

1 [Payroll Expense Tax Exclusion for Qualified Renewable Clean Energy Technology
2 Businesses.]

3 **Ordinance amending the Payroll Expense Tax Ordinance to establish a tax exclusion**
4 **for qualified ~~renewable~~ clean energy technology businesses, as specified.**

5 Note: Additions are *single-underline italics Times New Roman*;
6 deletions are *strikethrough italics Times New Roman*.
7 Board amendment additions are double underlined.
8 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 adding Sections 906.2 of Article 12-A (Payroll Expense Tax Ordinance), as follows:

12 SEC. 906.2. ~~RENEWABLE CLEAN ENERGY TECHNOLOGY BUSINESS EXCLUSION.~~

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

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

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

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

5 (3) "Clean energy technology" means a business that develops the development,
6 manufacture or application of scientific advances that produce or contribute to the production
7 of renewable clean energy sources including utilizing electrical energy produced by wind, solar
8 energy, hydropower, landfill gas, waste to energy, geothermal resources, ocean thermal energy
9 conversion, quantifiable energy conservation measures, tidal energy, wave energy, biomass,
10 including municipal solid waste, biofuels, or fuels derived from organic sources, hydrogen fuels
11 derived from renewable energy sources, or fuel cells where the fuel is derived from renewable
12 sources. Clean energy technology also means a business that produces electrical energy
13 savings brought about by the use of solar and heat pump water heating, seawater air-
14 conditioning district cooling systems, solar air-conditioning and ice storage, quantifiable
15 energy conservation measures, use of rejected heat from co-generation and combined heat
16 and power systems excluding fossil-fueled qualifying facilities that sell electricity to electric
17 utility companies. does not include: (1) the installation of clean energy technologies, (2) any
18 fossil fuel based energy production, including but not limited to, clean coal, clean diesel,
19 natural gas and hydrogen from natural gas, (3) any nuclear based energy production, (4)
20 waste to energy via combustion or incineration, or (5) other technologies that are detrimental
21 to human health.

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

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

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

5 (2) After approval, file an annual affidavit with SFE affirming that they continue to
6 meet the eligibility criteria set forth in regulations adopted by SFE. The affidavit must be filed
7 with SFE on or before January 31 of every year after the year the 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 (d) The Director of SFE shall:

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

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

23 (3) Provide the Tax Collector with a list of persons eligible to claim the tax
24 exclusion authorized under this Section for the preceding tax year by March 1 of each year.

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1 The Tax Collector shall grant or deny the tax exclusion on the basis of SFE's determination
2 along with the review, at the Tax Collector's option, of the documentation maintained by the
3 employer under Subsection (c)(3) of this Section.

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

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

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

24 (h) The effective date of this ordinance shall be January 1, 2006.
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1 (i) The Tax Collector shall submit an annual report to the Board of Supervisors for each
2 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 five years from the enactment of this Ordinance, shall perform
14 an assessment and review of the effect of the clean energy technology tax exclusion. Based
15 on such assessment and review the Controller shall prepare and submit an analysis to the
16 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 Section 1.

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

23 By: _____
24 Carol A. Boardman
25 Deputy City Attorney