

1 [Administrative Code - Irrevocable Employer Health Care Expenditure Requirement and
2 Establishment of Health Care Access Assistance Program]

3 **Ordinance revising the Health Care Security Ordinance to require all health care**
4 **expenditures to be made irrevocably; to establish a City public benefit program known**
5 **as the Health Care Access Assistance Program (HCAAP); to describe the public**
6 **benefits available under each of HCAAP's three component programs, Healthy San**
7 **Francisco, Covered San Francisco, and Health Care Access Accounts; to set certain**
8 **eligibility requirements for program participants; and to set an operative date of**
9 **October 1, 2014.**

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

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

18 Section 1. The Administrative Code is hereby amended by revising Sections 14.1
19 through 14.8 of Chapter 14, and deleting Section 14.1.5, to read as follows:

20 **SEC. 14.1. SHORT TITLE; DEFINITIONS.**

21 (a) Short title. This Chapter shall be known and may be cited as the "San Francisco
22 Health Care Security Ordinance."

23 (b) Definitions. For purposes of this Chapter, the following terms shall have the
24 following meanings:

25 (1) "City" means the City and County of San Francisco.

(2) "Covered employee" means any person who works in the City where such
person qualifies as an employee entitled to payment of a minimum wage from an employer

1 under the Minimum Wage Ordinance, ~~as provided under~~ Chapter 12R of the ~~San Francisco~~
2 Administrative Code, and has performed work for compensation for his or her ~~e~~Employer for
3 ninety (90) days, provided, however, that:

4 ~~(A) From the effective date of this Chapter through December 31, 2007, "at~~
5 ~~least twelve (12) hours" shall be substituted for "at least two (2) hours" where such term appears in~~
6 ~~Section 12R.3(a);~~

7 ~~(B) From January 1, 2008 through December 31, 2008, "at least ten (10)~~
8 ~~hours" shall be substituted for "at least two (2) hours" where such term appears in Section 12R.3(a);~~

9 ~~(1C) Beginning January 1, 2009, "At least eight (8) hours" shall be~~
10 substituted for "at least two (2) hours" where such term appears in Section 12R.3(a);

11 ~~(2D)~~ The term "Covered Employee" shall not include persons who are
12 managerial, supervisory, or confidential employees, unless such employees earn annually
13 under ~~\$88,21272,450.00~~ ~~or~~ in ~~2014~~2007 and, for subsequent years, the figure as set by the
14 administering agency;

15 ~~(3E)~~ The term "Covered Employee" shall not include those persons who
16 are eligible to receive benefits under Medicare or TRICARE/CHAMPUS;

17 ~~(4F)~~ The term "Ceovered Eemployees" shall not include those persons
18 who are "Ceovered Eemployees" as defined in Section 12Q.2.9 of the Health Care
19 Accountability Ordinance, Chapter 12Q of the ~~San Francisco~~ Administrative Code, if the
20 ~~e~~Employer meets the requirements set forth in Section 12Q.3 for those employees; and

21 ~~(5G)~~ The term "Ceovered Eemployees" shall not include those persons
22 who are employed by a nonprofit corporation for up to one year as trainees in a bona fide
23 training program consistent with Federal law, which training program enables the trainee to
24 advance into a permanent position, provided that the trainee does not replace, displace, or
25 lower the wage or benefits of any existing position or employee.

1 (6H) Nor shall the term "Covered Employees" include those persons
2 whose Employers verify that they are receiving Health Care Services through another
3 Employer, either as an employee or by virtue of being the spouse, domestic partner, ~~or~~ child,
4 or other dependent of another person; provided that the Employer obtains from those persons
5 a voluntary written waiver of the Health Care Expenditure requirements of this Chapter and
6 that such waiver is revocable by those persons at any time.

7 (3) "Covered Employer" means any ~~medium-sized~~ or ~~large~~ Business as
8 defined below engaging in business within the City that is required to obtain a valid San
9 Francisco business registration certificate from the San Francisco Tax Collector's office or, in
10 the case of a nonprofit corporation, an Employer for which an average of fifty (50) or more
11 persons per week perform work for compensation during a quarter. Small Businesses are not
12 "Covered Employers" and are exempt from the health care spending requirements under
13 Section 14.3.

