

1 [Health Care Accountability Ordinance.]

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3 **Ordinance amending the San Francisco Administrative Code by amending Sections**
4 **12Q.2.1, 12Q.2.2, 12Q.2.9, 12Q.3, 12Q.4, 12Q.5 and 12Q.6, and adding Sections 12Q.5.1,**
5 **and 12Q.5.2, and 12Q.8 to: change the requirements of the Health Care Accountability**
6 **Ordinance with respect to health benefit plans, exemptions for certain categories of**
7 **employees and agreements, and the payment rates due from employers; authorize the**
8 **Health Commission to increase the payment rates; authorize the withholding of**
9 **contract payments; make both substantive and clarifying changes with respect to**
10 **obligations imposed on Contracting Parties for notification, investigation, auditing,**
11 **inspection, enforcement, and settlement procedures; revise procedures for the**
12 **assessment of liquidated damages; establish a process for determining violations and**
13 **for the administrative appeal of such determinations; authorize waiver of requirements**
14 **of the Ordinance through collective bargaining; and ratify certain administrative**
15 **actions.**

16 Note: Additions are *single-underline italics Times New Roman*;
17 deletions are *strikethrough italics Times New Roman*.
18 Board amendment additions are double underlined.
19 Board amendment deletions are ~~strikethrough normal~~.

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

20 Section 1. The San Francisco Administrative Code is hereby amended by amending
21 Sections 12Q.2.1, 12Q.2.2, 12Q.2.9, 12Q.3, 12Q.4, and 12Q.5, to read as follows:

22 SEC. 12Q.2.1. AGENCY.

23 "Agency" shall mean the *Office of Labor Standards Enforcement*. ~~*City's Purchasing*~~
24 ~~*Department. If the City creates an Office of Contract Administration ("OCA"), the OCA shall assume*~~
25 ~~*all responsibilities of the Agency under this Chapter.*~~

1 SEC. 12Q.2.2. AGENCY DIRECTOR.

2 "Agency Director" shall mean the Director of the Office of Labor Standards Enforcement
3 Purchasing or his or her his/her designee. ~~If the City creates an Office of Contract Administration~~
4 ~~("OCA"), the Director of OCA shall assume all responsibilities of the Agency Director under this~~
5 ~~Chapter.~~

6 SEC. 12Q.2.9. COVERED EMPLOYEE.

7 (a) "Covered Employee" shall mean:

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

10 (A) Within the geographic boundaries of the City; or

11 (B) On real property owned or controlled by the City, but outside the geographic
12 boundaries of the City; or

13 (C) Elsewhere in the United States; and

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

16 (3) An Employee of a Contractor or Subcontractor that has a Contract or
17 Subcontract to perform services on property covered by a Lease or Sublease if the Employee
18 works 20 hours or more per Week on the property.

19 (4) A Contractor or Subcontractor may not divide an employee's time between working on a
20 City contract and working on other duties with the intent of reducing the number of Covered Employees
21 working on the Contract to evade compliance with this Chapter. Such action shall constitute a
22 violation of this Chapter. Beginning on July 1, 2002, the number of hours an employee must
23 work per Week in order to be considered a "Covered Employee" pursuant to this Subsection
24 (a)(1), (2) and (3) shall be 15 or more.

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1 (b) Notwithstanding the foregoing, the term "Covered Employee" does not include
2 the following:

3 (1) Any Employee (A) under the age of eighteen (18) who is a student, provided that
4 the Employee does not replace, displace or lower the wage or benefits of any existing position
5 or Employee, or (B) who is (i) a temporary Employee hired for a time-limited period, and (ii) for that
6 period is receiving academic credit or completing mandatory hours for professional licensure or
7 certification, and (iii) the Employee does not replace, displace or lower the wage or benefits of an
8 existing position or Employee; or

9 (2) Any Employee employed as a trainee in a bona fide training program consistent
10 with Federal law, which training program enables the Employee to advance into a permanent
11 position, provided that the Employee does not replace, displace or lower the wage or benefits
12 of any existing position or Employee; or

13 (3) Any Employee that the Contracting Party is required to pay no less than the
14 "prevailing rate of wage" in accordance with Section A7.204 of Appendix A to the City's
15 Charter or any provision Chapter 6 of the San Francisco Administrative Code; or

16 (4) Any disabled Employee who:

17 (A) Is covered by a current sub-minimum wage certificate issued to the employer by
18 the U.S. Department of Labor; or

19 (B) Would be covered by such a certificate but for the fact that the employer is
20 paying a wage equal to or higher than the minimum wage.

