Ordinance amending the San Francisco Administrative Code by amending Sections 14.1 through 14.4 to: (1) authorize the Department of Public Health to establish and maintain reimbursement accounts from which employees covered by the San Francisco Health Care Security Ordinance ("HCSO") may seek reimbursement for health care expenses; (2) clarify remedies for violations of the HCSO; and (3) make other technical changes and findings.

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

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

Section 1. Declaration of legislative findings and intent. With the passage of Ordinance 218-06, the City and County of San Francisco ("City") enacted the San Francisco Health Care Security Ordinance ("HCSO"), the findings of which are incorporated herein by reference. The HCSO mandates the creation of a comprehensive health care reform program to address the current health care crisis in San Francisco. The HCSO seeks to ensure that all San Francisco residents, and all non-San Francisco residents who work in San Francisco, have access to affordable health care. The reforms required by the HCSO are further intended to alleviate the demands placed on San Francisco's emergency health care system by its 82,000 uninsured residents, as well as the uninsured non-San Francisco residents who work in San Francisco and utilize emergency health care services in San Francisco. Essential to the successful operation of this system is the HCSO's requirement that employers make minimum health care expenditures on behalf of employees covered by the Ordinance, whether the employers choose to satisfy the requirement by providing for health care benefits

Supervisor Ammiano, Duffy, Mirkarimi, McGoldrick
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themselves in a manner of their choosing, or by making payments to the City and County of San Francisco, so that the City may provide for the health care needs of the employees who have not been provided benefits by their employers.

During the initial implementation phases of this program, the Department of Public Health determined that it would be better equipped to administer a comprehensive health care delivery system for uninsured San Francisco residents and uninsured nonresidents who work in San Francisco if it were authorized to use employer expenditures directed to the City to establish and maintain reimbursement accounts from which employees covered by the Ordinance, including employees who are not San Francisco residents, could obtain reimbursement for health care expenditures. The Department of Public Health has further determined that compliance with the expenditure mandate would be made easier for employers if they were permitted to make payments to the City and County of San Francisco on behalf of their employees who live outside of San Francisco, rather than merely on behalf of their employees who are San Francisco residents. The Board finds that these amendments, by making compliance easier for employers, and by improving the ability of the Department of Public Health to create and administer an effective, comprehensive health care system, will further effectuate the purposes of the Health Care Security Ordinance.

Section 2. The San Francisco Administrative Code is hereby amended by amending Sections 14.1 through 14.4, to read as follows:

SEC. 14.1. SHORT TITLE; DEFINITIONS.

(a) Short title. This Chapter shall be known and may be cited as the "San Francisco Health Care Security Ordinance."
(b) Definitions. For purposes of this Chapter, the following terms shall have the following meanings:

(1) "City" means the City and County of San Francisco.

(2) "Covered employee" means any person who works in the City where such person qualifies as an employee entitled to payment of a minimum wage from an employer under the Minimum Wage Ordinance as provided under Chapter 12R of the San Francisco Administrative Code and has performed work for compensation for his or her employer for ninety (90) days, provided, however, that:

(a) From the effective date of this Chapter through December 31, 2007, "at least twelve (12) hours" shall be substituted for "at least two (2) hours" where such term appears in Section 12R.3(a);

(b) From January 1, 2008 through December 31, 2008, "at least ten (10) hours" shall be substituted for "at least two (2) hours" where such term appears in Section 12R.3(a);

(c) Beginning January 1, 2009, "at least eight (8) hours" shall be substituted for "at least two (2) hours" where such term appears in Section 12R.3(a);

(d) The term "employee" shall not include persons who are managerial, supervisory, or confidential employees, unless such employees earn annually under $72,450 or in 2007 and for subsequent years, the figure as set by the administering agency;

(e) The term "employee" shall not include those persons who are eligible to receive benefits under Medicare or TRICARE/CHAMPUS;

(f) The term "covered employees" shall not include those persons who are "covered employees" as defined in Section 12Q.2.9 of the Health Care Accountability Ordinance, Chapter 12Q of the San Francisco Administrative Code, if the employer meets the requirements set forth in Section 12Q.3 for those employees; and
(g) The term "covered employees" shall not include those persons who are employed by a nonprofit corporation for up to one year as trainees in a bona fide training program consistent with Federal law, which training program enables the trainee to advance into a permanent position, provided that the trainee does not replace, displace, or lower the wage or benefits of any existing position or employee.

