

File No. 110546

Committee Item No. 1

Board Item No. \_\_\_\_\_

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: July 14, 2011

Board of Supervisors Meeting

Date: \_\_\_\_\_

#### Cmte Board

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Resolution                                   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement (Approved as to Form)     |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER

(Use back side if additional space is needed)

- |                                     |                          |   |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Small Business Commission Recommendation</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>S.F. Chamber of Commerce</u>                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____   |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____   |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____   |

Completed by: Andrea S. Ausberry

Date July 7, 2011

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Administrative Code - Health Care Security Ordinance]

2  
3 **Ordinance amending the San Francisco Administrative Code by amending Sections**  
4 **14.1, 14.3 and 14.4 of the Health Care Security Ordinance to provide that only amounts**  
5 **actually paid or irrevocably committed to pay for providing employee health care**  
6 **services shall satisfy the employer expenditure requirements of the Ordinance, add an**  
7 **employee notification requirement, and to modify penalty provisions.**

8 NOTE: Additions are single-underline italics Times New Roman;  
9 deletions are ~~strike-through italics Times New Roman~~.  
10 Board amendment additions are double-underlined;  
11 Board amendment deletions are ~~strikethrough-normal~~.

12 Section 1. The San Francisco Administrative Code is hereby amended by amending  
13 Sections 14.1, 14.3 and 14.4, to read as follows:

14 **SEC. 14.1. SHORT TITLE; DEFINITIONS.**

15 (a) **Short title.** This Chapter shall be known and may be cited as the "San Francisco  
16 Health Care Security Ordinance."

17 (b) **Definitions.** For purposes of this Chapter, the following terms shall have the  
18 following meanings:

19 (1) "City" means the City and County of San Francisco.

20 (2) "Covered employee" means any person who works in the City where such  
21 person qualifies as an employee entitled to payment of a minimum wage from an employer  
22 under the Minimum Wage Ordinance as provided under Chapter 12R of the San Francisco  
23 Administrative Code and has performed work for compensation for his or her employer for  
24 ninety (90) days, provided, however, that:

1                    (A) ~~(a)~~ From the effective date of this Chapter through December 31,  
2 2007, "at least twelve (12) hours" shall be substituted for "at least two (2) hours" where such  
3 term appears in Section 12R.3(a);

4                    (B) ~~(b)~~ From January 1, 2008 through December 31, 2008, "at least ten  
5 (10) hours" shall be substituted for "at least two (2) hours" where such term appears in  
6 Section 12R.3(a);

7                    (C) ~~(c)~~ Beginning January 1, 2009, "at least eight (8) hours" shall be  
8 substituted for "at least two (2) hours" where such term appears in Section 12R.3(a);

9                    (D) ~~(d)~~ The term "employee" shall not include persons who are  
10 managerial, supervisory, or confidential employees, unless such employees earn annually  
11 under \$72,450.00 or in 2007 and for subsequent years, the figure as set by the administering  
12 agency;

13                   (E) ~~(e)~~ The term "employee" shall not include those persons who are  
14 eligible to receive benefits under Medicare or TRICARE/CHAMPUS;

15                   (F) ~~(f)~~ The term "covered employees" shall not include those persons  
16 who are "covered employees" as defined in Section 12Q.2.9 of the Health Care Accountability  
17 Ordinance, Chapter 12Q of the San Francisco Administrative Code, if the employer meets the  
18 requirements set forth in Section 12Q.3 for those employees; and

19                   (G) ~~(g)~~ The term "covered employees" shall not include those persons  
20 who are employed by a nonprofit corporation for up to one year as trainees in a bona fide  
21 training program consistent with Federal law, which training program enables the trainee to  
22 advance into a permanent position, provided that the trainee does not replace, displace, or  
23 lower the wage or benefits of any existing position or employee.