21 (5) Any Employee of a Nonprofit Corporation who is a temporary employee, hired on an
22 hourly or per diem basis to replace a regular employee during a temporary absence from the
23 workplace.

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

2 (a) With respect to each Covered Employee who either resides in San Francisco
3 (regardless of where the Covered Employee provides services) or provides services covered
4 by this Chapter in San Francisco, each Contracting Party shall do one of the following, at the
5 Contracting Party's option:

6 (1) Offer to the Covered Employee health plan benefits that meet minimum
7 standards prepared by the Health Director and approved by the Health Commission. The
8 minimum standards shall provide for a maximum period for each Covered Employee's health
9 benefits to become effective, ~~not to exceed~~ no later than the first of the month that begins after 30
10 days from the start of employment on a covered Contract, Subcontract, Lease or Sublease.
11 The Health Commission shall review such standards at least once every two years to ensure
12 that the standards stay current with State and Federal regulations and existing health benefits
13 practices; or

14 (2) For each Week in which the Covered Employee works the applicable minimum
15 number of hours set forth in Section 12Q.2.9(a) (definition of "Covered Employee"), pay to the
16 City ~~\$2.00~~ \$1.50 per hour for each hour the Covered Employee is employed by the Contracting
17 Party on the Contract or Subcontract or on property covered by a Lease, but not to exceed
18 ~~\$80~~ \$60 in any Week. The City shall appropriate money received pursuant to this Subsection
19 (a)(2) for the use of the Department of Public Health. The Department of Public Health shall
20 use the monies appropriated for staffing and other resources to provide medical care for the
21 uninsured. The Health Commission may increase this hourly rate and Weekly maximum in
22 accordance with either the Bureau of Labor Statistics Consumer Price Index for Medical Care
23 in the San Francisco Bay Area or the increase in average Health Maintenance Organization (HMO)
24 premiums in California, or such other factors depending on which the Health Commission determines
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1 better reflects the cost of providing health care in the Bay Area as the Health Commission finds
2 appropriate; provided, however, the Health Commission shall take this action no more than
3 once a year and any adjustments in such hourly rate or Weekly maximum must be approved
4 by the Board of Supervisors by resolution; or

5 (3) Participate in a health benefits program developed by the Health Director in
6 consultation with the Agency. The Health Director shall obtain Health Commission approval
7 of the program before implementing it. The Health Director shall seek such approval within
8 twelve (12) months after this Chapter is finally approved. Prior to implementation of the health
9 benefits program provided in this Subsection (a)(3), each Contracting Party shall comply with
10 Subsection (a)(1) or (a)(2). After the Health Director implements the program, in addition to
11 the options provided in Subsections (a)(1) and (a)(2), Contracting Parties may satisfy their
12 obligations under this Chapter by complying with the requirements of the health benefits
13 program. In developing the program, the Health Director shall (i) attempt to make health
14 coverage available for uninsured Covered Employees and, if feasible, any other person
15 employed by a Contracting Party who works less than 20 hours per week on a City contract, or other
16 uninsured City residents; (ii) use public health facilities to the maximum extent practicable; (iii)
17 make the program economically viable; and (iv) provide a mechanism for funding which relies,
18 as much as possible, on contributions by participating employers and employees.

19 (b) With respect to each Covered Employee who does not reside in San Francisco,
20 but who provides services covered by this Chapter at the San Francisco Airport or at the San
21 Bruno Jail, each Contracting Party shall do one of the options set forth in Subsection (a), at
22 the Contracting Party's option.

