

1 [Administrative Code - Health Care Requirements for Certain Employers at San Francisco
2 International Airport]

3 **Ordinance amending the Administrative Code to require employers of employees**
4 **covered by the Quality Standards Program at the San Francisco International Airport to**
5 **provide family health insurance to such employees, or to make contributions on the**
6 **employees' behalf to an account established under Section 14.2 of the Administrative**
7 **Code.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

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

16 Section 1. Title.

17 This ordinance shall be known as the "Healthy Airport Ordinance."

18 Section 2. Findings.

19 (a) The San Francisco International Airport ("Airport") is a worldwide transportation hub,
20 connecting the San Francisco Bay Area directly to cities throughout the United States,
21 Canada, Mexico, Central America, Asia, Australia, and Europe. An average of nearly 58
22 million people normally travel through the Airport each year.

23 (b) On December 7, 1999, the San Francisco Airport Commission, by Resolution No.
24 99-0446, adopted the Quality Standards Program (QSP) to enhance Airport safety and
25 security. The Resolution required the implementation of minimum standards for hiring,

1 training, performance management, and compensation and benefits of employees covered by
2 the QSP, as well as enhanced equipment safety and security standards. The Airport
3 Commission incorporated the QSP into the Airport Rules and Regulations and required
4 compliance as a condition of Airport use permits.

5 (c) The QSP's compensation and benefit standards aim to assist in the recruitment of
6 high-quality employees and the reduction of employee turnover, and have been successful in
7 doing so, which in turn has improved worker performance. After the QSP was implemented,
8 turnover of covered employees fell by an average of 34% overall, with even larger decreases
9 for employee groups that received higher than average increases in compensation.

10 Employers reported that after the QSP was implemented they were able to increase their
11 hiring standards, and that they experienced improved employee performance, reduced
12 disciplinary actions, reduced absenteeism, and fewer employees who failed initial training.
13 These results improved safety and security at the Airport. Although the primary goals of the
14 program are safety and security, the QSP also improved Airport efficiency and customer
15 service.

16 (d) Due to the success of the program, the Airport Commission has adopted several
17 resolutions that expanded the QSP to include higher standards and new employee groups
18 that directly impact Airport safety or security. Under Charter Section 4.104, each of these
19 resolutions was adopted after notice and a public hearing to consider public comment.

20 (1) On January 18, 2000, by Resolution No. 00-0002, the Airport Commission
21 expanded the QSP to cover employees of airlines and service providers who have access to
22 the Airfield Operations Area or otherwise are directly involved in passenger and facility safety
23 and security.

24 (2) After a comprehensive review of the QSP, on August 18, 2009, by
25 Resolution No. 09-0199, the Airport Commission enhanced the QSP's employee

1 compensation requirements. The Resolution required employers to provide QSP-covered
2 employees with individual health benefits that met the minimum standards of the Health Care
3 Accountability Ordinance (HCAO), Administrative Code Chapter 12Q. The Resolution
4 temporarily froze the QSP minimum wage rate at \$12.33 per hour until that rate was no more
5 than \$0.50 per hour more than the wage rate required by the Minimum Compensation
6 Ordinance (MCO), Administrative Code Chapter 12P. The HCAO and MCO, each enacted
7 after the QSP was adopted, cover employees working under certain City contracts, leases,
8 and other agreements.

9 (3) On October 13, 2015, by Resolution No. 15-0216, the Airport Commission
10 included in the QSP employees located on or near Airport property who are directly involved
11 in the preparation and/or transportation of food and beverage products delivered directly onto
12 aircraft in the QSP. Additionally, to protect the QSP's pay standard, and the safety and
13 security interests that this standard supports, this Resolution provided that employee wage
14 requirements could not be waived in a collective bargaining agreement (CBA) unless the CBA
15 clearly and unambiguously waived them and provided for wages that at least met the QSP
16 standards. However, a CBA still may waive the QSP health benefit requirements.

17 (4) On January 19, 2016, by Resolution No. 16-0035, the Airport Commission
18 adopted additional QSP Airport safety and employee health and safety standards, enhanced
19 QSP employee training requirements, included Airport custodial workers in the QSP, and
20 increased fines for non-compliance.

21 (e) The individual health benefits provided to QSP-covered employees are critical to
22 the health, well-being, and financial security of those employees. These health benefits not
23 only enhance QSP employee recruitment and retention and reduce employee absences;
24 employee access to health care also reduces the spread of infectious disease. However,
25 some QSP-covered employees do not receive health benefits because their CBA waives the

1 health benefit requirement. Also, escalating health care costs are undermining the
2 effectiveness of these health benefits for QSP-covered employees, and of the QSP's
3 compensation and benefit components more broadly. Many QSP-covered employees report
4 that they cannot afford family health benefits. For example, employees of an airline catering
5 company report being offered family health benefits with a \$700 monthly premium and a
6 \$6,000 deductible. Such employees may face the choice between accessing health care or
7 affording other necessary expenses like rent or mortgage payments, food, or childcare.

