

1 [Board Response - Civil Grand Jury Report - Surcharges and Healthy San Francisco: Healthy
2 for Whom?]

3 **Resolution responding to the Presiding Judge of the Superior Court on the findings**
4 **and recommendations contained in the 2011-2012 Civil Grand Jury report entitled**
5 **"Surcharges and Healthy San Francisco: Healthy for Whom?" and urging the Mayor to**
6 **cause the implementation of accepted findings and recommendations through his/her**
7 **department heads and through the development of the annual budget.**

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9 WHEREAS, Under California Penal Code Section 933 et seq., the Board of
10 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior
11 Court on the findings and recommendations contained in Civil Grand Jury Reports; and

12 WHEREAS, In accordance with Penal Code Section 933.05(c), if a finding or
13 recommendation of the Civil Grand Jury addresses budgetary or personnel matters of a
14 county agency or a department headed by an elected officer, the agency or department head
15 and the Board of Supervisors shall respond if requested by the Civil Grand Jury, but the
16 response of the Board of Supervisors shall address only budgetary or personnel matters over
17 which it has some decision making authority; and

18 WHEREAS, The 2011-2012 Civil Grand Jury Report entitled "Surcharges and Healthy
19 San Francisco: Healthy for Whom?" is on file with the Clerk of the Board of Supervisors in File
20 No. 120787, which is hereby declared to be a part of this resolution as if set forth fully herein;
21 and

22 WHEREAS, The Civil Grand Jury has requested that the Board of Supervisors respond
23 to Finding Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 as well as Recommendations 1,
24 2, 3, 4, and 5 contained in the subject Civil Grand Jury report; and

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1 WHEREAS, Finding No. 1 states: “The Jury could not identify any government
2 investigation that reports the number of businesses adding surcharges to pay for Health Care
3 Security Ordinance (HCSO) employee mandates and mandated paid sick days;” and

4 WHEREAS, Finding No. 2 states: “The City has not investigated health care related
5 surcharges to determine whether or not employers are generating profits from these
6 surcharges;” and

7 WHEREAS, Finding No. 3 states: “Neither the City nor the state of California, to the
8 Jury's knowledge, has investigated whether sales tax is being added to surcharges;” and

9 WHEREAS, Finding No. 4 states: “The City has neither a plan nor sufficient staff at the
10 OSLE to audit employers' surcharges in compliance with HCSO regulations;” and

11 WHEREAS, Finding No. 5 states: “San Francisco businesses that collected surcharges
12 prior to January 1, 2012 have no obligation to report surcharge receipts to the City nor
13 reconcile the surcharges with health care expenses;” and

14 WHEREAS, Finding No. 6 states: “Due to the varied wording in describing surcharges
15 on consumers' bills, and the wording of the ordinance, the auditing of surcharges will be
16 difficult;” and

17 WHEREAS, Finding No. 7 states: “Consumer fraud is committed if the consumer’s
18 receipt states that a surcharge is being assessed for a stated purpose and is not being used
19 for that purpose;” and

20 WHEREAS, Finding No. 8 states: “Employers with Health Reimbursement Accounts
21 (HRAs) in 2010 allocated \$62 million for medical care, reimbursed employees \$12 million, and
22 retained up to the remaining \$50 million;” and

23 WHEREAS, Finding No. 9 states: “Given similar demographics the 20% reimbursement
24 rate for HRAs is well below the City's 50% reimbursement rate for MRAs due to lack of
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1 program notification to employees, stricter HRA guidelines, and employees' unwillingness to
2 disclose their medical conditions to their employer;" and

3 WHEREAS, Finding No. 10 states: "Significant numbers of restaurants utilizing HRAs
4 in 2010 paid out no medical expenses for their employees;" and

5 WHEREAS, Finding No. 11 states: "Employees with two or more employers may have
6 two or more HRAs, likely with differing guidelines for what constitutes medical expenses and
7 with differing time limits;" and

8 WHEREAS, Finding No. 12 states: "HRAs may not be an allowable option in meeting
9 the federal requirements under the Affordable Care Act;" and

10 WHEREAS, Finding No. 13 states: "The financial incentive to retain unspent HRA
11 funds could be a motivating force for employers to restrict employee access to these funds;"
12 and

13 WHEREAS, Finding No. 14 states: "By submitting personal medical invoices directly to
14 their employers, employees are forced to reveal their medical history and current health
15 conditions to their employers;" and

16 WHEREAS, the Recommendation No. 1 states: "Disallow employers subject to the
17 Office of Labor Standards Enforcement regulations from adding surcharges on customers' bill
18 to pay for HCSO employer mandates and mandated paid sick days;" and

19 WHEREAS, the Recommendation No. 2 states: "The Office of the Treasurer and Tax
20 Collector investigate the under-reporting of sales taxes on surcharges;" and

21 WHEREAS, the Recommendation No. 3 states: "The District Attorney open an
22 investigation to review the Jury's survey findings for possible consumer fraud;" and

23 WHEREAS, the Recommendation No. 4 states: "Disallow the use of the employer HRA
24 option;" and

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1 WHEREAS, the Recommendation No. 5 states: "Eliminate time limits for employees to
2 use their MRA funds;" and

3 WHEREAS, in accordance with Penal Code Section 933.05(c), the Board of
4 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior
5 Court on Finding Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 as well as
6 Recommendations 1, 2, 3, 4, and 5 contained in the subject Civil Grand Jury report; now,
7 therefore, be it

8 RESOLVED, That the Board of Supervisors reports to the Presiding Judge of the
9 Superior Court that it {agrees/disagrees} 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14, for
10 reasons as follows _____; and, be it

11 FURTHER RESOLVED, That the Board of Supervisors reports that it
12 {agrees/disagrees} Recommendations 1, 2, 3, 4, and 5, for reasons as follows _____;
13 and, be it

14 FURTHER RESOLVED, That the Board of Supervisors urges the Mayor to cause the
15 implementation of accepted findings and the recommendation through his/her department
16 heads and through the development of the annual budget.

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