

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Dr. Grant Colfax, Director, Department of Public Health
Chief William Scott, Police Department

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: March 8, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation:

File No. 210218

Ordinance amending the Administrative Code to waive the requirement for employers to report compliance with the Health Care Security Ordinance for 2020, codifying the previous waiver of such requirement for 2019, amending the Police Code to waive the requirement for employers to report compliance with the Fair Chance Ordinance for 2020, and codifying the previous waiver of such requirement for 2019.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org.

- c. Greg Wagner, Department of Public Health
Dr. Naveena Bobba, Department of Public Health
Sneha Patil, Department of Public Health
Arielle Fleisher, Department of Public Health
Rowena Carr, Police Department
Lili Gamero, Police Department
Diana Oliva-Aroche, Police Department



City and County of San Francisco

Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 210218 **File Type:** Ordinance **Status:** 30 Day Rule

Enacted: _____ **Effective:** _____

Version: 1 **In Control:** Rules Committee

File Name: Administrative, Police Codes - Waiving Employer Requirements to Report on 2020 Compliance with Health Care Security Ordinance and Fair Chance Ordinance **Date Introduced:** 03/02/2021

Requester: _____ **Cost:** _____ **Final Action:** _____

Comment: _____ **Title:** Ordinance amending the Administrative Code to waive the requirement for employers to report compliance with the Health Care Security Ordinance for 2020, codifying the previous waiver of such requirement for 2019, amending the Police Code to waive the requirement for employers to report compliance with the Fair Chance Ordinance for 2020, and codifying the previous waiver of such requirement for 2019.

Sponsor: Stefani

History of Legislative File 210218

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	03/02/2021	ASSIGNED UNDER 30 DAY RULE	Rules Committee		

1 [Administrative, Police Codes - Waiving Employer Requirements to Report on 2020
2 Compliance with Health Care Security Ordinance and Fair Chance Ordinance]

3 **Ordinance amending the Administrative Code to waive the requirement for employers**
4 **to report compliance with the Health Care Security Ordinance for 2020, codifying the**
5 **previous waiver of such requirement for 2019, amending the Police Code to waive the**
6 **requirement for employers to report compliance with the Fair Chance Ordinance for**
7 **2020, and codifying the previous waiver of such requirement for 2019.**

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

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

16 Section 1. Background and Findings.

17 (a) Administrative Code Section 14.3(f)(2) requires employers to report annually on
18 health care expenditures pursuant to the San Francisco Health Care Security Ordinance
19 (“HCSO”), which requires employers to make minimum health care expenditures for
20 employees in san Francisco. Police Code Section 4910(b) requires employers to report
21 annually on compliance with the San Francisco Fair Chance Ordinance (“FCO”), which
22 restricts how employers may consider applicants’ and employees’ arrest and conviction
23 records and related information.

24 (b) In 2018, by Ordinance No. 54-18, the City expanded the FCO to cover all
25 employers with five or more employees, from 20 or more employees previously, more than
doubling the number of employers required to report on their compliance. These newly-

1 covered employers were to be subject to the FCO's annual reporting requirements for the first
2 time in April 2020, reporting on calendar year 2019.

3 (c) On March 23, 2020, in response to extensive business closures related to the
4 COVID-19 pandemic, Mayor Breed issued the Fifth Supplement to Mayoral Proclamation
5 Declaring the Existence of a Local Emergency, which, as relevant here, waived the calendar
6 year 2019 reporting requirements under both the HCSO and FCO. As a result, thousands of
7 San Francisco employers – those newly required to report by the 2018 FCO amendment –
8 have yet to participate in the annual reporting process.

9 (d) Compiling and preparing these reports can be administratively difficult for
10 employers, placing an additional burden on employers at a time of significant economic strain
11 and uncertainty. Further, many businesses incurred periodic closures, and attendant furloughs
12 and layoffs, in 2020 that may complicate analysis of their payroll and health care expenditure
13 records. Some employers may need to engage in travel to their places of business to access
14 the necessary information, risking spread of COVID-19.

15 (e) The majority of the staff of the Office of Labor Standards Enforcement (OLSE)
16 continues to work remotely for their own safety to reduce the spread of COVID-19 during the
17 ongoing pandemic. OLSE typically receives more than 1000 telephone calls a year related to
18 the annual reporting requirements for HCSO and FCO compliance. These calls are likely to
19 increase substantially with many employers newly subject to the FCO reporting requirement. It
20 would be challenging for OLSE staff to accommodate this volume of calls while working
21 remotely.

