

1 [Health Care Accountability Ordinance.]

2
3 Ordinance amending the San Francisco Administrative Code by adding Chapter 12Q,
4 encompassing sections 12Q.1 through 12Q.11, to require contractors that provide
5 services to the City or enter into certain leases with the City, and certain
6 subcontractors, subtenants and parties providing services to tenants and subtenants
7 on City property, with respect to covered employees, to offer health plan benefits to
8 employees, to make payments to the City for use by the Department of Public Health, to
9 make payments directly to employees under limited circumstances, or to participate in
10 a health benefits program developed by the Director of Health.

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

15 Note: The entire Chapter 12Q is new.

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

17
18 Section 1. The San Francisco Administrative Code is hereby amended by adding
19 Chapter 12Q, encompassing Sections 12Q.1 through 12Q.11, to read as follows:

20 **CHAPTER 12Q: HEALTH CARE ACCOUNTABILITY**

- 21 Sec. 12Q.1 Title
22 Sec. 12Q.2 – 12Q.2.21 Definitions
23 Sec. 12Q.3 Health Care Accountability Components
24 Sec. 12Q.4 Contractual Obligations
25 Sec. 12Q.5 Administration and Enforcement

- 1 Sec. 12Q.6 Waivers by the Agency Director
- 2 Sec. 12Q.7 Special Waiver by the Public Utilities Commission
- 3 Sec. 12Q.8 Preemption
- 4 Sec. 12Q.9 Effective Date
- 5 Sec. 12Q.10 Period of Suspension
- 6 Sec. 12Q.11 Severability

7

8 **SEC. 12Q.1. TITLE.**

9 This Chapter shall be known as the “San Francisco Health Care Accountability
10 Ordinance.”

11

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

13 As used in this Chapter, the following capitalized terms shall have the meanings set
14 forth in the following provisions.

15

16 **SEC. 12Q.2.1. AGENCY.**

17 “Agency” shall mean the City’s Purchasing Department. If the City creates an Office of
18 Contract Administration (“OCA”), the OCA shall assume all responsibilities of the Agency
19 under this Chapter.

20

21 **SEC. 12Q.2.2. AGENCY DIRECTOR.**

22 “Agency Director” shall mean the Director of Purchasing or his/her designee. If the City
23 creates an Office of Contract Administration (“OCA”), the Director of OCA shall assume all
24 responsibilities of the Agency Director under this Chapter.

25

1 **SEC. 12Q.2.3. CITY.**

2 "City" shall mean the City and County of San Francisco.

3
4 **SEC. 12Q.2.4. CONTRACT.**

5 (a) "Contract" shall mean an agreement between a Contracting Department and any
6 person or entity that provides for public works or public improvements to be purchased, or for
7 services to be performed, at the expense of the City. The term "Contract" also means an
8 agreement between a Tenant or Subtenant and any person or entity to perform services on
9 property covered by a Lease. The term "Contract" includes "Contract Amendment."

10 (b) Notwithstanding the foregoing, the term "Contract" does not include the
11 following:

12 (1) Agreements for a duration of less than one (1) year. Contracting Departments
13 and Tenants and Subtenants are prohibited from entering into multiple contracts of short
14 duration with the proposed Contractor in order to evade the requirements of this Chapter;

15 (2) Agreements for the purchase or lease of goods, or for guarantees, warranties,
16 shipping, delivery, installation or maintenance of such goods. Where an agreement is for the
17 purchase or lease of both goods and other services, the agreement shall not be deemed a
18 "Contract" if a preponderance of the contract amount is for goods;

19 (3) Agreements entered into pursuant to settlement of legal proceedings;

20 (4) Agreements for urgent or specialized advice, consultation or litigation services
21 for the City Attorney's Office where the City Attorney finds that it would be in the best interests
22 of the City not to include the requirements of this Chapter;

23 (5) Agreements with any person or entity if the amount of the agreement is less
24 than \$25,000 (in the case of a for-profit entity or person) or less than \$50,000 (in the case of a
25 Nonprofit Corporation). However, if the Contracting Party has multiple agreements with the

1 City in a given fiscal year (which agreements would be considered "Contracts" under this
2 Chapter except that the individual dollar amounts are below the thresholds set forth in the
3 preceding sentence) and the cumulative amount of such agreements is \$75,000 or more, the
4 provisions of this Chapter shall apply to each such agreement from the date on which the
5 triggering Contract is executed;