24                   (H) ~~(h)~~ Nor shall "covered employees" include those persons whose  
25 employers verify that they are receiving health care services through another employer, either

1 as an employee or by virtue of being the spouse, domestic partner, or child of another person;  
2 provided that the employer obtains from those persons a voluntary written waiver of the health  
3 care expenditure requirements of this Chapter and that such waiver is revocable by those  
4 persons at any time.

5 (3) "Covered employer" means any medium-sized or large business as defined  
6 below engaging in business within the City that is required to obtain a valid San Francisco  
7 business registration certificate from the San Francisco Tax Collector's office or, in the case of  
8 a nonprofit corporation, an employer for which an average of fifty (50) or more persons per  
9 week perform work for compensation during a quarter. Small businesses are not "covered  
10 employers" and are exempt from the health care spending requirements under Section 14.3

11 (4) "Employer" means an employing unit as defined in Section 135 of the  
12 California Unemployment Insurance Code or any person defined in Section 18 of the  
13 California Labor Code. "Employer" shall include all members of a "controlled group of  
14 corporations" as defined in Section 1563(a) of the United States Internal Revenue Code, and  
15 the determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of  
16 the Internal Revenue Code.

17 (5) "Health Access Program" means a San Francisco Department of Public  
18 Health program to provide health care for uninsured San Francisco residents.

19 (6) "Health Access Program participant" means any uninsured San Francisco  
20 resident, regardless of employment or immigration status or pre-existing condition, who is  
21 enrolled by his or her employer or who enrolls as an individual in the Health Access Program  
22 under the terms established by the Department of Public Health.

23 (7) Subject to the limitations set forth in Section 14.3(a), "health ~~"Health~~ care  
24 expenditure" means any amount paid by a covered employer to its covered employees or to a  
25 third party on behalf of its covered employees for the purpose of providing health care

1 services for covered employees or reimbursing the cost of such services for its covered  
2 employees, including, but not limited to (a) contributions by such employer on behalf of its  
3 covered employees to a health savings account as defined under section 223 of the United  
4 States Internal Revenue Code or to any other account having substantially the same purpose  
5 or effect without regard to whether such contributions qualify for a tax deduction or are  
6 excludable from employee income; (b) reimbursement by such covered employer to its  
7 covered employees for expenses incurred in the purchase of health care services; (c)  
8 payments by a covered employer to a third party for the purpose of providing health care  
9 services for covered employees; (d) costs incurred by a covered employer in the direct  
10 delivery of health care services to its covered employees; and (e) payments by a covered  
11 employer to the City to be used on behalf of covered employees. The City may use these  
12 payments to: (i) fund membership in the Health Access Program for uninsured San Francisco  
13 residents; and (ii) establish and maintain reimbursement accounts for covered employees,  
14 whether or not those covered employees are San Francisco residents. Notwithstanding any  
15 other provision of this subsection, "health care expenditure" shall not include any payment  
16 made directly or indirectly for workers' compensation or Medicare benefits.

17 (8) "Health care expenditure rate" means the amount of health care expenditure  
18 that a covered employer shall be required to make for each hour paid for each of its covered  
19 employees each quarter. The "health care expenditure rate" shall be computed as follows:

20 (A) ~~(a)~~ From the effective date of this Chapter through June 30, 2007,  
21 \$1.60 per hour for large businesses and \$1.06 per hour for medium-sized businesses;

22 (B) ~~(b)~~ From July 1, 2007 through December 31, 2007, January 1, 2008  
23 through December 31, 2008, and January 1, 2009 through December 31, 2009, the rates for  
24 large and medium-sized businesses shall increase five (5) percent over the expenditure rate  
25 calculated for the preceding year;

1                    ~~(C)~~ (e) From January 1, 2010 and each year thereafter, the "health care  
2 expenditure rate" shall be determined annually based on the "average contribution" for a full-  
3 time employee to the City Health Service System pursuant to Section A8.423 of the San  
4 Francisco Charter based on the annual ten county survey amount for the applicable fiscal  
5 year, with such average contribution prorated on an hourly basis by dividing the monthly  
6 average contribution by one hundred seventy-two (172) (the number of hours worked in a  
7 month by a full-time employee). The "health care expenditure rate" shall be seventy-five  
8 percent (75%) of the annual ten county survey amount for the applicable fiscal year for large  
9 businesses and fifty percent (50%) for medium-sized businesses.

