

1 [Tax Collector's reports to Board on Biotechnology and Clean Energy Technology Business
2 exclusions from Payroll Expense Tax; contents are public information; certain individual
3 taxpayer information required in reports; non-substantive changes to correct punctuation,
numbering errors]

4 **Ordinance amending Business and Tax Regulations Code to: (1) amend confidentiality**
5 **rules under Section 6.22-1 of Article 6 by adding new subsection (k) to make all**
6 **contents of Tax Collector's reports to the Board of Supervisors on Biotechnology**
7 **Exclusion and Clean Energy Technology Business Exclusion non-confidential public**
8 **information; (2) amend information required in Tax Collector's reports to the Board on**
9 **Biotechnology Exclusion and Clean Energy Technology Business Exclusion under**
10 **Sections 906.1(f) [renumbered Section 906.1(e)] and 906.2(i) of Article 12-A to include**
11 **names of individual taxpayers who have claimed the exclusions, the number of**
12 **employees specified in the exclusion claim, and the dollar value of individual**
13 **taxpayers' exclusion claims; and (3) make non-substantive, technical amendments to**
14 **correct punctuation and subsection numbering errors in original versions of**
15 **Sections 906.1 and 906.2.**

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

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

20 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended
21 by amending Section 6.22-1 of Article 6 to add new subsection (k) to read as follows:

22 **SEC. 6.22-1. CONFIDENTIALITY.**

23 (a) Except where disclosure is otherwise required by law, it is a violation of this
24 section for the Tax Collector or any officer, employee or agent of the City to make known in
25 any manner whatever the business affairs, operations or information obtained by an

1 investigation of records or any person visited or examined in the discharge of official duty, or
2 the amount or source of income, profits, losses, expenditures, or any particular thereof, set
3 forth or disclosed in any return, or to permit any return or copy thereof or any book containing
4 any abstract or particulars thereof to be seen or examined by any person, except as set forth
5 below. These confidentiality provisions also apply to former Tax Collectors and employees
6 and agents thereof.

7 (b) Otherwise confidential information may be disclosed in any federal, state, city or
8 county judicial administrative proceeding pertaining to tax administration, determination,
9 assessment, collection, or enforcement, of any civil or criminal liability arising under the
10 Business and Tax Regulations Code if the information concerns a person who is a party to the
11 proceeding, or the proceeding arose out of, or in connection with determining that person's
12 civil or criminal liability, or the collection of that person's liability with respect to any tax
13 imposed thereunder.

14 (c) Disclosure of otherwise confidential information may be made to the extent such
15 disclosures are reasonably necessary to obtaining information bearing a direct transactional
16 relationship to the determination, assessment, collection, or enforcement, of any civil or
17 criminal liability arising under the Business and Tax Regulations Code.

18 (d) Disclosure of otherwise confidential information may be to other employees or
19 agents of the Tax Collector or employee of the City in matters preparatory to any judicial or
20 administrative proceeding pertaining to the administration or enforcement of any civil or
21 criminal liability arising out of the Business and Tax Regulations Code.

22 (e) If the Tax Collector determines that a liability owing from a taxpayer may be
23 collected from another person, the Tax Collector may disclose to such other person
24 information relevant to the determination of tax due or owing from the taxpayer.

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1 (f) The taxpayer, his successors, receivers, trustees, executors, administrators,
2 assignees and guarantors, and their duly authorized legal representatives if directly
3 interested, may be given information as to the items included in the measure and amount of
4 any unpaid tax or amounts of tax required to be collected, interest and penalties.

5 (g) Notwithstanding any other provision of the Business and Tax Regulations Code
6 or of any City ordinance, the Tax Collector is authorized to enter into agreements with the
7 California Franchise Tax Board, the State Board of Equalization, and/or the Internal Revenue
8 Service providing for the exchange of information for official purposes of said agencies, and to
9 implement any such agreement through the exchange of information.