(h) Nor shall "covered employees" include those persons whose employers verify that they are receiving health care services through another employer, either as an employee or by virtue of being the spouse, domestic partner, or child of another person; provided that the employer obtains from those persons a voluntary written waiver of the health care expenditure requirements of this Chapter and that such waiver is revocable by those persons at any time.

(3) "Covered employer" means any medium-sized or large business as defined below engaging in business within the City that is required to obtain a valid San Francisco business registration certificate from the San Francisco Tax Collector's office or, in the case of a nonprofit corporation, an employer for which an average of fifty (50) or more persons per week perform work for compensation during a quarter. Small businesses are not "covered employers" and are exempt from the health care spending requirements under Section 14.3.

(4) "Employer" means an employing unit as defined in Section 135 of the California Unemployment Insurance Code or any person defined in Section 18 of the California Labor Code. "Employer" shall include all members of a "controlled group of corporations" as defined in Section 1563(a) of the United States Internal Revenue Code, and the determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of the Internal Revenue Code.
(5) "Health Access Program" means a San Francisco Department of Public Health program to provide health care for uninsured San Francisco residents.

(6) "Health Access Program participant" means any uninsured San Francisco resident, regardless of employment or immigration status or pre-existing condition, who is enrolled by his or her employer or who enrolls as an individual in the Health Access Program under the terms established by the Department of Public Health.

(7) "Health care expenditure" means any amount paid by a covered employer to its covered employees or to a third party on behalf of its covered employees for the purpose of providing health care services for covered employees or reimbursing the cost of such services for its covered employees, including, but not limited to (a) contributions by such employer on behalf of its covered employees to a health savings account as defined under section 223 of the United States Internal Revenue Code or to any other account having substantially the same purpose or effect without regard to whether such contributions qualify for a tax deduction or are excludable from employee income; (b) reimbursement by such covered employer to its covered employees for expenses incurred in the purchase of health care services; (c) payments by a covered employer to a third party for the purpose of providing health care services for covered employees; (d) costs incurred by a covered employer in the direct delivery of health care services to its covered employees; and (e) payments by a covered employer to the City to be used on behalf of covered employees. The City may use these payments to: (i) fund membership in the Health Access Program for uninsured San Francisco residents; and (ii) establish and maintain reimbursement accounts for covered employees, whether or not those covered employees are San Francisco residents, to fund the Health Access Program for uninsured San Francisco residents, including employees. Notwithstanding any other provision of
this subsection, "health care expenditure" shall not include any payment made directly or
indirectly for workers' compensation or Medicare benefits.

(8) "Health care expenditure rate" means the amount of health care expenditure
that a covered employer shall be required to make for each hour paid for each of its covered
employees each quarter. The "health care expenditure rate" shall be computed as follows:

(a) From the effective date of this Chapter through June 30, 2007, $1.60 per hour
for large businesses and $1.06 per hour for medium-sized businesses;

(b) From July 1, 2007 through December 31, 2007, January 1, 2008 through
December 31, 2008, and January 1, 2009 through December 31, 2009, the rates for large and
medium-sized businesses shall increase five (5) percent over the expenditure rate calculated
for the preceding year;

(c) From January 1, 2010 and each year thereafter, the "health care expenditure
rate" shall be determined annually based on the "average contribution" for a full-time
employee to the City Health Service System pursuant to Section A8.423 of the San Francisco
Charter based on the annual ten county survey amount for the applicable fiscal year, with
such average contribution prorated on an hourly basis by dividing the monthly average
contribution by one hundred seventy-two (172) (the number of hours worked in a month by a
full-time employee). The "health care expenditure rate" shall be seventy-five percent (75%) of
the annual ten county survey amount for the applicable fiscal year for large businesses and
fifty percent (50%) for medium-sized businesses.