6 (6) Agreements for the investment, management or use of trust assets where
7 compliance would violate the fiduciary duties of the trustee;

8 (7) Agreements executed prior to the Effective Date (unless and until a Contract
9 Amendment is executed);

10 (8) Agreements executed after the Effective Date (unless and until a Contract
11 Amendment is entered into) pursuant to, and within the scope of, bid packages or requests for
12 proposals advertised and made available to the public prior to the Effective Date, unless the
13 bid packages or requests for proposals are materially amended on or after the Effective Date;

14 (9) Agreements involving the expenditure by the City of special funds or other non-
15 General Fund revenues to the extent that application of this Chapter would require the City to
16 use General Fund monies to supplement the special funds or other non-General Fund
17 revenues to maintain the current level of services;

18 (10) Agreements that require the expenditure of grant funds awarded to the City by
19 another entity. If a Contract is funded both by grant funds and non-grant funds, the entire
20 Contract is exempt; provided that, if the use of the grant funds is severable from the non-grant
21 funds, the Contract is exempt only with respect to the use of the grant funds;

22 (11) Agreements pursuant to which the City awards a grant to a Nonprofit
23 Corporation;

1 (12) Agreements with a public entity, unless the public entity is the San Francisco
2 Redevelopment Agency, the San Francisco LAFCO, the San Francisco Transportation
3 Authority, the San Francisco Parking Authority or the San Francisco Health Authority;

4 (13) Agreements for employee benefits to be provided to City employees, where the
5 Director of Human Resources finds that no person or entity is willing to comply with this
6 Chapter and is capable of providing the required employee benefits;

7 (14) Agreements for the investment, management or use of City monies where the
8 Treasurer finds that requiring compliance with this Chapter will violate the Treasurer's
9 fiduciary duties and for the investment of retirement, health or other funds held in trust
10 pursuant to Charter, statute, ordinance or MOU where the official or officials responsible for
11 investing or managing such funds find that requiring compliance with this Chapter will violate
12 their fiduciary duties;

13 (15) Loan agreements and agreements made in connection with loans or grants
14 under which the City, as creditor or grantor, is providing funds to be used by the debtor or
15 grantee to:

16 (A) Acquire an interest in real property on which residential improvements for
17 low- or moderate-income households will be constructed;

18 (B) Construct improvements owned or leased by the debtor or grantee, on
19 condition that residents of the improvements qualify as low- or moderate-income households;

20 or

21 (C) Rehabilitate improvements owned or leased by the debtor or grantee; and

22 (16) Agreements between a Tenant or Subtenant and a Contractor to perform
23 services on property covered by a Lease if the Contractor does not provide such services on a
24 regular and on-going basis. For purposes of this exemption, if employees of the Contractor
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1 and any Subcontractors cumulatively work on the Lease property less than 130 days within a
2 12-month period, the agreement shall not be considered regular and on-going.

3
4 **SEC. 12Q.2.5. CONTRACT AMENDMENT.**

5 (a) "Contract Amendment" shall mean a modification to an agreement which
6 extends the term, increases the total amount of payments due from the City (except where
7 such increase is due solely to cost of living adjustments), or modifies the scope of services to
8 be performed by the Contractor; provided that the resulting agreement falls within the
9 definition of "Contract."

10 (b) Notwithstanding the foregoing, "Contract Amendment" does not include a one-
11 time extension of the term of a Contract for up to 6 months, or a construction change order,
12 modification or amendment to a Contract executed by the City for its benefit (as determined
13 by the Agency Director).

14
15 **Sec. 12Q.2.6. CONTRACTING DEPARTMENT.**

16 "Contracting Department" shall mean the City department, office, board, commission or
17 other City agency that enters into the applicable Contract or Lease on behalf of the City.

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19 **SEC. 12Q.2.7. CONTRACTING PARTIES.**

20 "Contracting Parties" shall mean Contractors, Subcontractors, Tenants, and
21 Subtenants.