22 (f) This ordinance is intended to reduce the administrative burden on employers and by
23 waiving these reporting requirements for 2020 health care expenditures and Fair Chance
24 Ordinance compliance. Further, for clarity, it codifies the waiver of these reporting
25 requirements for 2019.

1 (g) This ordinance maintains all other employer requirements under the Health Care
2 Security Ordinance and the Fair Chance Ordinance. It addresses the reporting requirements
3 only, and only to the extent addressed by the ordinance.
4

5 Section 2. The Administrative Code is hereby amended by revising Section 14.3(f)(2),
6 to read as follows:

7 **SEC. 14.3. EMPLOYER REQUIREMENTS.**

8 * * * *

9 (f) **Additional Employer Responsibilities.** A Covered Employer shall:

10 * * * *

11 (2) provide information to OLSE, or the OLSE's designee, on an annual
12 basis (with the exception of reporting on calendar year 2019 and 2020 compliance) containing such
13 other information as OLSE shall require, including information on the Employer's compliance
14 with this Chapter, but OLSE may not require an Employer to provide information in violation of
15 State or federal privacy laws. In the event the information required by OLSE is comingled with
16 information protected by privacy laws, the Employer shall redact the private information. If a
17 Covered Employer uses a Revocable Expenditure to satisfy its obligation to make Required
18 Health Care Expenditures for any of its Covered Employees, the Employer shall also report to
19 OLSE any conditions or restrictions on the Covered Employee's use of the expenditure, and
20 the condition or conditions that permit any portion of the expenditure to be revoked by or
21 returned to the Covered Employer.

22 * * * *

23
24 Section 3. The Police Code is hereby amended by revising Section 4910(b), to read as
25 follows:

1 **SEC. 4910. EMPLOYER RECORDS.**

2 * * * *

3 (b) An Employer shall provide information to the OLSE, or the OLSE's designee, on an
4 annual basis (with the exception of reporting on calendar year 2019 and 2020 compliance) as may
5 be required to verify the Employer's compliance with this Article.

6 * * * *

7
8 Section 4. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12
13 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: /s/ _____
23 LISA POWELL
24 Deputy City Attorney

25
n:\legana\as2021\2100301\01511845.docx

LEGISLATIVE DIGEST

[Administrative, Police Codes - Waiving Employer Requirements to Report on 2020 Compliance with Health Care Security Ordinance and Fair Chance Ordinance]

Ordinance amending the Administrative Code to waive the requirement for employers to report compliance with the Health Care Security Ordinance for 2020, codifying the previous waiver of such requirement for 2019, amending the Police Code to waive the requirement for employers to report compliance with the Fair Chance Ordinance for 2020, and codifying the previous waiver of such requirement for 2019.

Existing Law

The City's Health Care Security Ordinance ("HCSO"), Administrative Code Chapter 14, requires employers to make minimum health care expenditures for their employees working in the City. Section 14.3(f)(2) of the HCSO requires employers to report annually on their compliance.

The City's Fair Chance Ordinance ("FCO"), Police Code Article 49, restricts how employers may consider applicants' and employees' arrest and conviction records and related information. Section 4910(b) of the FCO requires employers to report annually on their compliance.

On March 23, 2020, Mayor London Breed, in the Fifth Supplement to her proclamation of local emergency related to the COVID-19 pandemic, waived the requirements to report on 2019 compliance under both the HCSO and FCO.

Amendments to Current Law

This ordinance waives the requirements that employers report on their HCSO and FCO compliance during calendar year 2020. Further, for clarity, it codifies the Mayor's previous waiver of both reporting requirements on compliance during 2019.

Background Information

This ordinance addresses only reporting requirements. It does not change any of the substantive employer requirements under either the HCSO and FCO.

