

File No. 091461

Committee Item No. 5

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee BUDGET AND FINANCE

Date 2/17/10

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
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#### OTHER

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Completed by: Gail Johnson

Date 2/12/10

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.



1 [Payroll Expense Tax; Exclusion for Certain Employers Under the Health Care Security  
2 Ordinance.]

3 Ordinance amending the San Francisco Business and Tax Regulations Code, Payroll  
4 Expense Tax Ordinance, by adding Section 906.3 to defray the cost of compliance with  
5 the Health Care Security Ordinance for certain employers by making them eligible for  
6 the exclusion of up to \$133,333 per year in taxable payroll from the calculation of the  
7 payroll expense tax.

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

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

13 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended  
14 by adding Section 906.3, to read as follows:

15  
16 **SEC. 906.3. EXCLUSION FROM TAXABLE PAYROLL FOR CERTAIN EMPLOYERS**  
17 **UNDER THE HEALTH CARE SECURITY ORDINANCE.**

18 (a) Any person required to pay the payroll expense tax under Section 903 shall be eligible for  
19 the exclusion of up to \$133,333 per year in taxable payroll from the calculation of the payroll expense  
20 tax if the person:

21 (1) Is a "covered employer" within the meaning of Administrative Code Section 14.1(b)(3)  
22 and (4), and a "medium-sized business" within the meaning of Administrative Code  
23 Section 14.1(b)(13);

24 (2) Employs an average of between twenty (20) and forty-nine (49) persons per week to  
25 perform work for compensation during a quarter; and

Mayor Newsom, *Supervisor Duffy*  
BOARD OF SUPERVISORS

1 (3) Complies with the San Francisco Health Care Security Ordinance, Administrative Code  
2 Sections 14.1 and 14.3, by making the required "health care expenditure" at the required  
3 "health care expenditure rate" for "covered employees."

4 (b) To be eligible for this reduction in taxable payroll expense for any tax year, an employer  
5 shall file with its payroll expense tax return for that year a form required by the Treasurer Tax  
6 Collector. The Treasurer Tax Collector shall consult with the Office of Labor Standards in  
7 determining the content of the form and any information required. At a minimum, the form shall  
8 require the employer to state the number of "covered employees," the type or types of "health care  
9 expenditure" made on behalf of those employees, as those terms are defined in Administrative Code  
10 Sections 14.1(b)(2) and (7) respectively, the reduction in taxable payroll being claimed, and under  
11 penalty of perjury that the employer has made the health care expenditures required by the Health  
12 Care Security Ordinance.

13 (c) The exclusion provided in this Section shall expire on December 31, 2010, unless the Board  
14 of Supervisors extends the exclusion.

15  
16  
17 APPROVED AS TO FORM:  
18 DENNIS J. HERRERA, City Attorney

19 By:

  
20 Michael K. Slattery  
21 Deputy City Attorney  
22  
23  
24  
25

**LEGISLATIVE DIGEST**

[Payroll Expense Tax; Exclusion for Certain Employers Under the Health Care Security Ordinance.]

**Ordinance amending the San Francisco Business and Tax Regulations Code, Payroll Expense Tax Ordinance, by adding Section 906.3 to defray the cost of compliance with the Health Care Security Ordinance for certain employers by making them eligible for the exclusion of up to \$133,333 per year in taxable payroll from the calculation of the payroll expense tax.**

Existing Law

The Payroll Expense Tax. The City currently imposes a tax on the payroll expense of persons who conduct business in the City. The payroll expense tax rate is 1.5%. Taxable payroll expense includes payments to partners and other owners of pass through entities for their services. If an employee or owner of an association performs work or renders services within and outside the City, the taxpayer must allocate the compensation between his or her in-City and out-of-City work and services to determine the amount of taxable payroll expense that is attributable to the City.