22
23 **SEC. 12Q.2.8. CONTRACTOR.**

1 "Contractor" shall mean the person or entity that enters into a Contract with the City.
2 The term "Contractor" also means any person or entity that enters into a Contract with a
3 Tenant or Subtenant to perform services on property covered by a Lease.
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5 **SEC. 12Q.2.9. COVERED EMPLOYEE.**

6 (a) "Covered Employee" shall mean:

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

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

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

12 (C) Elsewhere in the United States; and

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

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

18 (4) Beginning on July 1, 2002, the number of hours an employee must work per
19 Week Pay Period in order to be considered a "Covered Employee" pursuant to this
20 Subsection (a)(1), (2) and (3) shall be 15 or more.

21 (b) Notwithstanding the foregoing, the term "Covered Employee" does not include
22 the following:

23 (1) Any Employee under the age of eighteen (18) who is a student, provided that
24 the Employee does not replace, displace or lower the wage or benefits of any existing position
25 or Employee; or

1 (2) Any Employee employed as a trainee in a bona fide training program consistent
2 with Federal law, which training program enables the Employee to advance into a permanent
3 position, provided that the Employee does not replace, displace or lower the wage or benefits
4 of any existing position or Employee; or

5 (3) Any Employee that the Contracting Party is required to pay no less than the
6 "prevailing rate of wage" in accordance with Section A7.204 of Appendix A to the City's
7 Charter or Chapter 6 of the San Francisco Administrative Code; or

8 (4) Any disabled Employee who:

9 (A) Is covered by a current sub-minimum wage certificate issued to the
10 employer by the U.S. Department of Labor; or

11 (B) Would be covered by such a certificate but for the fact that the employer
12 is paying a wage equal to or higher than the minimum wage.

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14 **SEC. 12Q.2.10. EFFECTIVE DATE.**

15 "Effective Date" shall mean the applicable effective date specified in Section 12Q.9 of
16 this Chapter.

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18 **SEC. 12Q.2.11. EMPLOYEE.**

19 "Employee" shall mean any person who is employed by a Contracting Party, including
20 part-time and temporary employees.

21
22 **SEC. 12Q.2.12. HEALTH DIRECTOR.**

23 "Health Director" shall mean the Director of the Department of Public Health.

24
25 **SEC. 12Q.2.13. LEASE.**

1 (a) "Lease" shall mean a written agreement (including, without limitation, any lease,
2 concession or license) in which the City gives to another party the exclusive use of City
3 Property for a term exceeding twenty-nine (29) consecutive days in any calendar year,
4 whether by single or cumulative instruments. "City Property" means real property that is
5 owned by the City or of which the City has exclusive use, if such property is located within the
6 City or is under the jurisdiction of the San Francisco Airport Commission. If cumulative
7 instruments cause the term of the agreement to exceed twenty-nine (29) consecutive days,
8 the agreement in question shall be subject to this Chapter only on and after the effective date
9 of the instrument which causes the term to exceed twenty-nine (29) consecutive days. For
10 the purposes of this definition and the definition of Sublease, "exclusive use" means the right
11 to use or occupy real property to the exclusion of others, subject to the rights reserved by the
12 party granting such exclusive use. "Lease" includes "Lease Amendment."

13 (b) Notwithstanding the foregoing, the term "Lease" does not include the following:

14 (1) Agreements granting a franchise or easement;

15 (2) Agreements with a public entity, unless the public entity is the San Francisco
16 Redevelopment Agency, the San Francisco LAFCO, the San Francisco Transportation
17 Authority, the San Francisco Parking Authority or the San Francisco Health Authority;

18 (3) Agreements entered into pursuant to settlement of legal proceedings;

19 (4) Revocable at-will use or encroachment permits for the use of or encroachment
20 on City Property, regardless of the ultimate duration of such permits;

21 (5) Street excavation, street construction or street use permits or other regulatory
22 permits;

23 (6) Agreements for the use of a City right-of-way, including circumstances where a
24 contracting utility has the power of eminent domain;

1 (7) Agreements governing the use of City Property under the jurisdiction of the
2 Recreation and Park Department primarily for recreational activities.

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4
5 **SEC. 12Q.2.14. LEASE AMENDMENT.**

6 (a) "Lease Amendment" shall mean a modification to a Lease that extends the term
7 or materially changes any other provision of the Lease.