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Stefani

Subject:

Administrative, Police Codes - Waiving Employer Requirements to Report on 2020 Compliance with Health Care Security Ordinance and Fair Chance Ordinance

The text is listed:

Ordinance amending the Administrative Code to waive the requirement for employers to report compliance with the Health Care Security Ordinance for 2020, codifying the previous waiver of such requirement for 2019, amending the Police Code to waive the requirement for employers to report compliance with the Fair Chance Ordinance for 2020, and codifying the previous waiver of such requirement for 2019

Signature of Sponsoring Supervisor:

For Clerk's Use Only

From: [Mullan, Andrew \(BOS\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Kittler, Sophia \(MYR\)](#); [Barnes, Bill \(ADM\)](#); [Asay, Greg \(ADM\)](#); [Quetone, Tal \(ADM\)](#); [Mulligan, Pat \(ADM\)](#); [Stefani, Catherine \(BOS\)](#); [Bennett, Samuel \(BOS\)](#); [Donovan, Dominica \(ECN\)](#); [POWELL, LISA \(CAT\)](#)
Subject: FW: HCSO/FCO Annual reporting
Date: Tuesday, March 2, 2021 9:52:18 AM
Attachments: [01511845.DOCX](#)
[01511892.DOCX](#)
[Introduction Form- HSCO and FCO.pdf](#)

Good morning Madam Clerk,

Please see the following introduction from Supervisor Stefani for today's meeting.

Best,

Andy

From: Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>
Sent: Monday, March 01, 2021 1:46 PM
To: Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>
Cc: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>; Asay, Greg (ADM) <greg.asay@sfgov.org>; Barnes, Bill (ADM) <bill.barnes@sfgov.org>; Kittler, Sophia (MYR) <sophia.kittler@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

Attorney-Client Communication – Do Not Disclose

Hi – Andrew, I just re-sent the email transmitting it for introduction but here are the final ordinance, which is approved as to form, and leg digest for anyone else who wants to see them.

Lisa Powell
Deputy City Attorney
Office of City Attorney Dennis Herrera
(415) 554-4762 Direct
www.sfcityattorney.org

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you have received this communication in error, please notify me immediately and permanently delete the original message and attachments from your email system and destroy all copies. Thank you.

From: Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>
Sent: Monday, March 1, 2021 1:36 PM
To: Powell, Lisa (CAT) <Lisa.Powell@sfcityattorney.org>
Cc: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>; Asay, Greg (ADM) <greg.asay@sfgov.org>; Barnes, Bill (ADM) <bill.barnes@sfgov.org>; Kittler, Sophia (MYR) <sophia.kittler@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

Thank you all!

I understand that Pat and Bill have met with other offices and it sounds ready to introduce. Is OLSE okay with this draft? Does it still need to be approved to form or have a leg digest?

Best,

Andy

From: Powell, Lisa (CAT) <Lisa.Powell@sfcityattorney.org>
Sent: Tuesday, February 09, 2021 10:40 AM
To: Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>
Cc: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>; Asay, Greg (ADM) <greg.asay@sfgov.org>; Barnes, Bill (ADM) <bill.barnes@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

Attorney-Client Communication – Do Not Disclose

I'm attaching an updated/near final draft for you to review, subject to my question below on housing and any changes/OLSE have. We thought that for clarity, it would be good to codify the waiver of reporting on 2019.

Lisa Powell
Deputy City Attorney
Office of City Attorney Dennis Herrera
(415) 554-4762 Direct
www.sfcityattorney.org

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From: Powell, Lisa (CAT)
Sent: Tuesday, February 9, 2021 9:37 AM
To: Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>; Barnes, Bill (ADM) <bill.barnes@sfgov.org>
Cc: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

Attorney-Client Communication – Do Not Disclose

Question – we note that there is another reporting requirement under the FCO on housing to the HRC (under Police Code Section 4912(b)). Have you by any chance been in touch with HRC about that requirement? I'm wondering if that should be waived as well for consistency.

Lisa Powell
Deputy City Attorney
Office of City Attorney Dennis Herrera
(415) 554-4762 Direct
www.sfcityattorney.org

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From: Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>
Sent: Monday, February 8, 2021 11:35 AM

To: Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>; Barnes, Bill (ADM) <bill.barnes@sfgov.org>
Cc: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>
Subject: Re: HCSO/FCO Annual reporting

Hi all,

Looks fine to me -- ADM folks let me know if you think this okay. We can intro and I can ask to have the 30 day rule waived, but I can't make any promises.

Andy

From: Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>
Sent: Friday, February 5, 2021 4:33 PM
To: Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>; Barnes, Bill (ADM) <bill.barnes@sfgov.org>
Cc: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

Attorney-Client Communication – Do Not Disclose

Here's a draft. Please let me know if you have any questions or concerns. Otherwise, I'll proof it and send for review/approval, and it should be no problem to have ready for introduction by Tuesday.

