

[Police Code - Fair Scheduling and Treatment of Formula Retail Employees]

Ordinance amending the Police Code to require 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; and to provide 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.

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 33G, consisting of Sections 3300G.1 through 3300G.18, to read as follows:

ARTICLE 33G: PREDICTABLE SCHEDULING AND FAIR TREATMENT

FOR FORMULA RETAIL EMPLOYEES

SEC. 3300G.1. TITLE.

This Article shall be known as the "Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance."

1 **SEC. 3300G.2. FINDINGS AND PURPOSE.**

2 (a) Formula retail establishments are a major employment base in the City and County of San
3 Francisco ("City"). As of September 2014, there were approximately 1,250 formula retail
4 establishments in the City, accounting for 12% of all retailers. There are approximately 35,000
5 persons employed by these formula retail establishments in the City, accounting for approximately 5 to
6 6% of the City's total wage and salary employment. The City has a strong interest in ensuring that the
7 jobs these formula retail establishments provide allow employees to meet their basic needs and achieve
8 economic security.

9 (b) Erratic and on-call scheduling practices have become pervasive in formula retail
10 establishments, particularly in stores and restaurants and bars, which together represent 83% of
11 formula retail establishments in the City. Nationally, almost two-thirds of food service employees and
12 half of formula retail store employees receive their work schedules one week or less in advance. The
13 majority of these employees experience significant fluctuations in their work hours from week to week
14 and month to month. According to a recent survey of employees at chain stores and large stores, only
15 40% of those surveyed have consistent minimum hours per week, one quarter of the employees are
16 scheduled for on-call shifts, and the vast majority find out from a supervisor if they are needed for the
17 on-call shift only two hours before the shift starts.

18 (c) Erratic scheduling practices also impact janitors and security guards who contract
19 with formula retail establishments. A recent study by sociologists at the University of Chicago
20 indicated that 66 percent of janitors nationwide experience fluctuating schedules, 50 percent
21 report that their employer decides the timing of their work without their input, and 40 percent
22 report schedule changes with less than one-week notice.

23 (de) Many formula retail establishments use computer software that automatically generates
24 work schedules for their employees. The schedules generated by such software are frequently erratic
25 and unpredictable, and provide employees with minimal notice of their upcoming shifts. Companies

1 seldom encourage managers to adjust those schedules to accommodate the needs of their employees. A
2 recent national study shows that although companies could use the software to provide predictable
3 schedules and greater notice to their employees, few have done so. An August 2014 New York Times
4 article described how Starbucks Coffee uses this software to create the schedules of its 130,000
5 baristas, often resulting in an unpredictable and erratic work schedule for employees. Soon after the
6 article's publication, Starbucks announced that it planned to change its policy to give employees more
7 advance notice of their work schedules and give managers more latitude to accommodate the needs of
8 employees.

9 (ed) Many employees of San Francisco formula retail establishments are impacted by
10 unpredictable scheduling practices such as frequent and last-minute changes to their work schedules
11 and use of "on-call" scheduling. In a recent survey of food retail employees in four regions of
12 California – including the San Francisco Bay Area – 25% of employees reported employers requiring
13 availability for on-call shifts, and almost half of employees reported having little or no input on their
14 work schedules. Unpredictable scheduling practices and last-minute work schedule changes cause
15 workers who are already struggling with low wages to live in a constant state of insecurity about when
16 they will work or how much they will earn on any given day.

17 (fe) Unpredictable work scheduling practices are detrimental to San Francisco employees and
18 their families because they (1) lead to income instability, making it hard for employees to plan their
19 finances and obtain economic security; (2) create work-family conflicts that make it difficult for
20 employees to plan their child care, care giving duties, and transportation; and (3) prevent part-time
21 employees from pursuing educational opportunities or holding a second or third job that such workers
22 may need to make ends meet. Retail industry research in New York City found that more than half of
23 family caregivers in the retail industry must be available for on-call shifts, forcing them to arrange for
24 child or elder care at the last minute. Women are more likely than men to work part-time and
25

1 experience unpredictability in their work schedules; one study found that women were 64% of the
2 frontline part-time workforce among retail workers.