8 (f) The COVID-19 pandemic poses a new and unprecedented threat to the health of
9 Airport employees and consequently to the City's ability to safely and effectively operate the
10 Airport. As COVID-19 spread in Asia and Europe, the Trump Administration did not impose
11 international travel limits until February 2, 2020, more than a month after the virus was first
12 reported and after it had already been documented to have spread to more than 20 countries,
13 including the United States. SFO workers likely had been exposed to COVID-19 before the
14 novel coronavirus was detected in the United States.

15 (g) On March 16, 2020, to mitigate the spread of COVID-19, local health officers in
16 seven Bay Area jurisdictions, including the City and San Mateo County, where the Airport is
17 located, issued health orders directing individuals living in those jurisdictions to shelter in their
18 places of residence and directing businesses, except essential businesses as defined in the
19 order, to cease activities at facilities located within those jurisdictions. Although these health
20 orders have been gradually modified to allow additional activities, they remain in place
21 indefinitely, and a large number of Bay Area employees continue to work remotely. But many
22 others in a variety of industries perform jobs that are considered essential but that cannot be
23 performed remotely. Airport employees, an essential workforce due to their role in facilitating
24 air travel, which is an essential business, must continue to perform their work duties in person,
25

1 and thus face a risk of transmission of COVID-19 that is significantly higher than for those who
2 are able to work safely at home.

3 (h) Employees working at the Airport who perform services that directly impact safety
4 and/or security at the Airport are at considerable risk of contracting and spreading COVID-19
5 due to the nature of their work duties. As examples:

6 (1) QSP-covered employees, including airline baggage handlers, wheelchair
7 agents, security screeners, and lobby agents face a heightened risk of exposure as their job
8 duties require frequent, close contact with passengers, often in areas where passengers are
9 likely to congregate together. Inconsistent policies for enforcing compliance with face covering
10 requirements increase the risk that employees face.

11 (2) Employees of airline catering companies often work in climate-controlled
12 spaces with little ventilation, where they must breathe the same air recirculated throughout
13 their shifts. These employees often work in crowded worksites where distancing is not
14 possible—in industrial kitchens or on assembly lines where employees stand shoulder-to-
15 shoulder as they prepare food, assemble food and beverage carts, and wash dishes. Others
16 must board multiple airplanes every week to coordinate catering delivery, coming into close
17 contact with airplane cabin crews in spaces where distancing is often impossible.

18 (3) Employees who disinfect and clean airplane cabins in between flights must
19 come into contact with surfaces and areas used by large groups of air travelers, and in some
20 instances have been asked to clean airplane cabins while passengers are still present.

21 (i) As of September 29, 2020, at least 131 employees who work at the Airport have
22 tested positive for COVID-19. This figure likely significantly underestimates the true number of
23 COVID-19 cases among employees who work at the Airport, because many employees lack
24 access to testing.

1 (j) Many Airport workers are people of color, who may be especially vulnerable to
2 contracting COVID-19 and to suffering greater health consequences from the virus. According
3 to the Centers for Disease Control (CDC), there is increasing evidence that some racial and
4 ethnic minority groups are disproportionately impacted by COVID-19. The CDC has identified
5 occupation; healthcare access and utilization; discrimination; educational, wealth and income
6 gaps; and substandard housing as the contributing factors that may increase the risk that
7 people from certain racial and ethnic minorities contract, face serious illness, or die from
8 COVID-19.

9 (k) Access to affordable family health benefits is central to achieving the goals of the
10 QSP. Protecting the health of employees and their families is important to the City's
11 proprietary interests as owner and operator of the Airport, including its interest in attracting
12 and retaining high-quality employees whose work impacts safety and security, protecting the
13 community and the traveling public from the spread of COVID-19, and restoring public
14 confidence in the safety of air travel.

15 (l) Moreover, recent history shows that these interests are not likely to be limited to the
16 duration of the COVID-19 pandemic. Air travel played a central role in the spread of severe
17 acute respiratory syndrome (SARS) in 2002 and Middle East Respiratory System (MERS) in
18 2014, as well as influenza pandemics in 1957, 1968, and 2009. It is therefore in both the
19 short-term interest and the long-term interest of the Airport and the City to adopt the changes
20 to the HCAO set forth in this ordinance.

