

[Retention Of Grocery Workers Upon Change In Control Of Grocery Store.]

Ordinance amending the San Francisco Police Code by adding a new Article 33D to require grocery employers to retain employees for 90 days upon change in control of the grocery store; to prohibit grocery employers from terminating the employees during those 90 days without cause; to require grocery employers to conduct a performance evaluation of the employees at the conclusion of the 90 days and consider for continued employment those employees with satisfactory performance; to require public notice of a change in control of the grocery store; and to provide judicial remedies, including hiring and reinstatement rights, front and back pay, and the value of benefits lost, for violation of the ordinance, along with an award of reasonable attorneys' fees to a successful plaintiff.

Note: Additions are *single-underline italics Times New Roman*; deletions are ~~*strikethrough-italics Times New Roman*~~. Board amendment additions are double underlined. Board amendment deletions are ~~strikethrough-normal~~.

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

Section 1. The San Francisco Police Code is hereby amended by adding Article 33D, Sections 3300D.1 through 3300D.9, to read as follows:

ARTICLE 33D

GROCERY WORKER RETENTION

Sec. 3300D.1. PURPOSE.

Supermarkets and other grocery retailers are the main points of distribution for food and daily necessities for the residents of San Francisco and are essential to the vitality of the community. The City has a strong interest in ensuring the welfare of the residents of San Francisco through the maintenance of health and safety standards in grocery establishments. Experienced grocery workers with knowledge of proper sanitation procedures and health regulations and an understanding of the

Supervisor, Ma, Alioto-Pier, Ammiano, Daly, Dufty, Maxwell, Mirkarimi, Sandoval
BOARD OF SUPERVISORS

1 clientele and communities they serve are instrumental in furthering this interest. A transitional
2 retention period upon change in ownership, control, or operation of grocery stores ensures
3 stabilization of this vital workforce, which results in preservation of health and safety standards.
4 Through this ordinance, the City seeks to sustain the stability of this vital workforce.

5 Sec. 3300D.2. DEFINITIONS.

6 For purposes of this Article, the following definitions apply:

7 (a) "Change in Control" shall mean any sale, assignment, transfer, contribution, or other
8 disposition (including by consolidation, merger, or reorganization) of all or substantially all of the
9 assets of, or a controlling interest in, the Incumbent Grocery Employer or IGE Parent or any Grocery
10 Establishment under the operation or control of either such Incumbent Grocery Employer or IGE
11 Parent.

12 (b) "City" shall mean the City and County of San Francisco.

13 (c) "Eligible Grocery Worker" shall mean any individual whose primary place of employment
14 is at the Grocery Establishment subject to a Change in Control, and who has worked for the Incumbent
15 Grocery Employer for at least six months prior to the execution of the Transfer Document. "Eligible
16 Grocery Worker" does not include a managerial, supervisory, or confidential employee.

17 (d) "Employment Commencement Date" shall mean the date on which an Eligible Grocery
18 Worker retained by the Successor Grocery Employer pursuant to this Article commences work for the
19 Successor Grocery Employer in exchange for compensation and benefits under the terms and
20 conditions established by the Successor Grocery Employer and as required by law and any applicable
21 collective bargaining agreement, if any.

22 (e) "Grocery Establishment" shall mean a retail store in the City that is over 15,000 square feet
23 in size and sells primarily household foodstuffs for offsite consumption, including fresh produce, meats,
24 poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, and/or

1 prepared foods. Other household supplies or other products sold by the "Grocery Establishment" shall
2 be secondary to the primary purpose of food sales.

3 (f) "Incumbent Grocery Employer" shall mean the Person that owns, controls, and/or operates
4 the Grocery Establishment prior to the Change in Control.

5 (g) "IGE Parent" shall mean any Person who controls the Incumbent Grocery Employer.

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

9 (i) "Successor Grocery Employer" shall mean the Person that owns, controls, and/or operates
10 the Grocery Establishment after the Change in Control.

11 (j) "Transfer Document" shall mean the purchase agreement or other document(s) effecting the
12 Change in Control.