The Health Care Security Ordinance. The City's Health Care Security Ordinance ("HCSO") became effective on January 9, 2008. The HCSO requires a Covered Employer to make health care expenditures for its Covered Employees. The term "Covered Employer" includes for-profit businesses that employ twenty (20) or more persons and non-profits that employ fifty (50) or more persons. A "Covered Employee" is a person entitled to a minimum wage, employed for at least ninety (90) calendar days, and who works at least eight (8) hours/week in the City. A manager, supervisor, or confidential employee who earns more than \$80,397/year is exempt from coverage under the HCSO. The minimum expenditure depends on the Covered Business' number of Covered Employees. In 2009, a Covered Business with one hundred (100) or more employees must spend at least \$1.85/hour; a Covered Business with twenty to ninety-nine (20-99) Covered Employees must spend at least \$1.23/hour. The expenditure rates will increase in 2010 to \$1.96/hour and \$1.31/hour respectively. Covered Employers may purchase insurance for their Covered Employees, make payments to the City for their Covered Employees' benefit, or satisfy their health care expenditure obligation in a variety of other ways.

Amendments to Current Law

This Ordinance would help smaller Covered Employers—those with twenty to forty-nine (20-49) workers—defray the cost of compliance with the HCSO. It would amend the Payroll Expense Tax to allow that group of Covered Employers to exclude up to \$133,333 of their taxable payroll expense from their tax base. Since the Payroll Expense tax rate is 1.5% of taxable payroll, the exclusion would enable this group to save up to \$2,000 in Payroll Expense Tax liability.

The Tax Collector would create a form for eligible Covered Employers to claim the exclusion. No eligible Covered Employer would be allowed to claim the exclusion unless it had filed that form and certified, under penalty of perjury, that the employer had made all the health care expenditures the HCSO requires.

The exclusion would expire on December 31, 2010, unless the Board of Supervisors extended it.

**Item # 5**  
**File 09-1461**

**Department(s):**  
Office of Labor Standards Enforcement and Treasurer/Tax Collector

## EXECUTIVE SUMMARY

### Legislative Objective

- The proposed ordinance would add Section 906.3 to the City's Business and Tax Regulations Code, to allow "covered employers" with 20 to 49 employees and who comply with the Health Care Security Ordinance to be eligible for up to \$133,333 in taxable payroll exclusions from their 2010 Payroll Expense Tax.

### Key Points

- The goals of the proposed ordinance are to (a) encourage San Francisco businesses to comply with the Health Care Security Ordinance, and (b) provide eligible businesses who are complying with the Health Care Security Ordinance a 2010 Payroll Tax credit or refund during the recession. However, the City's Office of Labor Standards Enforcement (OLSE) cannot effectively monitor and enforce the current provisions of the Health Care Security Ordinance due to a shortage of staffing. In addition, neither the Treasurer/Tax Collector's office nor the OLSE can accurately determine the number of businesses which are subject to the Ordinance because the Treasurer/Tax Collector currently does not collect information regarding the number of employees that businesses employ.

### Fiscal Impact

- Based on the City's Payroll Expense Tax of 1.5 percent of compensation paid to employees and exclusions of up to \$133,333 in taxable payroll, the proposed ordinance would provide a maximum \$2,000 credit or refund to each eligible business in 2010. The proposed ordinance would result in an estimated total reduction of \$3,740,000 in Payroll Expense Tax revenues to the City, or approximately 1.1 percent of the budgeted \$348,213,000 Payroll Tax revenues in the FY 2009-2010 Annual Appropriation Ordinance, approved by the Board of Supervisors.
- The OLSE currently has one FTE 2978 Contract Compliance Officer II to monitor and enforce the Health Care Security Ordinance, which according to OLSE is not sufficient. Prior to implementing the proposed ordinance, the OLSE would require an additional five 2992 Contract Compliance Officer I positions to enforce the existing ordinance at an estimated additional cost of (a) \$101,495 for salary and benefits for two months in FY 2009-2010 (May and June of 2010), and (b) \$611,415 for the ongoing annual salary and benefits.
- In addition to the five new positions requested for OLSE, the additional estimated one-time cost to implement the proposed ordinance is \$44,000. Therefore, the total estimated cost to enforce the existing Health Care Security Ordinance and to implement the proposed ordinance is \$655,415, which includes \$611,415 annually and \$44,000 in one-time costs.