8 (b) Notwithstanding the foregoing, "Lease Amendment" does not include a one-time
9 extension of the term of a Lease for up to 6 months, or relocation of the leased premises at
10 the request of the City for its benefit or convenience (as determined by the Agency Director).

11
12 **SEC. 12Q.2.15. NONPROFIT CORPORATION.**

13 "Nonprofit Corporation" shall mean a nonprofit corporation, duly organized, validly
14 existing and in good standing under the laws of the jurisdiction of its incorporation and (if a
15 foreign corporation) in good standing under the laws of the State of California, which
16 corporation has established and maintains valid nonprofit status under Section 501(c)(3) of
17 the United States Internal Revenue Code of 1986, as amended, and all rules and regulations
18 promulgated under such Section.

19
20 **SEC. 12Q.2.16. WEEK ~~PAY PERIOD~~.**

21 "Week" ~~"Pay Period"~~ shall mean a consecutive seven-day period. If the Contracting
22 Party's regular pay period is other than a seven-day period, the number of hours worked by
23 an employee during a seven-day Week ~~Pay Period~~, for purposes of this Chapter, shall be
24 calculated by adjusting the number of hours actually worked during the Contracting Party's
25

1 regular pay period to determine the average over a seven-day Week Pay Period. However,
2 such period of averaging shall not exceed a duration of one month.

3
4 **SEC. 12Q.2.17. SUBCONTRACT.**

5 (a) "Subcontract" shall mean an agreement between a Contractor and a person or
6 entity pursuant to which the person or entity agrees to perform all or a portion of the services
7 covered by a Contract.

8 (b) Notwithstanding the foregoing, the term "Subcontract" does not include:

9 (1) Agreements for the purchase or lease of goods, or for guarantees, warranties,
10 shipping, delivery, installation or maintenance of such goods. When an agreement is for the
11 purchase or lease of both goods and other services, the agreement shall not be deemed a
12 "Subcontract" if a preponderance of the Contract amount is for goods;

13 (2) Agreements with a public entity, unless the public entity is the San Francisco
14 Redevelopment Agency, the San Francisco LAFCO, the San Francisco Transportation
15 Authority, the San Francisco Parking Authority or the San Francisco Health Authority.

16
17 **SEC. 12Q.2.18. SUBCONTRACTOR.**

18 "Subcontractor" shall mean a person or entity that enters into a Subcontract.

19
20 **SEC. 12Q.2.19. SUBLEASE.**

21 (a) "Sublease" shall mean any agreement with any person or entity for the exclusive
22 right to occupy or use all or any portion of City Property covered by a Lease.

23 (b) Notwithstanding the foregoing, the term "Sublease" does not include each of the
24 circumstances set forth in Section 12Q.2.13(b) that constitutes an exclusion from the definition
25 of "Lease."

1
2 **SEC. 12Q.2.20. SUBTENANT.**

3 "Subtenant" shall mean a person or entity that enters into a Sublease.
4

5 **SEC. 12Q.2.21. TENANT.**

6 "Tenant" shall mean the person or entity that enters into a Lease with the City.
7

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

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

13 (1) Offer to the Covered Employee health plan benefits that meet minimum
14 standards prepared by the Health Director and approved by the Health Commission. The
15 minimum standards shall provide for a maximum period for each Covered Employee's health
16 benefits to become effective, not to exceed 30 days from the start of employment on a
17 covered Contract, Subcontract, Lease or Sublease. The Health Commission shall review
18 such standards every two years to ensure that the standards stay current with State and
19 Federal regulations and existing health benefits practices; or

20 (2) For each Week Pay Period in which the Covered Employee works the applicable
21 minimum number of hours set forth in Section 12Q.2.9(a) (definition of "Covered Employee"),
22 pay to the City \$1.50 per hour for each hour the Covered Employee is employed by the
23 Contracting Party on the Contract or Subcontract or on property covered by a Lease, but not
24 to exceed \$60 in any Week Pay Period. The City shall appropriate money received pursuant
25 to this Subsection (a)(2) for the use of the Department of Public Health. The Health
The Department of Public Health shall use the monies appropriated for staffing and
other resources to provide medical care for the uninsured.

Mayor Willie L. Brown, Jr.

