

File No. 201133

Committee Item No. 1

Board Item No. 1

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget & Finance Committee

Date October 28, 2020

Board of Supervisors Meeting

Date November 10, 2020

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Completed by: Linda Wong

Date October 23, 2020

Completed by: Linda Wong

Date October 30, 2020

1 [Administrative Code - Health Care Requirements for Certain Employers at San Francisco
2 International Airport]

3 **Ordinance amending the Administrative Code to require employers of employees**
4 **covered by the Quality Standards Program at the San Francisco International Airport to**
5 **provide family health insurance to such employees, or to make contributions on the**
6 **employees' behalf to an account established under Section 14.2 of the Administrative**
7 **Code.**

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. Title.

17 This ordinance shall be known as the "Healthy Airport Ordinance."

18 Section 2. Findings.

19 (a) The San Francisco International Airport ("Airport") is a worldwide transportation hub,
20 connecting the San Francisco Bay Area directly to cities throughout the United States,
21 Canada, Mexico, Central America, Asia, Australia, and Europe. An average of nearly 58
22 million people normally travel through the Airport each year.

23 (b) On December 7, 1999, the San Francisco Airport Commission, by Resolution No.
24 99-0446, adopted the Quality Standards Program (QSP) to enhance Airport safety and
25 security. The Resolution required the implementation of minimum standards for hiring,

1 training, performance management, and compensation and benefits of employees covered by
2 the QSP, as well as enhanced equipment safety and security standards. The Airport
3 Commission incorporated the QSP into the Airport Rules and Regulations and required
4 compliance as a condition of Airport use permits.

5 (c) The QSP's compensation and benefit standards aim to assist in the recruitment of
6 high-quality employees and the reduction of employee turnover, and have been successful in
7 doing so, which in turn has improved worker performance. After the QSP was implemented,
8 turnover of covered employees fell by an average of 34% overall, with even larger decreases
9 for employee groups that received higher than average increases in compensation.
10 Employers reported that after the QSP was implemented they were able to increase their
11 hiring standards, and that they experienced improved employee performance, reduced
12 disciplinary actions, reduced absenteeism, and fewer employees who failed initial training.
13 These results improved safety and security at the Airport. Although the primary goals of the
14 program are safety and security, the QSP also improved Airport efficiency and customer
15 service.

16 (d) Due to the success of the program, the Airport Commission has adopted several
17 resolutions that expanded the QSP to include higher standards and new employee groups
18 that directly impact Airport safety or security. Under Charter Section 4.104, each of these
19 resolutions was adopted after notice and a public hearing to consider public comment.

20 (1) On January 18, 2000, by Resolution No. 00-0002, the Airport Commission
21 expanded the QSP to cover employees of airlines and service providers who have access to
22 the Airfield Operations Area or otherwise are directly involved in passenger and facility safety
23 and security.

24 (2) After a comprehensive review of the QSP, on August 18, 2009, by
25 Resolution No. 09-0199, the Airport Commission enhanced the QSP's employee

1 compensation requirements. The Resolution required employers to provide QSP-covered
2 employees with individual health benefits that met the minimum standards of the Health Care
3 Accountability Ordinance (HCAO), Administrative Code Chapter 12Q. The Resolution
4 temporarily froze the QSP minimum wage rate at \$12.33 per hour until that rate was no more
5 than \$0.50 per hour more than the wage rate required by the Minimum Compensation
6 Ordinance (MCO), Administrative Code Chapter 12P. The HCAO and MCO, each enacted
7 after the QSP was adopted, cover employees working under certain City contracts, leases,
8 and other agreements.

9 (3) On October 13, 2015, by Resolution No. 15-0216, the Airport Commission
10 included in the QSP employees located on or near Airport property who are directly involved
11 in the preparation and/or transportation of food and beverage products delivered directly onto
12 aircraft in the QSP. Additionally, to protect the QSP's pay standard, and the safety and
13 security interests that this standard supports, this Resolution provided that employee wage
14 requirements could not be waived in a collective bargaining agreement (CBA) unless the CBA
15 clearly and unambiguously waived them and provided for wages that at least met the QSP
16 standards. However, a CBA still may waive the QSP health benefit requirements.

17 (4) On January 19, 2016, by Resolution No. 16-0035, the Airport Commission
18 adopted additional QSP Airport safety and employee health and safety standards, enhanced
19 QSP employee training requirements, included Airport custodial workers in the QSP, and
20 increased fines for non-compliance.

21 (e) The individual health benefits provided to QSP-covered employees are critical to
22 the health, well-being, and financial security of those employees. These health benefits not
23 only enhance QSP employee recruitment and retention and reduce employee absences;
24 employee access to health care also reduces the spread of infectious disease. However,
25 some QSP-covered employees do not receive health benefits because their CBA waives the

1 health benefit requirement. Also, escalating health care costs are undermining the
2 effectiveness of these health benefits for QSP-covered employees, and of the QSP's
3 compensation and benefit components more broadly. Many QSP-covered employees report
4 that they cannot afford family health benefits. For example, employees of an airline catering
5 company report being offered family health benefits with a \$700 monthly premium and a
6 \$6,000 deductible. Such employees may face the choice between accessing health care or
7 affording other necessary expenses like rent or mortgage payments, food, or childcare.

8 (f) The COVID-19 pandemic poses a new and unprecedented threat to the health of
9 Airport employees and consequently to the City's ability to safely and effectively operate the
10 Airport. As COVID-19 spread in Asia and Europe, the Trump Administration did not impose
11 international travel limits until February 2, 2020, more than a month after the virus was first
12 reported and after it had already been documented to have spread to more than 20 countries,
13 including the United States. SFO workers likely had been exposed to COVID-19 before the
14 novel coronavirus was detected in the United States.

15 (g) On March 16, 2020, to mitigate the spread of COVID-19, local health officers in
16 seven Bay Area jurisdictions, including the City and San Mateo County, where the Airport is
17 located, issued health orders directing individuals living in those jurisdictions to shelter in their
18 places of residence and directing businesses, except essential businesses as defined in the
19 order, to cease activities at facilities located within those jurisdictions. Although these health
20 orders have been gradually modified to allow additional activities, they remain in place
21 indefinitely, and a large number of Bay Area employees continue to work remotely. But many
22 others in a variety of industries perform jobs that are considered essential but that cannot be
23 performed remotely. Airport employees, an essential workforce due to their role in facilitating
24 air travel, which is an essential business, must continue to perform their work duties in person,
25

1 and thus face a risk of transmission of COVID-19 that is significantly higher than for those who
2 are able to work safely at home.

3 (h) Employees working at the Airport who perform services that directly impact safety
4 and/or security at the Airport are at considerable risk of contracting and spreading COVID-19
5 due to the nature of their work duties. As examples:

6 (1) QSP-covered employees, including airline baggage handlers, wheelchair
7 agents, security screeners, and lobby agents face a heightened risk of exposure as their job
8 duties require frequent, close contact with passengers, often in areas where passengers are
9 likely to congregate together. Inconsistent policies for enforcing compliance with face covering
10 requirements increase the risk that employees face.

11 (2) Employees of airline catering companies often work in climate-controlled
12 spaces with little ventilation, where they must breathe the same air recirculated throughout
13 their shifts. These employees often work in crowded worksites where distancing is not
14 possible—in industrial kitchens or on assembly lines where employees stand shoulder-to-
15 shoulder as they prepare food, assemble food and beverage carts, and wash dishes. Others
16 must board multiple airplanes every week to coordinate catering delivery, coming into close
17 contact with airplane cabin crews in spaces where distancing is often impossible.

18 (3) Employees who disinfect and clean airplane cabins in between flights must
19 come into contact with surfaces and areas used by large groups of air travelers, and in some
20 instances have been asked to clean airplane cabins while passengers are still present.

21 (i) As of September 29, 2020, at least 131 employees who work at the Airport have
22 tested positive for COVID-19. This figure likely significantly underestimates the true number of
23 COVID-19 cases among employees who work at the Airport, because many employees lack
24 access to testing.

1 (j) Many Airport workers are people of color, who may be especially vulnerable to
2 contracting COVID-19 and to suffering greater health consequences from the virus. According
3 to the Centers for Disease Control (CDC), there is increasing evidence that some racial and
4 ethnic minority groups are disproportionately impacted by COVID-19. The CDC has identified
5 occupation; healthcare access and utilization; discrimination; educational, wealth and income
6 gaps; and substandard housing as the contributing factors that may increase the risk that
7 people from certain racial and ethnic minorities contract, face serious illness, or die from
8 COVID-19.

9 (k) Access to affordable family health benefits is central to achieving the goals of the
10 QSP. Protecting the health of employees and their families is important to the City's
11 proprietary interests as owner and operator of the Airport, including its interest in attracting
12 and retaining high-quality employees whose work impacts safety and security, protecting the
13 community and the traveling public from the spread of COVID-19, and restoring public
14 confidence in the safety of air travel.

15 (l) Moreover, recent history shows that these interests are not likely to be limited to the
16 duration of the COVID-19 pandemic. Air travel played a central role in the spread of severe
17 acute respiratory syndrome (SARS) in 2002 and Middle East Respiratory System (MERS) in
18 2014, as well as influenza pandemics in 1957, 1968, and 2009. It is therefore in both the
19 short-term interest and the long-term interest of the Airport and the City to adopt the changes
20 to the HCAO set forth in this ordinance.

21
22 Section 3. Chapter 12Q of the Administrative Code is hereby amended by revising
23 Sections 12Q.2, 12Q.2.7, 12Q.2.9, 12Q.3, 12Q.5, 12Q.5.2, and 12Q.8; renumbering existing
24 Section 12Q.2.16 as Section 12Q.2.22 and revising said Section; and adding new Section
25 12Q.2.16, to read as follows:

1 **SEC. 12Q.2. DEFINITIONS.**

2 As used in this Chapter 12Q, the following capitalized terms shall have the meanings
3 set forth in ~~the following provisions~~ Sections 12Q.2.1 through 12Q.2.22.

4
5 **SEC. 12Q.2.7. CONTRACTING PARTIES.**

6 “Contracting Parties” shall mean Contractors, Subcontractors, Tenants, ~~and~~
7 Subtenants, and employers of San Francisco Airport Service Employees.

8
9 **SEC. 12Q.2.9. COVERED EMPLOYEE.**

10 (a) “Covered Employee” shall mean:

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

13 ~~————— (A) Within the geographic boundaries of the City; or~~

14 ~~————— (B) On real property owned or controlled by the City, but outside the geographic~~
15 ~~boundaries of the City; or~~

16 ~~————— (C) Elsewhere in the United States; and~~

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

19 (3) An Employee of a Contractor or Subcontractor that has a Contract or
20 Subcontract to perform services on property covered by a Lease or Sublease if the Employee
21 works 20 hours or more per Week on the property; and

22 (4) A San Francisco Airport Service Employee who works any number of hours during
23 any Week in such capacity.

