

1 [Worker Health Care Security Ordinance]

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3 **Ordinance amending the San Francisco Administrative Code by adding Sections 14.1**  
4 **through 14.10, to require that employers operating within San Francisco make health**  
5 **expenditures on behalf of employees, set penalties and provide for enforcement, and**  
6 **creating a health security task force to analyze among other related issues, the**  
7 **desirability and feasibility of imposing a fee on employers to provide health care for**  
8 **employees.**

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

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

14 Section 1. **Declaration of legislative findings and intent.** In San Francisco,  
15 responsible employers have long provided employer-paid health care for their employees.  
16 But in recent years, these employers have faced mounting competitive pressure from other  
17 employers who do not follow the industry standard of providing health care. Employers in San  
18 Francisco who do not provide health care are engaging in unfair competition and causing  
19 economic injury to the majority of responsible employers who continue to provide such care.

20 The City has a vital interest in preventing a "race to the bottom" where, in an effort to  
21 remain competitive, employers abandon their longstanding commitment to providing  
22 employer-paid health care, forcing their employees to seek uncompensated care from the  
23 City's already overburdened taxpayer-funded public health care system. Reducing the  
24 economic pressure for employers to eliminate employer-paid health care is important for  
25 minimizing the burden on taxpayers and the public health care system, protecting the health,

1 safety and well-being of hardworking San Franciscans and promoting safe conditions and  
2 stable economic growth.

3 Further, research shows that improving access to employer-paid health care can  
4 strengthen industries by significantly reducing employee turnover and improving employers'  
5 ability to recruit and retain employees. To ensure that the cost of providing health care to  
6 employees is not shifted to the taxpayers and the public health care system, and to promote  
7 safe conditions and a more stable and reliable workforce for all employers, the City must  
8 reduce the competitive pressure to eliminate employer-provided health care. The City can  
9 reduce these pressures and level the playing field for responsible employers by requiring that  
10 employers make health care expenditures on behalf of their employees.

11

12 Section 2. The San Francisco Administrative Code is hereby amended by adding  
13 Sections 14.1 through 14.10, 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 "Worker Health Care*  
16 *Security Ordinance."*

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

19 *(1) "Administering agency" or "Agency" means the City's Office of Labor Standards (OLS).*

20 *(2) "City" means the City and County of San Francisco.*

21 *(3) "Covered employer" means any employer operating within the City that is required to*  
22 *obtain a valid San Francisco business license from the San Francisco Tax Collector's office, where*  
23 *such employer employs a minimum total of twenty (20) covered employees at any one time during the*  
24 *preceding fiscal year. Covered employers shall not include those employers subject to the Health Care*

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1 Accountability Ordinance, Chapter 12Q of the San Francisco Administrative Code, and such employers  
2 are exempted from the requirements of this Chapter.

3 (4) "Employee" or "covered employee" means any person who works in the City for a covered  
4 employer on a full-time or part-time basis where such employee works at least eighty (80 ) hours  
5 monthly for a minimum of six (6) months per annual reporting period, provided, however, that the term  
6 "employee" shall not include persons who are managerial, supervisory, or confidential employees,  
7 unless such employees earn annually under \$72,450 or in 2007 and for subsequent years, the figure as  
8 set by the administering agency.

9 (5) "Entity" or "Person" means any natural person, corporation, sole proprietorship,  
10 partnership, association, joint venture, limited liability company or other legal entity.

11 (6) "Health Care Expenditure" means any amount paid by a covered employer to its covered  
12 employees or to another party on behalf of its covered employees for the purpose of providing health  
13 care services for covered employees or reimbursing the cost of such services for its employees,  
14 including, but not limited to, (a) contributions by such employer to a health savings account as defined  
15 under section 223 of the United States Internal Revenue Code on behalf of any of its covered  
16 employees, or (b) reimbursement by such employer to its covered employees for incurred health care  
17 expenses. Notwithstanding any other provision of this subsection, such term shall not include any  
18 payment made directly or indirectly for workers' compensation or Medicare benefits.

19 (7) "Health Care Services" means medical care, services or goods including, but not limited to,  
20 (i) inpatient and outpatient hospital services, (ii) physicians' surgical and medical services, (iii)  
21 laboratory, diagnostic and x-ray services, (iv) prescription drug coverage, (v) annual physical  
22 examinations, (vi) preventative services, (vii) mental health services, (viii) dental services, (ix) vision  
23 care services, (x) durable medical equipment, and (xi) substance abuse treatment services; provided,  
24 however, that such term shall not include any medical procedure or treatment which is solely cosmetic.  
25

1           (8) "Prevailing Health Care Expenditure Rate" means the amount of health care expenditure  
2 made on behalf of a full-time employee equal to the "average contribution" approved by the Board of  
3 Supervisors pursuant to Section A8.425 of the San Francisco Charter and based on the annual ten  
4 county survey amount for the applicable fiscal year, and paid by the City through its Health Service  
5 System on behalf of members, with such rate to be prorated on an hourly basis.