23 (c) With respect to each Covered Employee who does not reside in San Francisco,
24 and does not provide services covered by this Chapter in San Francisco, at the San Francisco
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1 Airport or at the San Bruno Jail, each Contracting Party shall do one of the following, at the
2 Contracting Party's option:

3 (1) Offer to the Covered Employee health plan benefits that meet minimum
4 standards prepared by the Health Director and approved by the Health Commission pursuant
5 to Subsection 12Q.3(a)(1) above; or

6 (2) For each Week in which the Covered Employee works the applicable minimum
7 number of hours set forth in Section 12Q.2.9(a) (definition of "Covered Employee"), pay to the
8 Covered Employee an additional ~~\$2.00~~ ~~\$1.50~~ per hour for each hour the Covered Employee is
9 employed by the Contracting Party on the Contract or Subcontract or on property covered by
10 a Lease, but not to exceed ~~\$80~~ ~~\$60~~ in any Week, to enable the employee to obtain health
11 insurance coverage. This represents the City's current estimate of the average cost of
12 obtaining individual health insurance benefits. The Health Commission may increase this
13 hourly rate and Weekly maximum in accordance with either the Bureau of Labor Statistics
14 Consumer Price Index for Medical Care in the San Francisco Bay Area or ~~the Bureau of Labor~~
15 ~~Statistics Consumer Price Index for Medical Care in the San Francisco Bay Area~~ the increase in
16 average Health Maintenance Organization (HMO) premiums in California, depending on which the
17 Health Commission determines better reflects the cost of providing health care in the Bay
18 Area to reflect the cost of obtaining individual health insurance; provided, however, the Health
19 Commission shall take this action no more than once a year and any adjustments in such
20 hourly rate or Weekly maximum must be approved by the Board of Supervisors by resolution.
21 ~~and any adjustments in such hourly rate or Weekly maximum must be approved by the Board of~~
22 ~~Supervisors by resolution.~~

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

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

14 SEC. 12Q.4. CONTRACTUAL OBLIGATIONS.

15 (a) Each Contracting Party that enters into a Contract, Subcontract, Lease, or
16 Sublease shall agree:

17 (1) To comply with the requirements of this Chapter, including the requirement to
18 choose and perform one of the Health Care Accountability Components set forth in Section
19 120.3;

20 (2) To comply with regulations adopted by the Agency pursuant to this Chapter;

21 (3) To maintain employee and payroll records in compliance with the California Labor
22 Code and Industrial Welfare Commission orders, including the number of hours each employee has
23 worked on the City Contract or Subcontract. If the Contracting Party fails to maintain records that
24 accurately reflect the number of hours each employee has worked on the City Contract or Subcontract,
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1 it shall be presumed that any employee who has worked on a City Contract or Subcontract is a Covered
2 Employee as defined in Section 12Q.2.9.

3 ~~(4)~~ (3) To provide information and reports to the City in accordance with any reporting
4 standards promulgated by the Agency in consultation with the Director of Health;

5 ~~(5)~~ (4) To provide the City with access to pertinent payroll records relating to the number
6 of employees employed and terms of medical coverage ~~as allowed by law~~ after receiving a written
7 request to do so and being provided at least ~~ten (10)~~ five (5) business days to respond;

8 ~~(6)~~ (5) To allow the City to inspect Contracting Parties' job sites and have access to
9 Contracting Parties' employees in order to monitor and determine compliance with this Chapter;

10 ~~(7)~~ (5) To cooperate with the Agency when it conducts audits;

11 ~~(8)~~ (6) To include in every Contract, Subcontract, Lease, or Sublease subject to this
12 Chapter provisions requiring compliance with this Chapter, consistent with any directives or
13 standards adopted by the Agency;

14 ~~(9)~~ (7) To notify the Contracting Department Agency promptly of any Subcontractors
15 performing services covered by this Chapter and certify to the Contracting Department Agency
16 that it has notified the Subcontractors of their obligations under this Chapter; and

17 ~~(10)~~ (8) To represent and warrant that it is not an entity that was set up, or is
18 being used, for the purpose of evading the intent of this Chapter.

19 (b) A Contracting Party shall not discharge, reduce in compensation, or otherwise
20 discriminate against any Employee for notifying the City regarding the Contracting Party's
21 noncompliance or anticipated noncompliance with this Chapter, for opposing any practice
22 proscribed by this Chapter, for participating in proceedings related to this Chapter, or for
23 seeking to assert or enforce any rights under this Chapter by any lawful means.

