

1 [Business and Tax Regulations Code - Payroll Expense Tax Exclusion for Compensation Paid
2 to Individuals With a Felony Conviction]

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**
5 **compensation paid to individuals who have a felony conviction.**

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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. Findings. The Board of Supervisors hereby finds that:

12 (a) Former incarceration is a significant barrier to employment.

13 (1) Job seekers with criminal records are offered employment at half the rate
14 of those without criminal records and African Americans with criminal records are offered
15 employment at one third the rate of those without criminal records.

16 (2) Incarceration weakens the social and referral networks that can lead to
17 job opportunities.

18 (3) State and federal laws often exclude former offenders from some
19 industries, such as banking or occupations requiring contact with children or involving the
20 delivery of some health and security services.

21 (4) Employer surveys reveal that employers are more averse to hiring
22 ex-offenders than they are toward any other disadvantaged group, including welfare
23 recipients. The trend of limited or negative job growth in industries that historically have been
24 most likely to provide work for formerly incarcerated individuals, such as construction and
25 manufacturing, has exacerbated this aversion.

1 (5) Ex-offenders constitute a very significant percentage of the demographic
2 cohort that already is challenged in obtaining employment in the modern economy due to low
3 education and literacy levels. Approximately 70 percent of offenders and ex-offenders are
4 high school dropouts and according to one study, about half are functionally illiterate.
5 Ex-offenders also often have significant gaps in their work histories, due to incarceration.

6 (6) The U.S. Department of Justice concludes that the internet makes
7 criminal history information increasingly available to non-criminal justice users. The increased
8 availability of criminal history means that employers are more likely to check the criminal
9 backgrounds of potential employees and exclude them based on a criminal conviction.

10 (b) The need for employment is particularly acute for the formerly-incarcerated
11 population in the United States.

12 (1) Ex-offenders often owe court supervision fees, victim restitution or child
13 support. In addition, financial liens and garnishments against future earnings often make it
14 difficult for formerly incarcerated individuals to pay back debt owed. In some instances, debts
15 garnished from wages when combined with standard taxation can impose effective tax rates
16 on ex-offenders as high as 65 percent.

17 (2) Lack of economic mobility among the formerly incarcerated population
18 has lasting effects on their families. Children of formerly incarcerated parents are likely to
19 stay in a lower economic demographic cohort than their peers.

20 (c) The costs associated with low employment levels among ex-offenders extend
21 beyond individual offenders and into communities.

22 (1) The United States has the highest documented incarceration rate in the
23 world. In 2008, one in every 31 adults was behind bars, or under probationary or parole
24 supervision.

1 (2) On May 23, 2011, the U.S. Supreme Court upheld an affirmative
2 injunction issued by a special three-judge panel that ordered California to reduce its 143,000
3 prison population by 30,000 in two years after the court determined that the system's health
4 care services violated the Eighth Amendment's ban on cruel and unusual punishment. As a
5 result, Governor Jerry Brown signed AB 109, which, on October 1, 2011, the implementation
6 of which sent tens of thousands of low-level offenders to counties for supervision.

7 (3) In 2010, San Francisco County spent \$47,500 per prisoner.

8 (4) In 2010, the San Francisco Adult Probation Department spent
9 approximately \$12 million on supervision costs alone.

10 (5) Approximately 750,000 felons are released each year in the United
11 States. The recidivism rate for those who obtain employment within the first six months of
12 their release is nearly half of those who do not.

13 (6) A 2011 University of Pennsylvania study found that high recidivism rates
14 in Philadelphia cost the city in wage and sales taxes as well as incarceration. The report
15 estimated that if Philadelphia could cut the number of inmates returning to jail by 1,500, it
16 would save \$26.3 million per year.

17 (d) San Francisco, California and the United States all have extremely high
18 recidivism rates.

19 (1) Nearly two out of every three inmates released from U.S. state and
20 federal prisons are expected to be rearrested within three years.

21 (2) California's recidivism rate is approximately 70 percent.

22 (3) According to a study conducted by the City Hall Fellows, the recidivism
23 rate in San Francisco for 2010 was approximately 63 percent.

24 (e) Employment for ex-offenders reduces recidivism rates and positively impacts
25 communities.

1 (1) Studies have shown that post-incarceration job training programs reduce
2 recidivism by more than 20 percent.

3 (2) Combined employment and supportive housing programs have proven to
4 reduce recidivism by 20 percent.

5 (3) In a cost-benefit analysis of crime-reduction programs from across the
6 United State over the past 25 years, the Washington State Institute for Public Policy found
7 significant gains to taxpayers from several workforce programs, in terms of both recidivism
8 and cost savings from reduced crime.

