

1 [Tax Collector's reports to Board of Supervisors on Biotechnology and Clean Energy
2 Technology Business exclusions from Payroll Expense Tax; contents are public information;
3 certain individual taxpayer information required in reports.]

4 **Ordinance amending the San Francisco Business and Tax Regulations Code by**
5 **amending Section 6.22-1 to make all contents of Tax Collector's reports to the Board of**
6 **Supervisors regarding the Biotechnology Exclusion and the Clean Energy Technology**
7 **Business Exclusion non-confidential public information, and by amending**
8 **Sections 906.1 and 906.2 to require that, beginning with the report for the 2008 tax year,**
9 **the reports include the names and addresses of individual taxpayers who have claimed**
10 **the exclusions unless only one business has claimed the exclusion, and to make non-**
11 **substantive, technical amendments to correct punctuation and reference errors.**

12 Note: Additions are *single-underline italics Times New Roman*;
13 deletions are *strikethrough italics Times New Roman*.
14 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

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

18 **SEC. 6.22-1. CONFIDENTIALITY.**

19 (a) Except where disclosure is otherwise required by law, it is a violation of this
20 section for the Tax Collector or any officer, employee or agent of the City to make known in
21 any manner whatever the business affairs, operations or information obtained by an
22 investigation of records or any person visited or examined in the discharge of official duty, or
23 the amount or source of income, profits, losses, expenditures, or any particular thereof, set
24 forth or disclosed in any return, or to permit any return or copy thereof or any book containing
25 any abstract or particulars thereof to be seen or examined by any person, except as set forth

1 below. These confidentiality provisions also apply to former Tax Collectors and employees
2 and agents thereof.

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

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

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

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

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

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

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

11 (i) The Tax Collector may disclose to any City employee or agent for official
12 purposes any information described in ~~§~~ subsection (a) in aggregate or other form that does
13 not disclose the identity of particular taxpayers.

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

17 (k) All of the information in the Tax Collector's reports to the Board of Supervisors on the
18 Biotechnology Exclusion and Clean Energy Technology Business Exclusion from the Payroll Expense
19 Tax, required by Article 12-A Sections 906.1(f) and 906.2 (i), including the names and addresses of
20 taxpayers who have claimed the exclusion, shall be non-confidential public information. However, if
21 only one business has claimed either of those exclusions, the name and address of that business shall
22 remain confidential. The reporting of names and addresses of taxpayers who claimed these exclusions
23 will begin with the report for the 2008 tax year.

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

1 **SEC. 906.1. BIOTECHNOLOGY EXCLUSION.**

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

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

22 (c) The biotechnology exclusion authorized under this Section shall expire on the
23 tenth anniversary date of the effective date of this Section. A person may not use or claim any
24 unused portion of the seven and one-half year biotechnology exclusion after the expiration
25 date of this Section. Unless exempted under Section 906 of this Article, every person

1 engaging in the biotechnology business in the City shall pay the tax imposed under this Article
2 on the full amount of the person's payroll expense attributable to the City from and after the
3 expiration of this Section.

4 (d) If a person's calculated liability for the Payroll Expense Tax does not exceed
5 \$2,500 for the tax year after applying the biotechnology exclusion under this Section, the
6 person shall be exempt from payment of the Payroll Expense Tax for that tax year as provided
7 in Section 905-A.

8 [(e) *Reserved.*]

9 (f) The Tax Collector shall submit an annual report to the Board of Supervisors for
10 each year for which the biotechnology exclusion authorized under this Section is available that
11 sets forth aggregate information on the dollar value of the biotechnology exclusions taken
12 each year, the number of businesses taking the exclusion, and the names and addresses of those
13 businesses, the change in the number of biotechnology businesses engaging in business in the
14 City, and any increase or decrease in the number of jobs in the biotechnology business sector
15 compared to the number of jobs in the biotechnology business sector for the immediately
16 preceding calendar year. The contents of this report, including the names and addresses of
17 taxpayers who claimed the exclusion, shall be non-confidential public information. However, if only
18 one business has claimed the exclusion, the name and address of that business shall remain
19 confidential. The reporting of names and addresses of taxpayers who claimed the exclusion will begin
20 with the report for the 2008 tax year.

21 (g) The Assessor-Recorder and the Tax Collector shall jointly prepare and submit
22 an annual report to the Board of Supervisors for each year for which the biotechnology
23 exclusion authorized under this Section is available that sets forth any increases in property
24 taxes resulting from biotechnology businesses location, relocation or expansion to or within
25 the City.

1 (h) The Mayor's Office of Economic and Workforce Development shall coordinate
2 community educational workshops on the biotechnology industry.

3 (i) The Controller, after five years from the enactment of this Ordinance, shall
4 perform an assessment and review of the effect of the biotechnology tax exclusion. Based on
5 such assessment and review the Controller shall prepare and submit an analysis to the Board
6 of Supervisors. The analysis shall be based on criteria deemed relevant by the Controller, and
7 may include but is not limited to, data contained in the annual reports to the Board of
8 Supervisors as required by subsections (f) and ~~(a)~~ (g) of Section 4.

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

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

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

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

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

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

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

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

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

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

24 (2) After approval, file an annual affidavit with the Department of the Environment
25 affirming that they continue to meet the eligibility criteria set forth in regulations adopted by the

1 Department of the Environment. The affidavit must be filed with the Department of the
2 Environment on or before January 31 of every year after the year the application is first
3 approved.

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

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

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

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

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

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

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

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

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

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

22 (h) The effective date of this ~~o~~Ordinance shall be January 1, 2006.

23 (i) The Tax Collector shall submit an annual report to the Board of Supervisors for
24 each year for which the clean energy technology exclusion authorized under this Section is
25 available that sets forth aggregate information on the dollar value of the clean energy

1 technology exclusions taken each year, the number of businesses taking the exclusion, and
2 the names and addresses of those businesses, the change in the number of clean energy
3 technology businesses engaging in business in the City, and any identifiable increase or
4 decrease in the number of jobs in the clean energy technology business sector compared to
5 the number of jobs in the clean energy technology business sector for the immediately
6 preceding calendar year. The contents of this report, including the names and addresses of taxpayers
7 who claimed the exclusion, shall be non-confidential public information. However, if only one business
8 has claimed the exclusion, the name and address of that business shall remain confidential. The
9 reporting of names and addresses of taxpayers who claimed the exclusion will begin with the report for
10 the 2008 tax year.

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

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

22 (l) A misrepresentation or misstatement by any person regarding eligibility for the
23 clean energy technology payroll expense tax exclusion authorized by this ~~s~~Section that results
24 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 Regulations Administrative Code.

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

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6 By: _____
7 Michael Slattery
8 Deputy City Attorney

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