24 SEC. 12Q.5. ADMINISTRATION AND ENFORCEMENT.

1 (a) The Agency, in consultation with the Department of Public Health, shall
2 promulgate regulations for the interpretation and administration of this Chapter, which
3 regulations shall be adopted only after public hearing. The regulations shall establish procedures
4 for monitoring Contractors, receiving and investigating complaints, and providing administrative
5 hearings to determine whether a Contractor has breached a Contract, Subcontract, Lease or Sublease
6 based on the requirements of this Chapter.

7 (b) The Agency shall monitor Contracting Parties for compliance and investigate
8 complaints of violations. The Agency, in consultation with the City Attorney, shall develop
9 contractual provisions for use by Contracting Departments designed to enable the City to
10 pursue the remedies set forth in this Section against every person or entity required to comply
11 with this Chapter.

12 (c) The Agency, in consultation with the Department of Public Health, may conduct
13 audits of Contracting Parties, although such audits shall be conducted through an examination
14 of records at a mutually agreed upon time and location within ten (10) days of ~~the~~ written
15 notice ~~only with at least 10 days' advance written notice to the Contracting Party and after making~~
16 ~~good faith efforts for a mutually agreed upon time and location.~~

17 (d) The Agency and the Department of Public Health shall provide an annual joint
18 report to the Board of Supervisors on compliance with this Chapter. Such report shall include
19 cumulative information regarding the number of waivers granted pursuant to this Chapter.

20 (e) A Covered Employee may report to the Agency in writing any alleged violation of
21 this Chapter by a Contracting Party or other person or entity subject to this Chapter. The
22 Agency shall investigate any such report. If the Agency determines that any person or entity
23 has violated this Chapter, the Agency shall notify the Contracting Department of its findings.
24 In order to ensure compliance with this Chapter and to enhance the monitoring activities of the
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1 Agency, the City encourages reporting by Covered Employees pursuant to this Subsection.
2 The Agency shall keep confidential the Covered Employee's name and other identifying
3 information, to the maximum extent permitted by applicable law.

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

7 (1) The right, at the discretion of the Agency, to charge the Contracting Party for any
8 amounts that the Contracting Party should have paid to the City for hours worked by Covered
9 Employees pursuant to Section 12Q.3(a)(2) and (b), or to Covered Employees pursuant to Section
10 12Q.3(c)(2), together with simple annual interest of 10% on such amount from the date payment
11 was due at the maximum rate then permitted by law;

12 (2) The right, at the discretion of the Agency, to assess liquidated damages as provided
13 in Section 12Q.5.1 and 12Q.5.2 of \$50 a day for each Covered Employee each day that the Contracting
14 Party fails to pay to the City the amounts required by Subsection 12Q.3(a)(2) and (b);

15 (3) The right, at the discretion of the Agency, to set off all or any portion of the amount
16 that a Contracting Party is required to pay to the City pursuant to preceding Subsections (g)(1)
17 and (2) against amounts due to a Contracting Party;

18 (4) The right, at the discretion of the Contracting Department, to terminate the Contract
19 or Lease in whole or in part;

20 (5) The right, at the discretion of either the Contracting Department or the Agency, to bar
21 a Contracting Party from entering into future Contracts or Leases with the City for three (3)
22 years.

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1 (6) The right to bring a civil action against the Contractor to pursue the remedies provided
2 by this Chapter and other applicable law. The prevailing party shall be entitled to all costs and
3 expenses, including reasonable attorney's fees.

4 (g) Each Contractor shall be responsible for its Subcontractors with respect to
5 compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the
6 remedies set forth in this Section against the Contractor based on the Subcontractor's failure
7 to comply, provided that the Contracting Department has first provided the Contractor with
8 notice and an opportunity to obtain a cure of the violation.

9 (h) Each Tenant shall be responsible for each Subtenant, Contractor and
10 Subcontractor performing services on property covered by the Tenant's Lease, with respect to
11 compliance with this Chapter. If any Subtenant, Contractor or Subcontractor fails to comply,
12 the City may pursue the remedies set forth in this Section against the Tenant based on the
13 Subtenant's, Contractor's or Subcontractor's failure to comply, provided that the Contracting
14 Department has first provided the Tenant with notice and an opportunity to obtain a cure of
15 the violation.