24 **(b4)** A Contractor or Subcontractor may not divide an employee's time between
25 working on a City contract and working on other duties with the intent of reducing the number

1 of Covered Employees working on the Contract to evade compliance with this Chapter 12Q.
2 Such action shall constitute a violation of this Chapter.

3 (c) Notwithstanding the foregoing, the term "Covered Employee" does not include the
4 following:

5 * * * *

6
7 **SEC. 12Q.2.16. SAN FRANCISCO AIRPORT SERVICE EMPLOYEES.**

8 "San Francisco Airport Service Employees" shall mean Employees who are covered employees
9 under the Quality Standards Program adopted by the San Francisco Airport Commission, as may be
10 amended from time to time.

11 ~~**WEEK.**~~

12 ~~"Week" shall mean a consecutive seven-day period. If the Contracting Party's regular pay~~
13 ~~period is other than a seven-day period, the number of hours worked by an employee during a seven-~~
14 ~~day Week for purposes of this Chapter; shall be calculated by adjusting the number of hours actually~~
15 ~~worked during the Contracting Party's regular pay period to determine the average over a seven-day~~
16 ~~Week. However, such period of averaging shall not exceed a duration of one month.~~

17
18 **SEC. 12Q.2.22. WEEK.**

19 "Week" shall mean a consecutive seven-day period. If the Contracting Party's regular pay
20 period is other than a seven-day period, the number of hours worked by an employee during a seven-
21 day Week for purposes of this Chapter 12Q shall be calculated by adjusting the number of hours
22 actually worked during the Contracting Party's regular pay period to determine the average over a
23 seven-day Week. However, such period of averaging shall not exceed a duration of one month.

1 **SEC. 12Q.3. HEALTH CARE ACCOUNTABILITY COMPONENTS.**

2 (a) Except as provided in subsection (d), wWith respect to each Covered Employee who
3 either resides in San Francisco (regardless of where the Covered Employee provides
4 services) or provides services covered by this Chapter 12Q in San Francisco, each
5 Contracting Party shall do one of the following, at the Contracting Party's option:

6 * * * *

7 (b) Except as provided in subsection (d), wWith respect to each Covered Employee who
8 does not reside in San Francisco, but who provides services covered by this Chapter 12Q at
9 the San Francisco Airport or at the San Bruno Jail, each Contracting Party shall do one of the
10 options set forth in §subsection (a), at the Contracting Party's option.

11 * * * *

12 (d) With respect to each Covered Employee who is a San Francisco Airport Service Employee,
13 each Contracting Party shall do one of the following, at the Contracting Party's option:

14 (1) Offer health plan benefits to the Covered Employee and the Covered Employee's
15 dependents, with all the following features:

16 (A) The health benefits shall be offered at no cost to the Covered Employee.

17 (B) The health benefits offered shall include at least one plan that provides a
18 level of coverage that is designed to provide benefits that are actuarially equivalent to at least 90% of
19 the full actuarial value of the benefits provided under the plan and to provide coverage for all services
20 described in the California Essential Health Benefit Benchmark Plan. A Contracting Party may offer
21 additional health benefit plans, provided that each such health benefit plan offered shall provide a level
22 of coverage that is designed to provide benefits that are actuarially equivalent to at least 80% of the
23 full actuarial value of the benefits provided under the plan and to provide coverage for all services as
24 described in the California Essential Health Benefit Benchmark Plan.

1 (C) The maximum period for each Covered Employee’s health benefits to become
2 effective shall be no later than the first day of the first month after 30 days from the start of employment
3 as a San Francisco Airport Service Employee; provided, however, that if a Contracting Party elects to
4 make monthly contributions for a Covered Employee pursuant to subsection (d)(2), health benefits shall
5 become effective no later than the first day after the Contracting Party ceases making such
6 contributions.

7 (2) For each Week in which the Covered Employee works any hours as a San Francisco
8 Airport Service Employee, make contributions for that Employee as specified below into an account
9 established under Section 14.2 of the Administrative Code, as may be amended from time to time.

10 (A) Contributions made pursuant to this subsection (d)(2) shall be \$9.50 per
11 hour, but not to exceed \$380 in any Week, as of the operative date of the ordinance in Board File No.
12 201133 _____, establishing this subsection.

13 (B) Beginning with fiscal year 2022-2023, and for each following fiscal year, the
14 Director of Health shall propose adjustments to the hourly rate and weekly maximum fee provided in
15 this subsection (d)(2), based on changes since the prior year in the Bureau of Labor Statistics
16 Consumer Price Index for Medical Care in the San Francisco Bay Area or in average Health
17 Maintenance Organization premiums in California. The Health Director shall submit the proposed
18 adjustments, together with proposed adjustments under Section 12Q.3(a)(2), to the Controller by
19 March 1. The Controller shall make appropriate adjustments to the hourly rate and weekly maximum
20 fee without further action by the Board of Supervisors. The adjusted hourly rate and weekly maximum
21 fee shall take effect on July 1.

22 (~~e~~) A Covered Employee may voluntarily waive an offer of health plan benefits under
23 this Section 12Q.3 using a waiver form approved by the Agency upon providing the
24 Contracting Party proof of current health plan coverage. With respect to subsection (d) of this
25 Section 12Q.3, such proof of current health plan coverage must include the Covered

1 Employee's dependents. The Contracting Party must retain voluntary waiver forms and proof
2 of health plan coverage for three years and must provide the Agency access to them upon
3 request.

4 (f) When preparing proposed budgets and requests for supplemental appropriations for
5 contract services, City departments that regularly enter into agreements for the provision of
6 services by nonprofit corporations shall transmit with their proposal a written confirmation that
7 the department has considered in its calculation the costs that the nonprofit corporations
8 calculate that they will incur in complying with the Health Care Accountability Ordinance.

9 (gfe) Notwithstanding the above, if, at the time a Contract, Subcontract, Lease, or
10 Sublease is executed, the Contracting Party has 20 or fewer employees (or, in the case of a
11 Nonprofit Corporation, 50 or fewer employees), including any employees the Contracting
12 Party plans to hire to implement the Contract, Subcontract, Lease, or Sublease, the
13 Contracting Party shall not be obligated to provide the Health Care Accountability
14 Components set forth in this Section 12Q.3(a), (b), or (c) to its Covered Employees. In
15 determining the number of employees had by a Contracting Party, all employees of all entities
16 that own or control the Contracting Party and that the Contracting Party owns or controls, shall
17 be included.

18
19 **SEC. 12Q.5. ADMINISTRATION AND ENFORCEMENT.**

20 * * * *

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

24 (1) The right, at the discretion of the Agency, to charge the Contracting Party for
25 any amounts that the Contracting Party should have paid to the City for hours worked by

1 Covered Employees pursuant to Section 12Q.3(a)(2), ~~and (b)~~, or (d), or to Covered Employees
2 pursuant to Section 12Q.3(c)(2), together with simple annual interest of 10% on such amount
3 from the date payment was due;

4 * * * *

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

7 * * * *

8 **(e) Withholding of Payments by Controller.**

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

17 (2) The Controller shall withhold these funds until (A) the hearing officer issues a
18 decision finding that the Contracting Party does not owe all or a portion of the amount
19 withheld, in which case the Controller shall release funds to the Contracting Party consistent
20 with the hearing officer's decision or (B) the Contracting Party consents to the use of the funds
21 to pay the City the amounts that the Agency or hearing officer found due. As to any funds
22 being withheld for which neither (A) nor (B) applies, the Controller shall retain the funds until
23 the hearing officer's decision is no longer subject to judicial review, at which time the
24 Controller shall distribute amounts owed under Section 12Q.3(a)(2), (b), or (d) in the
25 appropriate account for the use of the Department of Public Health and amounts due as

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
3 subsection, the Agency may authorize the release of payments withheld from the Contracting
4 Party under this Section if the Agency determines that the continued withholding of funds
5 imposes a substantial risk of endangering public health or safety, interfering with a service or
6 project that is essential to the City, or having an unreasonable adverse financial impact on the
7 City.

8
9 **SEC. 12Q.8. WAIVER THROUGH COLLECTIVE BARGAINING.**

10 *Except for the requirements provided in subsection 12Q.3(d), a*All or any portion of the
11 applicable requirements of this Chapter 12Q may be waived in a bona fide collective
12 bargaining agreement, provided that such waiver is explicitly set forth in such agreement in
13 clear and unambiguous terms.

14
15 Section 4. Effective and Operative Dates.

16 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
17 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
18 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
19 Mayor’s veto of the ordinance.

20 (b) This ordinance shall become operative 90 days after its effective date.

21
22 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
23 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
24 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
25 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

1 additions, and Board amendment deletions in accordance with the “Note” that appears under
2 the official title of the ordinance.

3

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

6 By: /s/ Lisa Powell
7 LISA POWELL
8 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Health Care Requirements for Certain Employers at San Francisco International Airport]

Ordinance amending the Administrative Code to require employers of employees covered by the Quality Standards Program at the San Francisco International Airport to provide family health insurance to such employees, or to make contributions on the employees' behalf to an account established under Section 14.2 of the Administrative Code.

Existing Law

The Health Care Accountability Ordinance (HCAO) requires employers to offer individual health plan benefits to their covered employees or to make payments to the Department of Public Health (DPH) (or, under limited circumstances not relevant here, to make payments directly to their covered employees). See Admin. Code § 12Q.3. The HCAO applies to most City contractors and tenants, including those at San Francisco International Airport ("Airport"), but not Airport permittees.

Separately, the Airport's Quality Standards Program (QSP), established by the Airport Commission, sets minimum training, equipment, safety, hiring, compensation, and benefit standards for employees who directly impact Airport safety and security. The QSP includes certain SFO permittees that are not covered by the HCAO, such as employers of wheelchair attendants and baggage handlers. Conversely, some HCAO-covered employees at SFO, such as those with concession leases, are not included in the QSP. Employers must provide QSP-covered employees with individual health benefits that comply with the HCAO's "minimum health coverage standards," even if those employees are not covered employees under the HCAO. A collective bargaining agreement (CBA) may waive the health benefit requirements under both the HCAO and the QSP.

Amendments to Current Law

The proposed ordinance would amend the HCAO to require expanded health benefits for "San Francisco Airport Service Employees," which the ordinance defines as employees covered by the QSP. Employers of San Francisco Airport Service Employees would be required to either (1) provide family, rather than individual, health insurance; or (2) pay contributions on behalf of each employee, starting at \$9.50 per hour, to the City Option Program established under the Health Care Security Ordinance (HCSO), Admin. Code Chapter 14, rather than \$5.60 per hour to the City for DPH under the current HCAO. These requirements must be satisfied for each San Francisco Airport Service Employee, with no minimum-hours requirement, whereas under the HCAO employees must work an average of 20 hours per week on the covered agreement to be covered employees. The ordinance does not permit this health benefit requirement to be waived by a CBA.

