDANCE)

Unexpected increases or decreases in theatre attendance require adjustments in staffing on very short notice.



## SPECIAL LATE PROGRAMMING

Movie theatres are also accustomed to last minute promotional activities, which also requires late changes to employee scheduling.



## THEATER BUSINESS IS UNPREDICTABLE

Due to the business model of the entire movie distribution industry, theater owners are unable to know their staffing needs two weeks in advance. Quite simply, it is impossible to accurately forecast these precise staffing levels. Please visit [www.natocalnev.org](http://www.natocalnev.org) for more info.





BOARD of SUPERVISORS



City Hall  
1 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: Todd Rufo, Director, Office of Economic and Workforce Development

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

DATE: April 14, 2015

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

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The Board of Supervisors' Budget and Finance Sub-Committee has received the following proposed legislation, introduced by Supervisor Farrell:

**File No. 150269**

**Ordinance amending the Police Code, Articles 33F and 33G, which contain the formula retail employee rights ordinances, to change from 20 to 40 the number of employees in San Francisco required for a formula retail establishment to be covered by the Ordinances; and to allow collective bargaining agreements covering employees of formula retail establishments to waive the protections of Articles 33F and 33G.**

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: Ken Rich, Office of Economic and Workforce Development

BOARD of SUPERVISORS



City Hall  
1 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: Linda Wong, Assistant Clerk, Budget and Finance Committee,  
Board of Supervisors

DATE: April 14, 2015

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Budget and Finance Committee

The Board of Supervisors' Budget and Finance Sub-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. 150269**

**Ordinance amending the Police Code, Articles 33F and 33G, which contain the formula retail employee rights ordinances, to change from 20 to 40 the number of employees in San Francisco required for a formula retail establishment to be covered by the Ordinances; and to allow collective bargaining agreements covering employees of formula retail establishments to waive the protections of Articles 33F and 33G.**

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**

Print Form

# 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. [ ]
- 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):**

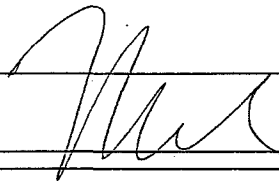
Supervisor Mark Farrell; Supervisor Eric Mar

**Subject:**

Police Code - Formula Retail Employee Rights

**The text is listed below or attached:**

Attached.

Signature of Sponsoring Supervisor: 

**For Clerk's Use Only:**