10                    (9) "Health care services" means medical care, services, or goods that may  
11 qualify as tax deductible medical care expenses under Section 213 of the Internal Revenue  
12 Code, or medical care, services, or goods having substantially the same purpose or effect as  
13 such deductible expenses.

14                    (10) "Hour paid" or "hours paid" means a work hour or work hours for which a  
15 person is paid wages or is entitled to be paid wages for work performed within the City,  
16 including paid vacation hours and paid sick leave hours, but not exceeding 172 hours in a  
17 single month. For salaried persons, "hours paid" shall be calculated based on a 40-hour work  
18 week for a full-time employee.

19                    (11) "Large business" means an employer for which an average of one hundred  
20 (100) or more persons per week perform work for compensation during a quarter.

21                    (12) "Medium-sized business" means an employer for which an average of  
22 between twenty (20) and ninety-nine (99) persons per week perform work for compensation  
23 during a quarter.

24                    (13) "Person" means any natural person, corporation, sole proprietorship,  
25 partnership, association, joint venture, limited liability company, or other legal entity.

1 (14) "Required health care expenditure" means the total health care  
2 expenditure that a covered employer is required to make every quarter for all its covered  
3 employees.

4 (15) "Small business" means an employer for which an average of fewer than  
5 twenty (20) persons per week perform work for compensation during a quarter.  
6

### 7 **SEC. 14.3. REQUIRED HEALTH CARE EXPENDITURES.**

#### 8 **(a) Required Expenditures.**

9 (1) Covered employers shall make required health care expenditures to or on  
10 behalf of their covered employees each quarter. The required health care expenditure for a  
11 covered employer shall be calculated by multiplying the total number of hours paid for each of  
12 its covered employees during the quarter (including only hours starting on the first day of the  
13 calendar month following ninety (90) calendar days after a covered employee's date of hire)  
14 by the applicable health care expenditure rate. In determining whether a covered employer  
15 has made its required health care expenditures, payments to or on behalf of a covered  
16 employee shall not be considered if they exceed the following amount: the number of hours  
17 paid for the covered employee during the quarter multiplied by the applicable health care  
18 expenditure rate. The City's Office of Labor Standards Enforcement (OLSE) shall enforce the  
19 health expenditure requirements under this Section.

20 (2) "Health care expenditure" shall only include an amount irrevocably paid by a  
21 covered employer to a covered employee or to a third party on behalf of a covered employee. An  
22 amount that is retained by the employer or that may be recovered by or returned to the employer shall  
23 not constitute a valid "health care expenditure." An amount paid to a third party for the purpose of  
24 reimbursing a covered employee for expenses incurred in the purchase of health care services shall not  
25 constitute a valid "health care expenditure" unless any unused funds carry over from quarter to

1 quarter and from year to year and remain available to the covered employee or to a surviving spouse,  
2 registered domestic partner, or dependent, for reimbursement of future health care expenses.

3 (b) **Employer Notice to Employees.** Each covered employer shall provide its covered  
4 employees with a written notice of the employer's obligation under this Chapter to make health care  
5 expenditures and how the employer is meeting this obligation. The City shall develop and promulgate  
6 rules regarding the content and timing of the required notice.