9
10 Section 2. The San Francisco Business and Tax Regulations Code is hereby amended
11 by adding Section 906.5, to read as follows:

12 **SEC. 906.5. EX-OFFENDER EXCLUSION.**

13 *(a) For purposes of this Section, the following terms shall have the meaning set forth below:*

14 *(1) Ex-Offender. Ex-Offender means an individual convicted of a felony in any state or*
15 *federal court.*

16 *(2) Full-Time. Full-Time means that for a minimum of six months, an individual*
17 *worked or performed services at least 40 hours per week.*

18 *(3) Part-Time. Part-Time means that for a minimum of six months, an individual*
19 *worked or performed services at least 20 hours per week.*

20 *(b) A person may exclude from its Payroll Expense \$675,000 for each Ex-Offender who*
21 *works or provides services for that person on a Full-Time basis, and a person may exclude from its*
22 *Payroll Expense \$337,500 for each Ex-Offender who works or provides services for that person on a*
23 *Part-Time basis.*

24 *(c) In order to be eligible for the Payroll Expense Tax exclusion authorized under this*
25 *Section, persons wishing to claim the exclusion must:*

1 (1) Complete and submit an initial application to the Office of Economic and
2 Workforce Development for review and evaluation. The Office of Economic and Workforce
3 Development shall use this application to verify that applicants seeking the Payroll Expense Tax
4 exclusion under this Section meet the eligibility requirements. The Office Economic and Workforce
5 Development and the Office of the Treasurer and Tax Collector shall prescribe the form of the
6 application and, consistent with this Ordinance, the rules and regulations regarding eligibility for the
7 Ex-Offender Payroll Expense Tax exclusion.

8 (2) File an annual affidavit under declaration of perjury with the Office of Economic
9 and Workforce Development that details the total number of Ex-Offenders hired during the year, and
10 provides the names and felony records of the Ex-Offenders along with information regarding whether
11 the Ex-Offenders worked or performed services on a Full-Time or Part-Time basis. The affidavit must
12 be filed with the Office of Economic and Workforce Development on or before January 31 of each year.

13 (3) Each affidavit submitted to the Office of Economic and Workforce Development
14 must state that each Ex-Offender whom the applicant has hired is not displacing another employee of
15 the applicant.

16 (4) Maintain records and documents in a manner acceptable to the Tax Collector
17 that objectively substantiate any exclusion claimed under this Section and provide them to the Tax
18 Collector upon request.

19 (5) Timely file an annual Payroll Expense Tax Return with the Tax Collector
20 regardless of the amount of tax liability shown on the return after claiming the exclusion provided for
21 in this Section.

22 (6) A person delinquent in any taxes, fees or penalties owed to the City and County
23 of San Francisco is ineligible to claim the Payroll Expense Tax exclusion under this Section.

24 (d) A person may not use or claim any unused portion of the exclusion available under this
25 Section after the expiration of this Section.

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

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

5 (g) A misrepresentation or misstatement by any person regarding eligibility for the
6 exclusion authorized under this Section that results in the underpayment or underreporting of the
7 Payroll Expense Tax shall be subject to penalties.

8 (h) A person may not claim the exclusion provided by this Section concurrently with any
9 other Payroll Expense Tax exclusion or credit, and may not use it in conjunction with the Small
10 Business Tax Exemption under Section 905-A.

11 (i) The Tax Collector shall submit an annual report to the Board of Supervisors for each
12 year for which the exclusion authorized under this Section is available that sets forth aggregate
13 information on the dollar value of the exclusions taken each year, the number of persons claiming this
14 exclusion.

15 (j) The exclusion set forth in this Section shall become effective with the tax year
16 commencing on January 1, 2012. It shall remain effective until the earlier of the date it is scheduled to
17 expire under this Section or, in the event the Payroll Expense Tax Ordinance under 12-A of the
18 Business and Tax Regulations Code is repealed, on the date the Payroll Expense Tax Ordinance under
19 Article 12-A of the Business and Tax Regulations is no longer in effect.

20 (k) The exclusion set forth in this Section shall expire by operation of law on December 31,
21 2013, and the City Attorney shall cause it to be removed from future editions of the Business and Tax
22 Regulations Code unless the Board of Supervisors or the voters extend the exclusion prior to December
23 31, 2013.

24 (l) The Office of Economic and Work Force Development shall conduct on-going outreach
25 and marketing efforts to inform business owners, Ex-Offenders, and those who assist Ex-Offenders in

1 finding employment, about the Ex-Offender Payroll Expense Tax exclusion. The Office of Economic
2 and Workforce Development shall produce an annual report about the exclusion and present the
3 report's findings to the Board of Supervisors. The report shall include the number of businesses that
4 have applied for the exclusion, the number of businesses that have received the exclusion, and the
5 number of Ex-Offenders who have found employment as a result of the exclusion. The report shall also
6 specifically evaluate the effectiveness of the marketing and outreach efforts conducted by the Office of
7 Economic and Workforce Development to promote the exclusion.

8 (m) The Office of Economic and Workforce Development shall coordinate with any and all
9 City and County of San Francisco agencies the missions of which include helping Ex-Offenders reenter
10 society, or administering programs available to participants who are Ex-Offenders reentering society.
11 Such coordination should strive to maximize the number of Ex-Offenders finding employment through
12 utilization of the Ex-Offender Payroll Expense Tax exclusion. The Adult Probation Department, the
13 Public Defender's Office, and the Human Services Agency are examples of such agencies.

14 (n) The Office of the Treasurer-Tax Collector and the Office of Economic and Workforce
15 Development may request an annual budget appropriation equal to the actual costs of administering
16 this Payroll Expense Tax exclusion.

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18 Section 3. Effective Date. This Ordinance shall become effective 30 days from the
19 date of passage.

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

23 By: _____
24 STEPHANIE M. PROFITT
25 Deputy City Attorney