3 (gf) As of September 2014, according to the Bureau of Labor Statistics, there were 7.3 million
4 “involuntary part-time workers” in the United States. These individuals were working part-time
5 because their hours had been cut back or because they were unable to find a full-time job. According
6 to Census data, since 2006, the number of “involuntary part-time employees” in California nearly
7 tripled to 1.1 million employees. According to the Bureau of Labor Statistics, less than half of the retail
8 workforce nationwide works full time, and the number of those working fewer than 20 hours per week
9 has grown by 14% in the past decade. In 2012, nearly 111,000 employees in the City – approximately
10 23% of the City’s workforce – were employed part-time. Employers sometimes treat part-time
11 employees less favorably than full-time employees. For example, the majority of full-time employees
12 nationally earn more per hour than their part-time counterparts.

13 (hg) Half of formula retailers in the City each have more than 1,000 locations nationwide,
14 whereas only 5% of formula retailers in the City have less than 20 locations nationwide. Given the
15 number of employees working for formula retail establishments in the City, these businesses are well
16 positioned to implement fair and predictable scheduling practices for their employees. Even some
17 small local businesses in the City that do not meet the definition of “formula retail” have implemented
18 predictable scheduling practices such as giving employees 14 days’ advance notice of their schedules.

19 (ij) The purpose of this Article 33G is to provide formula retail employees with more
20 predictable, stable work schedules that are essential to their ability to earn a living and ensure a
21 healthy and decent life for themselves and their families, and to ensure that part-time employees in
22 formula retail establishments are treated fairly and equally compared to their full-time counterparts.

23
24 **SEC. 3300G.3. DEFINITIONS.**

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

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

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

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

8 "Employer" shall mean any Person that owns or operates a Formula Retail Establishment with
9 20 or more Employees in the City, including corporate officers or executives, who directly or
10 indirectly or through an agent or any other person, including through the services of a temporary
11 services or staffing agency or similar entity, employs or exercises control over the wages, hours, or
12 working conditions of any individual. For the purpose of calculating the 20-employee threshold
13 referenced herein, Employees performing work in other Formula Retail Establishments in the
14 City that are owned or operated under the same trade name by the same Employer shall be
15 counted. For the purpose of calculating the 20-employee threshold referenced herein,
16 Employees performing work in other Formula Retail Establishments in the City that are owned
17 or operated under the same trade name by the same Employer shall be counted.
18 Notwithstanding the foregoing definition, "Employer" does not include a Nonprofit Corporation or
19 governmental entity.

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

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

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

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

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

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

11
12 **SEC. 3300G.4. ADVANCE NOTICE OF WORK SCHEDULES AND CHANGES IN WORK**
13 **SCHEDULES.**

14 (a) Initial Estimate of Minimum Hours.

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

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

24 (b) Two Weeks' Notice of Work Schedules.

1 An Employer shall provide its Employees with at least two weeks' notice of their work schedules
2 by doing one of the following at least every 14 days (on a "Biweekly Schedule"): (1) posting the work
3 schedule in a conspicuous place at the workplace that is readily accessible and visible to all
4 Employees, or (2) transmitting the work schedule by electronic means, so long as all Employees are
5 given access to the electronic schedule at the workplace. For new Employees, an Employer shall
6 provide the new Employee on his or her first day of employment with an initial work schedule that runs
7 through the date that the next Biweekly Schedule for existing Employees is scheduled to be posted or
8 distributed; thereafter, the Employer shall include the new Employee in an existing Biweekly Schedule
9 with other Employees. For all Employees, the work schedule shall include any On-Call Shifts, where
10 applicable. If the Employer changes the work schedule after it is posted and/or transmitted, such
11 changes shall be subject to the notice and compensation requirements set forth in subsection (c) of this
12 Section 3330G.4.

13 (c) Notice and Compensation For Schedule Changes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (g) The requirements imposed by this Section 3300G.4 shall apply to Property
17 Services Contractors as to work performed in San Francisco at a Formula Retail
18 Establishment covered by this Article 33G, under a contract with an Employer. An Employer
19 shall include in any such contract executed on or after the operative date of this Article 33G,
20 (1) a provision requiring the Property Services Contractor to comply with this Article and (2) a
21 copy of this Article. The Employer shall retain copies of such contracts for a period of not less
22 than three years following the expiration or termination of the contract, and make such copies
23 available to the Agency for inspection upon request. In addition, Sections 3300G.6, 3300G.7,
24 3300G.9, 3300G.10, and 3300G.11 of this Article shall apply to a Property Services
25

1 Contractor as if it is an Employer for purposes of notice, record retention, compliance,
2 investigation, and enforcement of the requirements of this Section 3300G.4.