14 "Covered San Francisco" means a public benefit program administered by the
15 Department of Public Health, funded in whole or in part by Health Care Expenditures made by
16 Covered Employers to the City under Section 14.3, to make health insurance purchased through
17 Covered California, or similar state-administered exchanges, more affordable for San Francisco
18 employees and residents.

19 (4) "Employer" means an employing unit as defined in Section 135 of the
20 California Unemployment Insurance Code or any Person defined in Section 18 of the
21 California Labor Code. "Employer" shall include all members of a "controlled group of
22 corporations" as defined in Section 1563(a) of the United States Internal Revenue Code, and
23 the determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of
24 the Internal Revenue Code.

1 “Health Care Access Account” means a public health benefit administered by the
2 Department of Public Health, funded in whole or in part by Health Care Expenditures made by
3 Covered Employers to the City under Section 14.3, from which eligible Covered Employees may obtain
4 reimbursement for Health Care Services.

5 “Health Care Access Assistance Program” means a public health benefit program
6 administered by the Department of Public Health; comprised of Healthy San Francisco, Covered San
7 Francisco, and Health Care Access Accounts; and intended to maximize enrollment in Covered
8 California plans and increase every participant’s access to Health Care Services.

9 ~~(5) “Health Access Program” means a San Francisco Department of Public Health~~
10 ~~program to provide health care for uninsured San Francisco residents.~~

11 ~~(6) “Health Access Program participant” means any uninsured San Francisco resident,~~
12 ~~regardless of employment or immigration status or pre-existing condition, who is enrolled by his or her~~
13 ~~employer or who enrolls as an individual in the Health Access Program under the terms established by~~
14 ~~the Department of Public Health.~~

15 ~~(A) “Health Care Expenditure” means an amount irrevocably paid by a Covered~~
16 ~~Employer to a Covered Employee or a trustee or a third party on behalf of a Covered Employee for the~~
17 ~~purpose of providing or reimbursing the cost of Health Care Services for Covered Employees and/or~~
18 ~~their spouses, domestic partners, children, or other dependents. “Health Care Expenditure” also~~
19 ~~means an amount paid by a Covered Employer to the City on behalf of a Covered Employee to~~
20 ~~establish his or her eligibility to participate in the Health Care Access Assistance Program in the~~
21 ~~manner and according to the terms set by the Department of Public Health. “Health Care~~
22 ~~Expenditure” shall not include any amount that has been allocated for use by a Covered Employee but~~
23 ~~retained by the Employer, nor any amount that has been paid to a trustee or third party but that may at~~
24 ~~any time be recovered by or returned to the Employer, nor any amount otherwise required to be paid by~~
25 ~~Federal, State, or local law. “Health care expenditure” means any amount paid by a covered employer~~

1 ~~to its covered employees or to a third party on behalf of its covered employees for the purpose of~~
2 ~~providing health care services for covered employees or reimbursing the cost of such services for its~~
3 ~~covered employees, including, but not limited to: (i) contributions designated or paid by such employer~~
4 ~~on behalf of its covered employees to a health savings account as defined under section 223 of the~~
5 ~~United States Internal Revenue Code or to any other account having substantially the same purpose or~~
6 ~~effect without regard to whether such contributions qualify for a tax deduction or are excludable from~~
7 ~~employee income; (ii) reimbursement by such covered employer to its covered employees for expenses~~
8 ~~incurred in the purchase of health care services; (iii) payments by a covered employer to a third party~~
9 ~~for the purpose of providing health care services for covered employees; (iv) costs incurred by a~~
10 ~~covered employer in the direct delivery of health care services to its covered employees; and (v)~~
11 ~~payments by a covered employer to the City to be used on behalf of covered employees. The City may~~
12 ~~use these payments to fund membership in the Health Access Program for uninsured San Francisco~~
13 ~~residents, and establish and maintain reimbursement accounts for covered employees, whether or not~~
14 ~~those covered employees are San Francisco residents.~~

15 ~~(B) Prior to October 1, 2014, a contribution designated or paid to a health~~
16 ~~savings account or to any other account having substantially the same purpose or effect which is not~~
17 ~~irrevocably paid to a third party on behalf of a covered employee, shall not constitute a "health care~~
18 ~~expenditure" unless all of the following conditions are met:~~