Lisa Powell
Deputy City Attorney
Office of City Attorney Dennis Herrera
(415) 554-4762 Direct
www.sfcityattorney.org

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From: Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>
Sent: Friday, February 5, 2021 1:18 PM

To: Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>; Barnes, Bill (ADM) <bill.barnes@sfgov.org>
Cc: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>
Subject: Re: HCSO/FCO Annual reporting

Thank you Lisa and Pat,

Feel free to share the draft with me when you're ready.

From: Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>
Sent: Friday, February 5, 2021 12:09 PM
To: Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>; Barnes, Bill (ADM) <bill.barnes@sfgov.org>
Cc: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

Thanks – I sent a draft over to OLSE. I think it's possible this could be ready to be introduced on Tuesday.

Attorney-Client Communication – Do Not Disclose

Lisa Powell
Deputy City Attorney
Office of City Attorney Dennis Herrera
(415) 554-4762 Direct
www.sfcityattorney.org

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From: Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>
Sent: Thursday, February 4, 2021 5:30 PM
To: Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>; Barnes, Bill (ADM) <bill.barnes@sfgov.org>
Cc: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>
Subject: Re: HCSO/FCO Annual reporting

Hi Lisa,

That's accurate! Really Pat in OSLE can really drive the requirements, in my opinion -- but I'm happy to do anything you need. We're sponsoring to help them out! Thank you Lisa

Andy

From: Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>
Sent: Thursday, February 4, 2021 2:06 PM
To: Barnes, Bill (ADM) <bill.barnes@sfgov.org>; Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

Attorney-Client Communication – Do Not Disclose

Andy, are you the person I should work with for any questions, to share the draft, etc.? I imagine given the circumstances, this is not confidential and I can confer with OLSE as well?

Thanks,
Lisa Powell
Deputy City Attorney
Office of City Attorney Dennis Herrera
(415) 554-4762 Direct
www.sfcityattorney.org

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From: Barnes, Bill (ADM) <bill.barnes@sfgov.org>
Sent: Tuesday, February 2, 2021 4:07 PM
To: Givner, Jon (CAT) <Jon.Givner@sfcityatty.org>; Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>; Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>; Pearson, Anne (CAT) <Anne.Pearson@sfcityatty.org>
Cc: Quetone, Tal (ADM) <tal.quetone@sfgov.org>; Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

Great thanks Jon.

Looping in Andy Mullan here for the update on timing.

All best,

Bill Barnes
Office of the City Administrator

From: Givner, Jon (CAT) <Jon.Givner@sfcityatty.org>
Sent: Tuesday, February 2, 2021 4:01 PM
To: Barnes, Bill (ADM) <bill.barnes@sfgov.org>; POWELL, LISA (CAT) <Lisa.Powell@sfcityatty.org>; Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>; PEARSON, ANNE (CAT) <Anne.Pearson@sfcityatty.org>
Cc: Quetone, Tal (ADM) <tal.quetone@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

Hi Bill. This would probably be a short ordinance—non-emergency, probably codified with a trigger to remove it from the code at the end of 2021. But with other deadlines on our plate, I don't think we'll have it ready for introduction this Tuesday.

Jon

Jon Givner
Deputy City Attorney
Office of City Attorney Dennis Herrera
1 Dr. Carlton B. Goodlett Place, Suite 234
San Francisco, CA 94102
phone: (415) 554-4694
www.sfcityattorney.org

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From: Barnes, Bill (ADM) <bill.barnes@sfgov.org>
Sent: Tuesday, February 2, 2021 2:26 PM
To: Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>; Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>; Givner, Jon (CAT) <Jon.Givner@sfcityatty.org>; Pearson, Anne (CAT) <Anne.Pearson@sfcityatty.org>
Cc: Quetone, Tal (ADM) <tal.quetone@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

Lisa:

This would be standalone. We explored adding it into another item, but it wasn't a good fit.

Bill Barnes
Office of the City Administrator

From: Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>
Sent: Tuesday, February 2, 2021 2:17 PM
To: Barnes, Bill (ADM) <bill.barnes@sfgov.org>; Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>; GIVNER, JON (CAT) <Jon.Givner@sfcityatty.org>; PEARSON, ANNE (CAT) <Anne.Pearson@sfcityatty.org>
Cc: Quetone, Tal (ADM) <tal.quetone@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

Is this an ordinance that is already being drafted and just needs a section related to this requirement? Or a request to draft an ordinance?