(9) "Health care services" means medical care, services, or goods that may qualify
as tax deductible medical care expenses under Section 213 of the Internal Revenue Code, or
medical care, services, or goods having substantially the same purpose or effect as such
deductible expenses.
(10) "Hour paid" or "hours paid" means a work hour or work hours for which a person is paid wages or is entitled to be paid wages for work performed within the City, including paid vacation hours and paid sick leave hours, but not exceeding 172 hours in a single month. For salaried persons, "hours paid" shall be calculated based on a 40-hour work week for a full-time employee.

(11) "Large business" means an employer for which an average of one hundred (100) or more persons per week perform work for compensation during a quarter.

(12) "Medium-sized business" means an employer for which an average of between twenty (20) and ninety-nine (99) persons per week perform work for compensation during a quarter.

(13) "Person" means any natural person, corporation, sole proprietorship, partnership, association, joint venture, limited liability company, or other legal entity.

(14) "Required health care expenditure" means the total health care expenditure that a covered employer is required to make every quarter for all its covered employees.

(15) "Small business" means an employer for which an average of fewer than twenty (20) persons per week perform work for compensation during a quarter.

SEC. 14.2. SAN FRANCISCO HEALTH ACCESS PROGRAM AND REIMBURSEMENT ACCOUNTS.

(a) The San Francisco Department of Public Health shall administer the Health Access Program. Under the Health Access Program, uninsured San Francisco residents may obtain health care from a network consisting of San Francisco General Hospital and the Department of Public Health's clinics, and other community non-profit and private providers.
that meet the program's quality and other criteria for participation. The Health Access
Program is not an insurance plan for Health Access Program participants.

(b) The Department of Public Health shall coordinate with a third party vendor to
administer program operations, including basic customer services, enrollment, tracking
service utilization, billing, and communication with the participants.

(c) The Health Access Program shall be open to uninsured San Francisco
residents, regardless of employment status. Eligibility criteria shall be established by the
Department of Public Health, but no person shall be excluded from the Health Access
Program based on a pre-existing condition. Participants may be enrolled by their employers or
may enroll themselves as individuals, with the terms of enrollment to be determined pursuant
to Section 14.4(a).

(d) The Health Access Program may be funded from a variety of sources, including
payments from covered employers pursuant to Section 14.3, from individuals, and from the
City. Funding from the City shall prioritize services for low and moderate income persons, with
costs based on the Health Access Program participant's ability to pay.

(e) The Health Access Program shall use the "Medical Home" model in which a
primary care physician, nurse practitioner, or physician assistant develop and direct a plan of
care for each Health Access Program participant, coordinate referrals for testing and specialty
services, and monitor management of chronic conditions and diseases. Health Access
Program participants shall be assigned to a primary care physician, nurse practitioner, or
physician assistant.

(f) The Health Access Program shall provide medical services with an emphasis on
wellness, preventive care and innovative service delivery. The Program shall provide medical
services for the prevention, diagnosis, and treatment of medical conditions, excluding vision,
Icare provided in San Francisco by contracted providers. Including emergency medical transportation if needed.

(g) The Department of Public Health shall also be authorized to use payments made to the City by employers to satisfy their expenditure requirements as set forth in Section 14.3 to establish and maintain reimbursement accounts from which covered employees may obtain reimbursement of health care expenditures. The Health Access Program shall offer the opportunity for employers to enroll their employees and for individual enrollment by July 1, 2007.