BOARD OF SUPERVISORS

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1 Commission may increase this hourly rate and Weekly Pay Period maximum in accordance
2 with the Bureau of Labor Statistics Consumer Price Index for Medical Care in the San
3 Francisco Bay Area or such other factors as the Health Commission finds appropriate;
4 provided, however, the Health Commission shall take this action no more than once a year
5 and any adjustments in such hourly rate or Pay Period Weekly maximum must be approved
6 by the Board of Supervisors by resolution; or

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

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

24 (c) With respect to each Covered Employee who does not reside in San Francisco,
25 and does not provide services covered by this Chapter in San Francisco, at the San Francisco

1 Airport or at the San Bruno Jail, each Contracting Party shall do one of the following, at the
2 Contracting Party's option:

3 (1) Offer to the Covered Employee health plan benefits that meet minimum
4 standards prepared by the Health Director and approved by the Health Commission pursuant
5 to Subsection 12Q.3(a)(1) above; or

6 (2) For each Week Pay Period in which the Covered Employee works the applicable
7 minimum number of hours set forth in Section 12Q.2.9(a) (definition of "Covered Employee"),
8 pay to the Covered Employee an additional \$1.50 per hour for each hour the Covered
9 Employee is employed by the Contracting Party on the Contract or Subcontract or on property
10 covered by a Lease, but not to exceed \$60 in any Week Pay Period, to enable the employee
11 to obtain health insurance coverage. This represents the City's current estimate of the
12 average cost of obtaining individual health insurance benefits. The Health Commission may
13 increase this hourly rate and Weekly Pay Period maximum in accordance with the Bureau of
14 Labor Statistics Consumer Price Index for Medical Care in the San Francisco Bay Area or
15 such other factors as the Health Commission finds appropriate in order to track the cost of
16 obtaining individual health insurance; provided, however, the Health Commission shall take
17 this action no more than once a year and any adjustments in such hourly rate or Pay Period
18 Weekly maximum must be approved by the Board of Supervisors by resolution.

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

1 control the Contracting Party and that the Contracting Party owns or controls, shall be
2 included.

3
4 **SEC. 12Q.4. CONTRACTUAL OBLIGATIONS.**

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

7 (1) To comply with the requirements of this Chapter, including the requirement to
8 choose and perform one of the Health Care Accountability Components set forth in Section
9 12Q.3;

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

11 (3) To provide information and reports to the City in accordance with any reporting

12 standards promulgated by the Agency in consultation with the Director of Health;
13 ~~relating to the number of employees employed and terms of medical coverage as allowed~~

14 ~~by law~~ (4) To provide the City with access to pertinent records after receiving a written
15 request to do so and being provided at least five (5) business days to respond;

16 (5) To cooperate with the Agency when it conducts audits;

17 (6) To include in every Contract, Subcontract, Lease, or Sublease subject to this
18 Chapter provisions requiring compliance with this Chapter, consistent with any directives or
19 standards adopted by the Agency;

20 (7) To notify the Agency promptly of any Subcontractors performing services
21 covered by this Chapter and certify to the Agency that it has notified the Subcontractors of
22 their obligations under this Chapter; and

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

25 (b) A Contracting Party shall not discharge, reduce in compensation, or otherwise
discriminate against any Employee for notifying the City regarding the Contracting Party's

1 noncompliance or anticipated noncompliance with this Chapter, for opposing any practice
2 proscribed by this Chapter, for participating in proceedings related to this Chapter, or for
3 seeking to assert or enforce any rights under this Chapter by any lawful means.
4

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

6 (a) The Agency, in consultation with the Department of Public Health, shall
7 promulgate regulations for the interpretation and administration of this Chapter, which
8 regulations shall be adopted only after public hearing.

9 (b) The Agency, in consultation with the City Attorney, shall develop contractual
10 provisions for use by Contracting Departments designed to enable the City to pursue the
11 remedies set forth in this Section against every person or entity required to comply with this
12 Chapter.

13 (c) The Agency, in consultation with the Department of Public Health, may conduct
14 audits of Contracting Parties, although such audits shall be conducted only with at least 10
15 days' advance written notice to the Contracting Party and after making good faith efforts for a
16 mutually agreed upon time and location.

