

1 [Business and Tax Regulations Code – Payroll Expense Tax Exclusion for Stock-Based  
2 Compensation]

3 **Ordinance amending the San Francisco Business and Tax Regulations Code, Article**  
4 **12-A, by adding Section 906.5 to establish a payroll expense tax exclusion for Stock-**  
5 **Based Compensation.**

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

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

10 Section 1. Findings. The Board of Supervisors hereby finds that:

11 (a) The technology industry is a vital element to San Francisco's long-term future.

12 (b) Issuing stock-based compensation has become an important vehicle in the  
13 technology industry to attract and retain valuable employees.

14 (c) Many other industries have adopted similar practices of issuing stock-based  
15 compensation to their employees.

16 (d) San Francisco is the only major city in the United States of America that taxes  
17 employers on stock-based compensation.

18 (e) Continuing to tax stock-based compensation threatens San Francisco's ability to  
19 retain existing technology and other companies, and San Francisco's ability to attract new  
20 companies and the jobs they provide.

21 (f) Excluding stock-based compensation from San Francisco's payroll expense tax  
22 is a critical step towards creating a competitive economic environment in San Francisco.

23 (g) Amendments to the Payroll Expense Tax relating to stock-based compensation  
24 should seek to mitigate any potential loss in General Fund dollars received in previous years.

25 Supervisor Farrell  
BOARD OF SUPERVISORS

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3 Section 2. The San Francisco Business and Tax Regulations Code is hereby amended  
4 by adding Section 906.5, to read as follows:

5 **SEC. 906.5 STOCK-BASED COMPENSATION EXCLUSION.**

6 (a) Any person who does not qualify as a Small Business Enterprise under the provisions of  
7 Section 905-A (Small Business Tax Exemption), shall be allowed an exclusion from its Payroll Expense,  
8 as defined in Section 902.1, for that portion of its Payroll Expense that is attributable to Stock-Based  
9 Compensation, provided, however, that in no event shall the excluded amount be less than the Stock-  
10 Based Compensation portion of the person's Base Year Payroll Expense.

11 (b) For purposes of this Section, Base Year is the greater of the person's 2010 or 2011  
12 Stock-Based Compensation portion of the person's Payroll Expense Tax liability.

13 (c) Stock-Based Compensation includes, but is not limited to, all incentive and non-statutory  
14 stock options, including all underlying stock relating to such options, restricted stock, restricted stock  
15 units, and stock acquired as a result of employee stock purchase plans.

16 (d) A person wishing to claim this exclusion must:

17 (1) File with the Tax Collector by the last day in January of each year, on a form  
18 prescribed by the Tax Collector, an affidavit attesting to the facts establishing entitlement to the  
19 exclusion. Any person who fails to timely file an affidavit under this subsection is prohibited from  
20 claiming the Stock-Based Compensation Exclusion.

21 (2) Maintain records and documents in a manner acceptable to the Tax Collector.  
22 Such records and documents must objectively substantiate any exclusion claimed under this Section  
23 and be provided to the Tax Collector upon request.

1                   (3)     File an annual payroll expense tax return with the Tax Collector regardless of  
2 the amount of tax liability shown on the return after claiming the exclusion provided for in this Section.

3                   (e)     The Office of the Treasurer and Tax Collector may adopt rules and regulations  
4 regarding the exclusion provided under this Section.

5                   (f)     The Tax Collector shall verify that any exclusion claimed pursuant to this Section is  
6 appropriate.

7                   (g)     The Stock-Based Compensation Exclusion under this Section may not be claimed  
8 concurrently with any other payroll expense tax exclusion.

9                   (h)     The Stock-Based Compensation Exclusion under this Section may not be claimed  
10 retroactively.

11                  (i)     The effective date of this Section 906.5 shall be January 1, 2012.

12                  (j)     A misrepresentation or misstatement by any person regarding eligibility for the  
13 exclusion set forth under this Section that results in the underpayment or underreporting of the payroll  
14 expense tax shall be subject to penalties.

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

19 By: \_\_\_\_\_  
20       STEPHANIE PROFITT  
21       Deputy City Attorney

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23  
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Supervisor Farrell  
**BOARD OF SUPERVISORS**