6           (9) "Required Health Care Expenditure" means the total health care expenditure that a covered  
7 employer is required to make each year for all its covered employees pursuant to Section 14.2.

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9           **SEC. 14.2. REQUIRED HEALTH CARE EXPENDITURES.**

10           (a) **Required Expenditures.** Covered employers shall make required health care expenditures  
11 on behalf of their covered employees each year. Each covered employer shall determine its required  
12 health care expenditure by multiplying the health care expenditure rate by the total number of hours  
13 worked that year by all the covered employees as defined in Section 14.1(d)(4), of such employer.

14           (b) **Additional Employer Responsibilities.** A covered employer shall: (i) maintain accurate  
15 records of health care expenditures and required health care expenditures, and proof of such  
16 expenditures each year; provided, however, that covered employers shall not be required to maintain  
17 such records in any particular form; and (ii) provide a report to the administering agency on an annual  
18 basis containing such other information as the administering agency shall require. Such report shall  
19 be made available to the public without employee names and addresses.

20           (c) **Collective Bargaining Agreements.** A covered employer that is a signatory to a collective  
21 bargaining agreement under which such employer makes the required health care expenditures on  
22 behalf of its employees as determined by the Agency, may fully comply with the requirements of this  
23 section by filing annually with the Agency proof of such collective bargaining agreement and its terms,

1 in a format specified by the Agency, and shall otherwise be exempt from all other provisions of this  
2 section.

3 **SEC. 14.3. PENALTIES; ENFORCEMENT.**

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5 (a) Penalties. The Agency may impose administrative penalties upon employers who violate  
6 this Chapter, in the amount of up to one-and-one-half times the total expenditures that the employer  
7 failed to make; or in its discretion, the Agency may require the employer to pay the medical bills of a  
8 covered employee, with the amount paid not to exceed that employee's proportionate share of the  
9 employer's required health expenditure for the period during which the bill was incurred.

10 (b) Notice of Violation. Upon determining that a covered employer may have violated the  
11 terms of this Chapter, the Agency shall send written notice to the covered employer of the possible  
12 violation and of the employer's right to respond to the Agency's initial determination by submitting  
13 pertinent documents and other information. If after providing the covered employer with a reasonable  
14 opportunity to respond to the allegations, the Agency makes a final determination that a violation has  
15 occurred, the Agency shall provide written notice to the covered employer setting forth:

16 (1) The basis for the final determination;

17 (2) The corrective action that the covered employer must take to come into compliance with the  
18 requirements of this Chapter, including any penalties that the employer owes to the City under  
19 subsection (a), which amounts shall also include simple annual interest of up to 10% from the date  
20 payment should have been made;

21 (3) That the covered employer has the right to appeal the Agency's final determination to the  
22 Controller, but that any such appeal must be filed in writing with the Controller within 15 days of the  
23 date of receipt of the determination; and

1           (4) That the Covered employer's failure to file an appeal in writing with the Controller within  
2 15 days shall cause the Agency's determination to be deemed a final administrative decision by the City  
3 upon expiration of the 15-day period, which the City may enforce in a court of law; that the covered  
4 employer will be required to take corrective action within 14 days of the Agency's decision becoming  
5 final; and that a covered employer must file an appeal with the Controller in order to exhaust  
6 administrative remedies.

7           (c) Appeals.

8           (1) Within 15 days of receiving an appeal from the Agency's final determination, the Controller  
9 shall appoint a hearing officer and shall so advise the Agency and the covered employer, and/or their  
10 respective counsel or authorized representative.

11           (2) The hearing officer shall promptly set a date for a hearing. The hearing must commence  
12 within 45 days of the notification of the appointment of the hearing officer and conclude within 75 days  
13 of such notification unless all parties agree to an extended period.

14           (3) The Agency shall have the burden of producing evidence that the covered employer has  
15 violated the requirements of this Chapter and the burden of proving the violation.