16 (i) Each of the rights set forth in this Section 12Q.5 shall be exercisable individually
17 or in combination with any other rights or remedies available to the City. Any amounts
18 realized by the City pursuant to this Section shall be used first to cover the costs of enforcing
19 this Chapter and thereafter appropriated for the use of the Department of Public Health.

20 (j) The Agency may compromise and settle unlitigated claims against Contracting Parties
21 for violations of contractual provisions required by this Chapter.

22 (k) All Contracting Parties and Contracting Departments shall cooperate fully with the
23 Agency in connection with any investigation of an alleged violation of this Chapter or with any
24 inspection conducted by the Agency.

1 (1) When this Chapter authorizes the Agency to charge interest (not to exceed 10%), in
2 determining whether to charge the interest, the Agency shall give due consideration to the size of the
3 Contractor's business, the Contractor's good faith, the gravity of the violation, and the history of
4 previous violations.

5 Section 2. The San Francisco Administrative Code is hereby amended by adding
6 Sections 12Q.5.1 and 12Q.5.2, to read as follows:

7 SEC. 12Q.5.1. ADDITIONAL CONTRACT REQUIREMENTS; LIQUIDATED DAMAGES.

8 Every Contract, Contract Amendment, Lease and Lease Amendment entered after January 1,
9 2006 shall contain provisions in which the Contracting Party agrees:

10 (1) To be liable to the City for liquidated damages as provided in this Section;

11 (2) To be subject to the procedures governing enforcement of a breach of the terms of a
12 Contract, Contract Amendment, Lease or Lease Amendment which terms are required by this Chapter,
13 as set forth in Section 12Q.5.2;

14 (3) That the commitment of Contracting Parties to comply with the requirements of this
15 Chapter is a material element of the City's consideration for the agreement and that the failure of a
16 Contracting Party to comply will cause significant and substantial harm to the City and the public,
17 which is extremely difficult to determine or quantify, and that the liquidated damages set forth in this
18 Section are reasonable amounts to pay for the harm caused by the Contracting Party's non-
19 compliance;

20 (4) That for failure to comply with the requirements of this Chapter, the Agency may require
21 the Contracting Party to pay the City liquidated damages of up to one hundred dollars (\$100) for each
22 one-week pay period for each employee for whom the Contracting Party has either not offered health
23 plan benefits or made payments as required by Section 12Q.3. The Agency shall adjust this amount
24 proportionately for Contracting Parties that use a pay period other than one week;
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1 (5) That for any failure to provide reports to the City or access to pertinent records, or any
2 failure to cooperate with any audit, inspection or investigation conducted by the Agency, the Agency
3 may require the Contracting Party to pay the City liquidated damages of up to one thousand dollars
4 (\$1000); and

5 (6) That while liquidated damages in the maximum amounts set forth in this Section are a
6 reasonable estimate of the harm caused by the Contracting Party's non-compliance with contractual
7 provisions required by this Chapter, the Agency may determine that less than the full amount is
8 warranted depending on the circumstances of each case. The Agency shall give due consideration to
9 the following factors in determining the amount of liquidated damages: the size of the Contracting
10 Party's business, the Contracting Party's good faith, the gravity of the violation, the history of previous
11 violations, the failure to comply with record-keeping, reporting and anti-retaliation requirements, and
12 the extent to which the imposition of liquidated damages would undermine the purpose of this Chapter
13 by imposing unreasonable financial burdens on the Contracting Party, thereby restricting its ability to
14 fulfill its obligations under this Chapter.

15 SEC. 12Q.5.2. INVESTIGATION AND DETERMINATION OF VIOLATIONS.

16 (a) Determination of Violation. Upon determining that a Contracting Party may have
17 violated the terms of a Contract, Contract Amendment, Lease or Lease Amendment required under this
18 Chapter, the Agency shall send written notice to the Contracting Party of the possible violation and of
19 the Contracting Party's right to respond to the Agency's initial determination by submitting pertinent
20 documents and other information. The written notice shall also notify the Contracting Party that the
21 Agency is authorized to direct the Controller to withhold payment otherwise due to the Contracting
22 Party pursuant to the provisions of Subsection (d). If after providing the Contracting Party with a
23 reasonable opportunity to respond to the allegations the Agency makes a final determination that a
24 violation has occurred, the Agency shall provide a written notice of violation to the Contracting Party.