19 ~~(i) The contribution is reasonably calculated to benefit the employee;~~
20 ~~(ii) Except as provided in clause (v)(a), the contribution remains~~
21 ~~available to the employee (and any other person eligible for reimbursement for health care expenses~~
22 ~~through the employee) for a minimum of twenty four (24) months from the date of the contribution.~~

23 ~~(iii) On January 1, 2012, the account contains an amount equal to the~~
24 ~~balance in the account at the close of business on December 31, 2011, if any.~~

1 (12) "Medium-sized ~~b~~Business" means an ~~e~~Employer for which an average of
2 between twenty (20) and ninety-nine (99) persons per week perform work for compensation
3 during a quarter.

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

6 (14) "Required ~~h~~Health ~~C~~Care ~~e~~Expenditure" means the total health care
7 expenditure that a ~~C~~Covered ~~E~~Employer is required to make every quarter for all its ~~C~~Covered
8 ~~E~~Employees.

9 (15) "Small ~~b~~Business" means an ~~e~~Employer for which an average of fewer than
10 twenty (20) persons per week perform work for compensation during a quarter.

11 ~~SEC. 14.1.5. ALTERNATE PROVISIONS.~~

12 ~~(a) If the City Attorney certifies to the Mayor and the Board of Supervisors that a court of~~
13 ~~competent jurisdiction in a lawsuit brought by or on behalf of a Covered Employer has struck down the~~
14 ~~provisions of Section 14.1.5, or permanently enjoined their enforcement, then the following provisions~~
15 ~~shall become operative on the first day of the next calendar quarter following the City Attorney's~~
16 ~~certification.~~

17 ~~Notwithstanding any other provision of this Chapter, "health care expenditure" shall~~
18 ~~only include an amount irrevocably paid by a covered employer to a covered employee or to a third~~
19 ~~party on behalf of a covered employee. An amount that is retained by the employer or that may be~~
20 ~~recovered by or returned to the employer shall not constitute a "health care expenditure." An amount~~
21 ~~paid to a third party for the purpose of reimbursing a covered employee for expenses incurred in the~~
22 ~~purchase of health care services shall not constitute a "health care expenditure" unless any unused~~
23 ~~funds carry over from quarter to quarter and from year to year and remain available to the covered~~
24 ~~employee, even after the covered employee's separation from employment.~~

1 *Notwithstanding the above, an amount paid as a "health expenditure" may be recovered*
2 *by or returned to the employer without losing its status as a "health care expenditure" in the following*
3 *circumstances:*

4 *(A) A former employee has not made a claim for any of the remaining available*
5 *funds for 18 months (including a claim made on behalf of any other person eligible for reimbursement*
6 *from health care expenses from the former employee's remaining available funds); or,*

7 *(B) The covered employee has died.*

8 *(b) If the City Attorney subsequently certifies to the Mayor and the Board of Supervisors that*
9 *an order enjoining enforcement of the provisions of Section 14.1.5 has been lifted, then the original*
10 *provisions shall again become operative on the first day of the next calendar quarter following the City*
11 *Attorney's certification.*

12 **SEC. 14.2. SAN FRANCISCO HEALTH CARE ACCESS ASSISTANCE PROGRAM**
13 **AND REIMBURSEMENT ACCOUNTS.**

14 (a) The San Francisco Department of Public Health shall administer the Health Care
15 Access Assistance Program, comprised of Healthy San Francisco, Covered San Francisco, and
16 Health Care Access Accounts. The Department shall determine eligibility and benefits under each
17 program component to maximize participants' overall access to Health Care Services.

18 (b) Under Healthy San Francisco ~~the Health Access Program~~, eligible uninsured San
19 Francisco residents may obtain health care from a network consisting of San Francisco
20 General Hospital and the Department of Public Health's clinics, and other community non-
21 profit and private providers that meet the program's quality and other criteria for participation.
22 Healthy San Francisco ~~The Health Access Program~~ is not an insurance plan for Healthy San
23 Francisco ~~Health Access Program~~ participants.

