

[Administrative Code - Compensation for City Employees with Same-Sex Spouses or Same-Sex Domestic Partners]

**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 paid by the City for a same-sex spouse, or same-sex domestic  
17 partner, the City shall pay an amount equal to twenty (20%) percent of the portion of the employee's  
18 health insurance premiums attributable to the same-sex spouse, or same-sex partner, as determined by  
19 the San Francisco Health Service System. These payments shall not be part of the employee's base pay,  
20 and shall not be included in any overtime or premium pay calculations.

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

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

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

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

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

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

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

19 Section 4. The Board of Supervisors finds that all the sections of this ordinance are  
20 intended and necessary to achieve a single legislative objective. To that end, the provisions  
21 of this ordinance are not severable, and Section 1 of this ordinance and proposed  
22 Administrative Code Section 16.704 shall only be adopted if Section 2 and proposed

1 Administrative Code Section 16.29-7.6 are adopted by the three-fourths' vote of the Board of  
2 Supervisors required by Charter Section A8.500, as provided in Section 3 above.

3 Section 5. Effective Date. This Ordinance shall become effective 30 days from the  
4 date of passage.

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

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

11  
12 By: \_\_\_\_\_  
ERIK A. RAPOPORT  
13 Deputy City Attorney