10 (h) Notwithstanding any other provision of the Business and Tax Regulations Code
11 or of any City ordinance, the Tax Collector shall provide any and all information to the
12 Controller that is needed to fulfill the Controller's responsibilities under Section 3.105 of the
13 Charter. With regard to all such information provided by the Tax Collector, the Controller shall
14 be subject to the confidentiality provisions of Subsection (a) of this Section.

15 (i) The Tax Collector may disclose to any City employee or agent for official
16 purposes any information described in Subsection (a) in aggregate or other form that does not
17 disclose the identity of particular taxpayers.

18 (j) Nothing in this Section shall impose any liability upon the Tax Collector or any
19 employee or agent thereof for any disclosures of confidential information made in good faith in
20 the performance of his or her duties.

21 (k) All of the information in the Tax Collector's reports to the Board of Supervisors on the
22 Biotechnology Exclusion and Clean Energy Technology Business Exclusion from the Payroll Expense
23 Tax required by Article 12-A Sections 906.1(e) and 906.2 (i), including the names of taxpayers who
24 have claimed the exclusion, the number of employees specified in the taxpayer's exclusion claim, and
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1 the dollar value of the exclusion claimed by each individual taxpayer, shall be non-confidential public
2 information.

3 Section 2. The San Francisco Business and Tax Regulations Code is hereby amended
4 by amending Sections 906.1 and 906.2 of Article 12-A to read as follows:

5 **SEC. 906.1. BIOTECHNOLOGY EXCLUSION.**

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

18 (b) The biotechnology exclusion authorized under this Section shall be available to
19 and may be taken by each person engaging in the biotechnology business in the City for a
20 period of seven and one-half years from the effective date of this Section or the
21 commencement of the person's biotechnology business in the City, whichever is later. The
22 date the Tax Collector received the person's application for a business registration certificate
23 for the person's biotechnology business shall be presumed to be the date of commencement
24 of such business unless the person establishes a different commencement date to the
25 satisfaction of the Tax Collector.

1 (c) The biotechnology exclusion authorized under this Section shall expire on the
2 tenth anniversary date of the effective date of this Section. A person may not use or claim
3 any unused portion of the seven and one-half year biotechnology exclusion after the
4 expiration date of this Section. Unless exempted under Section~~s~~ 906 of this Article, every
5 person engaging in the biotechnology business in the City shall pay the tax imposed under
6 this Article on the full amount of the person's payroll expense attributable to the City from and
7 after the expiration of this Section.

8 (d) If a person's calculated liability for the Payroll Expense Tax does not exceed
9 \$2,500 for the tax year after applying the biotechnology exclusion under this Section, the
10 person shall be exempt from payment of the Payroll Expense Tax for that tax year as provided
11 in Section 905-A.

12 ~~(f)~~(e) The Tax Collector shall submit an annual report to the Board of Supervisors for
13 each year for which the biotechnology exclusion authorized under this Section is available that
14 sets forth aggregate information on the dollar value of the biotechnology exclusions taken
15 each year, the number of businesses taking the exclusion and the names of those businesses and
16 number of employees specified in the exclusion claim, the dollar value of the exclusion for each
17 business that claimed the exclusion, the change in the number of biotechnology businesses
18 engaging in business in the City, and any increase or decrease in the number of jobs in the
19 biotechnology business sector compared to the number of jobs in the biotechnology business
20 sector for the immediately preceding calendar year. The contents of this report, including the
21 names of taxpayers who claimed the exclusion, the number of employees specified in the exclusion
22 claim, and the dollar value of each of those claims, shall be non-confidential public information.

23 ~~(g)~~(f) The Assessor-Recorder and the Tax Collector shall jointly prepare and submit
24 an annual report to the Board of Supervisors for each year for which the biotechnology
25 exclusion authorized under this Section is available that sets forth any increases in property

1 taxes resulting from biotechnology businesses location, relocation or expansion to or within
2 the City.