Background Information

The individual health benefits provided to QSP-covered employees have enhanced QSP employers' recruitment and retention of employees and have reduced employee absences. However, some QSP-covered employees are not provided individual health insurance because their CBA waives the health benefits requirement, and many QSP-covered employees report that family health insurance is unaffordable.

Employees working at the Airport who perform services that directly impact safety and/or security at the Airport are at elevated risk of contracting and spreading COVID-19 due to the nature of their work duties, which often require them to work in frequent, close contact with passengers and coworkers.

This ordinance seeks to expand QSP-covered employees' access to family health insurance benefits in order to protect those employees and their families, protect the community and the traveling public from the spread of COVID-19, and restore public confidence in the safety of air travel.

A Committee Amendment clarified the circumstances in which an employee may voluntarily waive an offer of health insurance under the HCAO. Such voluntary waiver requires the employee to provide proof of health insurance benefits, which for San Francisco Airport Service Employees must include proof that the employee's dependents have health insurance. Employers must use an OLSE-approved form for voluntary waivers, must retain the waiver forms and proof of insurance coverage for three years, and must provide them to OLSE upon request.

| | |
|--|--|
| <p>Item 1 File 20-1133 <i>Continued from October 21, 2020</i></p> | <p>Department: San Francisco International Airport (Airport)</p> |
| <p>EXECUTIVE SUMMARY</p> | |
| <p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed ordinance would amend the Administrative Code to require employees covered by the Quality Standards Program (QSP) at the San Francisco International Airport (Airport) to provide family health insurance to such employees, or to make contributions on the employees’ behalf to an account established under the Health Care Security Ordinance (Section 14.2 of the Administrative Code). <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The Health Care Accountability Ordinance (HCAO) requires employers to offer individual health plan benefits to their covered employees or to make payments to the Department of Public Health (DPH). The HCAO applies to most City contractors and tenants, including those at the Airport. The Health Care Security Ordinance established the Health Access Program, providing for Healthy San Francisco and Medical Reimbursement Accounts • The QSP sets hiring, training, performance management, and compensation standards for airlines, service providers, and catering companies doing business at the Airport. The proposed ordinance would apply to all QSP covered employees, regardless of number of hours worked. • Under the proposed ordinance, QSP employers may offer qualifying health plans covering employees and dependents at no cost to the employee (Option 1) or make a payment of \$9.50 per hour in accordance with the Health Care Security Ordinance (Option 2). <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed ordinance would result in cost increases to the Airport for two Airport security contracts. According to information provided by the Airport, the costs of offering qualifying health plans covering employees and dependents (Option 1) would result in estimated additional costs to the Airport each year ranging from \$805,733 to \$1,409,654, depending on the health plan. The costs of the \$9.50 per hour contribution in accordance with the Health Care Security Ordinance (Option 2) would result in estimated additional costs to the Airport each year of \$1,377,534. • According to information provided by the Airport, the costs of offering qualifying health plans covering employees and dependents (Option 1) would result in estimated additional costs each year to the airlines, service providers, and catering companies ranging from approximately \$8.4 million to \$24 million, depending on the health plan. The costs of the \$9.50 per hour contribution in accordance with the Health Care Security Ordinance (Option 2) would result in estimated additional costs each year to the airlines, service providers, and catering companies of approximately \$33 million. While these costs are not directly passed onto the Airport, they increase the cost of doing business for Airport tenants. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approval of the proposed ordinance is a policy matter for the Board of Supervisors. | |

MANDATE STATEMENT

According to City Charter Section 2.105, all legislative acts shall be by ordinance and require the affirmative vote of at least a majority of the members of the Board of Supervisors.

BACKGROUND

The Health Care Accountability Ordinance (HCAO), Chapter 12Q of the Administrative Code, requires employers to offer individual health plan benefits to their covered employees or to make payments to the Department of Public Health (DPH). The HCAO applies to most City contractors and tenants, including those at San Francisco International Airport (Airport), but not Airport permittees.

In December 1999, Airport Commission adopted the Quality Standards Program (QSP) to enhance safety and security. The QSP required the implementation of minimum standards for hiring, training, performance management, and compensation and benefits of employees covered by the QSP, as well as enhanced equipment safety and security standards for airlines and service providers whose employees perform services impacting safety and security at SFO.

According to Airport management, the QSP has been successful in recruiting high-quality employees and reducing turnover. Employers have reported that after the QSP was established, they have experienced improved employee performance, reduced disciplinary actions, reduced absenteeism, and fewer employees failing initial training. While the primary goals of the program are the safety and security of airport operations, the QSP has also improved Airport efficiency and customer service.

The Airport Commission has adopted several resolutions expanding or amending the QSP, as shown in Table 1 below.

Table I: Airport Commission Amendments to QSP

| Date | Amendment Description |
|--------------|---|
| January 2000 | Expanded the QSP to cover employees of airlines and service providers who have access to the Airfield Operations Area or otherwise are directly involved in passenger and facility safety and security. |
| August 2009 | Required employers to provide QSP-covered employees with individual health benefits that meet the minimum standards of the HCAO. Temporarily froze the QSP minimum wage rate at \$12.33 per hour until that rate was no more than \$0.50 per hour more than the wage rate required by the Minimum Compensation Ordinance (MCO). |
| October 2015 | Expanded the QSP to cover employees located on or near Airport property who are directly involved in the preparation and/or transportation of food and beverage products delivered directly onto aircraft. Provided that employee wage requirements could not be waived in a collective bargaining agreement (CBA) unless the CBA clearly and unambiguously waived them and provided for wages that at least met the QSP standards. However, a CBA may still waive the QSP health benefit requirements. |
| January 2016 | Adopted additional QSP Airport safety and employee health and safety standards, enhanced QSP training requirements, included Airport custodial workers in the QSP, and increased fines for non-compliance. |

Airport management reports that some CBAs at the Airport waive the health benefit requirement, resulting in some QSP employees having only minimal health care coverage.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the Administrative Code to require QSP employers at the Airport to provide family health insurance at no cost to employees, or to make contributions on the employees' behalf to an account established under Section 14.2 of the Administrative Code, the Health Care Security Ordinance (HCSO).¹ The contribution would be \$9.50 per hour for each employee, rather than \$5.60 per hour per employee under the HCAO. The payment amount would be adjusted annually based on the Consumer Price Index (CPI). The proposed ordinance would apply to all QSP covered employees, regardless of number of hours worked, while the HCAO only applies to employees working an average of at least 20 hours per week. Employees may opt out of this benefits program if they demonstrate proof of family health insurance coverage. The proposed ordinance specifies that its requirements cannot be waived by a collective bargaining agreement.

FISCAL IMPACT

The proposed ordinance would result in direct cost increases to Airport service contracts, as well as potential indirect costs.

Direct Costs

According to Ms. Emylene Aspilla, Airport Director of Social Responsibility, the Airport currently has two contracts with service providers whose employee health costs are partially covered by the Airport, General Airport Security Services (GASS) and Hallmark Aviation Services (Hallmark). Under the GASS contract, the Airport pays a flat rate of \$624.19 per employee per month for health coverage. Under the Hallmark contract, the Airport pays 22.28 percent of the medical, dental, and life insurance costs for their employees.

QSP employers may offer qualifying health plans covering the employee and dependents at no cost to the employee (Option 1), or make a payment of \$9.50 per hour in accordance with the Health Care Security Ordinance (Option 2). According to information provided by the Airport, under the proposed legislation, the costs of offering qualifying health plans covering employees and dependents (Option 1) would result in estimated additional costs to the Airport each year ranging from \$805,733 to \$1,409,654, depending on the health plan.² Under the proposed

¹ Administrative Code Section 14.2 established the Health Access Program, providing for Healthy San Francisco and Medical Reimbursement Accounts. Healthy San Francisco is a network of providers available to uninsured San Francisco residents, including Department of Public Health, non-profit, and private providers, and is funded by a variety of sources, including payments from employers on behalf of employees. Medical Reimbursement Accounts are a public health benefit administered by DPH, funded in whole or in part by contributions from covered employees to the City under Section 14.3, from which eligible employees may obtain reimbursement for health care services.

² The costs have been estimated using the 10-County Average for two popular qualifying health plans: The Kaiser Permanente HMO and the BlueShield Access+ HMO, based on the San Francisco Health Service System's presentation to the Board of Supervisors on June 17, 2020.

legislation, the costs of the \$9.50 per hour contribution in accordance with the Health Care Security Ordinance (Option 2) would result in estimated additional costs to the Airport each year of \$1,377,534.

Indirect Costs

According to Ms. Aspillá, the proposed ordinance would increase costs for airlines, service providers, and catering companies that operate at the Airport. While these costs are not directly passed onto the Airport, they increase the cost of doing business for Airport tenants.

The Airport estimates that 4,260 employees would be eligible for family healthcare benefits under the proposed ordinance, based on a forecast of approximately 18.4 million passengers in FY 2020-21. According to information provided by the Airport, under the proposed legislation, the costs of offering qualifying health plans covering employees and dependents (Option 1) would result in estimated additional costs each year to the airlines, service providers, and catering companies ranging from approximately \$8.4 million to \$24 million, depending on the health plan. Under the proposed legislation, the costs of the \$9.50 per hour contribution in accordance with the Health Care Security Ordinance (Option 2) would result in estimated additional costs each year to the airlines, service providers, and catering companies of approximately \$33 million.³

If airlines choose to pass the additional costs onto passengers through ticket pricing, Ms. Aspillá estimates that the proposed ordinance may result in a ticket increase of \$1.83 per ticket, based on approximately 18.4 million passengers in FY 2020-21.

RECOMMENDATION

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

³ The estimate assumes that 75 percent of employees work 40 hours per week, or 160 hours per month, and 25 percent of employees work 20 hours per week, or 80 hours per month.

| | |
|---|---|
| <p>Item 11 File 20-1133</p> | <p>Department: San Francisco International Airport (Airport)</p> |
| <p>EXECUTIVE SUMMARY</p> | |
| <p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed ordinance would amend the Administrative Code to require employees covered by the Quality Standards Program (QSP) at the San Francisco International Airport (Airport) to provide family health insurance to such employees, or to make contributions on the employees’ behalf to an account established under the Health Care Security Ordinance (Section 14.2 of the Administrative Code). <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The Health Care Accountability Ordinance (HCAO) requires employers to offer individual health plan benefits to their covered employees or to make payments to the Department of Public Health (DPH). The HCAO applies to most City contractors and tenants, including those at the Airport. The Health Care Security Ordinance established the Health Access Program, providing for Healthy San Francisco and Medical Reimbursement Accounts • The QSP sets hiring, training, performance management, and compensation standards for airlines, service providers, and catering companies doing business at the Airport. The proposed ordinance would apply to all QSP covered employees, regardless of number of hours worked, while the HCAO only applies to employees working an average of at least 20 hours per week. • Under the proposed ordinance, QSP employers may offer qualifying health plans covering employees and dependents at no cost to the employee (Option 1) or make a payment of \$9.50 per hour in accordance with the Health Care Security Ordinance (Option 2). <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed ordinance would result in cost increases to the Airport for two Airport security contracts. According to information provided by the Airport, the costs of offering qualifying health plans covering employees and dependents (Option 1) would result in estimated additional costs to the Airport each year ranging from \$805,733 to \$1,409,654, depending on the health plan. The costs of the \$9.50 per hour contribution in accordance with the Health Care Security Ordinance (Option 2) would result in estimated additional costs to the Airport each year of \$1,377,534. • According to information provided by the Airport, the costs of offering qualifying health plans covering employees and dependents (Option 1) would result in estimated additional costs each year to the airlines, service providers, and catering companies ranging from approximately \$8.4 million to \$24 million, depending on the health plan. The costs of the \$9.50 per hour contribution in accordance with the Health Care Security Ordinance (Option 2) would result in estimated additional costs each year to the airlines, service providers, and catering companies of approximately \$33 million. While these costs are not directly passed onto the Airport, they increase the cost of doing business for Airport tenants. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approval of the proposed ordinance is a policy matter for the Board of Supervisors. | |

MANDATE STATEMENT

According to City Charter Section 2.105, all legislative acts shall be by ordinance and require the affirmative vote of at least a majority of the members of the Board of Supervisors.

