

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 limits on company size and expand the definition of**
5 **qualifying business activities.**

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:

12

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 a) produce or contribute to the production of *or enable*
12 *the use of clean energy, or b) result in quantifiable energy or water conservation, or c) result in*
13 *greenhouse gas or toxics reductions, or d) make or enable carbon trading markets, including the*
14 *verification of projects that produce carbon credits.* *Clean energy is defined as ~~utilizing energy~~*
15 *~~produced by~~ wind, solar energy, landfill gas, geothermal resources, ocean thermal energy*
16 *conversion, ~~quantifiable energy conservation measures,~~ tidal energy, wave energy, biomass,*
17 *biofuels, or hydrogen fuels derived from renewable sources. Quantifiable energy or water*
18 *conservation applications are defined as energy efficiency engineering and retrofit, energy storage*
19 *devices for renewable energy, energy efficiency, electric vehicles and toxics reduction applications,*
20 *"green" building materials as certified by LEED, technological developments for water conservation*
21 *or purification, and enabling technology for the previously stated applications.* *Clean energy*
22 *technology does not include: (A) general electrical contractors (B) ~~the installation of clean energy~~*
23 *~~technologies,~~ (B) any fossil fuel based energy production, including but not limited to, clean*
24 *coal, clean diesel, natural gas and hydrogen from natural gas, (C) any nuclear based energy*
25 *production, (D) waste to energy via combustion or incineration, or (E) other technologies that*

1 are detrimental to human health. The Board of Supervisors may amend this legislation to
2 include future technologies.

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

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

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

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

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

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

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

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

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

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

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

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

21 (f) The clean ~~energy~~-technology exclusion authorized under this Section shall expire on
22 the fifteenth anniversary date of the effective date of this Section. A person may not use or
23 claim any unused portion of the ten year clean ~~energy~~-technology exclusion after the expiration
24 date of this Section. Unless exempted under Sections 906 of this Article, every person
25 engaging in a clean ~~energy~~-technology business in the City shall pay the tax imposed under

1 this Article on the full amount of the person's payroll expense attributable to the City from and
2 after the expiration of this Section.

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

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

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

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

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

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

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

By: _____
Catharine Barnes
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