7 (c) ~~(b)~~ **Additional Employer Responsibilities.** A covered employer shall: (i) maintain  
8 accurate records of health care expenditures, required health care expenditures, and proof of  
9 such expenditures made each quarter each year, and allow OLSE reasonable access to such  
10 records, provided, however, that covered employers shall not be required to maintain such  
11 records in any particular form; and (ii) provide information to the OLSE, or the OLSE's  
12 designee, on an annual basis containing such other information as OLSE shall require, but  
13 OLSE may not require an employer to provide information in violation of State or federal  
14 privacy laws. Where an employer does not maintain or retain adequate records documenting  
15 the health expenditures made, or does not allow OLSE reasonable access to such records, it  
16 shall be presumed that the employer did not make the required health expenditures for the  
17 quarter for which records are lacking, absent clear and convincing evidence otherwise. The  
18 Office of Treasurer and Tax Collector shall have the authority to provide any and all  
19 nonfinancial information to OLSE necessary to fulfill the OLSE's responsibilities as the  
20 enforcing agency under this Ordinance. With regard to all such information provided by the  
21 Office of Treasurer and Tax Collector, OLSE shall be subject to the confidentiality provisions  
22 of Subsection (a) of Section 6.22-1 of the San Francisco Business and Tax Regulations Code.

23  
24 / / /

25 / / /



1 **SEC. 14.4. ADMINISTRATION AND ENFORCEMENT.**

2 (a) The City shall develop and promulgate rules to govern the operation of this  
3 Chapter. The regulations shall include specific rules by the Department of Public Health on  
4 the operation of both the Health Access Program and the reimbursement accounts identified  
5 in Section 14.2(g), including but not limited to eligibility for enrollment in the Health Access  
6 Program and establishment of reimbursement accounts and rules by the OLSE for  
7 enforcement of the obligations of the employers under this Chapter. The rules shall also  
8 establish procedures for covered employers to maintain accurate records of health care  
9 expenditures and required health care expenditures and provide a report to the City without  
10 requiring any disclosures of information that would violate State or Federal privacy laws. The  
11 rules shall further establish procedures for providing employers notice that they may have  
12 violated this Chapter, a right to respond to the notice, a procedure for notification of the final  
13 determination of a violation, and an appeal procedure before a hearing officer appointed by  
14 the City Controller. The sole means of review of the hearing officer's decision shall be by filing  
15 in the San Francisco Superior Court a petition for a writ of mandate under Section 1094.5 of  
16 the California Code of Civil Procedure. No rules shall be adopted finally until after a public  
17 hearing.

18 (b) During implementation of this Chapter and on an ongoing basis thereafter, the City  
19 shall maintain an education and advice program to assist employers with meeting the  
20 requirements of this Chapter.

21 (c) Any employer that reduces the number of employees below the number that would  
22 have resulted in the employer being considered a "covered employer," or below the number  
23 that would have resulted in the employer being considered a medium-sized or large business,  
24 shall demonstrate that such reduction was not done for the purpose of evading the obligations  
25 of this Chapter or shall be in violation of the Chapter.

1 (d) It shall be unlawful for any employer or covered employer to deprive or threaten to  
2 deprive any person of employment, take or threaten to take any reprisal or retaliatory action  
3 against any person, or directly or indirectly intimidate, threaten, coerce, command or influence  
4 or attempt to intimidate, threaten, coerce, command or influence any person because such  
5 person has cooperated or otherwise participated in an action to enforce, inquire about, or  
6 inform others about the requirements of this Chapter. Taking adverse action against a person  
7 within ninety (90) days of the person's exercise of rights protected under this Chapter shall  
8 raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

9 (e) (1) The City shall enforce the obligations of ~~employers and~~ covered employers  
10 under this Chapter, and shall may impose administrative penalties upon ~~employers and~~ covered  
11 employers who fail to make required health care expenditures on behalf of their employees  
12 within five days of the quarterly due date. The amount of the penalty shall be equal to up to one-  
13 and one-half times the total expenditures that a covered employer failed to make plus simple  
14 annual interest of up to ten (10) percent from the date payment should have been made, but in any  
15 event the total penalty for this violation shall not exceed \$100 \$1,000.00 for each employee for  
16 each quarter week that the required such expenditures were are not made within five days of the  
17 quarterly due date. The \$100 penalty shall increase by an amount corresponding to the prior year's  
18 increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San  
19 Francisco-Oakland-San Jose, CA metropolitan statistical area.

