

1 [Changes to the Payroll Expense Tax exclusion for clean energy technology businesses.]

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3 **Ordinance amending San Francisco Business and Tax Regulations Code by amending**  
4 **Section 906.2 to eliminate minimum number of employees required to be eligible for**  
5 **clean energy technology business exclusion.**

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

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

10 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended  
11 by amending Section 906.2 of Article 12-A to read as follows:

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13 SEC. 906.2. CLEAN ENERGY TECHNOLOGY BUSINESS EXCLUSION.

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

23 (b) For purposes of this section, the terms "person," "business," "association," clean  
24 energy technology" and "clean energy technology business" have the following meanings:

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1 (1) The term "person" includes the combination of all subsidiaries, affiliates and  
2 other business entities related by ownership including but not limited to partnerships, joint  
3 ventures, limited liability companies, corporations and other business organizations of  
4 whatever form. Any beneficial ownership of the stock of publicly traded corporations shall not  
5 be considered for purposes of this definition.

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

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

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

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

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

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

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

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

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

15 (5) Obtain or maintain a Green Business recognition, if available as to that  
16 business, from the City under Chapter 15 of the Environment Code during the tax year for  
17 which the payroll tax exemption is requested.

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

19 (1) No later than the effective date of this ordinance, after a public hearing,  
20 adopt rules, regulations and forms regarding eligibility and the application process for the  
21 payroll tax expense exclusion. The Director of the Department of the Environment may amend  
22 such rules, regulations and forms from time to time as necessary.

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

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

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

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

21           (g) If a person's calculated liability for the Payroll Expense Tax does not exceed  
22 \$2,500 for the tax year after applying the clean energy technology exclusion under this  
23 Section, the person shall be exempt from payment of the Payroll Expense Tax for that tax  
24 year as provided in Section 905-A.

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

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

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

19 (l) A misrepresentation or misstatement by any person regarding eligibility for the clean  
20 energy technology payroll expense tax exclusion authorized by this section that results in the  
21 underpayment or underreporting of the payroll expense tax shall be subject to penalties as  
22 provided in Section 6.17-2 of Article 6 of the San Francisco Business and Tax Administrative  
23 Code.

1 APPROVED AS TO FORM:  
2 DENNIS J. HERRERA, City Attorney

3 By: \_\_\_\_\_  
4 Carol A. Boardman  
5 Deputy City Attorney

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