BACKGROUND

The Health Care Accountability Ordinance (HCAO), Chapter 12Q of the Administrative Code, requires employers to offer individual health plan benefits to their covered employees or to make payments to the Department of Public Health (DPH). The HCAO applies to most City contractors and tenants, including those at San Francisco International Airport (Airport), but not Airport permittees.

In December 1999, Airport Commission adopted the Quality Standards Program (QSP) to enhance safety and security. The QSP required the implementation of minimum standards for hiring, training, performance management, and compensation and benefits of employees covered by the QSP, as well as enhanced equipment safety and security standards for airlines and service providers whose employees perform services impacting safety and security at SFO.

According to Airport management, the QSP has been successful in recruiting high-quality employees and reducing turnover. Employers have reported that after the QSP was established, they have experienced improved employee performance, reduced disciplinary actions, reduced absenteeism, and fewer employees failing initial training. While the primary goals of the program are the safety and security of airport operations, the QSP has also improved Airport efficiency and customer service.

The Airport Commission has adopted several resolutions expanding or amending the QSP, as shown in Table 1 below.

Table 1: Airport Commission Amendments to QSP

| Date | Amendment Description |
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| August 2009 | Required employers to provide QSP-covered employees with individual health benefits that meet the minimum standards of the HCAO. Temporarily froze the QSP minimum wage rate at \$12.33 per hour until that rate was no more than \$0.50 per hour more than the wage rate required by the Minimum Compensation Ordinance (MCO). |
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| January 2016 | Adopted additional QSP Airport safety and employee health and safety standards, enhanced QSP training requirements, included Airport custodial workers in the QSP, and increased fines for non-compliance. |

Airport management reports that some CBAs at the Airport waive the health benefit requirement, resulting in some QSP employees having only minimal health care coverage.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the Administrative Code to require QSP employers at the Airport to provide family health insurance to employees, or to make contributions on the employees' behalf to an account established under Section 14.2 of the Administrative Code, the Health Care Security Ordinance (HCSO).¹ The contribution would be \$9.50 per hour for each employee, rather than \$5.60 per hour per employee under the HCAO. The payment amount would be adjusted annually based on the Consumer Price Index (CPI). The proposed ordinance would apply to all QSP covered employees, regardless of number of hours worked, while the HCAO only applies to employees working an average of at least 20 hours per week. The proposed ordinance specifies that its requirements cannot be waived by a collective bargaining agreement.

FISCAL IMPACT

The proposed ordinance would result in direct cost increases to Airport service contracts, as well as potential indirect costs.

Direct Costs

According to Ms. Emylene Aspilla, Airport Director of Social Responsibility, the Airport currently has two contracts with service providers whose employee health costs are partially covered by the Airport, General Airport Security Services (GASS) and Hallmark Aviation Services (Hallmark). Under the GASS contract, the Airport pays a flat rate of \$624.19 per employee per month for health coverage. Under the Hallmark contract, the Airport pays 22.28 percent of the medical, dental, and life insurance costs for their employees.

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¹ Administrative Code Section 14.2 established the Health Access Program, providing for Healthy San Francisco and Medical Reimbursement Accounts. Healthy San Francisco is a network of providers available to uninsured San Francisco residents, including Department of Public Health, non-profit, and private providers, and is funded by a variety of sources, including payments from employers on behalf of employees. Medical Reimbursement Accounts are a public health benefit administered by DPH, funded in whole or in part by contributions from covered employees to the City under Section 14.3, from which eligible employees may obtain reimbursement for health care services.

² The costs have been estimated using the 10-County Average for two popular qualifying health plans: The Kaiser Permanente HMO and the BlueShield Access+ HMO, based on the San Francisco Health Service System's presentation to the Board of Supervisors on June 17, 2020.

Security Ordinance (Option 2) would result in estimated additional costs to the Airport each year of \$1,377,534.

Indirect Costs

According to Ms. Aspillá, the proposed ordinance would increase costs for airlines, service providers, and catering companies that operate at the Airport. While these costs are not directly passed onto the Airport, they increase the cost of doing business for Airport tenants.

The Airport estimates that 4,260 employees would be eligible for family healthcare benefits under the proposed ordinance, based on a forecast of approximately 18.4 million passengers in FY 2020-21. According to information provided by the Airport, under the proposed legislation, the costs of offering qualifying health plans covering employees and dependents (Option 1) would result in estimated additional costs each year to the airlines, service providers, and catering companies ranging from approximately \$8.4 million to \$24 million, depending on the health plan. Under the proposed legislation, the costs of the \$9.50 per hour contribution in accordance with the Health Care Security Ordinance (Option 2) would result in estimated additional costs each year to the airlines, service providers, and catering companies of approximately \$33 million.³

If airlines choose to pass the additional costs onto passengers through ticket pricing, Ms. Aspillá estimates that the proposed ordinance may result in a ticket increase of \$1.83 per ticket, based on approximately 18.4 million passengers in FY 2020-21.

RECOMMENDATION

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

³ The estimate assumes that 75 percent of employees work 40 hours per week, or 160 hours per month, and 25 percent of employees work 20 hours per week, or 80 hours per month.



San Francisco International Airport

October 23, 2020

Budget and Finance Committee
San Francisco Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

TRANSMITTED VIA EMAIL
Sandra.Fewer@sfgov.org
Shamann.Walton@sfgov.org
Rafael.Mandelman@sfgov.org

SUBJECT: File No. 201133, Administrative Code - Dependent Health Care Requirements for Certain Employers at San Francisco International Airport

Dear Chair Fewer, Vice Chair Walton, and Supervisor Mandelman:

I would like to take this opportunity to clarify some statements that were made at the October 21, 2020 Budget and Finance Committee hearing on the Healthy Airport Ordinance (File No. 201133).

All airlines and airline service providers are part of the San Francisco International Airport’s (SFO) Quality Standards Program (QSP), and all are required to provide the health care benefits as defined in the City’s Health Care Accountability Ordinance (HCAO). In some cases, such as with the catering service providers, we understand that the employers and the union have negotiated a waiver of the HCAO in their collective bargaining agreement. This waiver has apparently resulted in some QSP employees having health care coverage that may not meet the standards prescribed under the HCAO. The discussion of additional costs airlines may pass on to passengers as the result of the proposed legislation belies the greater financial impact of the ordinance – the increased cost of doing business at SFO. We estimate that implementing this proposal could double health care costs for airlines and their service providers. As you know, the pandemic has led to a substantial decline in passenger volumes. Fewer passengers means less non-airline revenue to SFO – from sources such as parking, concessions, and TNC trip fees – which results in a greater share of expenses the airlines must cover, based on SFO’s residual rate setting/“break-even” budgeting methodology. These increased costs, paired with reduced passenger demand and a doubling in health care costs at SFO, have the potential to slow SFO’s post-pandemic recovery relative to that of other airports.

Lastly, estimating the number of workers currently employed by the airlines and their service providers is challenging due to the dynamic nature of the pandemic. For the worker estimates we shared with the Budget and Legislative Analyst, we correlated projected passenger activity to the number of employees per category, based on our 2019 Economic Impact Report. Based on the 2019 Economic Impact Report, Airlines, Fixed Based Operators, General Aviation, and Service Providers employed 20,634 workers. Using these pre-pandemic worker numbers, the costs of offering qualifying family health plans under the proposed legislation (Option 1) would result in estimated additional annual costs ranging from approximately \$40.9 million to \$120 million, depending on the health plan. Under the proposed legislation, the costs of the \$9.50 per hour contribution (Option 2) would result in estimated additional annual costs of approximately \$163 million.

I hope this clarifies some of the context for the regional impacts that were referenced during the hearing. Please feel free to contact me if you need further background.

Very truly yours,

Ivar C. Satero
Airport Director

cc: Chelsea.Boilard@sfgov.org
Tracy.Gallardo@sfgov.org
Erin.Mundy@sfgov.org
Linda.Wong@sfgov.org

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED MAYOR LARRY MAZZOLA PRESIDENT ELEANOR JOHNS VICE PRESIDENT RICHARD J. GUGGENHIME EVERETT A. HEWLETT, JR. MALCOLM YEUNG IVAR C. SATERO AIRPORT DIRECTOR

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: Health Commission, Mark Morewitz, Commission Secretary
Health Service System, Abbie Yant, Executive Director
Ivar C. Satero, Airport Director

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: October 9, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee received the following proposed legislation:

File No. 201133

Ordinance amending the Administrative Code to require employers of employees covered by the Quality Standards Program at the San Francisco International Airport to provide family health insurance to such employees, or to make contributions on the employees' behalf to an account established under Section 14.2 of the Administrative Code.

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: Cathy Widener, SF Airport
Corina Monzon, Airport Commission Corina.Monzon@flysfo.com
Linda Wong, Budget and Finance Committee

President, District 7
BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. 554-6516
Fax No. 554-7674
TDD/TTY No. 544-6546

Norman Yee

PRESIDENTIAL ACTION

Date:

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,

Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No.

(Primary Sponsor)

Title.

Transferring (Board Rule No 3.3)

File No.

(Primary Sponsor)

Title.

From:

Committee

To:

Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor:

Replacing Supervisor:

For:

Meeting

(Date)

(Committee)

Start Time:

End Time:

Temporary Assignment:

Partial

Full Meeting

Norman Yee, President
Board of Supervisors

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):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only

From: [Young, Victor \(BOS\)](#)
To: [Wong, Linda \(BOS\)](#)
Subject: FW: REFERRAL - BOS File No. 201133 Administrative Code - Health Care Requirements for Certain Employers at San Francisco International Airport
Date: Friday, October 16, 2020 3:19:03 PM
Attachments: [201133 FY1.pdf](#)
[image001.png](#)

Departmental response for 201133 scheduled next week.