20 (2) For other violations of this Chapter by employers and covered employers,  
21 the administrative penalties shall be as follows: For refusing to allow access to records,  
22 pursuant to Section 14.3(b), \$25.00 as to each worker whose records are in issue for each  
23 day that the violation occurs; for the failure to maintain or retain accurate and adequate  
24 records pursuant to Section 14.3(b) and for the failure to make the annual report of  
25 information required by OLSE pursuant to Section 14.3(b). \$500.00; for violation of Section

1 14.4(d) (retaliation), \$100.00 as to each person who is the target of the prohibited action for  
2 each day that the violation occurs; and for any other violation not specified in this subsection  
3 (e)(2), \$25.00 per day for each day that the violation occurs.

4 (3) The City Attorney may bring a civil action to recover civil penalties for the  
5 violations set forth in subsections (e)(1) and (e)(2) in the same amounts set forth in those  
6 subsections, and to recover the City's enforcement costs, including attorneys' fees.

7 (4) Amounts recovered under this Section shall be deposited in the City's  
8 General Fund.


9 (f) The City Controller shall coordinate with the Department of Public Health and OLSE  
10 to prepare periodic reports on the implementation of this Chapter including participant rates,  
11 any effect on services provided by the Department of Public Health, the cost of providing  
12 services to the Health Access Program participants and the economic impact of the Chapter's  
13 provisions. Reports shall be provided to the Board of Supervisors on a quarterly basis for  
14 quarters beginning July 1, 2007 through June 30, 2008, then every six months through June  
15 30, 2010. Reports shall include specific information on any significant event affecting the  
16 implementation of this Chapter and also include recommendations for improvement where  
17 needed, in which case the Board of Supervisors or a committee thereof shall hold a hearing  
18 within thirty (30) days of receiving the report to consider responsive action.

19 (g) The Director of Public Health shall convene an advisory Health Access Working  
20 Group to provide the Department of Public Health and the Health Access Program with expert  
21 consultation and direction, with input on members from the Mayor and the Board of  
22 Supervisors. The Health Access Working Group shall be advisory in nature and may provide  
23 the Health Access Program with input on matters including: setting membership rates;  
24 designing the range of benefits and health care services for participants; and researching  
25 utilization, actuaries, and costs.

1 (h) The Department of Public Health and the OLSE shall report to the Board of  
2 Supervisors by July 1, 2007, on the development of rules for the Health Access Program and  
3 for the enforcement and administration of the employer obligations under this Chapter. The  
4 Board of Supervisors or a committee thereof shall hold a hearing on the proposed rules to  
5 ensure that participants in the Health Access Program shall have access to high quality and  
6 culturally competent services.

7  
8  
9 APPROVED AS TO FORM:

10 DENNIS J. HERRERA, City Attorney

11  
12 By:   
13 THOMAS J. OWEN  
14 Deputy City Attorney

**LEGISLATIVE DIGEST**

[Administrative Code – Health Care Security Ordinance]

**Ordinance amending the San Francisco Administrative Code by amending Sections 14.1, 14.3 and 14.4 of the Health Care Security Ordinance, to provide that only amounts actually paid or irrevocably committed to pay for providing employee health care services shall satisfy the employer expenditure requirements of the Ordinance and add an employee notification requirement, and to modify penalty provisions.**

**Qualifying "Health Care Expenditures"**

The City's Health Care Security Ordinance (the "Ordinance") requires certain employers located in the City to make "health care expenditures" on behalf of certain of their employees. A "health care expenditure" is money paid by a covered employer to its covered employees or to another party on behalf of its covered employees for the purpose of providing health care services for the employees or reimbursing the cost of such services. Employers have various options on how to satisfy the required expenditure, including the use of health savings and reimbursement accounts.