(h) The City Controller shall ensure any required health care expenditures made by an employer to the City are kept separate and apart from general funds and shall limit use of the expenditures to the Health Access Program or to the establishment and maintenance of reimbursement accounts from which covered employees may obtain reimbursement of health care expenditures. If any covered employee fails to enroll in the Health Access Program or establish a reimbursement account with the Department of Public Health within a reasonable time, as determined by the Department of Public Health, the City may use the funds paid to the City and County of San Francisco on behalf of that employee for the benefit of the health care programs created by this Ordinance, but the City may not transfer these funds to the City's general fund.
SEC. 14.3 REQUIRED HEALTH CARE EXPENDITURES.

(a) Required Expenditures. Covered employers shall make required health care expenditures to or on behalf of their covered employees each quarter. The City Controller shall ensure any required health care expenditures made by an employer to the City are kept separate and apart from general funds and limit use of the expenditures to the Health Access Program. The required health care expenditure for a covered employer shall be calculated by multiplying the total number of hours paid for all each of its covered employees during the quarter (including only hours starting on the first day of the calendar month following ninety (90) calendar days after a covered employee's date of hire) by the applicable health care expenditure rate. In determining whether a covered employer has made its required health care expenditures, payments to or on behalf of a covered employee shall not be considered if they exceed the following amount: the number of hours paid for the covered employee during the quarter multiplied by the applicable health care expenditure rate. The City's Office of Labor Standards Enforcement (OLSE) shall enforce the health expenditure requirements under this Section.

(b) Additional Employer Responsibilities. A covered employer shall: (i) maintain accurate records of health care expenditures, required health care expenditures, and proof of such expenditures made each quarter each year, and allow OLSE reasonable access to such records, provided, however, that covered employers shall not be required to maintain such records in any particular form; and (ii) provide information to the OLSE, or the OLSE's designee, on an annual basis containing such other information as OLSE shall require, but OLSE may not require an employer to provide information in violation of State or federal privacy laws. Where an employer does not maintain or retain adequate records documenting the health expenditures made, or does not allow OLSE reasonable access to such records, it shall be presumed that the employer did not make the required health expenditures for the
quarter for which records are lacking, absent clear and convincing evidence otherwise. The
Office of Treasurer and Tax Collector shall have the authority to provide any and all
nonfinancial information to OLSE necessary to fulfill the OLSE's responsibilities as the
enforcing agency under this Ordinance. With regard to all such information provided by the
Office of Treasurer and Tax Collector, OLSE shall be subject to the confidentiality provisions
of Subsection (a) of Section 6.22-1 of the San Francisco Business and Tax Regulations Code.

SEC. 14.4 ADMINISTRATION AND ENFORCEMENT.

(a) The City shall develop and promulgate rules to govern the operation of this
Chapter. The regulations shall include specific rules by the Department of Public Health on
the operation of both the Health Access Program and the reimbursement accounts identified in
Section 14.2(g), including but not limited to eligibility for enrollment in the Health Access Program and
establishment of reimbursement accounts and rules by the OLSE for enforcement of the
obligations of the employers under this Chapter. The rules shall also establish procedures for
covered employers to maintain accurate records of health care expenditures and required
health care expenditures and provide a report to the City without requiring any disclosures of
information that would violate State or Federal privacy laws. The rules shall further establish
procedures for providing employers notice that they may have violated this Chapter, a right to
respond to the notice, a procedure for notification of the final determination of a violation, and
an appeal procedure before a hearing officer appointed by the City Controller. The sole
means of review of the hearing officer's decision shall be by filing in the San Francisco
Superior Court a petition for a writ of mandate under Section 1094.5 of the California Code of
Civil Procedure. No rules shall be adopted finally until after a public hearing.
(b) During implementation of this Chapter and on an ongoing basis thereafter, the City shall maintain an education and advice program to assist employers with meeting the requirements of this Chapter.

(c) Any employer that reduces the number of employees below the number that would have resulted in the employer being considered a "covered employer," or below the number that would have resulted in the employer being considered a medium-sized or large business, shall demonstrate that such reduction was not done for the purpose of evading the obligations of this Chapter or shall be in violation of the Chapter.