### Recommendation

- Continue the proposed ordinance to the call of the Chair until a supplemental appropriation ordinance and Annual Salary ordinance are submitted to the Board of Supervisors for the positions needed to monitor and enforce the existing Health Care Security Ordinance and to implement the proposed ordinance.

**BACKGROUND/MANDATE STATEMENT****Existing Legal Requirements**

Health Care Security Ordinance: On August 4, 2006, the Board of Supervisors approved Chapter 14 in the City's Administrative Code, to establish the Health Care Security Ordinance (File No. 05-1919). Effective on January 9, 2008, the Health Care Security Ordinance (a) created Healthy San Francisco<sup>1</sup>, (b) required "covered employers"<sup>2</sup> located in San Francisco, including private businesses with 20 or more employees and non-profit agencies with 50 or more employees (working in San Francisco and other locations), to make health care expenditures for their "covered employees"<sup>3</sup> who work in San Francisco, and (c) created an advisory health access working group. Covered employers can fulfill the health care expenditure requirements by (a) purchasing health insurance coverage for their covered employees, (b) reimbursing health care costs incurred by covered employees, (c) contributing to reimbursable health care accounts, (d) providing direct health care services to covered employees, or (e) making payments to the City to fund Healthy San Francisco.

As of January 1, 2010, covered employers are required to fund the following health care payments for covered employees (a) \$1.96 per hour for businesses employing 100 or more employees, and (b) \$1.31 per hour for businesses employing 20 to 99 employees and nonprofit agencies employing 50 to 99 employees. Health care rates for subsequent years will be determined by the (a) City's Health Service System annual ten-county survey and (b) City's monthly contribution to the Health Service System.

Covered employers are responsible for (a) maintaining accurate records of health care expenditures and proof of quarterly expenditures, and (b) each April, submitting annual reporting forms to the General Services Agency's Office of Labor Standards Enforcement (OLSE) regarding the employers' compliance with the Health Care Security Ordinance.

The OLSE is responsible for enforcement of the Health Care Security Ordinance, including (a) developing and reviewing covered employers annual reporting forms and health care expenditures; (b) notifying covered employers of any violations, taking corrective actions, and imposing any penalties; (c) handling appeals; and (d) investigating complaints.

Payroll Expense Tax: In accordance with Section 903.1 of the City's Business and Tax Regulations Code, the City imposes a 1.5 percent Payroll Expense Tax on the compensation paid to employees by San Francisco businesses with annual taxable payrolls greater than \$250,000.

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<sup>1</sup> Healthy San Francisco is a program that makes health care services accessible and affordable for uninsured San Francisco residents who are (a) living on a combined family income at or below 500% of the Federal Poverty Level, and (b) ineligible for other government-subsidized health benefits programs such as Medi-Cal, the State's Healthy Families Program, or Healthy Kids and Young Adults Program.

<sup>2</sup> According to Section 14.1(b) of the City's Administrative Code, a "covered employer" is (a) any medium or large (20 employees or more) business in the City or (b) any nonprofit agencies in the City with 50 or more employees including employees who work outside of San Francisco.

<sup>3</sup> According to Section 14.1(b) of the City's Administrative Code, a "covered employee" is defined as any person who, over a period of 90 days, performs at least eight hours of work per week in CY 2009 and in subsequent years.



## DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would add Section 906.3 to the City's Business and Tax Regulations Code, to allow covered City employers, with 20 to 49 employees, who comply with the City's Health Care Security Ordinance, to be eligible to exclude up to \$133,333 from their taxable payroll in calculating their 2010 Payroll Expense Tax owed to the City. The maximum credit or refund that an eligible business could receive is \$2,000 ( $\$133,333 \times 1.5$  percent Payroll Expense Tax).