The proposal would provide that a "health care expenditure" would only include an amount irrevocably paid by an employer to an employee or to a third party on behalf of the employee. An amount that was designated as an expenditure but still held by the employer would not satisfy the Ordinance; nor would an amount that was paid over to a third party but could later be recovered by or returned to the employer. And any unused amount would have to carry over and remain available to the employee or a surviving spouse, domestic partner or dependent for reimbursement of future health care expenses.

**Notification to Employees**

The Ordinance in its current form does not require employers to provide specific notice to their employees regarding what the company is doing on their behalf to comply with the law.

The proposal would require the employer to provide its employees with a written notice of the employer's obligation to make health care expenditures under the Ordinance and how the employer was complying with the Ordinance.

### Enforcement

Under current law, the possible penalties for failing to make the required health care expenditures include administrative fines in an amount up to one-and-one-half times the total expenditures that the employer failed to make 10 percent interest, not exceed \$1,000 for each employee for each week that the expenditures were not made.

Under the proposal, the administrative fine would be equal to the total expenditures that a covered employer failed to make, not exceed \$100 for each employee for each quarter that the expenditures were not made within five days of the quarterly due date. The \$100 figure would be adjusted annually for inflation.



SAN FRANCISCO  
CHAMBER OF COMMERCE *Where smart business starts.*

file 110546, BOS-11  
GAO Clerk-AA  
RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2011 JUN -9 PM 3:07  
AK

June 8, 2011

Mayor Edwin Lee  
City Hall, Room 200  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Members, San Francisco Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

Members, San Francisco Small Business Commission  
City Hall, Room 110  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 9410

Dear City Official,

In early May, Supervisor David Campos introduced an amendment to San Francisco's Health Care Security Ordinance that would effectively eliminate the use of Health Reimbursement Arrangements (HRA) and Flexible Spending Accounts (FSA), both of which were outlined as compliance options in the Health Care Security Ordinance when it was originally adopted. We believe that the elimination of these account options is unnecessary and will negatively impact those currently receiving important healthcare benefits. If Supervisor Campos's legislation is enacted unchanged, it would increase business overhead, forcing employers to reduce the number of people they employ, the hours their employees work and likely the quality of care and the current amount of benefit, to which their employees have access.

Supervisor Campos's legislation would change the definition of "health care expenditure" to exclude the money put into HRAs, if the unspent portion of the HRA ever reverts back to the employer. The proposal would effectively require businesses to manage health accounts for their past employees indefinitely, resulting in a substantial increase in the administrative costs to businesses. Employers that use HRAs as the primary means of compliance for Healthy San Francisco would see a significant increase in costs if the legislation is enacted, adding an additional 10% - 15% to their labor costs, and having their health care compliance costs more than triple. These additional costs will further put local businesses at an economic and competitive disadvantage to competitors in neighboring counties.

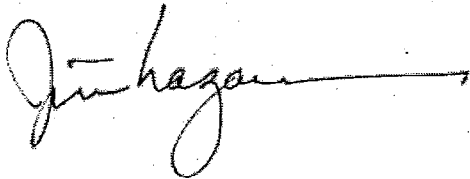
We believe the intent of Healthy San Francisco is to provide health access to low income San Francisco residents. HRAs are a flexible and cost effective tool for employees to access health care, and are in complete compliance with Healthy San Francisco's health care expenditure requirements. In fact, of the 2,960 businesses in San Francisco that filed reports under Healthy San Francisco, 860 (or 29.1%) used some form of a health reimbursement account. As a result a total of \$13.3 million was spent by businesses in San Francisco to comply with this law, but for those businesses, the cost of compliance under the new amendment would go up, on average, by 3½ times. That translates to a debilitating cost increase of around \$49 million annually.