Attorney-Client Communication – Do Not Disclose

Lisa Powell
Deputy City Attorney
Office of City Attorney Dennis Herrera
(415) 554-4762 Direct
www.sfcityattorney.org

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From: Barnes, Bill (ADM) <bill.barnes@sfgov.org>
Sent: Tuesday, February 2, 2021 2:14 PM
To: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>; Givner, Jon (CAT) <Jon.Givner@sfcityatty.org>; Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>
Cc: Quetone, Tal (ADM) <tal.quetone@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

Attorney-Client Privilege

Lisa:

We are speaking with a potential supervisorial sponsor of these changes. The office asked us to work with you to draft proposed language do they could review to introduce next week. Do you think this is feasible?

Bill Barnes
Office of the City Administrator

From: Mulligan, Pat (ADM)
Sent: Tuesday, February 2, 2021 2:10 PM
To: Barnes, Bill (ADM) <bill.barnes@sfgov.org>
Subject: FW: HCSO/FCO Annual reporting

From: Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>
Sent: Friday, January 22, 2021 1:50 PM
To: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

I did send the email I thought I had, so I'm just flagging to make it easy for you to find.

Attorney-Client Communication – Do Not Disclose

Lisa Powell
Deputy City Attorney
Office of City Attorney Dennis Herrera
(415) 554-4762 Direct
www.sfcityattorney.org

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From: Powell, Lisa (CAT)
Sent: Thursday, January 21, 2021 4:14 PM
To: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

Attorney-Client Communication – Do Not Disclose

Circling back. Unfortunately, my office doesn't see a basis for an emergency proclamation at this point. However, we note that the reporting deadlines are not specified in the ordinances, so you could delay the reporting deadline. (Since it is in the HCSO regs, you might want to do a brief notice and opportunity to comment period.) Another option might be seeking to have the Board waive the requirement for the year (you could do these together to give you time to work with the Board). And/or if it is feasible, you could consider streamlining the reporting requirements.

Sorry I couldn't be more helpful but please let me know if you want to discuss. (I'm on a call now probably until 5).

Lisa Powell
Deputy City Attorney
Office of City Attorney Dennis Herrera
(415) 554-4762 Direct
www.sfcityattorney.org

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From: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>
Sent: Thursday, January 21, 2021 3:04 PM
To: Powell, Lisa (CAT) <Lisa.Powell@sfcityatt.org>
Subject: RE: HCSO/FCO Annual reporting

Thanks Lisa.

From: Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>
Sent: Thursday, January 21, 2021 2:57 PM
To: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>
Subject: RE: HCSO/FCO Annual reporting

Thanks – I'm checking into this and I'll circle back.

Attorney-Client Communication – Do Not Disclose

Lisa Powell
Deputy City Attorney
Office of City Attorney Dennis Herrera
(415) 554-4762 Direct
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From: Mulligan, Pat (ADM) <pat.mulligan@sfgov.org>
Sent: Thursday, January 21, 2021 2:10 PM
To: Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>
Subject: HCSO/FCO Annual reporting

Hi Lisa,

I'm looking into the prospect of suspending the 2021 annual reporting requirements for the Healthcare Security and Fair Chance Ordinances. This is strictly an administrative reporting requirement and would not affect the monetary healthcare requirements under the law. As many businesses are still struggling or remain closed under current public health orders, it makes sense to avoid nonessential reporting requirements given the current crisis. In addition, recent changes (pre pandemic) to FCO annual reporting will more than double the number of employers providing responses and subsequently will double the impact on our office and businesses.

Last year Mayor Breed suspended the same reporting requirements through executive order, and I had anticipated that it could be handled in a similar manner this year. However, there is some concern as to whether the Mayor has the same level of discretion this year. Please advise.

Thanks,

Patrick Mulligan
Director
Office of Labor Standards Enforcement
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685
415-554-6239

[Administrative, Police Codes - Waiving Employer Requirements to Report on 2020 Compliance with Health Care Security Ordinance and Fair Chance Ordinance]

Ordinance amending the Administrative Code to waive the requirement for employers to report compliance with the Health Care Security Ordinance for 2020, codifying the previous waiver of such requirement for 2019, amending the Police Code to waive the requirement for employers to report compliance with the Fair Chance Ordinance for 2020, and codifying the previous waiver of such requirement for 2019.

