

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.

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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~~

1 ~~Health Care Accountability Ordinance, Chapter 12Q of the San Francisco Administrative~~
2 ~~Code, and such employers are exempted from the requirements of this Chapter. Covered~~
3 ~~employers shall not include those employers participating in a health benefits program~~
4 ~~developed by the Health Director in consultation with the Agency where such program makes~~
5 ~~available essential health care for uninsured workers and, if feasible, other uninsured City~~
6 ~~residents, and uses public health facilities to the maximum extent practicable. After the~~
7 ~~Health Director implements the program, covered employers may satisfy their obligations~~
8 ~~under this Chapter by complying with the requirements of the health benefits program.~~

9 *(4) "Employee" or "covered employee" means any person who works in the City for a covered*
10 *employer on a full-time or part-time basis where such employee works at least eighty (80) hours*
11 *monthly for a minimum of six (6) months per annual reporting period, provided, however, that the term*
12 *"employee" shall not include persons who are managerial, supervisory, or confidential employees,*
13 *unless such employees earn annually under \$72,450 or in 2007 and for subsequent years, the figure as*
14 *set by the administering agency. Covered employees under this Chapter shall not include those*
15 *persons who are "covered employees" as defined in Section 12Q.2.9 of the Health Care*
16 *Accountability Ordinance, Chapter 12Q of the San Francisco Administrative Code, if the*
17 *employer meets the requirements set forth in Section 12Q.3 for those employees.*

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

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

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

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

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

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

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

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

5 (c) **Collective Bargaining Agreements.** A covered employer that is a signatory to a collective
6 bargaining agreement under which such employer makes the required health care expenditures on
7 behalf of its employees as determined by the Agency, may fully comply with the requirements of this
8 section by filing annually with the Agency proof of such collective bargaining agreement and its terms,
9 in a format specified by the Agency, and shall otherwise be exempt from all other provisions of this
10 section.

11 **SEC. 14.3. PENALTIES; ENFORCEMENT.**

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

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

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

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

8 (4) That the Covered employer's failure to file an appeal in writing with the Controller within
9 15 days shall cause the Agency's determination to be deemed a final administrative decision by the City
10 upon expiration of the 15-day period, which the City may enforce in a court of law; that the covered
11 employer will be required to take corrective action within 14 days of the Agency's decision becoming
12 final; and that a covered employer must file an appeal with the Controller in order to exhaust
13 administrative remedies.

14 (c) Appeals.

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

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

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

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

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

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

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

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

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5 **SEC. 14.4. UNLAWFUL RETALIATION.**

6 It shall be unlawful for any covered employer to deprive or threaten to deprive any person of
7 employment, take or threaten to take any reprisal or retaliatory action against any person, or directly
8 or indirectly intimidate, threaten, coerce, command or influence or attempt to intimidate, threaten,
9 coerce, command or influence any person because such person has cooperated or otherwise
10 participated in an action to enforce, inquire about, or inform others about the requirements of this
11 Chapter.

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13 **SEC. 14.5. RULES.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15
16 By: _____
17 ALEETA M. VAN RUNKLE
18 Deputy City Attorney