

FILE NO.081449

ORDINANCE NO.

1 [Clean Technology Payroll Expense Tax exclusion.]

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3 **Ordinance amending San Francisco Business and Tax Regulations Code by amending**
4 **Article 12-A, Section 906.2 to expand eligibility for the clean technology payroll tax**
5 **exclusion to include carbon trading, solar panel and other clean technology research**
6 **and development- related businesses, and to include businesses with fewer than ten**
7 **employees.**

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

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

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

15 SEC. 906.2. CLEAN ~~ENERGY~~ TECHNOLOGY BUSINESS EXCLUSION.

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

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1 (b) For purposes of this section, the following terms shall have the meanings set forth
2 below "person," "business," "association," "clean energy technology" and "clean energy technology
3 business" have the following meanings:

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

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

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

13 (4) "Clean energy technology" means the development, manufacture or application of
14 scientific advances that produce or contribute to the production of clean energy 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, ~~Clean energy technology does not~~
18 ~~include: (A) the installation of clean energy technologies, excluding (BA) any fossil fuel based~~
19 energy production, including but not limited to, clean coal, clean diesel, natural gas and
20 hydrogen from natural gas, ~~(CB) any nuclear based energy production, (DC) waste to energy~~
21 via combustion or incineration, or/and ~~(ED) other technologies that are detrimental to human~~
22 health. ~~The Board of Supervisors may amend this legislation to include future technologies.~~

23 (5) "Clean ~~energy~~ technology business" means a business in which at least seventy-five
24 percent of all business activities carried on during the tax year are directly related to ~~clean~~
25 energy technology one or more of the following activities:

1 (A) research and development and/or associated manufacturing applying scientific
2 advances to the production, distribution or storage of clean energy;

3 (B) research and development and/or associated manufacturing applying scientific
4 advances to prototype or commercially viable materials and products powered by clean energy,
5 including but not limited to single passenger vehicles and fueling infrastructure;

6 (C) research and development and/or associated manufacturing applying scientific
7 advances to prototype or commercially viable techniques, materials and products that materially
8 improve energy efficiency, water conservation or air quality;

9 (D) research and development, manufacture and/or installation of solar panels; or

10 (E) carbon trading on new or existing markets, including but not limited to, verification
11 of projects for carbon reduction credits.

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

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

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

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

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

4 (5) Obtain or maintain a Green Business recognition, For clean technology
5 businesses in business sectors eligible for Green Business recognition from the City under Chapter 15
6 of the Environment Code and implementing regulations, if available as to that business,(1) qualify as a
7 Green Business, and (2) complete and submit all required applications for Green Business recognition
8 at least ninety days prior to the close of from the City under Chapter 15 of the Environment Code
9 ~~during~~ the tax year for which the payroll tax exemption is requested.

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

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

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

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

23 (e) The clean ~~energy~~ technology exclusion authorized under this Section shall be
24 available to and may be taken by a person for each tax year that person holds a valid
25 certificate of eligibility for a period of ten years from the effective date of this Section or the

1 commencement of the person's clean ~~energy~~ technology business in the City, whichever is
2 later. The date the Tax Collector first received the person's application for a business
3 registration certificate for the person's clean ~~energy~~ technology business shall be presumed to
4 be the date of commencement of such business unless the person establishes a different
5 commencement date to the satisfaction of the Tax Collector.

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

13 (g) If a person's calculated liability for the Payroll Expense Tax does not exceed ~~\$2,500~~
14 ~~\$250,000~~ the ceiling specified in Section 905-A for the tax year after applying the clean ~~energy~~
15 technology exclusion under this Section, the person shall be exempt from payment of the
16 Payroll Expense Tax for that tax year as provided in Section 905-A.

17 (h) The effective date of this ~~ordinance~~ Section 906.2 shall be January 1, 2006 except that
18 the amendments to Section 906.2 made by Ordinance 08- do not apply to tax years beginning before
19 January 1, 2009 .

20 (i) The Tax Collector shall submit an annual report to the Board of Supervisors for
21 each year for which the clean ~~energy~~ technology exclusion authorized under this Section is
22 available that sets forth aggregate information on the dollar value of the clean ~~energy~~
23 technology exclusions taken each year, the number of businesses taking the exclusion, the
24 change in the number of clean ~~energy~~ technology businesses engaging in business in the City,
25 and any identifiable increase or decrease in the number of jobs in the clean ~~energy~~ technology

1 business sector compared to the number of jobs in the clean ~~energy~~ technology business
2 sector for the immediately preceding calendar year.

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

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

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

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

22 By: _____
23 Catharine Barnes
24 Deputy City Attorney

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