Victor Young

Assistant Clerk

Board of Supervisors

phone 415-554-7723 | fax 415-554-5163

victor.young@sfgov.org | www.sfbos.org

From: Yant, Abbie (HSS) <abbie.yant@sfgov.org>
Sent: Friday, October 16, 2020 12:45 PM
To: Young, Victor (BOS) <victor.young@sfgov.org>
Cc: Lopez, Holly (HSS) <holly.lopez@sfgov.org>; Griggs, Mitchell (HSS) <mitchell.griggs@sfgov.org>
Subject: FW: REFERRAL - BOS File No. 201133 Administrative Code - Health Care Requirements for Certain Employers at San Francisco International Airport

Victor

Thank you for sending us this information. We have received one inquiry regarding this matter. Therefore, SFHSS would like to enter this comment into the record regarding BOS File No. 20133:

The San Francisco Health Service System (“HSS”) does not provide health care coverage for private sector employers located at the San Francisco International Airport. HSS covers employees and retirees of the City and County of San Francisco, San Francisco Unified School District, San Francisco Community College District and the San Francisco Superior Court.

Thank you.

Abbie Yant RN, MA
Executive Director
San Francisco Health Service System
1145 Market St.
San Francisco, CA 94103
Abbie.yant@sfgov.org
NEW Office 628-652-4653
New Fax 628-652-4702

sfhss.org

**SAN FRANCISCO
HEALTH SERVICE SYSTEM**

Affordable, Quality Benefits & Well-Being

This message (including any attachments) contains business proprietary/confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and all attachments from your computer or email server. Any disclosure, copying, or distribution of this message, or the taking of any action based on it, without the express permission of the originator, is strictly prohibited.

From: Young, Victor (BOS) <victor.young@sfgov.org>

Sent: Friday, October 9, 2020 9:31 AM

To: Morewitz, Mark (DPH) <mark.morewitz@sfdph.org>; Yant, Abbie (HSS) <abbie.yant@sfgov.org>; Ivar Satero (AIR) <Ivar.Satero@flysfo.com>

Cc: Cathy Widener (AIR) <Cathy.Widener@flysfo.com>; Corina Monzon (AIR) <corina.monzon@flysfo.com>; Wong, Linda (BOS) <linda.wong@sfgov.org>

Subject: REFERRAL - BOS File No. 201133 Administrative Code - Health Care Requirements for Certain Employers at San Francisco International Airport

Greetings:

The attached matter is being forwarded to your department for informational purposes (attached). If you have any 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 email at victor.young@sfgov.org.

Victor Young

Board of Supervisors

1 Dr. Carlton B. Goodlett Place, City Hall., Room 244

San Francisco CA 94102

phone 415-554-7723 | fax 415-554-5163

victor.young@sfgov.org | www.sfbos.org



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

***Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the*

Board of Supervisors website or in other public documents that members of the public may inspect or copy.

From: [BOS Legislation, \(BOS\)](#)
To: [Sandoval, Suhagey \(BOS\)](#); [Mundy, Erin \(BOS\)](#); [Wong, Linda \(BOS\)](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: RE: Adding Supervisor Safai as a Cosponsor
Date: Wednesday, October 14, 2020 3:27:48 PM
Attachments: [image001.png](#)

Thank you for your request, looping in Linda, committee clerk for Budget and Finance for processing.

Lisa Lew

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
T 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org

(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services.



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

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From: Sandoval, Suhagey (BOS) <suhagey.sandoval@sfgov.org>
Sent: Wednesday, October 14, 2020 3:23 PM
To: Mundy, Erin (BOS) <erin.mundy@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Subject: Re: Adding Supervisor Safai as a Cosponsor

Hi, Erin:

Confirming for Supervisor Safai, he would like to be added as a co-sponsor. Thank you!

-Suha

From: Sandoval, Suhagey (BOS) <suhagey.sandoval@sfgov.org>
Sent: Wednesday, October 14, 2020 2:59 PM
To: Mundy, Erin (BOS) <erin.mundy@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Subject: Re: Adding Supervisor Safai as a Cosponsor

Hi, Erin:

Let me confirm and I'll circle back as soon as I hear back, thank you.

-Suha

From: Mundy, Erin (BOS) <erin.mundy@sfgov.org>
Sent: Wednesday, October 14, 2020 2:53 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Sandoval, Suhagey (BOS) <suhagey.sandoval@sfgov.org>
Subject: Adding Supervisor Safai as a Cosponsor

Hello,

Please add Supervisor Safai as a co-sponsor to File 201133. Suha, can you confirm? Supervisor Safai asked Rafael to add him earlier today.

Thanks!

Erin

Erin Mundy

Legislative Aide

Supervisor Rafael Mandelman

(415) 554-6968 - Voice

(415) 554-6909 - Fax

erin.mundy@sfgov.org

From: [BOS Legislation, \(BOS\)](#)
To: [Monge, Paul \(BOS\)](#); [Mundy, Erin \(BOS\)](#); [Wong, Linda \(BOS\)](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: RE: Adding Supervisor Ronen as a Cosponsor
Date: Friday, October 16, 2020 10:55:50 AM
Attachments: [image001.png](#)

Thank you Erin and Paul.

Since this matter is assigned to committee, looping in Linda Wong, committee clerk for Budget and Finance for processing.

Lisa Lew
San Francisco Board of Supervisors
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(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

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From: Monge, Paul (BOS) <paul.monge@sfgov.org>
Sent: Friday, October 16, 2020 10:33 AM
To: Mundy, Erin (BOS) <erin.mundy@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Subject: Re: Adding Supervisor Ronen as a Cosponsor

Thanks Erin. Yes, confirming Supervisor Ronen's co-sponsorship.

Best,

Paul Monge, JD, MPP

Legislative Aide

Office of Supervisor Hillary Ronen I District 9

San Francisco Board of Supervisors

Pronouns: He/Him

From: Mundy, Erin (BOS) <erin.mundy@sfgov.org>
Sent: Thursday, October 15, 2020 4:15 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Monge, Paul (BOS) <paul.monge@sfgov.org>
Subject: Adding Supervisor Ronen as a Cosponsor

Hello,

Please add Supervisor Ronen as a Cosponsor to File 201133, as per her request to Supervisor Mandelman. Paul is copied here for confirmation.

Thanks,

Erin Mundy

Legislative Aide

Supervisor Rafael Mandelman

(415) 554-6968 - Voice

(415) 554-6909 - Fax

erin.mundy@sfgov.org

From: [Kilgore, Preston \(BOS\)](#)
To: [Mundy, Erin \(BOS\)](#); [BOS Legislation, \(BOS\)](#); [Wong, Linda \(BOS\)](#); [Smeallie, Kyle \(BOS\)](#)
Cc: [Snyder, Jen \(BOS\)](#); [BOS Legislation, \(BOS\)](#)
Subject: Re: Adding Supervisor Preston as a cosponsor
Date: Tuesday, October 20, 2020 5:24:41 PM
Attachments: [image001.png](#)

Thank you Erin. Please add Sup. Preston as a cosponsor of file number 201133.

Thanks everyone,
Preston

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From: Mundy, Erin (BOS) <erin.mundy@sfgov.org>
Sent: Tuesday, October 20, 2020 5:18:40 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>; Wong, Linda (BOS) <linda.wong@sfgov.org>; Smeallie, Kyle (BOS) <kyle.smeallie@sfgov.org>; Kilgore, Preston (BOS) <preston.kilgore@sfgov.org>
Cc: Snyder, Jen (BOS) <jen.snyder@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Subject: Re: Adding Supervisor Preston as a cosponsor

Hi D5 friends - can someone confirm Supervisor Preston's cosponsorship?

Thanks

From: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Sent: Monday, October 19, 2020 2:55:02 PM
To: Mundy, Erin (BOS) <erin.mundy@sfgov.org>; Wong, Linda (BOS) <linda.wong@sfgov.org>
Cc: Snyder, Jen (BOS) <jen.snyder@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Subject: RE: Adding Supervisor Preston as a cosponsor

Thank you Erin,

Looping in Linda, who is the committee clerk for Budget and Finance, since File No. 201133 is assigned to B&F.

Also, we still need confirmation from Supervisor Preston's office before processing co-sponsorship.
Thanks.

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From: Mundy, Erin (BOS) <erin.mundy@sfgov.org>
Sent: Friday, October 16, 2020 3:51 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Snyder, Jen (BOS) <jen.snyder@sfgov.org>
Subject: Adding Supervisor Preston as a cosponsor

Hello,

Please add Supervisor Preston as a cosponsor to File 201133. Jen is copied here and can confirm.

Thanks!

Erin

From: [Boilard, Chelsea \(BOS\)](#)
To: [Wong, Linda \(BOS\)](#)
Cc: [Mundy, Erin \(BOS\)](#); [Fregosi, Ian \(BOS\)](#); [Jane Martin](#)
Subject: Fewer cosponsorship
Date: Monday, October 26, 2020 5:30:45 PM

Hello,
Please add Supervisor Fewer as a cosponsor on File No. 201133.

Thanks,
Chelsea

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235 Montgomery St., Ste. 760, San Francisco, CA 94104
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October 20, 2020

The Honorable Supervisor Rafael Mandelman
The Honorable Supervisor Shamann Walton
San Francisco City Hall
1 Dr. Carlton B. Goodlett Place, Room 284
San Francisco, CA

Re: File #201133 Health Care Requirements for Certain Employers at San Francisco International Airport

Dear Supervisor Mandelman and Walton,

On behalf of the San Francisco Chamber of Commerce and our members, I write to you about our concerns regarding File #201133 "Health Care Requirements for Certain Employers at San Francisco International Airport." The Healthy Workers Ordinance (HWO), which would add employee family coverage to HCAO's mandate and require that family coverage be cost-free to the employee, directly targets the airline industry - as well as the small business food vendors in SFO.

The aviation industry is currently suffering greatly due to COVID-19 impacts. After the public health crisis was declared, this industry saw a 70 percent decrease in business and tens of thousand of airline workers furloughed. The estimated minimum cost to SFO employers of implementing the HWO is \$83 million. It is estimated that 29,000 contractor, supplier, vendor, and airline jobs would be placed at risk - not including job losses due to COVID.

While the HWO directly targets the aviation industry, it would also impact San Francisco based businesses that are also SFO employers. Restaurants and cafes that are in SFO have faced furloughs and massive decreases in business and revenue since shelter in place; and our members will not be able to sustain more costs to business during COVID or in recovery. We cannot afford to further hinder our San Francisco businesses.