21
22 Section 3. Chapter 12Q of the Administrative Code is hereby amended by revising
23 Sections 12Q.2, 12Q.2.7, 12Q.2.9, 12Q.3, 12Q.5, 12Q.5.2, and 12Q.8; renumbering existing
24 Section 12Q.2.16 as Section 12Q.2.22 and revising said Section; and adding new Section
25 12Q.2.16, to read as follows:

1 **SEC. 12Q.2. DEFINITIONS.**

2 As used in this Chapter 12Q, the following capitalized terms shall have the meanings
3 set forth in ~~the following provisions~~ Sections 12Q.2.1 through 12Q.2.22.

4
5 **SEC. 12Q.2.7. CONTRACTING PARTIES.**

6 “Contracting Parties” shall mean Contractors, Subcontractors, Tenants, ~~and~~
7 Subtenants, and employers of San Francisco Airport Service Employees.

8
9 **SEC. 12Q.2.9. COVERED EMPLOYEE.**

10 (a) “Covered Employee” shall mean:

11 (1) An Employee of a Contractor or Subcontractor who works on a City Contract
12 or Subcontract for 20 hours or more per Week:

13 ~~————— (A) Within the geographic boundaries of the City; or~~

14 ~~————— (B) On real property owned or controlled by the City, but outside the geographic~~
15 ~~boundaries of the City; or~~

16 ~~————— (C) Elsewhere in the United States; and~~

17 (2) An Employee of a Tenant or Subtenant who works 20 hours or more per
18 Week on property that is covered by a Lease or Sublease; and

19 (3) An Employee of a Contractor or Subcontractor that has a Contract or
20 Subcontract to perform services on property covered by a Lease or Sublease if the Employee
21 works 20 hours or more per Week on the property; and

22 (4) A San Francisco Airport Service Employee who works any number of hours during
23 any Week in such capacity.

24 **(b4)** A Contractor or Subcontractor may not divide an employee's time between
25 working on a City contract and working on other duties with the intent of reducing the number

1 of Covered Employees working on the Contract to evade compliance with this Chapter 12Q.
2 Such action shall constitute a violation of this Chapter.

3 (c) Notwithstanding the foregoing, the term "Covered Employee" does not include the
4 following:

5 * * * *

6
7 **SEC. 12Q.2.16. SAN FRANCISCO AIRPORT SERVICE EMPLOYEES.**

8 "San Francisco Airport Service Employees" shall mean Employees who are covered employees
9 under the Quality Standards Program adopted by the San Francisco Airport Commission, as may be
10 amended from time to time.

11 ~~**WEEK.**~~

12 ~~*"Week" shall mean a consecutive seven-day period. If the Contracting Party's regular pay*~~
13 ~~*period is other than a seven-day period, the number of hours worked by an employee during a seven-*~~
14 ~~*day Week for purposes of this Chapter; shall be calculated by adjusting the number of hours actually*~~
15 ~~*worked during the Contracting Party's regular pay period to determine the average over a seven-day*~~
16 ~~*Week. However, such period of averaging shall not exceed a duration of one month.*~~

17
18 **SEC. 12Q.2.22. WEEK.**

19 "Week" shall mean a consecutive seven-day period. If the Contracting Party's regular pay
20 period is other than a seven-day period, the number of hours worked by an employee during a seven-
21 day Week for purposes of this Chapter 12Q shall be calculated by adjusting the number of hours
22 actually worked during the Contracting Party's regular pay period to determine the average over a
23 seven-day Week. However, such period of averaging shall not exceed a duration of one month.

1 **SEC. 12Q.3. HEALTH CARE ACCOUNTABILITY COMPONENTS.**

2 (a) Except as provided in subsection (d), wWith respect to each Covered Employee who
3 either resides in San Francisco (regardless of where the Covered Employee provides
4 services) or provides services covered by this Chapter 12Q in San Francisco, each
5 Contracting Party shall do one of the following, at the Contracting Party’s option:

6 * * * *

7 (b) Except as provided in subsection (d), wWith respect to each Covered Employee who
8 does not reside in San Francisco, but who provides services covered by this Chapter 12Q at
9 the San Francisco Airport or at the San Bruno Jail, each Contracting Party shall do one of the
10 options set forth in §subsection (a), at the Contracting Party’s option.

11 * * * *

12 (d) With respect to each Covered Employee who is a San Francisco Airport Service Employee,
13 each Contracting Party shall do one of the following, at the Contracting Party’s option:

14 (1) Offer health plan benefits to the Covered Employee and the Covered Employee’s
15 dependents, with all the following features:

16 (A) The health benefits shall be offered at no cost to the Covered Employee.

17 (B) The health benefits offered shall include at least one plan that provides a
18 level of coverage that is designed to provide benefits that are actuarially equivalent to at least 90% of
19 the full actuarial value of the benefits provided under the plan and to provide coverage for all services
20 described in the California Essential Health Benefit Benchmark Plan. A Contracting Party may offer
21 additional health benefit plans, provided that each such health benefit plan offered shall provide a level
22 of coverage that is designed to provide benefits that are actuarially equivalent to at least 80% of the
23 full actuarial value of the benefits provided under the plan and to provide coverage for all services as
24 described in the California Essential Health Benefit Benchmark Plan.