1 ~~(b) The Department of Public Health shall coordinate with a third party vendor to administer~~
2 ~~program operations, including basic customer services, enrollment, tracking service utilization, billing,~~
3 ~~and communication with the participants.~~

4 (c) Healthy San Francisco~~The Health Access Program~~ shall be open to eligible, uninsured
5 San Francisco residents, ~~regardless of employment status~~. Eligibility criteria shall be established
6 by the Department of Public Health, and shall include eligibility for persons (1) with family incomes
7 up to 400% of the federal poverty level who are not eligible for subsidized health insurance coverage
8 through Covered California or for Medicare or Medi-Cal; or (2) who are exempt, due to economic
9 hardship or the cost of employer-sponsored coverage, from the mandate of the federal Affordable Care
10 Act to carry health insurance; or (3) who do not have an affordable offer of insurance coverage as
11 determined by the Department of Public Health. ~~but n~~No person shall be excluded from Healthy
12 San Francisco~~The Health Access Program~~ based on employment or immigration status or a pre-
13 existing condition. ~~Participants may enroll themselves as individuals, with the terms of enrollment to~~
14 ~~be determined pursuant to Section 14.4(a).~~

15 (d) Healthy San Francisco~~The Health Access Program~~ may be funded from a variety of
16 sources, including health care expenditures by~~payments from~~ Ccovered Employers pursuant to
17 Section 14.3, from individuals, and from the City. Funding from the City shall prioritize
18 services for low and moderate income persons, with costs based on Healthy San
19 Francisco~~Health Access Program~~ participant's' ability to pay.

20 (e) Healthy San Francisco~~The Health Access Program~~ shall use the "Medical Home" model
21 in which a primary care physician, nurse practitioner, or physician assistant develop and direct
22 a plan of care for each Healthy San Francisco~~Health Access Program~~ participant, coordinate
23 referrals for testing and specialty services, and monitor management of chronic conditions
24 and diseases. Healthy San Francisco~~Health Access Program~~ participants shall be assigned to a
25 primary care physician, nurse practitioner, or physician assistant.

1 (f) ~~Healthy San Francisco~~~~The Health Access Program~~ shall provide medical services with
2 an emphasis on wellness, preventive care and innovative service delivery. The ~~p~~Program shall
3 provide medical services for the prevention, diagnosis, and treatment of medical conditions,
4 excluding vision, dental, infertility, and cosmetic services. The Department of Public Health
5 may further define the services to be provided, except that such services must, at a minimum,
6 include: professional medical services by doctors, nurse practitioners, physician assistants,
7 and other licensed health care providers, including preventive, primary, diagnostic and
8 specialty services; inpatient and outpatient hospital services, including acute inpatient mental
9 health services; diagnostic and laboratory services, including therapeutic radiological services;
10 prescription drugs, excluding drugs for excluded services; home health care; and emergency
11 care provided in San Francisco by contracted providers, including emergency medical
12 transportation if needed.

13 (g) Covered San Francisco shall provide financial assistance to eligible participants to offset a
14 portion of the cost of health insurance purchased through Covered California or similar state-
15 administered exchanges as determined by the Department of Public Health.

16 (h) Participation in Covered San Francisco shall be available to eligible Covered Employees
17 whose Employers make health care expenditures to the City on their behalf, to their dependents, and to
18 others as determined by the Department of Public Health.

19 (i) The Department of Public Health shall annually determine the level of public benefits
20 available to Covered San Francisco participants subject to the following:

21 (1) That the costs of Covered San Francisco shall be met by Health Care Expenditures
22 made by Covered Employers to the City pursuant to Section 14.3, in addition to any funds that may be
23 made available by the Board, allocated at the discretion of the Department of Public Health, or
24 received as grants.

1 (2) That the design of the Covered San Francisco public benefit shall incentivize
2 enrollment in Covered California health plans so as to maximize affordability for participants, taking
3 into account both the individual share of premiums and other individual cost sharing under the terms of
4 these plans.

5 (j) The Department of Public Health shall coordinate with Covered California and other state
6 or federal agencies as appropriate to create mechanisms for the efficient coordination of Covered San
7 Francisco benefits and to minimize the administrative burden placed on Covered San Francisco
8 participants and on the City.