13 Sec. 3300D.3. CONTINUED EMPLOYMENT OF ELIGIBLE GROCERY WORKERS.

14 (a) The Incumbent Grocery Employer shall, within 15 days after the execution of the Transfer
15 Document, provide to the Successor Grocery Employer the name, address, date of hire, and
16 employment occupation classification of each Eligible Grocery Worker.

17 (b) The Successor Grocery Employer shall maintain a preferential hiring list of Eligible
18 Grocery Workers identified by the Incumbent Grocery Employer as set forth in subsection (a) of this
19 section and shall be required to hire from that list for a period beginning upon the execution of the
20 Transfer Document and continuing for 90 days after the Grocery Establishment is fully operational and
21 open to the public under the Successor Grocery Employer.

22 (c) If the Successor Grocery Employer extends an offer of employment to an Eligible Grocery
23 Worker, the Successor Grocery Employer shall retain written verification of that offer for no less than
24 three years from the date the offer was made. The verification shall include the name, address, date of
25

1 hire, and employment occupation classification of each Eligible Grocery Worker to whom the offer was
2 made.

3 Sec. 3300D.4. TRANSITION EMPLOYMENT PERIOD.

4 (a) A Successor Grocery Employer shall retain each Eligible Grocery Worker hired pursuant
5 to this Article for no less than 90 days following the Eligible Grocery Worker's Employment
6 Commencement Date. During this 90-day transition employment period, Eligible Grocery Workers
7 shall be employed under the terms and conditions established by the Successor Grocery Employer, as
8 required by law and pursuant to the terms of an applicable collective bargaining agreement, if any.

9 (b) If within the period established in Section 3300D.3(b) the Successor Grocery Employer
10 determines that it requires fewer Eligible Grocery Workers than were required by the Incumbent
11 Grocery Employer, the Successor Grocery Employer shall retain Eligible Grocery Workers by seniority
12 within each job classification to the extent that comparable job classifications exist or pursuant to an
13 applicable collective bargaining agreement, if any. Nonclassified Eligible Grocery Workers shall be
14 retained by seniority and according to experience or pursuant to the terms of an applicable collective
15 bargaining agreement, if any.

16 (c) During the 90-day transition employment period, the Successor Grocery Employer shall not
17 discharge without cause an Eligible Grocery Worker retained pursuant to this Article.

18 (d) At the end of the 90-day transition employment period, the Successor Grocery Employer
19 shall do a written performance evaluation for each Eligible Grocery Worker retained pursuant to this
20 Article. If the Eligible Grocery Worker's performance during the 90-day transition employment period
21 is satisfactory, the Successor Grocery Employer shall consider offering the Eligible Grocery Worker
22 continued employment under the terms and conditions established by the Successor Grocery Employer
23 and as required by law. The Successor Grocery Employer shall retain a record of the written
24 performance evaluation for a period of no less than three years.

1 Sec. 3300D.5. PUBLIC NOTICE OF CHANGE IN CONTROL.

2 (a) The Incumbent Grocery Employer shall post public notice of the Change in Control at the
3 location of the affected Grocery Establishment within five business days after the execution of the
4 Transfer Document. Notice shall remain posted during any closure of the Grocery Establishment and
5 until the Grocery Establishment is fully operational and open to the public under the Successor
6 Grocery Employer.

7 (b) Notice shall include, but is not limited to, the name of the Incumbent Grocery Employer and
8 its contact information, the name of the Successor Grocery Employer and its contact information, and
9 the effective date of the Change in Control.

10 (c) Notice shall be posted in a conspicuous place or places at the Grocery Establishment so as
11 to be readily viewed by Eligible Grocery Workers, other employees, customers, and other members of
12 the public.

13 Sec. 3300D.6. REMEDIES FOR VIOLATION.

14 (a) An Eligible Grocery Worker or Workers may bring an action in the Superior Court of the
15 State of California against the Incumbent Grocery Employer and/or the Successor Grocery Employer
16 for violations of this Article, and may be awarded the following relief:

17 (1) Hiring and reinstatement rights, whereupon the 90-day transition employment period shall
18 not commence until the Eligible Grocery Worker's Employment Commencement Date with the
19 Successor Grocery Employer.