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

20 (e) A Covered Employee may report to the Agency in writing any alleged violation of
21 this Chapter by a Contracting Party or other person or entity subject to this Chapter. The
22 Agency shall investigate any such report. If the Agency determines that any person or entity
23 has violated this Chapter, the Agency shall notify the Contracting Department of its findings.
24 In order to ensure compliance with this Chapter and to enhance the monitoring activities of the
25 Agency, the City encourages reporting by Covered Employees pursuant to this Subsection.

1 The Agency shall keep confidential the Covered Employee's name and other identifying
2 information, to the maximum extent permitted by applicable law.

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

6 (1) The right to charge the Contracting Party for any amounts that the Contracting
7 Party should have paid to the City for hours worked by Covered Employees pursuant to
8 Section 12Q.3(a)(2) and (b), together with interest on such amount from the date payment
9 was due at the maximum rate then permitted by law;

10 (2) The right to assess liquidated damages of \$50 a day for each Covered
11 Employee each day that the Contracting Party fails to pay to the City the amounts required by
12 Subsection 12Q.3(a)(2) and (b);

13 (3) The right to set off all or any portion of the amount that a Contracting Party is
14 required to pay to the City pursuant to preceding Subsections (g)(1) and (2) against amounts
15 due to a Contracting Party;

16 (4) The right to terminate the Contract or Lease in whole or in part;

17 (5) The right to bar a Contracting Party from entering into future Contracts or
18 Leases with the City for three (3) years.

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

24 (h) Each Tenant shall be responsible for each Subtenant, Contractor and
25 Subcontractor performing services on property covered by the Tenant's Lease, with respect to

1 compliance with this Chapter. If any Subtenant, Contractor or Subcontractor fails to comply,
2 the City may pursue the remedies set forth in this Section against the Tenant based on the
3 Subtenant's, Contractor's or Subcontractor's failure to comply, provided that the Contracting
4 Department has first provided the Tenant with notice and an opportunity to obtain a cure of
5 the violation.

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

10 **SEC. 12Q.6. WAIVERS BY THE AGENCY DIRECTOR.**

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

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

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

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

22 (4) There are no qualified responsive bidders or prospective vendors or tenants that
23 comply with the requirements of this Chapter and the agreement is for a service, lease or
24 project that is essential to the City or the public;
25

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

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

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

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

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

12
13 **SEC. 12Q.7. SPECIAL WAIVER BY THE PUBLIC UTILITIES COMMISSION.**

14 The General Manager of the Public Utilities Commission may waive the requirements
15 of this Chapter where the Contractor or Subcontractor is providing to or on behalf of the San
16 Francisco Public Utilities Commission services relating to:

17 (a) The provision, conveyance or transmission of wholesale or bulk water, electricity
18 or natural gas; or

19 (b) Ancillary requirements such as spinning reserve, voltage control, or loading
20 scheduling, as required for ensuring reliable services in accordance with good utility practice;
21 provided, however:

22 (1) The purchase of such services may not practically be accomplished through the
23 City's standard competitive bidding procedures; and

24 (2) The Contractor or Subcontractor is not providing direct, retail services to end
25 users within the geographic boundaries of the City.

1
2 **SEC. 12Q.8. PREEMPTION.**

3 Nothing in this Chapter shall be interpreted or applied so as to create any power or
4 duty in conflict with any federal or state law.
5

6 **SEC. 12Q.9. EFFECTIVE DATE.**

7 This Chapter shall become effective, and its requirements shall be included in all
8 covered Contracts, Subcontracts, Leases and Subleases, 30 days after it is adopted or July 1,
9 2001, whichever occurs later. This Chapter is intended to have prospective effect only.
10

11 **SEC. 12Q.10. PERIOD OF SUSPENSION.**

12 ~~Contracting Parties shall not be required to provide any of the Health Care~~
13 ~~Accountability Components provided in Section 12Q.3 to their Covered Employees until such~~
14 ~~time as the If the Health Director has not prepared, or and the Health Commission has not~~
15 ~~approved, minimum standards for health plan benefits pursuant to Section 12Q.3(a)(1), by the~~
16 ~~Effective Date, the Agency Director shall suspend enforcement of this Chapter for a period of~~
17 ~~up to 30 days in order to provide sufficient time for the Health Director and the Health~~
18 ~~Commission to take these actions. The Health Director and Health Commission shall proceed~~
19 ~~promptly to take these actions. From the date upon which the Health Commission approves~~
20 ~~such minimum standards forward, Contracting Parties shall provide the Health Care~~
21 ~~Accountability Components set forth in Section 12Q.3 to their Covered Employees.~~
22