9 (k~~g~~) The Department of Public Health shall also be authorized to use payments made
10 to the City by ~~Covered~~ ~~e~~Employers to satisfy their Health Care Eexpenditure requirements as set
11 forth in Section 14.3 to establish and maintain Health Care Access reimbursement Aaccounts
12 from which eligible Ccovered Eemployees may obtain reimbursement of ~~h~~Health eCare
13 ~~e~~Expenditures in the amount and under the terms set by the Department of Public Health. Such
14 Health Care Access Accounts shall be made available to Covered Employees who are not eligible for
15 Healthy San Francisco or Covered San Francisco, including Medi-Cal enrollees and others as
16 determined by the Department of Public Health.

17 (l) The Department of Public Health shall promulgate information about the Health Care
18 Access Assistance Program and each of its components to maximize awareness of these public health
19 benefits and to maximize enrollment in Covered California or other forms of health insurance.

20 (m) The Department of Public Health may coordinate with a third party vendor to administer
21 program operations, including enrollment, tracking service utilization, billing, and communication with
22 the participants.

23 (n) The Department of Public Health shall establish a procedure by which participants in the
24 Health Care Access Assistance Program may appeal their placement in the Healthy San Francisco,
25 Covered San Francisco, or Health Care Access Account programs.

1 (~~oh~~) The City Controller shall ensure that any ~~required~~ Health Care Expenditures
2 made by an Covered Employer to the City pursuant to Section 14.3 are kept separate and apart
3 from general funds and shall limit use of the expenditures to support the Health Care Access
4 Assistance Program. ~~or to the establishment and maintenance of reimbursement accounts from which~~
5 ~~covered employees may obtain reimbursement of health care expenditures. If any covered employee~~
6 ~~fails to enroll in the Health Access Program or establish a reimbursement account with the Department~~
7 ~~of Public Health within a reasonable time, as determined by the Department of Public Health, the City~~
8 ~~may use the funds paid to the City and County of San Francisco on behalf of that employee for the~~
9 ~~benefit of the health care programs created by this Ordinance, but the City may not transfer these funds~~
10 ~~to the City's general fund.~~

11 **SEC. 14.3. REQUIRED HEALTH CARE EXPENDITURES.**

12 **(a) Required Expenditures.** Covered Employers shall make Required Health Care
13 Expenditures to or on behalf of their Covered Employees each quarter. The Required
14 Health Care Expenditure for a Covered Employer shall be calculated by multiplying the
15 total number of hours paid for each of its Covered Employees during the quarter (including
16 only hours starting on the first day of the calendar month following ninety (90) calendar days
17 after a Covered Employee's date of hire) by the applicable Health Care Expenditure
18 Rate. In determining whether a Covered Employer has made its Required Health Care
19 Expenditures, payments to or on behalf of a Covered Employee shall not be considered if
20 they exceed the following amount: the number of hours paid for the Covered Employee
21 during the quarter multiplied by the applicable Health Care Expenditure Rate. The City's
22 Office of Labor Standards Enforcement (OLSE) shall enforce the Health Care Expenditure
23 requirements under this Section 14.3.

1 **(b) Employer Notice to Employees.**

2 (1) By December 1 of each year, OLSE shall publish and make available to
3 Covered Employers, in all languages spoken by more than five percent of the San Francisco
4 work force, a notice suitable for posting by Covered Employers in the workplace informing
5 Covered Employees of their rights and the Covered Employer’s obligations under the
6 Ordinance.

7 (2) Every Covered Employer shall post in a conspicuous place at any workplace
8 or job site where any Covered Employee works the notice published each year by OLSE.
9 Every Covered Employer shall post such notices in English, Spanish, Chinese and any other
10 language spoken by at least five percent of the Employees at the workplace or job site.

11 **(c) Additional Employer Responsibilities.** A ~~C~~covered ~~E~~employer shall: ~~(i1)~~
12 maintain accurate records of ~~h~~Health ~~e~~Care ~~e~~Expenditures, ~~R~~required ~~h~~Health ~~e~~Care
13 ~~e~~Expenditures, and proof of such expenditures made each quarter each year, and allow OLSE
14 reasonable access to such records, provided, however, that ~~C~~covered ~~E~~employers shall not be
15 required to maintain such records in any particular form; and ~~(i2)~~ provide information to ~~the~~
16 OLSE, or ~~the~~ OLSE's designee, on an annual basis containing such other information as
17 OLSE shall require, including information on the ~~e~~Employer's compliance with this Chapter,
18 but OLSE may not require an ~~e~~Employer to provide information in violation of State or federal
19 privacy laws. ~~If a cCovered eEmployer uses a health reimbursement account to satisfy its obligation to~~
20 ~~make health care expenditures for any of its cCovered eEmployees, the eEmployer shall also report to~~
21 ~~OLSE the terms of such accounts, including what costs are eligible for reimbursement.~~