Considering the breadth of impact of this legislation, we advocate for the following measures to ensure the HWO does not cause undue harm:

Economic Impact Report

With the expected release of an Economic Impact Report and the Committee Hearing just a day away, we are advocating for the time needed to fully digest the economic impacts of this ordinance. The four largest airlines at SFO estimate the direct cost of implementing the proposed legislation to be \$83 million, with a projected overall direct and indirect impacts to amount to almost 3,000 fewer jobs, and a \$306 million hit to the economy. This industry is essential to providing San Francisco with its tourism base, which generated \$819 million in taxes in fees to the City in 2019. It is imperative to fully understand how this legislation would add further reduction in operations to SFO's ability to bring in tourists, considering that COVID travel will continue to only slowly recover.



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Commission Hearings

This legislation deserved a full hearing before it is heard at the Budget and Finance Committee. Given the impacts on small businesses and the airport itself, we feel it is essential to have the HWO heard by the Small Business Commission and the Airport Commission. Despite this legislation being targeted at private sector employees, the airport's capacity will be affected on the whole.

The San Francisco Chamber of Commerce prioritizes the health of San Francisco businesses and its employees, and believes that any legislation that has such a breadth of impact on a variety of industries deserves to be heard in full. We urge you to consider continuing the legislation at committee until there is adequate time to digest the full economic report of the HWO, and allow it to be heard by the Small Business and Airport Commission.

Thank you for your time and consideration.

Respectfully,

Rodney Fong
President & CEO
San Francisco Chamber of Commerce



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BY EMAIL, FAX, AND U.S. MAIL

October 26, 2020

Dennis J. Herrera
City Attorney
Office of the City Attorney
San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102
cityattorney@sfcityatty.org
1-415-554-4715 (fax)

Re: *Proposed City Ordinance No. 201133*

Dear Mr. Herrera:

We are writing to contest the legality of proposed City Ordinance No. 201133 (“Ordinance”) on behalf of our client Airlines for America (A4A). The Airline Deregulation Act (“ADA”), Employee Retirement Income Security Act (“ERISA”), and Railway Labor Act (“RLA”) will preempt the Ordinance. The Ordinance further creates significant administrative problems for A4A members at a time when the industry is in dire financial straits and is fighting to save employees’ jobs. The actuarial valuation requirements in the current version of the Ordinance also could have the effect of employees losing health insurance because member carriers’ plan or other plans do not meet the Ordinance’s requirements, and therefore carriers will need to pay into the City fund. Ultimately, the Ordinance will not survive legal challenge and will have the opposite intended effect—workers not having health insurance because of the loss of additional airline industry jobs.

A4A Members’ SFO Operations

A4A is the principal trade and service organization of the United States-scheduled airline industry. Its members and affiliates account for more than 90% of the passenger and cargo traffic that United States-scheduled airlines carry annually and for a significant portion of traffic in and out of San Francisco International Airport (“SFO”). Together, United States-schedule and cargo airlines employed more than 750,000 at the end of 2019 with thousands employed at SFO. A4A is well positioned to provide information on the impact of laws and regulations on airline workers at SFO, including benefits laws.

A4A members employ Quality Standards Program (“QSP”) covered-employees at SFO, including ticket agents, gate agents, baggage handlers, fleet service workers, and maintenance technicians. Most of these employees are sited at SFO on a full-time or part-time basis. However, at least some A4A carriers send their employees who work at other Bay Area airports,

like Oakland International Airport (“OAK”) or San Jose International Airport (“SJC”), to work at SFO for a day(s)/shift(s), weeks, or months when there are irregular or other special operations or assignments at SFO.

A4A Members’ Health Insurance Benefits for SFO Employees

A4A members provide well-paying jobs with generous benefits to employees in every state in the Nation. A4A members have provided health insurance benefits for their employees for years, often through nationwide collective bargaining agreements. These bargained-for health insurance benefits typically require carriers to offer certain health insurance plans to employees throughout the United States with agreed-upon benefits and service offerings. The carriers who have employees not covered by a collective bargaining agreement also offer health insurance plans with benefits and service offerings, typically on a nationwide basis.

At SFO, A4A members have complied with SFO’s QSP and the City’s Healthcare Accountability Ordinance (“HCAO”) for years. A4A members offer single-coverage at no cost to employees under these programs. They also offer generous, significantly subsidized single-plus and family coverage to employees under the above-described collective bargaining agreements and employment policies. A4A members’ SFO employees already have ample access to no and low-cost health insurance for themselves and their family members.

Proposed Ordinance No. 201133

Under the Ordinance, employers who employ QSP-covered employees at SFO must (1) offer self- and dependent-healthcare coverage at no cost to those employees; or (2) pay at least \$9.50 per each hour worked by those employees into a medical reimbursement account for employees established by the City under Section 14.2 of the City’s Administrative Code. See Ordinance § 12.Q.3(d). The Ordinance applies to any QSP-covered employee who spends any amount of time working at SFO in a week. *Id.* at § 12.Q.2.9(a)(4).

Additionally, to avail themselves of option 1 described above, employers must provide a certain level of benefits to QSP-covered employees:

The health benefits offered shall include at least one plan that provides a level of coverage that is designed to provide benefits that are actuarially equivalent to at least 90% of the full actuarial value of the benefits provided under the plan and to provide coverage for all services described in the California Essential Health Benefit Benchmark Plan.

Id. at § 12.Q.3(d)(1)(B). An employee also must be eligible for these benefits within 30 days of the covered employee’s start of employment. *Id.* at § 12.Q.3(d)(1)(C).

The Ordinance further appears to place restrictions on other health insurance plans that employers may offer to their employees at SFO:

A Contracting Party may offer additional health benefit plans, provided that each such health benefit plan offered shall provide a level of coverage that is designed to provide benefits that are actuarially equivalent to at least 80% of the full actuarial

value of the benefits provided under the plan and to provide coverage for all services as described in the California Essential Health Benefit Benchmark Plan.

Id.

The above-described provisions of the Ordinance are not waivable by a union or through a collective bargaining agreement. *Id.* at § 12.Q.8. Covered employees may voluntarily waive the Ordinance’s requirements, but only if the covered employee provides a waiver form establishing proof of current health plan coverage for the employee’s dependents. *Id.* at § 12.Q.3(e).

Finally, it is our understanding that the Ordinance will apply only to airline, fixed-based operators/signature flight support, general aviation, and airline service provider employers. It will not apply to airport restaurant/retail, rental car, or airport commission employers.

The ADA, ERISA, and RLA Preempt the Ordinance

The Ordinance cannot survive legal challenge. It is preempted for the reasons described below.

1. *The ADA preempts the Ordinance because it affects rates, routes, and services.*

The ADA prohibits the enactment and enforcement of state and local laws “related to a price, route, or service of an air carrier.” 49 U.S.C. § 41713(b)(1). Congress included this “broad” express preemption provision to promote efficiency and to avoid “regulatory patchwork[s],” *Rowe v. N.H. Motor Transp. Ass’n*, 552 U.S. 364, 373 (2008), and to prevent states from “undo[ing] federal deregulation with regulation of their own,” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378, 383-84 (1992). The breadth of this provision is reflected in the ADA’s “related to” language. It preempts any state law “having a connection” with air carrier “prices, routes, and services.” *Rowe*, 552 U.S. at 370-71 (quotations omitted). That connection need not be direct, *id.*, and it is not necessary that the state law “actually prescribe[] rates, routes, or services,” *Morales*, 504 U.S. at 385.

It is clear that the Ordinance will affect rates. The Board of Supervisors (“BOS”) Budget & Legislative Analyst (“BLA”) calculated that the Ordinance will cost air carriers between \$8.4M to \$33M annually, increasing ticket costs for passengers by \$1.83 per ticket. See BOS Budget & Finance Committee Meeting Transcript (Oct. 21, 2020). San Francisco International Airport Director Ivar Satero places the cost much higher—at between \$40.9M and \$163M (see enclosed letter dated October 23, 2020). A4A agrees with Director Satero in this respect and believes the BLA drastically understates the true costs of the Ordinance. The BLA’s admission that the Ordinance will affect rates *at all* is dispositive under the preemption analysis. The ADA preempts any state and local laws that affect rates, no matter how much or how little.

The Ordinance also will affect routes. SFO already is one of the most expensive airports to fly into and out of. The Ordinance’s cost, coupled with the pandemic, will cause air carriers to eliminate flights altogether or to use other airports instead. Carrier representatives testified to this fact during the BOS Budget and Finance Committee meeting on October 21, 2020:

I'm the managing director for state and local government based in the State of Hawaii representing Hawaiian Airlines. . . . I'm here to speak about the consequences of reduced services contemplated in the proposal by the healthy workers ordinance if passed this year and implemented in 2021. [A] [p]roposal such as this which target[s] the airline . . . industry [with] substantial cost increases will further devastate the impact of COVID-19 and could lead to sustained reduction [of flights] in SFO. This limits competition and restricts growth for smaller carriers. Hawaiian Airlines was poised for meaningful growth prior to the pandemic. If traffic returns to normal levels, these cost overruns make [growth] unlikely. . . . [A] [smaller carrier] cannot spread [costs] across multiple flights, and [the Ordinance] makes San Francisco prohibitively expensive.

I'm the director of government affairs [at jetBlue]. jetBlue is by no means the largest carrier at SFO, but we provide a critical role [and] historically [have had] passenger loads on jetBlue increase at SFO. [Our aircraft are a] finite resource [and] the cost of doing business at an airport is a leading factor [in where we fly]. The importance of keeping costs under control has only been exacerbated during the current COVID crisis. Higher costs due to policies [at] SFO could threaten new entrant[ts] like [jetBlue] from starting new service[,] decreasing competition and negatively impacting the traveling public in the process.

BOS Budget & Finance Committee Meeting Transcript (Oct. 21, 2020). Thus, the Ordinance is preempted under the ADA because it affects routes; it discourages carriers from flying into and out of SFO.

The Ordinance further will impact air carriers' service at SFO. The costs of the Ordinance will cause a decrease in headcount working flights:

I work for Southwest Airlines. . . . Southwest Airlines is proud of its record related to [] employees. . . . [If the Ordinance is approved], it would increase the cost of healthcare during financial[ly] challenging times and add[] millions of dollars in unnecessary healthcare costs [that] will hinder the recovery process and result in consequences. It would reduce headcounts in SFO or shift flights to other airports that are more cost effective. We go above and beyond for our employees and we ask the committee members to consider the unintended consequences of this proposal.

I'm [a] managing director at United Airlines. I'm here today to speak with you about jobs, or more accurately the loss of jobs at SFO which would occur if a proposal set forth by the healthy workers ordinance is to be passed this year and implemented in 2021. Proposals such as this that target the airline industry will only further exacerbate the financial impact of COVID-19. It could lead to massive job cuts. This is clearly not the intent of the proposal. As you know, United is the largest carrier at SFO.

BOS Budget & Finance Committee Meeting Transcript (Oct. 21, 2020).

Further headcount reduction will lead to longer lines and waiting times for customer assistance, aircraft maintenance, baggage loading and unloading, *etc.* Laws that lead to such reduced staffing are preempted by the ADA because these laws affect airline services. See, e.g., *Brindle v. R.I. Dep't of Labor & Training*, 211 A.3d 930 (R.I. 2019) (overtime law that would cause air carriers to staff flights with fewer employees was preempted by the ADA because it affected services and service levels), *cert denied*, 140 S.Ct. 908 (2020).