3
4 **SEC. 3300G.5. EQUAL TREATMENT FOR PART-TIME EMPLOYEES.**

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

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

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

24 (g) The requirements imposed by this Section 3300G.5 shall apply to Property
25 Services Contractors as to work performed in San Francisco at a Formula Retail

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

10
11 **SEC. 3300G.6. NOTICE OF EMPLOYEE RIGHTS.**

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

18 *(b) Employers shall post the notice described in subsection (a) in a conspicuous place at every*
19 *workplace, job site, or other location in San Francisco under the Employer's control frequently visited*
20 *by its Employees who perform work at the Employer's Formula Retail Establishment(s). The notice*
21 *shall be posted in English, Spanish, Chinese, Tagalog, and any language spoken by at least 5% of the*
22 *Employees at the workplace, job site, or other location at which it is posted.*

23
24 **SEC. 3300G.7. REQUIREMENTS GOVERNING RETENTION OF RECORDS.**

1 (a) Employers shall retain work schedules and payroll records pertaining to Employees for
2 three ~~four~~ years, and shall allow the Agency access to such records, with appropriate notice and
3 during business hours, to monitor compliance with the requirements of this Article 33G.

4 (b) The Director of the Agency or the Director's designee shall have access to all places of
5 labor subject to this Article 33G during business hours to inspect books and records, interview
6 employees, and investigate such matters necessary or appropriate to determine whether an Employer
7 has violated any provisions of this Article.

8 (c) Where an Employer does not maintain or retain adequate records documenting compliance
9 with this Article 33G or does not allow the Agency reasonable access to such records, it shall be
10 presumed that the Employer did not comply with this Article, absent clear and convincing evidence
11 otherwise.

12
13 **SEC. 3300G.8. CONFLICT WITH FAMILY FRIENDLY WORKPLACE ORDINANCE.**

14 If there is an unavoidable conflict between any requirement of this Article 33G and any
15 requirement of the San Francisco Family Friendly Workplace Ordinance, Chapter 12Z of the
16 Administrative Code, the requirements of this Article the San Francisco Family Friendly
17 Workplace Ordinance, Chapter 12Z of the Administrative Code shall prevail.

18
19 **SEC. 3300G.9. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

20 (a) It shall be unlawful for an Employer or any other Person to interfere with, restrain, or deny
21 the exercise of, or the attempt to exercise, any right protected under this Article 33G.

22 (b) It shall be unlawful for an Employer to discharge, threaten to discharge, demote, suspend,
23 or otherwise take adverse employment action against any Employee in retaliation for exercising rights
24 protected under this Article 33G. Such rights include but are not limited to:

1 (1) the right to request a modification to the initial proposed work schedule provided
2 under Section 3300G.4(a);

3 (2) the right to inform any person about an Employer's alleged violation of this Article;

4 (3) the right to file a complaint with the Agency alleging a violation of this Article;

5 (4) the right to cooperate with the Agency or other persons in the investigation or
6 prosecution of any alleged violation of this Article;

7 (5) the right to oppose any policy, practice, or act that is unlawful under this Article;

8 and

9 (6) the right to inform any person of his or her rights under this Article.

10
11 **SEC. 3300G.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 33G, 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.

19 (2) After investigating a possible violation of this Article 33G, and providing the
20 Employer the opportunity to respond to the allegations, if the Agency determines that a violation has
21 occurred, it may issue a Determination of Violation. The Determination of Violation shall identify the
22 violation and the factual basis for the determination. The Agency shall serve the Determination of
23 Violation on the Employer by United States mail and the date of service shall be the date of mailing. In
24 the Determination of Violation, the Agency may order any appropriate relief, provided, however, that
25 during the first six months following the operative date of this Article 33G, the Agency must

1 ~~issue warnings and notices to correct. Thereafter, the Agency may order relief~~ including, but
2 not limited to, requiring the Employer to offer payment of lost wages to the Employee or person whose
3 rights under this Article were violated, and the payment of an additional sum as an administrative
4 penalty in the amount of \$50 to each Employee or person whose rights under this Article were violated
5 for each day that the violation occurred or continued. To compensate the City for the costs of
6 investigating and remedying the violation, the Agency may also order the violating Employer to pay to
7 the City an amount that does not exceed its enforcement costs.

8 (c) Appeal Procedure. An Employer may appeal from a Determination of Violation in
9 accordance with the following procedures:

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

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

20 (3) After the expiration of 30 days following the date the Appeal is filed, any party may
21 request in writing, with concurrent notice to all other parties, that the Controller appoint a hearing
22 officer to hear and decide the appeal. If no party requests appointment of a hearing officer, the Notice
23 of Violation shall be deemed final on the 60th day after the date the Appeal is filed.