22 Where an ~~e~~Employer does not maintain or retain adequate records documenting the
23 ~~h~~Health ~~C~~are ~~e~~Expenditures made, or does not allow OLSE reasonable access to such
24 records, it shall be presumed that the ~~e~~Employer did not make the ~~R~~required ~~h~~Health ~~C~~are
25 ~~e~~Expenditures for the quarter for which records are lacking, absent clear and convincing

1 evidence otherwise. The Office of Treasurer and Tax Collector shall have the authority to
2 provide any and all nonfinancial information to OLSE necessary to fulfill OLSE's
3 responsibilities as the enforcing agency under this ~~Chapter~~Ordinance. With regard to all such
4 information provided by the Office of Treasurer and Tax Collector, OLSE shall be subject to
5 the confidentiality provisions of Subsection (a) of Section 6.22-1 of the San Francisco
6 Business and Tax Regulations Code.

7 (d) If a Covered Employer imposes a surcharge on its customers to cover in whole or
8 in part the costs of the ~~h~~H~~e~~e~~l~~l~~h~~h~~l~~l~~h~~h~~l~~l ~~e~~C~~a~~r~~e~~ ~~e~~E~~x~~p~~e~~n~~di~~tu~~r~~e~~ requirement under this Chapter, the
9 Covered Employer shall provide to OLSE on an annual basis the amount collected during the
10 12-month reporting period from the surcharge for employee health care and the amount spent
11 on employee health care. If the amount collected from the surcharge is greater than the
12 amount spent on employee health care, the Covered Employer must irrevocably pay or
13 designate an amount equal to that difference for ~~h~~H~~e~~e~~l~~l~~h~~h~~l~~l ~~e~~C~~a~~r~~e~~ ~~e~~E~~x~~p~~e~~n~~di~~tu~~r~~e~~s for its Covered
14 Employees under this Chapter. OLSE may refer any potential cases of consumer fraud to
15 appropriate authorities.~~~~~~~~~~~~

16 **SEC. 14.4. ADMINISTRATION AND ENFORCEMENT.**

17 (a) The City shall develop and promulgate rules and regulations to govern the operation
18 of this Chapter. ~~The regulations shall include specific rules by t~~The Department of Public Health
19 shall develop and promulgate rules and regulations to govern ~~on~~ the operation of ~~both~~ the Health
20 Care Access Assistance Program ~~and the reimbursement accounts~~ identified in Section 14.2(~~g~~),
21 including but not limited to eligibility for enrollment in Healthy San Francisco and Covered San
22 Francisco, ~~the Health Access Program~~ and the establishment of Health Care Access reimbursement
23 Accounts, ~~and rules by the~~ OLSE shall develop and promulgate rules and regulations for
24 enforcement of the obligations of ~~the e~~E~~m~~p~~l~~o~~y~~e~~r~~s~~ under this Chapter. The rules and regulations
25 shall also establish procedures for C~~e~~o~~v~~er~~ed E~~e~~m~~p~~l~~o~~y~~e~~r~~s~~ to maintain accurate records of~~~~~~~~~~~~~~~~~~~~~~~~~~~~

1 ~~h~~Health ~~e~~Care ~~e~~Expenditures and ~~R~~required ~~h~~Health ~~e~~Care ~~e~~Expenditures and provide a report
2 to ~~the OLSE City~~ without requiring any disclosures of information that would violate State or
3 Federal privacy laws. The rules and regulations shall further establish procedures for providing
4 ~~e~~Employers notice that they may have violated this Chapter, a right to respond to the notice, a
5 procedure for notification of the final determination of a violation, and an appeal procedure
6 before a hearing officer appointed by the City Controller. The sole means of review of the
7 hearing officer's decision shall be by filing in the San Francisco Superior Court a petition for a
8 writ of mandate under Section 1094.5 of the California Code of Civil Procedure. No rules shall
9 be adopted finally until after a public hearing.