According to Ms. Jennifer Entine Matz, Managing Deputy Director of the Office of Economic and Workforce Development, the goals of the proposed ordinance are to (a) encourage medium-sized businesses to comply with the Health Care Security Ordinance<sup>4</sup>, and (b) provide businesses which are complying with the Health Care Security Ordinance a one-time Payroll Tax credit or refund during the current recession. Unless the Board of Supervisors extends the term, the proposed Payroll Expense Tax provisions will only apply for CY 2010 and will expire on December 31, 2010. Under the proposed ordinance, the Payroll Tax credit or refund must be requested by eligible businesses for the 2010 tax year, but the credit or refund would not be received until CY 2011, such that the proposed ordinance would require approximately 16 months, from May 2010 through August 2011 to implement and enforce<sup>5</sup>.

According to Ms. Tajel Shah, Budget Manager of the Treasurer/Tax Collector, eligible businesses would self-report their calculated taxable Payroll exclusion when filing their CY 2010 Payroll Expense Taxes to the City at the end of February 2011. However, such businesses could not reduce their Payroll Expense Taxes owed in CY 2010. Rather, the Treasurer/Tax Collector's Office would compile and submit a list of potentially eligible businesses to OLSE, who will compare the Tax Collector's list with the Health Care Security Ordinance annual reporting forms submitted by businesses in April 2011 to determine compliance with the Health Care Security Ordinance for CY 2010. If OLSE determines that the eligible business has submitted an Annual Reporting Form that shows compliance with the Health Care Security Ordinance, Ms. Shah advises the Treasurer/Tax Collector will issue a 2011 Payroll Expense Tax credit or refund to the eligible businesses by the summer of 2011 to account for the 2010 taxable Payroll exclusion of up to \$133,333.

## FISCAL ANALYSIS

### Estimated Reduction in Payroll Expense Tax Revenue

Based on the City's Payroll Expense Tax of 1.5 percent and up to \$133,333 per year in taxable payroll that would be excluded under the proposed ordinance, the maximum credit or refund that an eligible business could receive is \$2,000 ( $\$133,333 \times .015$ ).

<sup>4</sup> According to Ms. Entine Matz, many businesses currently do not comply with the Health Care Security Ordinance because they (a) do not know what is required for compliance, (b) are new medium-sized businesses, (c) were previously small-sized businesses, which are not subject to the Ordinance, or (d) are avoiding compliance.

<sup>5</sup> Based on information provided by OLSE and the Treasurer/Tax Collector, the earliest the OLSE could hire staff is May 2010. The proposed end date of August 2011 is based on the estimated time that OLSE would require to determine whether an eligible business meets the criteria of the proposed Payroll Expense Tax exclusion.

According to Ms. Donna Levitt, Division Manager of the OLSE, there were approximately 4,061 Annual Reporting Forms that were submitted to the City for CY 2008 and approximately 3,477 businesses of the 4,061 businesses complied with the Health Care Security Ordinance. However, Ms. Levitt advises that the OLSE cannot verify the number of medium-sized businesses that are subject to the City's Health Care Security Ordinance. Ms. Levitt estimates there are approximately 5,000 to 6,000 businesses subject to the Health Care Security Ordinance, and that approximately 34 percent, or 1,700 to 2,040 of these businesses may be eligible for the 2010 Payroll Tax exclusion under the proposed ordinance. Based on these preliminary estimates, as shown in Table 1 below, the proposed ordinance could reduce Payroll Taxes paid to the City by an estimated \$3,400,000 to \$4,080,000 for between 1,700 and 2,040 eligible businesses in 2010.

**Table 1: Estimated Reduction in Payroll Expense Tax Revenue in 2010**

<b>Total Businesses Subject to HCSO (A)</b>	<b>Eligible Businesses (B) = (A) x 34%</b>	<b>Estimated Payroll Expense Tax Reduction (C) = (B) x \$2,000</b>
5000	1700	\$3,400,000
6000	2040	\$4,080,000
<b>Average</b>	<b>1,870</b>	<b>\$3,740,000</b>

Source: OLSE

The City's Payroll Expense Taxes are budgeted at \$348,213,000 in the FY 2009-2010 Annual Appropriation Ordinance, as approved by the Board of Supervisors. Therefore, as shown in Table 1 above, the estimated average reduction of \$3,740,000 in City Payroll Expense Taxes under the proposed ordinance represents 1.1 percent of the FY 2009-2010 budgeted \$348,213,000 of City Payroll Expense Taxes.

