

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, to: change the requirements of the Health Care Accountability Ordinance**
 6 **with respect to health benefit plans, exemptions for certain categories of employees**
 7 **and agreements, and the payment rates due from employers; authorize the Health**
 8 **Commission to increase the payment rates; authorize the withholding of contract**
 9 **payments; make both substantive and clarifying changes with respect to obligations**
 10 **imposed on Contracting Parties for notification, investigation, auditing, inspection,**
 11 **enforcement, and settlement procedures; revise procedures for the assessment of**
 12 **liquidated damages; establish a process for determining violations and for the**
 13 **administrative appeal of such determinations; and ratify certain administrative actions.**

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

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

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

20 SEC. 12Q.2.1. AGENCY.

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

24 SEC. 12Q.2.2. AGENCY DIRECTOR.

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

5 SEC. 12Q.2.9. COVERED EMPLOYEE.

6 (a) "Covered Employee" shall mean:

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

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

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

12 (C) Elsewhere in the United States; and

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

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

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

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

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

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

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

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

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

22 (c) With respect to each Covered Employee who does not reside in San Francisco,
23 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 ~~the Bureau of Labor Statistics Consumer~~
14 ~~Price Index for Medical Care in the San Francisco Bay Area~~ the increase in average Health
15 Maintenance Organization (HMO) premiums in California to reflect the cost of obtaining individual
16 health insurance; provided, however, the Health Commission shall take this action no more
17 than once a year ~~and any adjustments in such hourly rate or Weekly maximum must be approved by~~
18 ~~the Board of Supervisors by resolution.~~

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

4 SEC. 12Q.4. CONTRACTUAL OBLIGATIONS.

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

7 (1) To comply with the requirements of this Chapter, including the requirement to
8 choose and perform one of the Health Care Accountability Components set forth in Section
9 120.3;

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

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

17 (4) (3) To provide information and reports to the City in accordance with any reporting
18 standards promulgated by the Agency in consultation with the Director of Health;

19 (5) (4) To provide the City with access to pertinent payroll records relating to the number
20 of employees employed and terms of medical coverage as allowed by law after receiving a written
21 request to do so and being provided at least ten (10) five (5) business days to respond;

22 (6) (5) To allow the City to inspect Contracting Parties' job sites and have access to
23 Contracting Parties' employees in order to monitor and determine compliance with this Chapter;

24 (7) (5) To cooperate with the Agency when it conducts audits;
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1 (8) ~~(6)~~ To include in every Contract, Subcontract, Lease, or Sublease subject to this
2 Chapter provisions requiring compliance with this Chapter, consistent with any directives or
3 standards adopted by the Agency;

4 (9) ~~(7)~~ To notify the Contracting Department Agency promptly of any Subcontractors
5 performing services covered by this Chapter and certify to the Contracting Department Agency
6 that it has notified the Subcontractors of their obligations under this Chapter; and

7 (10) ~~(8)~~ To represent and warrant that it is not an entity that was set up, or is
8 being used, for the purpose of evading the intent of this Chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Every Contract, Contract Amendment, Lease and Lease Amendment entered after January 1,
22 2006 shall contain provisions in which the Contracting Party agrees:

23 (1) To be liable to the City for liquidated damages as provided in this Section;
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1 (2) To be subject to the procedures governing enforcement of a breach of the terms of a
2 Contract, Contract Amendment, Lease or Lease Amendment which terms are required by this Chapter,
3 as set forth in Section 12Q.5.2;

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

10 (4) That for failure to comply with the requirements of this Chapter, the Agency may require
11 the Contracting Party to pay the City liquidated damages of up to one hundred dollars (\$100) for each
12 one-week pay period for each employee for whom the Contracting Party has either not offered health
13 plan benefits or made payments as required by Section 12Q.3. The Agency shall adjust this amount
14 proportionately for Contracting Parties that use a pay period other than one week;

15 (5) That for any failure to provide reports to the City or access to pertinent records, or any
16 failure to cooperate with any audit, inspection or investigation conducted by the Agency, the Agency
17 may require the Contracting Party to pay the City liquidated damages of up to one thousand dollars
18 (\$1000); and

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

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

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

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

20 (c) Administrative Hearing.

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

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

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

6 (d) Hearing Officer's Decision.

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

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

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

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

9 (e) Withholding of Payments by Controller.

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

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

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

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

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

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

17 (1) ~~(2)~~ The needed service, project or property arrangement under the Contract or
18 Lease is available only from a sole source;

19 (2) ~~(3)~~ Pursuant to Chapter 6 or 21 of the Administrative Code, the Contract or Lease is
20 necessary to respond to an emergency that endangers the public health or safety;

21 (3) ~~(4)~~ There are no qualified responsive bidders or prospective vendors or tenants that
22 comply with the requirements of this Chapter and the agreement is for a service, lease or
23 project that is essential to the City or the public;

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1 ~~(4)~~ ~~(5)~~ The public interest warrants the granting of a waiver because application of this
2 Chapter would constitute an adverse impact on services or an unreasonable adverse financial
3 impact on the City; or

4 ~~(5)~~ ~~(6)~~ (A) The services to be purchased are available under a bulk purchasing
5 arrangement with a federal, state or local governmental entity;

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

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

10 (b) Each waiver shall be effective for the duration of the Contract or Lease.
11 Subsequent waivers may be requested and either granted or denied.

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

15
16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By: _____
19 AMY S. ACKERMAN
20 Deputy City Attorney

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