However, the uptake of individuals using their benefits might be improved by requiring that employees receive notice regarding their rights and benefits under the law. To that end, the business community would support an even stronger notice requirement so that employees will know their benefits and how they can access them. The notice could be provided on a quarterly basis to coincide with the employers' quarterly health care expenditures.

Finally, The Patient Protection & Affordable Care Act signed into law in 2010, contains its own set of guidelines and requirements for employers, including an employer mandate that will have the same net effect and goal as the Healthy San Francisco program. We should wait to see the results of the PPACA before making any substantial modifications to Healthy San Francisco.

San Francisco employees currently have the ability to use their benefits under the Healthy San Francisco program, but if the intent of the amendment is to encourage employees not currently utilizing this benefit to do so then we should work to strengthen the notice requirement to increase awareness. However, the legislation as currently proposed would have such a high price tag for employers that it would force them to reduce their workforce and potentially close operations all together. We urge that you oppose the current version of the legislation and instead work with the business community and other key stakeholders in San Francisco to create a more robust notice requirement.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Lazarus", with a long horizontal flourish extending to the right.

Jim Lazarus  
Sr. Vice President





SMALL BUSINESS COMMISSION  
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

June 20, 2011

Ms. Angela Calvillo, Clerk of the Board  
Board of Supervisors  
City Hall room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102-4694

**Re: File No. 110546 [Administrative Code- Health Care Security Ordinance]**

**Small Business Commission Recommendation: Do not recommend approval. Second Motion passed recommending that Reimbursement Account noticing requirements be implemented.**

Dear Ms. Calvillo:

On June 13, 2011, the Small Business Commission (SBC) voted unanimously to recommend that the Board of Supervisors not approve BOS File No. 110546.

The SBC does not support employers that are intentionally not notifying employees of their health reimbursement accounts. The SBC also does not support employers that do not allow employees to utilize their reimbursement accounts to pay for a health insurance premium, Healthy San Francisco, or otherwise severely restrict the usage of these funds. However, the available information and data used to support this ordinance has not demonstrated that the problems are so pervasive or wide spread that such a sweeping change, which will negatively impact a large number of businesses in San Francisco, is necessary. The Commission has determined that this is not an appropriate approach to address the issue of a small minority of employers who severely restrict the availability and use of reimbursement account funds to their employees.

Although available data shows that only 7% of health care expenditures are spent on reimbursement accounts, figures also show that 29% of employers use reimbursement plans as a full or partial means of complying with the HCSO. A disproportionate amount these employers are small businesses of less than 100 persons. Therefore, this will not "level the playing field" and impact a small number of businesses, as claimed by the ordinance proponents. Additionally, according to the Office of Labor Standards and Enforcement (OLSE), up to half of the businesses in certain low profit margin sectors, including the restaurant and hospitality industries, may feel the economic consequences of this ordinance.

Of the 29% of businesses that use reimbursement accounts, a majority of these businesses use reimbursement plans to supplement a primary expenditure, most cases likely being a health insurance plan. Reimbursement accounts are a reasonable option to fulfill the remainder of the mandate. Additionally, businesses that provide health insurance to full time workers, or employees working over a certain hour threshold, may choose to provide their very part time employees with reimbursement accounts. A health reimbursement account is often the most equitable way to provide the mandate, both for the employee and the employer.

The remaining numbers of businesses that use reimbursement plans are utilizing them as a primary means of complying with the HCSO. If this ordinance is enacted, employers that use reimbursement accounts as the primary means of compliance with the Health Care Security Ordinance may see their labor costs rise an additional 10-15%. As detailed earlier, the restaurant and service sectors are often users of these types of

SMALL BUSINESS ASSISTANCE CENTER/ SMALL BUSINESS COMMISSION  
1 DR. CARLTON B. GOODLETT PLACE, ROOM 110 SAN FRANCISCO, CALIFORNIA 94102-4681  
(415) 554-6408



SMALL BUSINESS COMMISSION  
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

accounts. These businesses, often low margin, high labor operations, may be forced to cut staff, reduce hiring, or may be pressured to close their doors. In addition to direct pressure on the cost side, these additional costs will continue to put these businesses at an economic and competitive disadvantage to competitors in neighboring cities and counties. Small business retailers are at a particular disadvantage as they must compete with online and formula retail big box stores, located both inside and outside of San Francisco.