20 (2) Back pay for each day of the violation and/or front pay for each day during which the
21 violation will continue. Back pay and front pay shall be calculated at a rate of compensation not less
22 than the higher of (i) the average regular rate of pay received by the Eligible Grocery Worker during
23 the last three years of the Eligible Grocery Worker's employment in the same occupation classification,

1 or (ii) the most recent regular rate received by the Eligible Grocery Worker while employed by either
2 the Incumbent Grocery Employer or the Successor Grocery Employer.

3 (3) Value of the benefits the Eligible Grocery Worker would have received under the Successor
4 Grocery Employer's benefit plan had the violation(s) not occurred.

5 (b) If the Eligible Grocery Worker or Workers is the prevailing party in any legal action taken
6 pursuant to this section, the court shall award reasonable attorneys' fees and costs as part of the costs
7 recoverable.

8 Sec. 3300D.7. EXEMPTION FOR COLLECTIVE BARGAINING AGREEMENT.

9 Parties subject to this Article may by collective bargaining agreement provide that the
10 agreement supersedes the requirements of this Article.

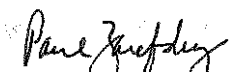
11 Sec. 3300D.8. NO LIMITATION OF OTHER RIGHTS AND REMEDIES.

12 This Article does not in any way limit the rights and remedies that the law otherwise provides to
13 Eligible Grocery Workers, including but not limited to the rights to be free from wrongful termination
14 and unlawful discrimination.

15 Sec. 3300D.9. SEVERABILITY.

16 If any part or provision of this Article, or the application of this Article in any circumstance, is
17 enjoined or held invalid by a court of competent jurisdiction, the remainder of this Article, including
18 the application of such part or provision in other circumstances, shall not be affected by such action
19 and shall continue in full force and effect. To this end, the parts and provisions of this Article, and
20 their application in particular circumstances, are severable.

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

23 By: 
24 PAUL ZAREFSKY
25 Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails - DRAFT

Ordinance

File Number: 060395

Date Passed:

Ordinance amending the San Francisco Police Code by adding a new Article 33D to require grocery employers to retain employees for 90 days upon change in control of the grocery store; to prohibit grocery employers from terminating the employees during those 90 days without cause; to require grocery employers to conduct a performance evaluation of the employees at the conclusion of the 90 days and consider for continued employment those employees with satisfactory performance; to require public notice of a change in control of the grocery store; and to provide judicial remedies, including hiring and reinstatement rights, front and back pay, and the value of benefits lost, for violation of the ordinance, along with an award of reasonable attorneys' fees to a successful plaintiff.

April 25, 2006 Board of Supervisors — PASSED ON FIRST READING

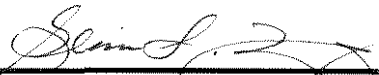
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

May 2, 2006 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, McGoldrick,
Mirkarimi, Peskin, Sandoval
Excused: 1 - Maxwell

File No. 060395

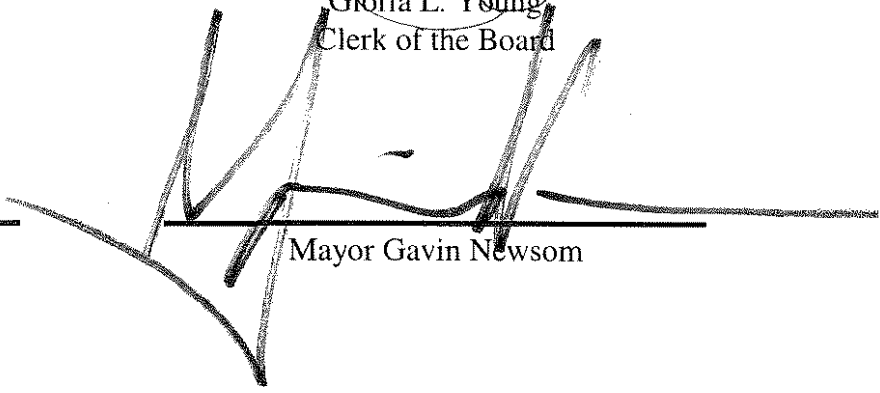
I hereby certify that the foregoing Ordinance
was FINALLY PASSED on May 2, 2006 by
the Board of Supervisors of the City and
County of San Francisco.



Gloria L. Young
Clerk of the Board

5/12/06

Date Approved



Mayor Gavin Newsom