### **Estimated Cost to Enforce the Health Care Security Ordinance and Implement the Proposed Ordinance**

Estimated Costs to Enforce the Health Care Security Ordinance: According to Ms. Levitt, the OLSE currently has one full-time 2978 Contract Compliance Officer II to monitor and enforce the Health Care Security Ordinance. Ms. Levitt advises that OLSE does not have the necessary staff to effectively handle the existing 209 Health Care Security Ordinance cases. Prior to being able to implement the proposed ordinance, Ms. Levitt advises the OLSE would require an additional 5.00 FTE 2992 Contract Compliance Officer Is to monitor and enforce the existing Health Care Security Ordinance caseload, for a total of 6.0 FTE positions. Ms. Levitt advises that she has requested new positions from the Mayor's Office to monitor and enforce the Health Care Security Ordinance during the FY 2008-2009 and FY 2009-2010 budget process, but has not received any additional positions.

Ms. Levitt advises that the additional five staff would allow the OLSE to reduce the Health Care Security Ordinance caseload from 209 to approximately 35 cases per Contract Compliance Officer. Table 3 below shows that the estimated cost to add these five additional positions is approximately \$611,415 annually. The estimated total annual cost for the existing 1.00 FTE 2978 Contract Compliance Officer II and the additional 5.00 FTE 2992 Contract Compliance Officer Is is \$767,195.

**Table 3: Estimated Annual Cost to Enforce Health Care Security Ordinance Cases**

	FTE	Total Salary	Mandatory Fringe Benefits*	Total
<b>Existing Cost</b>				
OLSE – 2978 Contract Compliance Officer II	1.00	\$119,704	\$36,076	\$155,780
<b>Additional Cost</b>				
OLSE – 2992 Contract Compliance Officer I	5.00	456,690	154,725	611,415
<b>Total Cost</b>	<b>6.00</b>	<b>\$576,394</b>	<b>\$190,801</b>	<b>\$767,195</b>

Source: Analysis conducted by the Budget and Legislative Analyst

\* Based on Local 21 Professional & Technical Engineers' Collective Bargaining Agreement with the Department of Human Resources.

Ms Levitt advises that the OLSE requires the additional five full-time FTE 2992 Contract Compliance Officer I to begin as soon as possible to ensure that all “covered businesses” are in compliance with the Health Care Security Ordinance. The estimated cost to add these five additional positions (0.83 FTE) in FY 2009-2010 is \$101,495, which includes \$75,811 for two months of salaries (May and June of 2010) and \$25,684 for mandatory fringe benefits. These five additional positions would be funded from the City’s General Fund.

Estimated Costs to Enforce the Health Care Security Ordinance and Implement the Proposed Ordinance: As noted above, OLSE advises they require an additional \$101,495 in FY 2009-2010 and \$611,415 annually to first hire five (0.83 FTE) additional 2992 Contract Compliance Officer I positions to monitor and enforce the existing Health Care Security Ordinance cases before implementing the proposed ordinance. In addition to the five positions, additional estimated one-time costs of \$44,000 to implement the proposed ordinance would be needed, as shown in Table 4 below.

**Table 4: Estimated OLSE and Treasurer/Tax Collector Costs to Implement the Proposed Ordinance and Enforce Health Care Security Ordinance Cases**

	Amount
OLSE – One-time software cost (Adobe Smart Form)	14,000
Treasurer/Tax Collector’s Office – Professional Services	30,000
<b>Total</b>	<b>\$44,000</b>

Source: Analysis conducted by the Budget and Legislative Analyst

Ms. Shah advises that, as shown in Table 4 above, the Treasurer/Tax Collector’s Office will require computer consultant services for approximately \$30,000, assuming 150 to 200 hours of programming support. In addition, according to Ms. Shah, the Treasurer/Tax Collector and OLSE will need to electronically communicate with the Treasurer/Tax Collector’s Office, such that as shown in Table 4 above, the OLSE estimates one-time cost of \$14,000 to purchase software, Adobe Smart Form, to electronically receive the eligible business information and data from the Treasurer/Tax Collector’s Office.