It is apparent that the Ordinance is seeking to regulate the airline industry. One of its primary stated goals is to protect the traveling public from the spread of COVID-19 and restore confidence in the safety of air travel, yet the City is excluding non-airline employers that operate at SFO and that have employees who have contact with the traveling public (when several of the covered employee classifications do not). We raise this not to suggest that those employers and their employees should be covered by the Ordinance, but to point out that the Ordinance is clearly regulation directed at the airline industry in violation of the ADA and inconsistent with the purported regulatory goals of the Ordinance to boot. No employers operating in and around SFO should be subject to this costly and unnecessary Ordinance at a time when all are trying to restore job loss from the pandemic.

2. *ERISA preempts the Ordinance because it relates to an ERISA-governed benefit plan.*

ERISA supersedes “any and all state laws insofar as they may now or hereafter relate to any benefit plan.” 29 U.S.C. § 1144(a). More specifically, ERISA preempts any state or local law that dictates the amount of employer contributions or the nature of required benefits. See, e.g., *Golden Gate Restaurant Ass'n v. City of San Francisco*, 546 F.3d 639, 658 (9th Cir. 2008) (finding that preemption of a state law is required when it “calculates its required payments based on the value or nature of the benefits”); *Local Union 598 v. J.A. Jones Const. Co.*, 846 F.2d 1213, 1219 (9th Cir. 1988) (a “statute which mandates employer contributions to benefit plans and which effectively dictates the level at which those required contributions must be made has a most direct connection with an employee benefit plan” and is “clearly preempted by ERISA”), *summarily aff'd*, 488 U.S. 881 (1988). The Ordinance dictates the level of benefits and services a covered employer must offer, to whom, and at 100% employer cost. It is thus preempted by ERISA.

An employer’s ability to pay into the City’s fund, rather than to provide these required benefits, does not save the Ordinance from ERISA preemption. The Ninth Circuit admittedly upheld a similar option in *Golden Gate*, but the rationale upon which *Golden Gate* was based is no longer valid in the Ninth Circuit or elsewhere. *Golden Gate* presumed ERISA preemption does not apply. The Supreme Court, however, has since stated that there can be no presumption against ERISA preemption because of the *express* nature of ERISA’s preemption provision. See *Gobeille v. Liberty Mut. Ins. Co.*, 136 S.Ct. 936, 946 (2016) (“Any presumption against preemption, whatever its force in other instances, cannot validate a state law that enters a fundamental area of ERISA regulation and thereby counters the federal purpose in the way this state law does.”); *Puerto Rico v. Franklin California Tax-Free Tr.*, 136 S.Ct. 1938, 1946 (2016) (“And because the statute ‘contains an express preemption clause,’ we do not invoke any presumption against preemption.”).

Moreover, the Ninth Circuit in *Golden Gate* and the Fourth Circuit in *Retail Industry Leaders Ass'n v. Fielder*, 475 F.3d 180 (4th Cir. 2007), have been at odds on this very issue. In *Fielder*, the Fourth Circuit concluded the exact opposite—that ERISA preempted a state law mandating employers to spend a certain level on healthcare and requiring an employer to pay into a state-run fund if the employer did not meet that level. The Fourth Circuit reasoned that allowing payment into a fund is really no option at all because it is highly unlikely that an employer would pay a government to run healthcare for some of its employees while having the option of covering them in a pre-existing ERISA plan. In other words, such state and local laws indirectly but effectively force an employer to amend its existing ERISA plan(s) to comply with the state and local law, and therefore are preempted by ERISA.

Upcoming decisions may resolve this circuit split or shed more light on the scope of ERISA preemption. For example, the Supreme Court is deciding *Rutledge v. Pharmaceutical Care Mgmt. Ass'n*, 891 F.3d 1109 (8th Cir. 2018), *cert granted*, 140 S.Ct. 812 (Jan. 10, 2020), likely in early 2021. This case should provide guidance on whether state or local regulation can be seen as a cost control or a control of ERISA plan terms or administration. The former may not be preempted, while the latter is preempted. The Court's decision may be dispositive or provide rationale important to determining the scope of ERISA preemption in the Ninth Circuit, including as to the Ordinance.

Even more specifically, *ERISA Indus. Comm. v. City of Seattle*, 2020 WL 2307481 (W.D.Wash. May 8, 2020), in which plaintiff challenged a law similar to the Ordinance, is pending before the Ninth Circuit, *ERISA Indus. Comm. v. City of Seattle*, Appeal No. 20-35472 (9th Cir.). Whether *Golden Gate* is still good law is at issue in this appeal. We believe that the Supreme Court and Ninth Circuit ultimately will resolve these issues in a way that shows the Ordinance is preempted. At the very least, rather than pass the Ordinance, at a time that would be devastating to air carriers who already provide generous healthcare coverage to their employees, the City should wait until these cases are decided and then re-evaluate the Ordinance.

3. *The RLA preempts the Ordinance because the Ordinance interferes with the negotiation of benefits and creates issues of contract interpretation.*

The RLA promotes the stability of labor relations in the air and rail industries by providing a federal framework for resolving labor disputes, including the negotiation of labor contracts. See, e.g., *Atchison, T. & S.F.R. Co. v. Buell*, 480 U.S. 557, 562 (1987). As the Supreme Court explained in *Lodge 76, Int'l Assoc. of Machinists and Aero. Workers v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 147-48 (1976) ("*Machinists*"), this federal framework leads to the preemption of state and local labor laws that regulate in areas that Congress left to be controlled by the free play of economic forces. The negotiation of complex benefits provisions in a labor contract is one such area.

The carriers have explained to the BOS that their labor contracts contain generous, detailed health insurance provisions, negotiated with unions, and approved by employees. These provisions are the product of carefully negotiated language, some of which was arrived at in exchange for other items:

I work for Southwest Airlines. . . . Southwest Airlines is proud of its record related to employees. Over 82% of our workforce is unionized. . . . We have collective

bargaining agreements, negotiated across the country with extremely generous provisions that extend to family members. Currently, Southwest employees can choose between a free healthcare plan or a premium plan at a discounted rate, but it's important to note that Southwest employees and unions approved these healthcare plans [in] the bargaining process. . . .

* * *

[United Airlines] negotiate[s] collective bargaining agreements which are voted upon and approved by the employees. [They] include generous wage and benefit packages. We do not believe this legislation should supersede our collective bargaining agreements or interfere with our relationships with our labor partners...

BOS Budget and Finance Committee Hearing Transcript (Oct. 21, 2020).

The Ordinance may require these carriers to violate their labor contracts if, for example, a plan required by the CBA does not meet the valuation requirement established by the Ordinance. See, *infra*, *The Ordinance Creates Real Administrative Problems*, Number 3. The carrier would be forced to discontinue the plan under the Ordinance or to pay into the City fund, even though the employee already has health insurance. A complex benefits law that directly conflicts with a collective bargaining agreement in such a way that the carrier cannot comply with its CBA is preempted under the RLA. See, e.g., *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959).

Even if a carrier's health insurance language in a CBA does not conflict with the Ordinance, there is RLA preemption. Requiring benefits over and above those that carriers and their unions negotiated disrupts the bargaining process, placing a thumb on the scale in favor of the provision of certain levels of benefits instead of the provision of other terms and conditions of employment, such as wages or leaves. Such requirements also place a thumb on the scale in favor of labor by providing unions with benefits that they chose not to bargain for in exchange for more generous other terms and conditions of employment. Such governmental interference with bargaining is not allowed under the RLA. See, e.g., *Machinists*, 427 U.S. at 147-48.

Additionally, the carefully negotiated health insurance provisions in the CBA may conflict with the Ordinance in a way that requires interpretation of the labor contract. For example, if the language of an entire health insurance plan is negotiated and contained in the CBA, but the plan does not meet the Ordinance's requirement that the benefits be "at least 90% of the full actuarial value of the benefits provided under the plan" or required minimum benefits or service offerings, Ordinance at § 12.Q.3(d)(1)(B), then how can the plan be reconciled with the Ordinance? The nuances related to how to interpret the plan in this regard are not necessarily a question of interpretation of the Ordinance, but could be an interpretation of the CBA itself.

Such issues are questions for a labor arbitrator—not for the City's enforcement arm, administrative agency, or a court—to resolve. In such cases, the dispute would be a contract interpretation dispute (*i.e.*, a "minor dispute" in RLA parlance) and preempted by the RLA. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 394 (1987) (state law cause of action that is "founded directly on rights created by collective-bargaining agreements" or that involves claims "substantially dependent on analysis of a collective-bargaining agreement," is governed by federal law) (quotations and citations omitted).

4. *The market-participant exception to preemption does not apply.*

The Ordinance contemplates amendments to the HCAO. Air carriers would not be bound only to the Ordinance or to their contracts with the City, but by the entire regulatory scheme of the HCAO as well. Therefore, the City cannot use the market-participant exception to escape preemption. See, e.g., *American Trucking Ass’n, Inc. v. City of Los Angeles*, 569 U.S. 641, 650 (“But that statutory reading gets the Port nothing, because it exercised classic regulatory authority—complete with the use of criminal penalties—in imposing the placard and parking requirements at issue here . . . So the contract here functions as part and parcel of a governmental program wielding coercive power over private parties, backed by the threat of criminal punishment.”).

This is particularly true where, as here, the City seeks to further policy goals. The Ninth Circuit applies a disjunctive test to determine whether the government can avail itself of the market-participant exception:

First, is the challenged governmental action undertaken in pursuit of the efficient procurement of needed goods and services, as one might expect of a private business in the same situation?

Second, does the narrow scope of the challenged action defeat an inference that its primary goal was to encourage a general policy rather than [to] address a specific proprietary problem?

Airline Serv. Providers Ass’n v. Los Angeles World Airports, 873 F.3d 1074, 1080 (9th Cir. 2017).

Neither prong applies to the Ordinance. First, the BOS has said that its interest in the Ordinance is to “[p]rotect[] the health of employees and their families” Ordinance at Section 2, Findings (k). While it is a noble goal, the statement reveals that it is not the economic interests of the BOS itself that is primarily at issue—the employees are the direct beneficiaries. The City is, at best, an indirect beneficiary. The first prong of the test is not met here.

Second, the Ordinance is not narrow. It effectively reaches employer conduct “unrelated to the employer’s performance of contractual obligations to the [City],” announces a regulatory policy, and brings complicated recordkeeping and litigation risks to employers if passed. This is quintessential regulation such that the City cannot avail itself of the market-participant exception. See, e.g., *Building & Const. Trades Council of Metro. Dist. v. Associated Builders & Contractors of Mass/R.I., Inc.*, 507 U.S. 218, 229 (1993); *Airline Serv. Providers Ass’n*, 873 F.3d at 1083. The second prong of the test also is not met here.