10 (b) ~~During implementation of this Chapter and on an ongoing basis thereafter, t~~The City shall
11 maintain an education and advice program to assist ~~e~~Employers with meeting the
12 requirements of this Chapter.

13 (c) Any ~~e~~Employer that reduces the number of employees below the number that
14 would have resulted in the ~~e~~Employer being considered a "~~C~~eovered ~~E~~employer," or below the
15 number that would have resulted in the ~~e~~Employer being considered a ~~m~~Medium-sized or
16 ~~L~~Large ~~b~~Business, shall demonstrate that such reduction was not done for the purpose of
17 evading the obligations of this Chapter or shall be in violation of ~~thi~~se Chapter.

18 (d) It shall be unlawful for any ~~e~~Employer or ~~C~~eovered ~~E~~employer to deprive or threaten
19 to deprive any person of employment, take or threaten to take any reprisal or retaliatory action
20 against any person, or directly or indirectly intimidate, threaten, coerce, command or influence
21 or attempt to intimidate, threaten, coerce, command or influence any person because such
22 person has cooperated or otherwise participated in an action to enforce, inquire about, or
23 inform others about the requirements of this Chapter. Taking adverse action against a person
24 within ninety (90) days of the person's exercise of rights protected under this Chapter shall
25 raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

1 (e) (1) The City shall enforce the obligations of Ceovered Eeemployers under this
2 Chapter, including requiring restitution to employees where appropriate, and shall impose
3 administrative penalties ~~upon~~ Ceovered Eeemployers who fail to make Rrequired ~~h~~HHealth eCare
4 eExpenditures on behalf of their employees within five business days of the quarterly due
5 date. ~~Failure to make a required health care expenditure shall include making a purported expenditure~~
6 ~~that is determined by OLSE not to be reasonably calculated to benefit the employee.~~The amount of
7 the penalty shall be up to one-and-one-half times the total expenditures that a Ceovered
8 Eeemployer failed to make, but in any event the total penalty for this violation shall not exceed
9 \$100 for each employee for each quarter that the required expenditures were not made within
10 five business days of the quarterly due date. ~~The \$100 penalty limit shall increase each year by an~~
11 ~~amount corresponding to the prior year's increase, if any, in the Consumer Price Index for urban wage~~
12 ~~earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical~~
13 ~~area.~~

14 (2) For other violations of this Chapter by eEmployers and Ceovered
15 Eeemployers, the maximum administrative penalties shall be as follows: For refusing to allow
16 access to records, pursuant to Section 14.3(c), \$25.00 as to each worker whose records are
17 in issue for each day that the violation occurs; for the failure to maintain or retain accurate and
18 adequate records pursuant to Section 14.3(c) and for the failure to make the annual reports of
19 information required by OLSE pursuant to Sections 14.3(c) and 14.3(d), \$500.00 for each
20 quarter that the violation occurs; for violation of Section 14.4(d) (retaliation), \$100.00 as to
21 each person who is the target of the prohibited action for each day that the violation occurs;
22 and for any other violation not specified in this subsection (e)(2), \$25.00 per day for each day
23 that the violation occurs.

1 (3) The City Attorney may bring a civil action to recover civil penalties for the
2 violations set forth in subsections (e)(1) and (e)(2) in the same amounts set forth in those
3 subsections, and to recover the City's enforcement costs, including attorneys' fees.

4 (4) Penalties Amounts recovered under this Section 14.4 shall be deposited in the
5 City's General Fund.