According to OLSE, the total reimbursement account expenditures are \$62 million per year. Of this, \$50 million is currently not being utilized by employees. It has not been quantified what percentage of this \$50 million is being retained by the employee or returned to the employer. Spread out among less than 800 employers, the economic impact could be upwards of \$60,000 per employer. This will directly translate into jobs and employee hours lost and jobs. This economic impact needs to be quantified as there will be a reduction of money being cycled back into the economy. The Commission recommends that an Economic Impact Report be completed to fully evaluate the impacts that this legislation will have on jobs and other factors of importance. The Commission also has logistical concerns about these funds being held in perpetuity, including when employees change jobs or move out of San Francisco, the State, and even the Country.

The SBC strongly believes that requiring notification of reimbursement account benefits provided under the HCSO is a very important right that workers should be entitled to. The SBC passed a second motion at our June 13 meeting which recommends that employee noticing requirements be implemented to ensure that all employees covered under the HCSO receive periodic notices and statements of their reimbursement account benefits. The Commission believes that the increased notice will lead to additional utilization of the reimbursement accounts, without leading to an immediate \$50 million impact on the economy. The San Francisco Health Plan, in administering Healthy San Francisco reimbursement accounts has demonstrated that increased notice and outreach has led to improved utilization of these accounts. In addition, the Commission recommends that as a policy direction, that the Board of Supervisors give OLSE the tools to better collect data to show how pervasive the practice of denying or withholding benefits to employees. Lastly, the Commission requests that all parties affected by the HCSO, including small businesses and the Small Business Commission, be included in discussions to require noticing requirements or modify reporting requirements.

The Commission thanks Supervisor Campos for his presentation and engagement on the issue and for his commitment to work with the business community on this important issue. The Country is still in the worst economic crisis since the Great Depression. Businesses are already preparing for national health care changes in 2014 and the impact of the Patient Protection & Affordable Care Act signed into law in 2010 is unknown. Businesses will be working hard to meet this mandate over the next three years- while trying to stay in business. Therefore, the Commission recommends against such a major change to the local level health care policy until the effects of the national reform are known.

Sincerely,

Regina Dick-Endrizzi  
Director, Office of Small Business

cc. Supervisors Campos, Avalos, Chiu, Cohen, Kim, Mar, Mirkarimi  
Jason Elliott, Mayor's Office  
Donna Levitt, Office of Labor Standards Enforcement

**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:

- 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 Committee hearing on a subject matter
- 4. Request for letter beginning "Supervisor \_\_\_\_\_ inquires..."
- 5. City Attorney request
- 6. Call file from Committee
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File Nos.
- 9. Request for Closed Session
- 10. Board to Sit as A. Committee of the Whole
- 11. 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
- Ethics Commission
- Building Inspection Commission
- Youth Commission
- Planning Commission

**Note:** For the Imperative Agenda (a resolution not on the printed agenda), use a different form.]

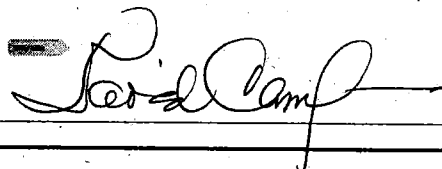
**Sponsor(s):** Campos, Mar, Avalos, Mirkarimi, Cohen, Chiu, Kim

Health Care Security Ordinance

**SUBJECT:** \_\_\_\_\_

The text is listed below or attached:

Signature of Sponsoring Supervisor: \_\_\_\_\_



**For Clerk's Use Only:**

110546