Therefore, total estimated additional annual costs to the City to monitor and enforce the existing Health Care Security Ordinance and to implement the proposed ordinance is \$655,415 (\$611,415 plus \$44,000)

After the proposed Payroll Expense Tax exclusion period ends in August 2011, Ms. Levitt advises that OLSE can continue to enforce and monitor the Health Care Security Ordinance with five total staff (one existing 2978 Contract Compliance Officer II position plus four new 2992 Contract Compliance Officer I positions), such that one of the new 2992 Contract Compliance Officer I positions could be eliminated.

## FISCAL ISSUES

### **The proposed ordinance would increase the City's overall projected FY 2010-2011 budget shortfall of \$522,000,000.**

According to a letter provided by the Mayor to the Board of Supervisors on December 17, 2009, the City's projected budgetary shortfall for FY 2010-2011 is \$522,000,000.

The proposed Payroll Expense Tax exclusions would result in increasing the total shortfall by an estimated \$4,395,415 over a two year period, which includes approximately \$3,740,000 in reduced Payroll Expense Tax revenue and approximately \$655,415<sup>6</sup> in additional costs to monitor and enforce Health Care Security Ordinance cases and implement the proposed ordinance.

## POLICY ISSUES

### **Increasing Compliance of the Health Care Security Ordinance**

As discussed above, one of the goals of the proposed ordinance is to encourage medium-sized businesses to comply with the Health Care Security Ordinance. According to Ms. Levitt, the proposed ordinance alone is unlikely to increase compliance with the Health Care Security Ordinance. According to Ms. Levitt, in order to increase compliance, the OLSE needs additional staff to monitor and enforce the Health Care Security Ordinance. Ms. Levitt advises that if the OLSE is able to effectively monitor and enforce the Health Care Security Ordinance cases, compliance by medium and large businesses would increase. OLSE's enforcement of the Health Care Security Ordinance would also significantly increase the amount of employer payments to Healthy San Francisco.

In addition, Ms. Levitt advises that the Treasurer/Tax Collector's Office does not collect information regarding the number of employees that businesses employ. Such information would allow the OLSE to more easily determine which businesses do not comply with the Health Care Security Ordinance by comparing a list of all businesses with a list of businesses which comply with the Health Care Security Ordinance. According to Ms. Shah, the Treasurer/Tax Collector's Office will begin collecting information regarding the number of employees that businesses employ in February 2011 for the 2010 tax year and provide such information to the OLSE.

<sup>6</sup> The additional costs of \$655,415 includes (a) \$611,415 for salaries and benefits in FY 2010-2011 and (b) \$44,000 for other costs in FY 2011-2012.

### **Appropriation Ordinance and Salary Ordinance Approval for Required Additional Positions**

The proposed ordinance was not accompanied with (a) an ordinance for a supplemental appropriation of General Fund revenues totaling \$101,495 for 0.83 FTE 2992 Contract Compliance Officer I (five positions) for May and June of 2010 in FY 2009-2010 and (b) an ordinance to amend the FY 2009-2010 Annual Salary Ordinance to add the additional five positions (0.83 FTE in FY 2009-2010), as requested by OLSE. Therefore, the Budget and Legislative Analyst recommends that the proposed ordinance be continued to the Call of the Chair until a supplemental appropriation ordinance and Annual Salary ordinance for the positions needed to monitor and enforce the existing Health Care Security Ordinance and to implement the proposed ordinance are submitted to the Board of Supervisors for consideration.

### **The Budget and Finance Committee is considering two ordinances (File Nos. 09-0228 and 09-1461) regarding reductions to the Payroll Expense Tax. If both ordinances are approved, it is uncertain in how the Payroll Expense Taxes owed to the City should be calculated in 2010 and 2011.**

These two ordinances are (a) the subject ordinance to provide a Payroll Expense Tax credit or refund of \$2,000 in 2010 for small businesses (20-49 employees) which comply with the City's Health Care Security Ordinance 2010 (File 09-1461), and (b) an ordinance to exclude growth in payroll over 2009 from the Payroll Expense Taxes due in 2010 and 2010 (File 09-0228). If both proposed ordinances are approved by the Board of Supervisors, it is uncertain as to what proposed tax reduction, either the \$2,000 credit or refund or the taxable exclusion in payroll growth, would apply first.

