

1 [Business and Tax Regulations Code - Payroll Expense Tax Exclusion for Small Business Net
2 New Payroll for 2012 through 2015]

3 **Ordinance amending the San Francisco Business and Tax Regulations Code Article 12-**
4 **A by adding Section 906.5 to permit a Payroll Expense Tax Exclusion for Small**
5 **Business Net New Payroll for years 2012 through 2015.**

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. 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. NET NEW PAYROLL EXCLUSION.**

13 (a) The purpose of this Section is to increase the number of jobs within the City and County of
14 San Francisco by providing an incentive for Small Businesses to create new jobs or to relocate existing
15 jobs to the City and County of San Francisco.

16 (b) Notwithstanding any other provisions of this Article, for purposes of this Section the
17 following terms shall have the meaning set forth below:

18 (1) "Small Business" means a person whose Base Year Payroll Expense is between
19 \$1 and \$500,000.

20 (2) "Base Year" means the 2011 tax year for a person who had Payroll Expense in
21 2011. If a person did not have Payroll Expense in the 2011 tax year, then the first year that the person
22 incurs Payroll Expense shall be that person's Base Year. If a person is exempt from filing a Payroll
23 Expense Tax return pursuant to Business and Tax Regulations Code 6.9-2 in the first year
24 that the person incurs Payroll Expense, the person's Base Year Payroll Expense shall be
25 \$150,000 for the purposes of calculating this exclusion.

1 (3) "San Francisco Labor Law" means the Health Care Security Ordinance,
2 codified at San Francisco Administrative Code Chapter 14; the Minimum Wage Ordinance,
3 codified at San Francisco Administrative Code Chapter 12R; the Paid Sick Leave Ordinance,
4 codified at San Francisco Administrative Code Chapter 12W; the Minimum Compensation
5 Ordinance, codified at San Francisco Administrative Code Chapter 12P; the Health Care
6 Accountability Ordinance, codified at San Francisco Administrative Code Chapter 12Q; and
7 the prevailing wage requirements, codified at San Francisco Administrative Code Chapter
8 6.22.

9 (c) A Small Business may exclude from its Payroll Expense the lesser of \$250,000 or the
10 amount of Payroll Expense that is greater than its Base Year Payroll Expense for the 2012, 2013, 2014
11 and 2015 tax years; provided, however, that in no event shall this exclusion reduce a person's Payroll
12 Expense Tax liability for 2012, 2013, 2014 or 2015 to less than the person's Base Year Payroll Expense
13 Tax liability.

14 (d) In order to be eligible for the Payroll Expense Tax exclusion authorized under this Section,
15 persons wishing to claim the exclusion must:

16 (1) Maintain records and documents in a manner acceptable to the Tax Collector. Such
17 records and documents must objectively substantiate any exclusion claimed under this Section and be
18 provided to the Tax Collector upon request.

19 (2) Timely file with the Tax Collector an annual Payroll Expense Tax return claiming
20 the exclusion provided for in this Section, regardless of the amount of tax liability shown on the return
21 after claiming the exclusion provided for in this Section. All returns shall be filed by the due date set
22 forth in Article 6 of the San Francisco Business and Tax Regulations Code.

23 (3) If, after the timely filing of a person's Payroll Expense Tax return, it is determined
24 that the person was delinquent in remitting any taxes, fees or penalties owed to the City and County of
25

1 San Francisco at the time of filing, that person shall be ineligible to claim the exclusion under this
2 Section for the period covered by the return.

3 (4) If, prior to or after the timely filing of a person's Payroll Expense Tax return,
4 the San Francisco Office of Labor Standards Enforcement determines that a person violated a
5 San Francisco Labor Law during the period covered by the return, or, in response to an
6 investigation by the San Francisco Office of Labor Standards Enforcement, a person paid, or
7 was required to pay, restitution to former or current employees during the period covered by
8 the return, then such person shall be ineligible to claim the exclusion provided by this Section
9 for the period covered by the return.

10 (e) A person may not use or claim any unused portion of the exclusion available under this
11 Section after the expiration of this Section.

12 (f) The San Francisco Office of Labor Standards Enforcement shall, no later than the
13 first of December of each year that the exclusion under this Section is in effect, provide to the
14 Tax Collector a list of all persons it determined to have violated a San Francisco Labor Law,
15 including the year the violation occurred.

16 (gf) The Tax Collector shall verify that any exclusion claimed pursuant to this Section is
17 appropriate.

18 (hg) A misrepresentation or misstatement by any person regarding eligibility for the exclusion
19 authorized under this Section that results in the underpayment or underreporting of the Payroll
20 Expense Tax shall be subject to penalties and interest.

21 (ih) The Office of the Treasurer and Tax Collector may adopt rules and regulations regarding
22 the exclusion provided under this Section.

23 (j) The exclusion provided by this Section may not be claimed concurrently with any other
24 Payroll Expense Tax exclusion.

1 (k) *The Tax Collector shall submit an annual report to the Board of Supervisors for each year*
2 *for which the exclusion authorized under this Section is available. The report shall set forth aggregate*
3 *information on the dollar value of the exclusions taken each year and the number of persons claiming*
4 *this exclusion.*

5 (l) *The exclusion set forth in this Section shall expire by operation of law on*
6 *December 31, 2015, and the City Attorney shall cause it to be removed from future editions of the*
7 *Business and Tax Regulations Code unless the Board of Supervisors or the voters extend the exclusion*
8 *prior to December 31, 2015. Alternatively, should the voters of the City and County of San Francisco*
9 *pass a gross receipts tax prior to December 31, 2015, the exclusion under this Section shall terminate*
10 *upon the effective date of such gross receipts tax.*

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12 Section 2. Effective Date. The exclusion set forth in this Section shall become
13 effective 30 days from the date of passage.

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15 Section 3. This Section is uncodified. In enacting this Ordinance, the Board intends to
16 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
17 punctuation, charts, diagrams, or any other constituent part of the Business and Tax
18 Regulations Code that are explicitly shown in this legislation as additions, deletions, Board
19 amendment additions, and Board amendment deletions in accordance with the "Note" that
20 appears under the official title of the legislation.

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

24 By: _____
25 STEPHANIE PROFITT
 Deputy City Attorney