1 Employee's dependents. The Contracting Party must retain voluntary waiver forms and proof
2 of health plan coverage for three years and must provide the Agency access to them upon
3 request.

4 (f) When preparing proposed budgets and requests for supplemental appropriations for
5 contract services, City departments that regularly enter into agreements for the provision of
6 services by nonprofit corporations shall transmit with their proposal a written confirmation that
7 the department has considered in its calculation the costs that the nonprofit corporations
8 calculate that they will incur in complying with the Health Care Accountability Ordinance.

9 (g) Notwithstanding the above, if, at the time a Contract, Subcontract, Lease, or
10 Sublease is executed, the Contracting Party has 20 or fewer employees (or, in the case of a
11 Nonprofit Corporation, 50 or fewer employees), including any employees the Contracting
12 Party plans to hire to implement the Contract, Subcontract, Lease, or Sublease, the
13 Contracting Party shall not be obligated to provide the Health Care Accountability
14 Components set forth in this Section 12Q.3(a), (b), or (c) to its Covered Employees. In
15 determining the number of employees had by a Contracting Party, all employees of all entities
16 that own or control the Contracting Party and that the Contracting Party owns or controls, shall
17 be included.

18
19 **SEC. 12Q.5. ADMINISTRATION AND ENFORCEMENT.**

20 * * * *

21 (f) In addition to any other rights or remedies available to the City under the terms of
22 any agreement of a Contracting Party or under applicable law, the City shall have the
23 following rights:

24 (1) The right, at the discretion of the Agency, to charge the Contracting Party for
25 any amounts that the Contracting Party should have paid to the City for hours worked by

1 Covered Employees pursuant to Section 12Q.3(a)(2), ~~and (b)~~, or (d), or to Covered Employees
2 pursuant to Section 12Q.3(c)(2), together with simple annual interest of 10% on such amount
3 from the date payment was due;

4 * * * *

5
6 **SEC. 12Q.5.2. INVESTIGATION AND DETERMINATION OF VIOLATIONS.**

7 * * * *

8 **(e) Withholding of Payments by Controller.**

9 (1) When the Agency sends notice to a Contracting Party of its final
10 determination that the Contracting Party has violated the requirements of this Chapter 12Q
11 and of the Contracting Party's right of appeal to the Controller, the Agency may direct the
12 Contracting Department and the Controller to deduct from the payments otherwise due to the
13 Contracting Party the amounts that the Agency has determined the Contracting Party must
14 pay to the City under Section 12Q.3(a)(2), (b), or (d) and as liquidated damages. The
15 Controller, in issuing any warrant for any such payment, shall deduct the amounts specified by
16 the Agency.

17 (2) The Controller shall withhold these funds until (A) the hearing officer issues a
18 decision finding that the Contracting Party does not owe all or a portion of the amount
19 withheld, in which case the Controller shall release funds to the Contracting Party consistent
20 with the hearing officer's decision or (B) the Contracting Party consents to the use of the funds
21 to pay the City the amounts that the Agency or hearing officer found due. As to any funds
22 being withheld for which neither (A) nor (B) applies, the Controller shall retain the funds until
23 the hearing officer's decision is no longer subject to judicial review, at which time the
24 Controller shall distribute amounts owed under Section 12Q.3(a)(2), (b), or (d) in the
25 appropriate account for the use of the Department of Public Health and amounts due as

1 liquidated damages in the General Fund, provided that this action is consistent with any final
2 determination of a court of competent jurisdiction. Notwithstanding the provisions of this
3 subsection, the Agency may authorize the release of payments withheld from the Contracting
4 Party under this Section if the Agency determines that the continued withholding of funds
5 imposes a substantial risk of endangering public health or safety, interfering with a service or
6 project that is essential to the City, or having an unreasonable adverse financial impact on the
7 City.

8
9 **SEC. 12Q.8. WAIVER THROUGH COLLECTIVE BARGAINING.**

10 *Except for the requirements provided in subsection 12Q.3(d), a*All or any portion of the
11 applicable requirements of this Chapter 12Q may be waived in a bona fide collective
12 bargaining agreement, provided that such waiver is explicitly set forth in such agreement in
13 clear and unambiguous terms.

14
15 Section 4. Effective and Operative Dates.

16 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
17 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
18 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
19 Mayor’s veto of the ordinance.

20 (b) This ordinance shall become operative 90 days after its effective date.

21
22 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
23 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
24 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
25 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

1 additions, and Board amendment deletions in accordance with the "Note" that appears under
2 the official title of the ordinance.

3

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

6 By: /s/ Lisa Powell
7 LISA POWELL
8 Deputy City Attorney

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