For example, assuming both ordinances are approved and an employer is eligible for the Payroll Tax reductions proposed in both ordinances, for the year 2010, the ordinances in combination, are unclear which of the formulas below would determine the Payroll Taxes owed:

1. Lesser of (a) Taxes owed in 2009 or (b) Taxes owed in 2010. Then reduce that value by \$2,000.
2. Lesser of (a) Taxes owed in 2009, or (b) Taxes owed in 2010 less \$2,000.

For the year 2011, a similar uncertainty exists regarding formulas below would determine the tax owed:

1. Lesser of (a) Taxes owed in 2010 less \$2,000, or (b) Taxes owed in 2011.
2. Lesser of (a) Taxes owed in 2010 regardless of the \$2,000 credit or refund, or (b) Taxes owed in 2011.

The Budget Analyst notes that the fiscal impact to the City calculated by the Controller's Office and the Treasurer/Tax Collector for each proposed ordinance does not include the fiscal impact to the City which might be caused by approval of both ordinances.

**RECOMMENDATION**

Continue the proposed ordinance to the call of the Chair until a supplemental appropriation ordinance and Annual Salary ordinance are submitted to the Board of Supervisors for the positions needed to monitor and enforce the existing Health Care Security Ordinance and to implement the proposed ordinance.



SMALL BUSINESS COMMISSION  
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
GAVIN NEWSOM, MAYOR

February 01, 2010

Ms. Angela Calvillo, Clerk of the Board  
Board of Supervisors  
City Hall room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102-4694

**RE: File No. 091461 [Payroll Expense Tax; Exclusion for Certain Employers Under the Health Care Security.]** Ordinance amending the San Francisco Business and Tax Regulations Code, Payroll Expense Tax Ordinance, by adding Section 906.3 to defray the cost of compliance with the Health Care Security Ordinance for certain employers by making them eligible for the exclusion of up to \$13,333 per year in taxable payroll from the calculation of the payroll expense tax.

**Small Business Commission Recommendation: Approval with Recommendations**

Dear Ms. Calvillo:

On January 11, 2009, the Small Business Commission heard and recommends to the Board of Supervisors approval for File #091461.

The Small Business Commission appreciates the Mayor's response to small business request for assistance to help off set the mandated cost of the Health Care Security Ordinance in this tough economic climate.

The Small Business Commission also recommends the Board of Supervisors amend the ordinance to include this one-time off set to:

1. Be applied to businesses with under 20 employees, pay payroll tax, and provide health insurance.  
Note: The business will zero out if the off set is greater than the amount in payroll tax.
2. Extend the off set to three years.

Sincerely,

Regina Dick-Endrizzi  
Director, Office of Small Business

cc. Supervisor Avalos, Mirkarimi and Elsbernd  
Starr Terrell  
Gail Johnson, Clerk of the Budget and Finance Committee  
Jennifer Entine Matz, Office of Economic and Workforce Development



TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: Mayor Gavin Newsom  
RE: Ordinance amending the San Francisco Business and Tax Regulations Code, Payroll Expense Tax Ordinance  
DATE: December 15, 2009

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Dear Madame Clerk:

Attached for introduction to the Board of Supervisors is an ordinance amending the San Francisco Business and Tax Regulations Code, Payroll Expense Tax Ordinance, by adding Section 906.3 to defray the cost of compliance with the Health Care Security Ordinance for certain employers by making them eligible for the exclusion of up to \$133,333 per year in taxable payroll from the calculation of the payroll expense tax.

Please note that Supervisor Bevan Dufty is a co-sponsor of this measure.

I request that this item be scheduled in the Budget and Finance Committee.

Should you have any questions, please contact Starr Terrell (415) 554-5262.