

1 [Payroll Expense Tax Biotechnology Exclusion Amendment.]

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3 **Ordinance amending Section 906.1 of the San Francisco Business and Tax Regulations**
 4 **Code to clarify the definition of "biotechnology business" and to allow applicants to**
 5 **claim the biotechnology exclusion for seven and one half years irrespective of the**
 6 **application date.**

7 NOTE: Additions are *single-underline italics Times New Roman*;
 8 deletions are ~~*strike-through italics Times New Roman*~~.
 9 Board amendment additions are double-underlined;
 Board amendment deletions are ~~strike-through normal~~.

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

11 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended
 12 by amending Section 906.1 to read as follows:

13 SEC. 906.1. BIOTECHNOLOGY EXCLUSION.

14 (a) Any person engaging in biotechnology business within the city may exclude from
 15 their payroll expense all compensation paid to, on behalf of or for the benefit of all employees
 16 of that person, and all distributions by an Association by way of salary to those having an
 17 ownership interest in such Association, who or that perform substantially all work or render
 18 substantially all services in direct support of such person's biotechnology business, subject to
 19 the conditions and limitations set forth in this Section. For purposes of this Section, outside
 20 contractors shall not be considered employees of the biotechnology business. For purposes of
 21 this Section, "biotechnology business" means conducting biotechnology research and
 22 experimental development, and operating laboratories for biotechnology research and
 23 experimental development, using ~~recombinant~~ DNA, cells ~~fusion~~, and or bioprocessing
 24 techniques, as well as the application thereof to the development of therapeutics, diagnostic
 25 products and/or devices to improve human health, animal health, and agriculture.

1 (b) For purposes of this section, "DNA" is a nucleic acid sequence, or fragment thereof, that
2 contains the genetic information for cell growth, division, and function. Examples of DNA include
3 recombinant DNA, RNA, mRNA, antisense, RNAi, genes and ESTs.

4 (c) For purposes of this section, "cells" are membrane bound structures containing
5 biomolecules, such as nucleic acids, proteins, and polysaccharides. This definition includes both
6 prokaryotic (bacterial) and eukaryotic (animal or plant) cells. Examples include primary cells,
7 transformed or cultured cells, stem cells, iPS, ESCs, fused cells and cell lines.

8 (d) For purposes of this section, "bioprocessing" is the use of microbial, plant, or animal cells
9 or portions thereof, for the production of therapeutics or diagnostics. Bioprocessing includes the
10 extraction of compounds from biomaterials; reaction of biomaterials, such as microbial fermentation,
11 cell culture, cell fusion or biotransformation by enzymes; and separation of product from biomaterials
12 using filtration, purification, precipitation, centrifugation, solvents, chromatography or other means.

13 ~~(be)~~ The biotechnology exclusion authorized under this Section shall be available to
14 and may be taken by each person engaging in the biotechnology business in the City for a
15 period of seven and one-half years from the effective date of this Section or the
16 commencement of the person's biotechnology business in the City, whichever is later. The
17 date the ~~Tax Collector~~ Director of Public Health or his or her designee received the person's
18 application for a business registration certificate for the person's biotechnology business shall
19 be presumed to be the date of commencement of such business unless the person
20 establishes a different commencement date to the satisfaction of the Tax Collector.

21 (f) In order to be eligible for the payroll expense tax exclusion authorized under this Section,
22 persons wishing to claim the exclusion must:

23 (1) Complete and submit an initial application to the Director of the Department of
24 Public Health or his or her designee for review and evaluation. The Director of the Department of
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1 Public Health, or his or her designee shall have authority to develop eligibility criteria for the
2 biotechnology exclusion.

3 (2) After approval, file an annual affidavit with the Department of Public Health
4 affirming that they continue to meet the eligibility criteria as determined by the Department of Public
5 Health. The affidavit must be filed with the Department of Public Health on or before January 31 of
6 every year after the year the application is first approved.

7 (3) Maintain a reasonable method of documentation that can be reviewed or verified
8 objectively that tracks how employees whose compensation qualifies for the payroll expense tax
9 exclusion spend their time at work, and provide such documentation to the Tax Collector upon request.

10 (4) File an annual Payroll Expense Tax Return with the Tax Collector regardless of the
11 amount of tax liability shown on the return after claiming the exclusion provided for in this Section.

12 ~~(e)(g)~~ The biotechnology exclusion authorized under this Section shall expire
13 on the tenth anniversary date of the effective date of this Section. ~~A person may not use or claim~~
14 ~~any unused portion of the seven and one-half year biotechnology exclusion after the expiration date of~~
15 ~~this Section.~~ Unless exempted under Sections 906 of this Article, every person engaging in the
16 biotechnology business in the City shall pay the tax imposed under this Article on the full
17 amount of the person's payroll expense attributable to the City from and after the expiration of
18 this Section.

19 ~~(dh)~~ If a person's ~~calculated liability for the Payroll Expense Tax does not exceed~~
20 ~~\$2,500 for the tax year~~ taxable payroll expense does not exceed \$250,000.00 or, effective January 1,
21 2010, whose taxable payroll does not exceed \$300,000 after applying the biotechnology exclusion
22 under this Section, the person shall be exempt from payment of the Payroll Expense Tax for
23 that tax year as provided in Section 905-A.

24 [(ei) Reserved.]
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1 *(fl)* The Tax Collector shall submit an annual report to the Board of Supervisors for
2 each year for which the biotechnology exclusion authorized under this Section is available that
3 sets forth aggregate information on the dollar value of the biotechnology exclusions taken
4 each year, the number of businesses taking the exclusion, the change in the number of
5 biotechnology businesses engaging in business in the City, and any increase or decrease in
6 the number of jobs in the biotechnology business sector compared to the number of jobs in
7 the biotechnology business sector for the immediately preceding calendar year.

8 *(gk)* The Assessor-Recorder and the Tax Collector shall jointly prepare and submit an
9 annual report to the Board of Supervisors for each year for which the biotechnology exclusion
10 authorized under this Section is available that sets forth any increases in property taxes
11 resulting from biotechnology businesses location, relocation or expansion to or within the City.

12 *(hl)* The Mayor's Office of Economic Development shall coordinate community
13 educational workshops on the biotechnology industry.

14 *(im)* The Controller, after five years from the enactment of this Ordinance, shall
15 perform an assessment and review of the effect of the biotechnology tax exclusion. Based on
16 such assessment and review the Controller shall prepare and submit an analysis to the Board
17 of Supervisors. The analysis shall be based on criteria deemed relevant by the Controller, and
18 may include but is not limited to, data contained in the annual reports to the Board of
19 Supervisors as required by subsections *(fl)* and (a) of Section 1.

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

23 By: _____
24 Carol A. Boardman
25 Deputy City Attorney