3 ~~(h)(g)~~ The Mayor's Office of Economic *and Workforce* Development shall coordinate
4 community educational workshops on the biotechnology industry.

5 ~~(i)(h)~~ The Controller, after five years from the enactment of this Ordinance, shall
6 perform an assessment and review of the effect of the biotechnology tax exclusion. Based on
7 such assessment and review the Controller shall prepare and submit an analysis to the Board
8 of Supervisors. The analysis shall be based on criteria deemed relevant by the Controller,
9 and may include but is not limited to, data contained in the annual reports to the Board of
10 Supervisors as required by ~~s~~Subsections ~~(f)(e)~~ and ~~(a)(f)~~ of *Section 1*.

11 **SEC. 906.2. CLEAN ENERGY TECHNOLOGY BUSINESS EXCLUSION.**

12 (a) Any person that employs a full-time staff of at least ten but not more than 100
13 employees and is engaging in a clean energy technology business may exclude from the
14 person's payroll expense all compensation paid to, on behalf of or for the benefit of the
15 person's employees, and all distributions by an association by way of salary to those having
16 an ownership interest in such association, who or that perform substantially all work or render
17 substantially all services in direct support of such person's clean energy technology efforts,
18 subject to the conditions and limitations set forth in this Section. For purposes of this Section,
19 outside independent contractors shall not be considered employees of the clean energy
20 technology business.

21 (b) For purposes of this ~~s~~Section, the terms "person," "business," "association,"
22 "clean energy technology" and "clean energy technology business" have the following
23 meanings:

24 (1) The term "person" includes the combination of all subsidiaries, affiliates and
25 other business entities related by ownership, including but not limited to, partnerships, joint

1 ventures, limited liability companies, corporations and other business organizations of
2 whatever form. Any beneficial ownership of the stock of publicly traded corporations shall not
3 be considered for purposes of this definition.

4 (2) The term "business" is as defined in Section 6.2-5 of Article 6 of the
5 San Francisco Business and Tax Regulations Code.

6 (3) The term "association" is as defined in Section 6.2-4 of Article 6 of the
7 San Francisco Business and Tax Regulations Code

8 (4) "Clean energy technology" means the development, manufacture or application
9 of scientific advances that produce or contribute to the production of clean energy utilizing
10 energy produced by wind, solar energy, landfill gas, geothermal resources, ocean thermal
11 energy conversion, quantifiable energy conservation measures, tidal energy, wave energy,
12 biomass, biofuels, or hydrogen fuels derived from renewable sources. Clean energy
13 technology does not include: (A) the installation of clean energy technologies, (B) any fossil
14 fuel based energy production, including but not limited to, clean coal, clean diesel, natural gas
15 and hydrogen from natural gas, (C) any nuclear based energy production, (D) waste to energy
16 via combustion or incineration, or (E) other technologies that are detrimental to human health.
17 The Board of Supervisors may amend this legislation to include future technologies.

18 (5) "Clean energy technology business" means a business in which at least
19 seventy-five percent of all business activities carried on during the tax year are directly related
20 to clean energy technology.

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

23 (1) Complete and submit an initial application to the Director of the Department of
24 the Environment for review and evaluation.

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1 (2) After approval, file an annual affidavit with the Department of the Environment
2 affirming that they continue to meet the eligibility criteria set forth in regulations adopted by the
3 Department of the Environment. The affidavit must be filed with the Department of the
4 Environment on or before January 31 of every year after the year the application is first
5 approved.

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

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

13 (d) The Director of the Department of the Environment shall:

14 (1) No later than the effective date of this ~~e~~Ordinance, after a public hearing, adopt
15 rules, regulations and forms regarding eligibility and the application process for the payroll tax
16 expense exclusion. The Director of the Department of the Environment may amend such
17 rules, regulations and forms from time to time as necessary.

18 (2) Review all applications for completeness and if an application is approved issue
19 a certificate of eligibility to the applicant. The Director's decision on the application shall be
20 final.