1 (b) Right to Appeal. The Contracting Party may appeal the Agency's final determination.
2 The Contracting Party must file an appeal with the Agency in writing, specifying the basis for
3 contesting the determination, no later than 15 days after the date of the notice of determination.
4 Failure to file an appeal in writing with the Controller within 15 days shall cause the Agency's
5 determination to be deemed a final administrative decision by the City.

6 (c) Administrative Hearing.

7 (1) Within 15 days after the Agency receives an appeal, the Controller shall appoint a
8 hearing officer and shall notify the Agency and the Contracting Party.

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

12 (3) The Agency shall have the burden of producing evidence that the Contracting Party has
13 violated the requirements of this Chapter and the burden of proving the violation.

14 (d) Hearing Officer's Decision.

15 (1) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written
16 decision affirming, modifying, or vacating the Agency's determination. If the hearing officer vacates
17 the Agency's determination in its entirety, that decision shall also vacate any assessment of liquidated
18 damages. If the hearing officer affirms the Agency's determination, the hearing officer shall issue a
19 decision upholding the Agency's determination, including the amount of the liquidated damages
20 assessed by the Agency. With respect to liquidated damages, the hearing officer's jurisdiction to
21 modify the Agency's assessment is limited and the following procedures apply. If the hearing officer
22 modifies the Agency's determination, the hearing officer shall transmit the decision to the Agency,
23 which shall within five business days modify the assessment of liquidated damages consistent with the
24 hearing officer's decision based on the criteria set forth in Section 12.Q.5.1(6) and transmit the
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1 modified assessment to the hearing officer. Upon receiving the modified assessment from the Agency,
2 the hearing officer shall within three business days issue a final decision, which shall include the
3 amount of the liquidated damages assessment as modified by the Agency.

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

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

11 (4) Upon the hearing officer's decision affirming or modifying the Agency's determination,
12 the Contracting Party shall take the corrective action, including the payment of liquidated damages ,if
13 any, within 14 days of receiving the hearing officer's decision. When a Contracting Party fails to take
14 corrective action within the time required by the provisions of this Section, the City may immediately
15 pursue all available remedies against the Contracting Party.

16 (e) Withholding of Payments by Controller.

17 (1) When the Agency sends notice to a Contracting Party of its final determination that the
18 Contracting Party has violated the requirements of this Chapter and of the Contracting Party's right of
19 appeal to the Controller, the Agency may direct the Contracting Department and the Controller to
20 deduct from the payments otherwise due to the Contracting Party the amounts that the Agency has
21 determined the Contracting Party must pay to the City under Section 12Q.3(a)(2) and as liquidated
22 damages. The Controller, in issuing any warrant for any such payment, shall deduct the amounts
23 specified by the Agency.

1 (2) The Controller shall withhold these funds until (A) the hearing officer issues a decision
2 finding that the Contracting Party does not owe all or a portion of the amount withheld, in which case
3 the Controller shall release funds to the Contracting Party consistent with the hearing officer's
4 decision or (B) the Contracting Party consents to the use of the funds to pay the City the amounts that
5 the Agency or hearing officer found due. As to any funds being withheld for which neither (A) nor (B)
6 applies, the Controller shall retain the funds until the hearing officer's decision is no longer subject to
7 judicial review, at which time the Controller shall distribute amounts owed under Section 12Q.3(a)(2)
8 in the appropriate account for the use of the Department of Public Health and amounts due as
9 liquidated damages in the General Fund, provided that this action is consistent with any final
10 determination of a court of competent jurisdiction. Notwithstanding the provisions of this subsection,
11 the Agency may authorize the release of payments withheld from the Contracting Party under this
12 Section if the Agency determines that the continued withholding of funds imposes a substantial risk of
13 endangering public health or safety, interfering with a service or project that is essential to the City, or
14 having an unreasonable adverse financial impact on the City.