6 ~~—(f) The City Controller shall coordinate with the Department of Public Health and OLSE to
7 prepare periodic reports on the implementation of this Chapter including participant rates, any effect
8 on services provided by the Department of Public Health, the cost of providing services to the Health
9 Care Access Assistance Program participants and the economic impact of the Chapter's provisions.
10 Reports shall be provided to the Board of Supervisors on a quarterly basis for quarters beginning July
11 1, 2007 through June 30, 2008, then every six months through June 30, 2010. Reports shall include
12 specific information on any significant event affecting the implementation of this Chapter and also
13 include recommendations for improvement where needed, in which case the Board of Supervisors or a
14 committee thereof shall hold a hearing within thirty (30) days of receiving the report to consider
15 responsive action.~~

16 ~~—(g) The Director of Public Health shall convene an advisory Health Access Working Group
17 to provide the Department of Public Health and the Health Access Program with expert consultation
18 and direction, with input on members from the Mayor and the Board of Supervisors. The Health Access
19 Working Group shall be advisory in nature and may provide the Health Access Program with input on
20 matters including: setting membership rates; designing the range of benefits and health care services
21 for participants; and researching utilization, actuaries, and costs.~~

1 ~~—(h) The Department of Public Health and the OLSE shall report to the Board of Supervisors~~
2 ~~by July 1, 2007, on the development of rules for the Health Access Program and for the enforcement~~
3 ~~and administration of the employer obligations under this Chapter. The Board of Supervisors or a~~
4 ~~committee thereof shall hold a hearing on the proposed rules to ensure that participants in the Health~~
5 ~~Access Program shall have access to high quality and culturally competent services.~~

6 **SEC. 14.5. SEVERABILITY.**

7 If any section, subsection, clause, phrase, or ~~word~~~~portion~~ of this Chapter is for any
8 reason held to be invalid or unconstitutional by a decision of any court ~~or Federal or State agency~~
9 of competent jurisdiction, such ~~portion shall be deemed a separate, distinct and independent~~
10 ~~provision and such holding~~ decision shall not affect the validity of the remaining portions of this
11 Chapter thereof. The Board of Supervisors hereby declares that it would have passed this Chapter and
12 each and every section, subsection, sentence, clause, phrase, and word not declared invalid or
13 unconstitutional without regard to whether any other portion of this Chapter would be subsequently
14 declared invalid or unconstitutional. To this end, the provisions of this ordinance shall be deemed
15 severable.

16 **SEC. 14.6. NO CONFLICT WITH FEDERAL OR STATE LAWPREEMPTION.**

17 Nothing in this Chapter shall be interpreted or applied so as to create any power, duty
18 or obligation in conflict with, ~~or preempted by,~~ any Federal or State law.

19 **SEC. 14.7. GENERAL WELFARE.**

20 By this Chapter, the City is assuming an undertaking only to promote the general
21 welfare and otherwise satisfy its obligations to provide health care under applicable law. This
22 Chapter should in no way be construed as an expansion of the City's existing obligations to
23 provide health care under State and Federal law, and the City shall set all necessary criteria
24 for enrollment consistent with its legal obligations. The City is not assuming, nor is it imposing
25 on its officers and employees, an obligation for breach of which it is liable in money damages

1 to any ~~p~~Person who claims that such breach proximately caused injury. To the fullest extent
2 permitted by law, the City shall assume no liability whatsoever. To the fullest extent permitted
3 by law, any actions taken by a public officer or employee under the provisions of this Chapter
4 shall not become a personal liability of any public officer or employee of the City.

5 **SEC. 14.8. OPERATIVE DATE.**

6 The changes in this Chapter resulting from enactment of Ordinance No. _____ shall
7 become operative on October 1, 2014 or the effective date of said ordinance, whichever is later. ~~in~~
8 three phases. The day this Chapter becomes effective, implementation of the Chapter shall commence.
9 The Health Access Program shall become operative on July 1, 2007. Any requirements on employers
10 for which an average of fifty (50) or more persons per week perform work for compensation during a
11 quarter shall become operative on January 1, 2008. Any requirements on employers for which an
12 average of from twenty (20) to forty-nine (49) persons per week perform work for compensation during
13 a quarter shall become operative on April 1, 2008. This Chapter is intended to have prospective effect
14 only.

15
16 Section 2. Effective Date and Operative Date. This Chapter shall become effective 30
17 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
18 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
19 or the Board of Supervisors overrides the Mayor's veto of the ordinance. As indicated in
20 Section 14.8 of the Administrative Code, this ordinance shall become operative on October 1,
21 2014 or its effective date, whichever is later.

22
23 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
24 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
25 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

1 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
2 additions, and Board amendment deletions in accordance with the "Note" that appears under
3 the official title of the ordinance.

4

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

7 By: _____
8 Sherri Sokeland Kaiser
9 Deputy City Attorney

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