16           (4) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written  
17 decision affirming, modifying, or vacating the Agency's determination. If the hearing officer vacates  
18 the Agency's determination in its entirety, that decision shall also vacate any assessment of damages. If  
19 the hearing officer affirms the Agency's determination, the hearing officer shall issue a decision  
20 upholding the Agency's determination, including the amount of the penalties assessed by the Agency.  
21 With respect to penalties, the hearing officer's jurisdiction to modify the Agency's assessment is limited  
22 and the following procedures apply. If the hearing officer modifies the Agency's determination, the  
23 hearing officer shall transmit the decision to the Agency, which shall within 5 business days modify the  
24 assessment of penalties consistent with the hearing officer's decision based on the criteria set forth in  
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1 this Section and transmit the modified assessment to the hearing officer. Upon receiving the modified  
2 assessment from the Agency, the hearing officer shall within 3 business days issue a final decision  
3 which shall include the amount of the penalty assessment as modified by the Agency.

4 (5) The hearing officer's decision shall consist of findings and a determination, which shall be  
5 final. The covered employer may seek review of the hearing officer's decision only by filing in the San  
6 Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure,  
7 section 1094.5, as may be amended from time to time.

8 (6) The failure of the Controller or hearing officer to comply with the time requirements of this  
9 Section shall not cause the Controller or the hearing officer to lose jurisdiction over an appeal from the  
10 Agency's determination filed under this Section.

11 (d) **Corrective Action by the Employer.** Upon the hearing officer's affirming or modifying the  
12 Agency's determination, the covered employer is required to take the corrective action, including the  
13 payment of penalties ,if any, within 14 days of receiving the hearing officer's decision. When a covered  
14 employer fails to take corrective action within the time required by the provisions of this Section, the  
15 City may immediately pursue all available remedies against the covered employer.

16 (e) **Selection of Hearing Officers.** The Agency may establish qualifications for persons  
17 selected by the Controller to serve as a hearing officer under this Section, including a requirement that  
18 the hearing officer have experience with the implementation of wage and hour labor laws.

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20 **SEC. 14.4. UNLAWFUL RETALIATION.**

21 It shall be unlawful for any covered employer to deprive or threaten to deprive any person of  
22 employment, take or threaten to take any reprisal or retaliatory action against any person, or directly  
23 or indirectly intimidate, threaten, coerce, command or influence or attempt to intimidate, threaten,  
24 coerce, command or influence any person because such person has cooperated or otherwise  
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1 participated in an action to enforce, inquire about, or inform others about the requirements of this  
2 Chapter.

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4 **SEC. 14.5. RULES.**

5 The Agency may promulgate rules in accordance with this Chapter and such other rules as may  
6 be necessary for the purpose of implementing, construing and carrying out the provisions of this  
7 section.

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9 **SEC. 14.6. TASK FORCE ON HEALTH CARE SECURITY FEE.**

10 (a) Creation. Pursuant to this section, a Task Force will be appointed to evaluate the  
11 desirability and necessity of imposing a fee on employers to further the provision of health care for the  
12 under and uninsured worker population.

13 (b) Members. The Task Force shall be a seven member body with all members appointed by  
14 the Board of Supervisors and such appointments must be made within sixty (60) days of the effective  
15 date of this Ordinance.

16 (c) Duties. The duties of the Task Force shall include the following:

17 (1) Review the feasibility of charging employers a fee for health care for employees  
18 after first directing that a study be conducted on the nexus between the burden on the City's safety net  
19 health system and use of such system by uninsured workers covered by this measure.

20 (2) Evaluate creating a fee to fund enforcement of the Worker Health Care Security  
21 Ordinance.

22 (3) Report on the relationship between uncompensated care provided for workers by  
23 non-profit hospitals and the absence of employer-compensated health care.



1                   (4) Analyze whether an employer paid fee for health care studied in 14.6(c)(1.) could be  
2 pooled for each worker to increase their access to health care.

3                   (5) Investigate the ability of small employers in the City with under twenty (20)  
4 employees to pay for health care for their employees.

5                   (6) Develop policy recommendations for possible tax benefits in the form of write-offs  
6 for the employers making the required health care expenditures.

7                   (d) **Reporting.** The Task Force shall report to the Board of Supervisors its recommendations  
8 within nine months of appointment of all members.

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10                   **SEC. 14.7. SEVERABILITY.** If any section, subsection, clause, phrase or portion of this  
11 Chapter is for any reason held invalid or unconstitutional by any court or federal or State agency of  
12 competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision  
13 and such holding shall not affect the validity of the remaining portions thereof. To this end, the  
14 provisions of this ordinance shall be deemed severable.

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16                   **SEC. 14.8. PREEMPTION.** Nothing in these sections shall be interpreted or applied so as to  
17 create any power, duty or obligation in conflict with, or preempted by, any federal or state law.