24 (4) Within 15 days of receiving a written request for appointment of a hearing officer,
25 the Controller shall appoint an impartial hearing officer who is not part of the Agency and immediately

1 notify the Agency and Appellant, and their respective counsel or authorized representative if any, of the
2 appointment. The appointed hearing officer shall be an Administrative Law Judge with not fewer than
3 two years experience in labor or employment law and/or wage and hour matters, or an attorney with
4 not fewer than five years' experience in labor or employment law and/or wage and hour matters.

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

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

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

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

22 (9) Failure to appeal a Determination of Violation shall constitute a failure to exhaust
23 administrative remedies, which shall serve as a complete defense to any petition or claim brought by
24 the Employer against the City regarding the Agency's Determination of Violation.
25

1 (d) Compliance. Where prompt compliance with a Determination of Violation is not
2 forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including
3 referring the action to the City Attorney to consider initiating a civil action pursuant to Section
4 3300G.11.

5 (e) Reporting Violations. An Employee or any individual who has reason to believe that a
6 violation of this Article 33G has occurred may report to the Agency any suspected violation of this
7 Article. The Agency shall encourage reporting pursuant to this subsection (e) by keeping confidential,
8 to the maximum extent permitted by applicable laws, the name and other identifying information of the
9 individual reporting the suspected violation; provided, however, that with the authorization of the
10 reporting individual, the Agency may disclose his or her name and identifying information as necessary
11 to enforce this Article or for other appropriate purposes.

12 (f) Report to the Board of Supervisors. By no later than January 31, 2016, January 31, 2017,
13 and January 31, 2018, and then January 31st of every even-numbered year thereafter, the Agency shall
14 provide a written report to the Board of Supervisors regarding this Article 33G. The report shall
15 include, but not be limited to, a discussion of the implementation and enforcement of this Article,
16 including the number of violations and the penalties assessed in the prior year (prior two years,
17 starting with the report due by January 31, 2020). The report may also include recommendations for
18 possible improvements to this Article.

19
20 **SEC. 3300G.11. CIVIL ENFORCEMENT.**

21 The City Attorney or any Employee or applicant for employment aggrieved by a violation
22 of this Article 33G may bring a civil action in a court of competent jurisdiction against an Employer,
23 for violating any requirement of this Article and, upon prevailing, shall be entitled to such legal or
24 equitable relief as may be appropriate to remedy the violation including, without limitation, the
25 payment of lost wages, the payment of an additional sum as a civil penalty not to exceed the amount

1 awarded for lost wages, and reinstatement in employment and/or injunctive relief, and shall be
2 awarded reasonable attorneys' fees and costs; ~~provided, however, that any person or entity~~
3 ~~enforcing this Article on behalf of the public as provided for under applicable state law shall,~~
4 ~~upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable~~
5 ~~attorneys' fees and costs.~~

6
7 **SEC. 3300G.12. AGENCY MAY ADOPT REGULATIONS.**

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

14
15 **SEC. 3300G.13. WAIVER UNDER COLLECTIVE BARGAINING AGREEMENT.**

16 ~~—— A bona fide collective bargaining agreement may waive all or any portion of the~~
17 ~~applicable requirements of this Article 33G, provided the agreement explicitly states the~~
18 ~~waiver in clear and unambiguous terms. In the event of a conflict between a requirement of~~
19 ~~this Article and a requirement of a collective bargaining agreement, the requirement of the~~
20 ~~collective bargaining agreement shall control.~~

21
22 **SEC. 3300G.134. NO LIMITATION OF OTHER RIGHTS AND REMEDIES.**

23 This Article 33G does not in any way limit the rights and remedies that the law otherwise
24 provides to Employees, including but not limited to the rights to be free from wrongful termination and
25 unlawful discrimination.

1
2 **SEC. 3300G.1415. SEVERABILITY.**

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

10
11 **SEC. 3300G.1516. NO CONFLICT WITH FEDERAL OR STATE LAW.**

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

14
15 **SEC. 3300G.1617. UNDERTAKING FOR THE GENERAL WELFARE.**

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

20
21 **SEC. 3300G.1718. OPERATIVE DATE.**

22 *This Article 33G shall become operative ~~90~~ 180 days after its effective date.*

23
24 Section 3. Effective and Operative Dates.
25

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

5 (b) Operative Date. As stated in Section 3300G.1748 of the Police Code, this
6 ordinance shall become operative ~~90~~ 180 days after the effective date.

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

10 By: _____
11 JOSHUA WHITE
12 Deputy City Attorney

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