(d) It shall be unlawful for any employer or covered employer to deprive or threaten to deprive any person of employment, take or threaten to take any reprisal or retaliatory action against any person, or directly or indirectly intimidate, threaten, coerce, command or influence or attempt to intimidate, threaten, coerce, command or influence any person because such person has cooperated or otherwise participated in an action to enforce, inquire about, or inform others about the requirements of this Chapter. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

(e) The City shall enforce the obligations of employers and covered employers under this Chapter, and may impose administrative penalties upon employers and covered employers who fail to make required health care expenditures on behalf of their employees. The amount of the penalty shall be $1,000 for each employee for each week that such expenditures are not made, provided that the total amount of penalties shall not exceed the following: violate this Chapter, including the requirements that businesses allow the City reasonable access to records of health expenditures, as follows: the amount of up to one-and-one-half times the total expenditures that a covered employer failed to make plus simple annual interest of up to ten (10) percent from the...
date payment should have been made, but in any event the total penalty for this violation shall not exceed $1,000 for each employee for each week that such expenditures are not made.

(2) For other violations of this Chapter by employers and covered employers, the administrative penalties shall be as follows: For refusing to allow access to records, pursuant to Section 14.3(b), $25 as to each worker whose records are in issue for each day that the violation occurs; for the failure to maintain or retain accurate and adequate records pursuant to Section 14.3(b) and for the failure to make the annual report of information required by OLSE pursuant to Section 14.3(b), $500; for violation of Section 14.4(d) (retaliation), $100 as to each person who is the target of the prohibited action for each day that the violation occurs; and for any other violation not specified in this subsection (e)(2), $25 per day for each day that the violation occurs.

(3) The City Attorney may bring a civil action to recover civil penalties for the violations set forth in subsections (e)(1) and (e)(2) in the same amounts set forth in those subsections, and to recover the City's enforcement costs, including attorneys' fees.

(4) Amounts recovered under this Section shall be deposited in the City's General Fund.

(f) The City Controller shall coordinate with the Department of Public Health and OLSE to prepare periodic reports on the implementation of this Chapter including participant rates, any effect on services provided by the Department of Public Health, the cost of providing services to the Health Access Program participants and the economic impact of the Chapter's provisions. Reports shall be provided to the Board of Supervisors on a quarterly basis for quarters beginning July 1, 2007 through June 30, 2008, then every six months through June 30, 2010. Reports shall include specific information on any significant event affecting the implementation of this Chapter and also include recommendations for improvement where needed, in which case the Board of Supervisors or a committee thereof
shall hold a hearing within thirty (30) days of receiving the report to consider responsive
action.

(g) The Director of Public Health shall convene an advisory Health Access Working
Group to provide the Department of Public Health and the Health Access Program with expert
consultation and direction, with input on members from the Mayor and the Board of
Supervisors. The Health Access Working Group shall be advisory in nature and may provide

(h) The Department of Public Health and the OLSE shall report to the Board of
Supervisors by July 1, 2007/January 31, 2007, on the development of rules for the Health
Access Program and for the enforcement and administration of the employer obligations
under this Chapter. The Board of Supervisors or a committee thereof shall hold a hearing on the
proposed rules to ensure that participants in the Health Access Program shall have access to
high quality and culturally competent services.

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

By: PAUL ZAREFSKY
Deputy City Attorney
Ordinance amending the San Francisco Administrative Code by amending Sections 14.1 through 14.4 to: (1) authorize the Department of Public Health to establish and maintain reimbursement accounts from which employees covered by the San Francisco Health Care Security Ordinance ("HCSO") may seek reimbursement for health care expenses; (2) clarify remedies for violations of the HCSO; and (3) make other technical changes and findings.

March 20, 2007 Board of Supervisors — PASSED ON FIRST READING
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

March 27, 2007 Board of Supervisors — FINALLY PASSED
Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
Noes: 1 - Jew
I hereby certify that the foregoing Ordinance was FINALLY PASSED on March 27, 2007 by the Board of Supervisors of the City and County of San Francisco.

Date Approved

Gloria L. Young
Clerk of the Board

Mayor Gavin Newsom