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19                   **SEC. 14.9. GENERAL WELFARE.** In adopting this Chapter, the City and County of San  
20 Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it  
21 imposing on its officers and employees, an obligation for breach of which it is liable in money damages  
22 to any person who claims that such breach proximately caused injury.

1            **SEC. 14.10 EFFECTIVE DATE.** This Chapter shall become effective ninety (90) days after it  
2 is adopted. This Chapter is intended to have prospective effect only.

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

7  
8 By: \_\_\_\_\_  
9        ALEETA M. VAN RUNKLE  
       Deputy City Attorney

1 **LEGISLATIVE DIGEST**

2 [Worker Health Care Security Ordinance]

3 **Ordinance amending the San Francisco Administrative Code by adding Sections 14.1**  
4 **through 14.10, to require that employers operating within San Francisco make health**  
5 **expenditures on behalf of employees, setting penalties and providing for enforcement,**  
6 **and creating a health security task force to, among other duties, analyze the**  
7 **desirability and feasibility of imposing a fee on employers to provide health care for**  
8 **employees.**

7 **Existing Law**

8 Existing law does not require that licensed businesses operating within San Francisco make  
9 health care expenditures on behalf of their employees. Local law does require that certain  
10 City contractors and lessors of City land comply with the Health Care Accountability  
11 Ordinance, Chapter 12Q of the Administrative Code, by choosing to pay a fee to the City to  
12 offset the cost of the City's provision of health care to the uninsured and underinsured  
13 populations, or by providing health care coverage to covered employees.

12 **Amendments to Current Law**

13 The proposed measure will amend the San Francisco Administrative Code by adding Sections  
14 14.1 through 14.10, to require that employers with more than 20 employees, licensed by the  
15 San Francisco Tax Collector's Office, and operating within San Francisco, make health  
16 expenditures on behalf of employees. The measure also sets penalties and provides for  
17 enforcement, and creates a health security task force to study and report upon various issues  
18 including the desirability and feasibility of imposing a fee on employers to provide health care  
19 for employees.

18 Under the measure, "Health Care Expenditure" means any amount paid by a covered  
19 employer to its covered employees or to another party on behalf of its covered employees for  
20 the purpose of providing health care services for covered employees or reimbursing the cost  
21 of such services for its employees, including, but not limited to, (a) contributions by such  
22 employer to a health savings account as defined under section 223 of the United States  
23 Internal Revenue Code on behalf of any of its covered employees, or (b) reimbursement by  
24 such employer to its covered employees for incurred health care expenses. Notwithstanding  
25 any other provision of this subsection, such term shall not include any payment made directly  
or indirectly for workers' compensation or Medicare benefits.

23 "Covered employer" means any employer operating within the City that is required to obtain a  
24 valid San Francisco business license from the San Francisco Tax Collector's office, where  
25 such employer employs a minimum total of twenty (20) covered employees at any one time  
during the preceding fiscal year. The measure does not include within the definition of

1 "Covered employers" those employers subject to the Health Care Accountability Ordinance,  
2 Chapter 12Q of the San Francisco Administrative Code, and such employers are exempted  
3 from the requirements of this Chapter.

### 4 Background Information

5 In San Francisco, responsible employers have sought to provide employer-paid health  
6 care for their employees. But in recent years, these employers have faced mounting  
7 competitive pressure from other employers who do not follow the industry standard of  
8 providing health care. Employers in San Francisco who do not provide health care are  
9 engaging in unfair competition and causing economic injury to the majority of responsible  
10 employers who continue to provide such care.

11 The City has a vital interest in preventing a "race to the bottom" where, in an effort to  
12 remain competitive, employers abandon their longstanding commitment to providing  
13 employer-paid health care, forcing their employees to seek uncompensated care from the  
14 City's already overburdened taxpayer-funded public health care system. Reducing the  
15 economic pressure for employers to eliminate employer-paid health care is important for  
16 minimizing the burden on taxpayers and the public health care system, protecting the health,  
17 safety and well-being of hardworking San Franciscans and promoting safe conditions and  
18 stable economic growth.

19 Further, research shows that improving access to employer-paid health care can  
20 strengthen industries by significantly reducing employee turnover and improving employers'  
21 ability to recruit and retain employees. To ensure that the cost of providing health care to  
22 employees is not shifted to the taxpayers and the public health care system, and to promote  
23 safe conditions and a more stable and reliable workforce for all employers, the City must  
24 reduce the competitive pressure to eliminate employer-provided health care. The City can  
25 reduce these pressures and level the playing field for responsible employers by requiring that  
employers make health care expenditures on behalf of their employees.