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

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

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Section 1. Background and Findings.

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(a) Administrative Code Section 14.3(f)(2) requires employers to report annually on health care expenditures pursuant to the San Francisco Health Care Security Ordinance (“HCSO”), which requires employers to make minimum health care expenditures for employees in san Francisco. Police Code Section 4910(b) requires employers to report annually on compliance with the San Francisco Fair Chance Ordinance (“FCO”), which restricts how employers may consider applicants’ and employees’ arrest and conviction records and related information.

(b) In 2018, by Ordinance No. 54-18, the City expanded the FCO to cover all employers with five or more employees, from 20 or more employees previously, more than doubling the number of employers required to report on their compliance. These newly-

1 covered employers were to be subject to the FCO's annual reporting requirements for the first
2 time in April 2020, reporting on calendar year 2019.

3 (c) On March 23, 2020, in response to extensive business closures related to the
4 COVID-19 pandemic, Mayor Breed issued the Fifth Supplement to Mayoral Proclamation
5 Declaring the Existence of a Local Emergency, which, as relevant here, waived the calendar
6 year 2019 reporting requirements under both the HCSO and FCO. As a result, thousands of
7 San Francisco employers – those newly required to report by the 2018 FCO amendment –
8 have yet to participate in the annual reporting process.

9 (d) Compiling and preparing these reports can be administratively difficult for
10 employers, placing an additional burden on employers at a time of significant economic strain
11 and uncertainty. Further, many businesses incurred periodic closures, and attendant furloughs
12 and layoffs, in 2020 that may complicate analysis of their payroll and health care expenditure
13 records. Some employers may need to engage in travel to their places of business to access
14 the necessary information, risking spread of COVID-19.

15 (e) The majority of the staff of the Office of Labor Standards Enforcement (OLSE)
16 continues to work remotely for their own safety to reduce the spread of COVID-19 during the
17 ongoing pandemic. OLSE typically receives more than 1000 telephone calls a year related to
18 the annual reporting requirements for HCSO and FCO compliance. These calls are likely to
19 increase substantially with many employers newly subject to the FCO reporting requirement. It
20 would be challenging for OLSE staff to accommodate this volume of calls while working
21 remotely.

22 (f) This ordinance is intended to reduce the administrative burden on employers and by
23 waiving these reporting requirements for 2020 health care expenditures and Fair Chance
24 Ordinance compliance. Further, for clarity, it codifies the waiver of these reporting
25 requirements for 2019.

1 (g) This ordinance maintains all other employer requirements under the Health Care
2 Security Ordinance and the Fair Chance Ordinance. It addresses the reporting requirements
3 only, and only to the extent addressed by the ordinance.
4

5 Section 2. The Administrative Code is hereby amended by revising Section 14.3(f)(2),
6 to read as follows:

7 **SEC. 14.3. EMPLOYER REQUIREMENTS.**

8 * * * *

9 (f) **Additional Employer Responsibilities.** A Covered Employer shall:

10 * * * *

11 (2) provide information to OLSE, or the OLSE's designee, on an annual
12 basis (*with the exception of reporting on calendar year 2019 and 2020 compliance*) containing such
13 other information as OLSE shall require, including information on the Employer's compliance
14 with this Chapter, but OLSE may not require an Employer to provide information in violation of
15 State or federal privacy laws. In the event the information required by OLSE is comingled with
16 information protected by privacy laws, the Employer shall redact the private information. If a
17 Covered Employer uses a Revocable Expenditure to satisfy its obligation to make Required
18 Health Care Expenditures for any of its Covered Employees, the Employer shall also report to
19 OLSE any conditions or restrictions on the Covered Employee's use of the expenditure, and
20 the condition or conditions that permit any portion of the expenditure to be revoked by or
21 returned to the Covered Employer.

22 * * * *

23
24 Section 3. The Police Code is hereby amended by revising Section 4910(b), to read as
25 follows:

1 **SEC. 4910. EMPLOYER RECORDS.**

2 * * * *

3 (b) An Employer shall provide information to the OLSE, or the OLSE's designee, on an
4 annual basis (with the exception of reporting on calendar year 2019 and 2020 compliance) as may
5 be required to verify the Employer's compliance with this Article.

6 * * * *

7
8 Section 4. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12
13 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: /s/ _____
23 LISA POWELL
24 Deputy City Attorney

25
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