23 **SEC. 12Q.11. SEVERABILITY.**

24 If any part or provision of this Chapter, or the application of this Chapter to any person,
25 location or circumstance, is enjoined or held invalid by a court of law, the remainder of this

1 Chapter, including the application of such part or provisions to other persons, locations or
2 circumstances, shall not be affected by such action and shall continue in full force and effect.
3 To this end, the provisions of this Chapter are severable. Further, to the extent Section
4 12Q.3(a)(2) may be enjoined or held invalid by a court of law, the Contracting Party may
5 alternatively comply in accordance with Section 12Q.3(c)(2).
6

7 Section 2. FINDINGS.

8 (a) The Board of Supervisors finds as follows:

9 (1) Employers should be primarily responsible for offering health care benefits to
10 their employees to enhance the quality of services provided.

11 (2) Where contractors and subcontractors are providing services to the public or the
12 City, the quality of service will be enhanced if the employees actually providing the services
13 for the contractors and subcontractors have access to sound medical care through health
14 insurance. Such employees are more likely to be physically and mentally healthy, and
15 therefore provide better service to the City. In addition, employees who are provided
16 reasonable benefits by their employers are more likely to be satisfied with their employment
17 and, therefore, represent a more stable sector of the workforce, providing better service on
18 City contracts.

19 (3) The City has a significant interest in reducing the costs it incurs in providing
20 medical care to uninsured individuals at San Francisco General Hospital and other City health
21 care facilities.

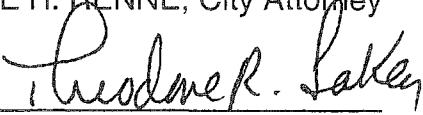
22 (b) Accordingly, it is the intent of the Board of Supervisors in adopting this
23 legislation to ensure that the employees of City contractors and subcontractors, and
24 employees working on City property in and adjacent to San Francisco, have access to health
25 insurance in the manner prescribed in this legislation.

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Section 3. CITY UNDERTAKING LIMITED.

In undertaking the adoption and enforcement of this ordinance, the City is not assuming, nor is it imposing on its officers and employees, an obligation for the breach of which it is liable in money damages to any person who claims such breach proximately caused injury.

APPROVED AS TO FORM:
LOUISE H. RENNE, City Attorney

By: 
Deputy City Attorney



City and County of San Francisco

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

Tails Ordinance

File Number: 010848

Date Passed:

Ordinance amending the San Francisco Administrative Code by adding Chapter 12Q, encompassing Sections 12Q.1 through 12Q.11, to require contractors that provide services to the City or enter into certain leases with the City, and certain subcontractors, subtenants and parties providing services to tenants and subtenants on City property, with respect to covered employees, to offer health plan benefits to employees, to make payments to the City for use by the Department of Public Health, to make payments directly to employees under limited circumstances, or to participate in a health benefits program developed by the Director of Health.

May 14, 2001 Mayor — SUBSTITUTED

May 21, 2001 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick, Newsom, Peskin, Sandoval, Yee

May 21, 2001 Board of Supervisors — AMENDED

Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick, Newsom, Peskin, Sandoval, Yee

May 21, 2001 Board of Supervisors — AMENDED

Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick, Newsom, Peskin, Sandoval, Yee

May 21, 2001 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick, Newsom, Peskin, Sandoval, Yee

May 29, 2001 Board of Supervisors — FINALLY PASSED

Ayes: 9 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, Newsom, Peskin, Sandoval

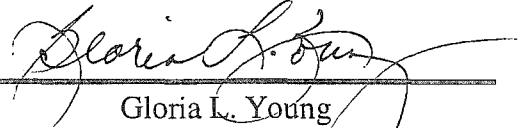
Absent: 2 - McGoldrick, Yee

File No. 010848

I hereby certify that the foregoing Ordinance
was FINALLY PASSED on May 29, 2001 by
the Board of Supervisors of the City and
County of San Francisco.

MAY 31 2001

Date Approved



Gloria L. Young
Clerk of the Board



Mayor Willie L. Brown Jr.