15 Section 3. The San Francisco Administrative Code is hereby amended by amending
16 Section 12Q.6, to read as follows:

17 SEC. 12Q.6. WAIVERS BY THE AGENCY DIRECTOR.

18 (a) The Agency Director or designee, in consultation with the Department of Public
19 Health, shall waive the requirements of this Chapter when the Contracting Department has
20 provided justification to the Agency Director, and the Agency Director has found that one of
21 the following circumstances exists:

22 ~~(1) — There is only one prospective Contractor or Tenant willing to enter into the applicable~~
23 ~~Contract or Lease on the terms and conditions established by the City (other than the requirements of~~
24 ~~this Chapter);~~

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1 (1) ~~(2)~~ The needed service, project or property arrangement under the Contract or
2 Lease is available only from a sole source;

3 (2) ~~(3)~~ Pursuant to Chapter 6 or 21 of the Administrative Code, the Contract or Lease is
4 necessary to respond to an emergency that endangers the public health or safety;

5 (3) ~~(4)~~ There are no qualified responsive bidders or prospective vendors or tenants that
6 comply with the requirements of this Chapter and the agreement is for a service, lease or
7 project that is essential to the City or the public;

8 (4) ~~(5)~~ The public interest warrants the granting of a waiver because application of this
9 Chapter would constitute an adverse impact on services or an unreasonable adverse financial
10 impact on the City; or

11 (5) ~~(6)~~ (A) The services to be purchased are available under a bulk purchasing
12 arrangement with a federal, state or local governmental entity;

13 (B) Purchase under such arrangement will substantially reduce the City's cost of
14 purchasing such services; and

15 (C) Purchase under such an arrangement is in the best interest of the City or the
16 public.

17 (b) Each waiver shall be effective for the duration of the Contract or Lease.

18 Subsequent waivers may be requested and either granted or denied.

19 Section 4. The San Francisco Administrative Code is hereby amended by adding
20 Section 12Q.8, to read as follows, and renumbering existing Sections 12Q.8 through 12Q.11
21 to be Sections 12Q.9 through 12Q.12:

22 SEC. 12Q.8. WAIVER THROUGH COLLECTIVE BARGAINING.

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1 All or any portion of the applicable requirements of this Chapter may be waived in a
2 bona fide collective bargaining agreement, provided that such waiver is explicitly set forth in
3 such agreement in clear and unambiguous terms.

4 SEC. ~~12Q.8~~12Q.9. PREEMPTION.

5 Nothing in this Chapter shall be interpreted or applied so as to create any power or
6 duty in conflict with any federal or state law.

7 SEC. ~~12Q.9~~12Q.10. EFFECTIVE DATE.

8 This Chapter shall become effective, and its requirements shall be included in all
9 covered Contracts, Subcontracts, Leases and Subleases, 30 days after it is adopted or July 1,
10 2001, whichever occurs later. This Chapter is intended to have prospective effect only.

11 SEC. ~~12Q.10~~12Q.11. PERIOD OF SUSPENSION.

12 Contracting Parties shall not be required to provide any of the Health Care
13 Accountability Components provided in Section 12Q.3 to their Covered Employees until such
14 time as the Health Director has prepared, and the Health Commission has approved,
15 minimum standards for health plan benefits pursuant to Section 12Q.3(a)(1). The Health
16 Director and Health Commission shall proceed promptly to take these actions. From the date
17 upon which the Health Commission approves such minimum standards forward, Contracting
18 Parties shall provide the Health Care Accountability Components set forth in Section 12Q.3 to
19 their Covered Employees.

20 SEC. ~~12Q.11~~12Q.12. SEVERABILITY.

21 If any part or provision of this Chapter, or the application of this Chapter to any person,
22 location or circumstance, is enjoined or held invalid by a court of law, the remainder of this
23 Chapter, including the application of such part or provisions to other persons, locations or
24 circumstances, shall not be affected by such action and shall continue in full force and effect.

1 To this end, the provisions of this Chapter are severable. Further, to the extent Section
2 12Q.3(a)(2) may be enjoined or held invalid by a court of law, the Contracting Party may
3 alternatively comply in accordance with Section 12Q.3(c)(2).

4 Section 45. The Board of Supervisors hereby ratifies any action taken by any City
5 department or official prior to the adoption of this ordinance that is consistent with the
6 provisions of Section 12Q.2.9.

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8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: _____
11 PAUL ZAREFSKY
12 Deputy City Attorney
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