21 (3) Provide the Tax Collector with a list of persons eligible to claim the tax exclusion
22 authorized under this Section for the preceding tax year by March 1 of each year. The Tax
23 Collector shall grant or deny the tax exclusion on the basis of the Department of the
24 Environment's determination along with the review, at the Tax Collector's option, of the
25 documentation maintained by the employer under Subsection (c)(3) of this Section.

1 (e) The clean energy technology exclusion authorized under this Section shall be
2 available to and may be taken by a person for each tax year that person holds a valid
3 certificate of eligibility for a period of ten years from the effective date of this Section or the
4 commencement of the person's clean energy technology business in the City, whichever, is
5 later. The date the Tax Collector first received the person's application for a business
6 registration certificate for the person's clean energy technology business shall be presumed to
7 be the date of commencement of such business unless the person establishes a different
8 commencement date to the satisfaction of the Tax Collector.

9 (f) The clean energy technology exclusion authorized under this Section shall
10 expire on the fifteenth anniversary date of the effective date of this Section. A person may not
11 use or claim any unused portion of the ten year clean energy technology exclusion after the
12 expiration date of this Section. Unless exempted under ~~§~~Section 906 of this Article, every
13 person engaging in a clean energy technology business in the City shall pay the tax imposed
14 under this Article on the full amount of the person's payroll expense attributable to the City
15 from and after the expiration of this Section.

16 (g) If a person's calculated liability for the Payroll Expense Tax does not exceed
17 \$2,500 for the tax year after applying the clean energy technology exclusion under this
18 Section, the person shall be exempt from payment of the Payroll Expense Tax for that tax
19 year as provided in Section 905-A.

20 (h) The effective date of this ordinance shall be January 1, 2006.

21 (i) The Tax Collector shall submit an annual report to the Board of Supervisors for
22 each year for which the clean energy technology exclusion authorized under this Section is
23 available that sets forth aggregate information on the dollar value of the clean energy
24 technology exclusions taken each year, the number of businesses taking the exclusion and the
25 names of those businesses and the number of employees specified in the exclusion claim, the dollar

1 value of the exclusion for each business that claimed the exclusion, the change in the number of
2 clean energy technology businesses engaging in business in the City, and any identifiable
3 increase or decrease in the number of jobs in the clean energy technology business sector
4 compared to the number of jobs in the clean energy technology business sector for the
5 immediately preceding calendar year. The contents of this report, including the names of taxpayers
6 who claimed the exclusion, the number of employees specified in the exclusion claim, and the dollar
7 value of each of those claims, shall be non-confidential public information.

8 (j) The Assessor-Recorder shall submit an annual report to the Board of
9 Supervisors for each year for which the clean energy technology exclusion authorized under
10 this Section is available that sets forth any identifiable increases in property taxes resulting
11 from clean energy technology businesses location, relocation or expansion to or within the
12 City.

13 (k) The Controller, after three years from the enactment of this Ordinance, shall
14 perform an assessment and review of the effect of the clean energy technology tax exclusion.
15 Based on such assessment and review the Controller shall prepare and submit an analysis to
16 the Board of Supervisors. The analysis shall be based on criteria deemed relevant by the
17 Controller, and may include but is not limited to, data contained in the annual reports to the
18 Board of Supervisors as required by ~~s~~Subsections (i) and (j) ~~of Section 1.~~

19 (l) A misrepresentation or misstatement by any person regarding eligibility for the
20 clean energy technology payroll expense tax exclusion authorized by this ~~s~~Section that results
21 in the underpayment or underreporting of the ~~p~~Payroll ~~e~~Expense ~~t~~Tax shall be subject to

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1 penalties as provided in Section 6.17-2 of Article 6 of the San Francisco Business and Tax
2 *Administrative Regulations* Code.

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

5 By: _____
6 Michael Slattery
7 Deputy City Attorney

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