The Ordinance Creates Real Administrative Problems

The obvious problem with enacting the Ordinance at this time is that it seriously hinders the industry’s recovery efforts. See also Director Satero’s October 23, 2020 letter (enclosed). Setting aside that primary concern for the time being and instead addressing more tactical issues here, the City should be aware that there are major administrative problems for air carriers in implementing the Ordinance. As described below, these administrative burdens are

unreasonable and should give the City pause because the burdens could lead to the loss of health insurance for more workers.

1. *The 30-day limit on waiting periods is unreasonably short and creates huge trailing liability.*

Federal law permits employers to impose waiting periods of up to 90 days (or even longer in the context of “variable hour” employees who have not been determined to be full-time). The longer waiting periods allow employers who experience greater churn within their workforce to avoid the need to engage in the expensive and administratively cumbersome process of enrolling a new employee in health coverage, only to have that employee cycle out of the job a few weeks later.

Moreover, health plans are typically subject to either federal COBRA, Cal-COBRA, or both, which require 18 months of continuation coverage (at a minimum) if an employee (and/or the employee’s dependents) were covered under the employer’s plan for even a single day. While COBRA coverage is intended to be priced such that the full cost of coverage is charged to the employee, in reality COBRA participants have a much more adverse risk profile than the population as a whole (given the high cost of the coverage), meaning employers can regularly spend significant sums of money extending coverage to COBRA participants. Given these risks, this law has the potential to have a “chilling” effect, limiting employers’ willingness to bring on new workers, ultimately resulting in fewer employees having health insurance coverage.

2. *Required plan offerings under the Ordinance are out of step with employer plan benchmarks.*

In both the private and public sector marketplace, it is exceedingly rare to see a plan available to an employee at no cost. Even where low-cost plans exist, they are usually plans at lower actuarial value (e.g., a high-deductible health plan), rather than the richest offering of the employer (i.e., one with a 90% actuarial value). As such, this law creates a mandate that extends far beyond what even the most generous employers offer.

Additionally, the law mandates that the plan cover all California-determined essential health benefits. This mandate extends to no other self-insured or large group fully-sourced plan in the market. The essential health benefit coverage mandate only applies to individual and small-group insurance policies. These types of plans typically do not exist in the large employer group market and would require employers to create custom plans for what would only be a subset of their population.

3. *The Ordinance may impact the ability to offer other and more diverse and innovative healthcare offerings.*

The Ordinance appears to not only mandate that employers offer an incredibly rich coverage option to its covered employees, but it also restricts the other options that may be made available (requiring that they represent a value of at least 80% of the “platinum” option). While further actuarial analysis would be required, this may inhibit employers’ ability to offer a high-deductible health plan, which is a lower-value plan but one that offers employees the ability to contribute to tax-preferred Health Savings Accounts. It also may inhibit their ability to offer other plans, including bargained-for plans. As structured, the law denies employees this

freedom of choice and potentially prohibits employers from offering employees a valuable benefit offered to other employees or required by their collective bargaining agreement. It could lead to the loss of insurance for these employees.

4. *The Ordinance unreasonably impacts employees at other Bay Area airports.*

On occasion, A4A members send their employees from OAK, SJC, and other Bay Area airports during times of irregular operation or special assignment. Such work stints are often limited to short periods of time. The Ordinance, however, reaches to cover such employees' work at SFO because it covers any work in a week, no matter how short the amount of work is.

Air carriers are left with no choice in this situation but to pay into the City's fund under Ordinance Section 12.Q.3(d)(2). Air carriers are not likely to offer Ordinance-required plans at other airports, and these non-SFO employees cannot move into and out of healthcare plans on an hourly, daily, weekly, or even monthly basis. It is unreasonable for the City to require payment for these employees who are covered by health insurance plans in effect elsewhere.

5. *Ambiguous terms in the Ordinance make compliance difficult.*

The Ordinance contains numerous ambiguities that make it challenging for employers to assess what compliance would even entail. For instance, does the term "dependents" include only dependent children (consistent with federal guidelines) or something else? What other forms of coverage would suffice for an employee signing a coverage waiver? Individual coverage? Medicaid? Medicare? These ambiguities will create compliance questions and ultimately lead to more litigation. The Ordinance should, at the very least, be clarified accordingly.

The Ordinance Will Lead to Fewer Workers Having Access to Healthcare Coverage

As set forth above, airline employers already offer generous healthcare benefits to their employees. The carriers provided comments to the BOS Budget & Finance Committee explaining that the Ordinance will lead to further job loss at SFO:

[Hawaiian Airlines] SFO is already expensive for passengers. This will have a negative impact on the supply and demand for air service. And result in additional job losses. It will eliminate direct and indirect jobs and over \$300 million in annual income to the San Francisco region.

[United Airlines] I'm here today to speak with you about jobs, or more accurately the loss of jobs at SFO which would occur if a proposal set forth by the healthy workers ordinance is to be passed this year and implemented in 2021. Proposals such as this that target the airline industry will only further exacerbate the financial impact of COVID-19. It could lead to massive job cuts. This is clearly not the intent of the proposal. As you know, United is the largest carrier at SFO. Prior to COVID-19, just at the beginning of [2020], we employed over 12,000 workers throughout the airport. Unfortunately just a few weeks ago, we had to furlough approximately 3,000 employees at SFO and 13,000 [employees] nationwide due to the

pandemic's financial impact. . . . SFO has taken a huge hit and we expect a slow recovery in the future. Contrary to what I heard from some other [] comments, these cuts could[] continue. . . . SFO is among the most expensive in the country for airlines and passengers. Significantly increasing the cost of doing business at SFO will have a negative impact on the supply and demand for air service and result in additional job losses.

BOS Budget & Finance Committee Meeting Transcript (Oct. 21, 2020).

In fact, due to the pandemic, the four A4A members with the largest presence at SFO have been forced to reduce their SFO-based workforce by roughly 3,000 jobs, from 14,700 to 11,700. The higher costs incurred if the Ordinance is enacted will reduce air travel demand as airlines will attempt to pass the higher costs onto Bay Area constituents and visitors. As prices are forced up, demand will fall accordingly and these airlines will not be able to support as much payroll expense, so they will curtail hours worked and limit the number of employees otherwise rehired. A4A estimates that reduced demand and reduced profitability will ultimately result in a 6.2 percent reduction in capacity and associated airline full-time equivalent employees ("FTE"). This means a further reduction of 728 FTEs and \$97 million in lower salaries, wages, and benefits over the course of a single year. The cumulative effect of these direct effects plus indirect effects that would ripple through the supply chain and economy places the statewide impact at approximately 2,900 fewer jobs and \$306 million loss to the economy. This additional job loss will cause workers to lose health insurance altogether; the exact opposite of the stated goal of the Ordinance.

Moreover, as explained above in *The Ordinance Will Create Real Administrative Problems*, numbers 1 and 3, *supra*, the maximum 30-day waiting period requirement and the valuation requirements in the Ordinance may actually cause carriers to hesitate to hire employees or for existing employees to lose valued healthcare plan features, such as Healthcare Savings Accounts. Surely the City wants job gains and does not want employees to lose plans that they want and that, in many cases, they and their unions have bargained for and are entitled to receive in their CBAs.

In the end, the Ordinance makes no sense, especially at a time like this. The industry experienced massive job loss on or shortly after October 1, 2020. Additional job loss will occur if the industry does not recover or if costs drastically increase. This is especially true at an airport like SFO, where air carriers have the ability to fly elsewhere in the Bay Area. Why the City is considering an Ordinance that will lead to additional job loss, a hesitancy to hire new employees, and healthcare coverage loss defies comprehension.

Conclusion

The Ordinance is preempted, creates significant administrative problems, and ultimately will lead to fewer workers having health insurance coverage. It is unworkable and will lead to litigation at a time when airport employers, the City, and BOS should be focused on the pandemic and recovery from it. We strongly caution against its passage for all of these reasons. BOS should not pass the Ordinance.

Very Truly Yours,

SEYFARTH SHAW LLP

s/ Molly Gabel
s/ Mark Casciari
s/ Ben Conley

Molly Gabel, Partner
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Riva Parker, Vice President, Labor & Employment/Litigation, Airlines for America (by email)

City of San Francisco, Board of Supervisors (by email to board.of.supervisors@sf.gov.org and fax to 1-415-554-5163)

Enclosure



San Francisco International Airport

October 23, 2020

Budget and Finance Committee
San Francisco Board of Supervisors
City Hall
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San Francisco, CA 94102-4689

TRANSMITTED VIA EMAIL
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SUBJECT: File No. 201133, Administrative Code - Dependent Health Care Requirements for Certain Employers at San Francisco International Airport

Dear Chair Fewer, Vice Chair Walton, and Supervisor Mandelman:

I would like to take this opportunity to clarify some statements that were made at the October 21, 2020 Budget and Finance Committee hearing on the Healthy Airport Ordinance (File No. 201133).

All airlines and airline service providers are part of the San Francisco International Airport’s (SFO) Quality Standards Program (QSP), and all are required to provide the health care benefits as defined in the City’s Health Care Accountability Ordinance (HCAO). In some cases, such as with the catering service providers, we understand that the employers and the union have negotiated a waiver of the HCAO in their collective bargaining agreement. This waiver has apparently resulted in some QSP employees having health care coverage that may not meet the standards prescribed under the HCAO. The discussion of additional costs airlines may pass on to passengers as the result of the proposed legislation belies the greater financial impact of the ordinance – the increased cost of doing business at SFO. We estimate that implementing this proposal could double health care costs for airlines and their service providers. As you know, the pandemic has led to a substantial decline in passenger volumes. Fewer passengers means less non-airline revenue to SFO – from sources such as parking, concessions, and TNC trip fees – which results in a greater share of expenses the airlines must cover, based on SFO’s residual rate setting/“break-even” budgeting methodology. These increased costs, paired with reduced passenger demand and a doubling in health care costs at SFO, have the potential to slow SFO’s post-pandemic recovery relative to that of other airports.

Lastly, estimating the number of workers currently employed by the airlines and their service providers is challenging due to the dynamic nature of the pandemic. For the worker estimates we shared with the Budget and Legislative Analyst, we correlated projected passenger activity to the number of employees per category, based on our 2019 Economic Impact Report. Based on the 2019 Economic Impact Report, Airlines, Fixed Based Operators, General Aviation, and Service Providers employed 20,634 workers. Using these pre-pandemic worker numbers, the costs of offering qualifying family health plans under the proposed legislation (Option 1) would result in estimated additional annual costs ranging from approximately \$40.9 million to \$120 million, depending on the health plan. Under the proposed legislation, the costs of the \$9.50 per hour contribution (Option 2) would result in estimated additional annual costs of approximately \$163 million.

I hope this clarifies some of the context for the regional impacts that were referenced during the hearing. Please feel free to contact me if you need further background.

Very truly yours,

Ivar C. Satero
Airport Director

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AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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