

[Administrative Code - Compensation For City Employees With Same-Sex Spouses Or Same-Sex Domestic Partners To Offset Federal Income Tax On Health Insurance Premiums]

Ordinance amending the San Francisco Administrative Code, by adding sections 16.704 and 16.29-7.6, to mandate payments to City employees to offset federal income taxation on health insurance premiums for their same-sex spouses or same-sex domestic partners, and to exclude such payments from the computation of compensation under the San Francisco Employees' Retirement System.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strike-through normal~~.

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

Section 1. The San Francisco Administrative Code is hereby amended by adding Section 16.704, as follows:

SEC. 16.704. REMEDYING DISCRIMINATION AGAINST EMPLOYEES IN SAME-SEX MARRIAGES OR IN SAME-SEX DOMESTIC PARTNERSHIPS.

(a) Findings and Purpose. The City and County of San Francisco (City) finds that its own employees with same-sex spouses or same-sex domestic partners suffer both dignitary and economic harm as a result of discriminatory federal laws. In particular, as a result of discriminatory treatment under federal tax laws that impose taxes on health care coverage provided to employees with same-sex, but not those with opposite-sex, spouses, City employees with same-sex spouses or same-sex domestic partners suffer not only the indignities of being treated as second-class citizens by their own government; they also suffer measurable financial harm that is concrete, persistent, and significant, and in some cases immense.

1 The City is committed to the equitable principle that all City employees receive equal pay for
2 equal work. That principle is unattainable for City employees with same-sex spouses or same-sex
3 domestic partners so long as: (1) state law prevents same-sex couples from marrying; (2) federal law
4 treats the value of employer contributions for same-sex spouses' or same-sex domestic partners' health
5 insurance premiums as taxable income, and does not tax employer subsidies for opposite-sex spouses'
6 health insurance premiums; and (3) federal law prevents the use of pre-tax dollars by employees to pay
7 health insurance premiums for their same-sex spouses or same-sex domestic partners, while allowing
8 the use of pre-tax dollars by employees to pay health insurance premiums for their opposite-sex
9 spouses.

10 In an effort to offset the discriminatory impact of federal taxation on same-sex spouse and same
11 sex-domestic partner health insurance premiums, and to come closer to achieving the equitable
12 principle of equal pay for equal work, this Section 16.704 requires the City to make payments to City
13 employees who are provided subsidies for, and/or who pay all or part of the premiums for, their same-
14 sex spouses' or same-sex domestic partners' health insurance premiums.

15 (b) For each City employee Health Service System member who is subject to federal
16 taxation on health insurance premiums (both medical and dental) paid by the City for a same-sex
17 spouse, or same-sex domestic partner, the City shall pay an amount equal to twenty (20%) percent of
18 the portion of the employee's health insurance premiums attributable to the same-sex spouse, or same-
19 sex partner, as determined by the San Francisco Health Service System. These payments shall not be
20 part of the employee's base pay, are not payments made as compensation for hours of
21 employment, and shall not be included in any overtime or premium pay calculations.

22 (c) Operative Date. This Section 16.704 shall become operative on July 1, 2013.

23 (d) Expiration. This Section 16.704 shall expire in its entirety, or as applied specifically to
24 one or more of the following three groups of City employees -- employees with same-sex spouses who
25 married in California; employees with same-sex spouses who married outside of California; and

1 employees with same-sex domestic partners -- if, and when, the City Attorney's Office certifies to the
2 Mayor and the Board of Supervisors that one or more of those groups of City employees are no longer
3 subject to discriminatory federal income taxation of health insurance premiums attributable to their
4 same-sex spouses or same-sex domestic partners. This Ordinance shall continue to apply to those
5 groups of City employees listed above who continue to be subject to discriminatory federal income tax
6 on health insurance premiums attributable to their same-sex spouses or same-sex domestic partners.

7 Section 2. The San Francisco Administrative Code is hereby amended by adding
8 Section 16.29-7.6, as follows:

9 SEC. 16.29-7.6. DEFINITIONS – COMPENSATION PAID TO OFFSET FEDERAL
10 TAXATION OF HEALTH INSURANCE PREMIUMS FOR CITY EMPLOYEES WITH SAME-SEX
11 SPOUSES OR SAME-SEX DOMESTIC PARTNERS EXCLUDED.

12 When the compensation of a member is a factor in any computation to be made under the
13 Retirement System, there shall be excluded from such computation any compensation paid to offset
14 federal taxation of health insurance premiums for same-sex spouses or same-sex domestic partners.

15 Section 3. ~~In accordance with Section A8.500 of the City Charter, Section 16.29-7.6 of~~
16 ~~the Administrative Code requires passage by a three-fourths' vote of the Board of~~
17 ~~Supervisors. By certifying that this Ordinance passed the Board on second reading, the Clerk~~
18 ~~of the Board is certifying that Section 16.29-7.6 received an affirmative vote of at least three-~~
19 ~~fourths of the Board.~~

20 Section 34. The Board of Supervisors finds that all the sections of this ordinance are
21 intended and necessary to achieve a single legislative objective. To that end, the provisions
22 of this ordinance are not severable, ~~and Section 1 of this ordinance and proposed~~
23 ~~Administrative Code Section 16.704 shall only be adopted if Section 2 and proposed~~
24 ~~Administrative Code Section 16.29-7.6 are adopted by the three-fourths' vote of the Board of~~
25 ~~Supervisors required by Charter Section A8.500, as provided in Section 3 above.~~

1 Section 45. Effective Date. This Ordinance shall become effective 30 days from the
2 date of passage.

3 Section 56. Expiration of Ordinance Provisions; Removal From Code. Upon expiration
4 of Section 16.704 of the Administrative Code, the City Attorney's Office shall be authorized to
5 remove that provision from the Administrative Code. Administrative Code Section 16.29-7.6
6 shall not expire.

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

10 By: _____
11 JON GIVNER
12 Deputy City Attorney

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