

1 [Business and Tax Regulations Code – Exclusion of Stock Compensation from Payroll
2 Expense for Tax Years 2011 and 2012]

3 **Draft ordinance amending Article 12-A of the Business and Tax Regulations Code by**
4 **adding Section 906.4 to establish a payroll expense tax exclusion for tax years 2011**
5 **and 2012 of that portion of an eligible person's payroll expense that is attributable to**
6 **stock compensation.**

7 NOTE: Additions are *single-underline italics Times New Roman*;
8 deletions are ~~*strike-through italics Times New Roman*~~.
9 Board amendment additions are double-underlined;
Board amendment deletions are ~~strike-through normal~~.

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

11 Section 1. Findings. The Board of Supervisors hereby finds that:

12 (a) San Francisco is the only city in California to levy a payroll expense tax. The
13 San Francisco Payroll Expense Tax is levied against businesses on its annual compensation
14 expense, to which stock compensation can be subject.

15 (b) According to the California Employment Development Department, at the
16 beginning of 2011, the City and County of San Francisco had an estimated 32,000 non-
17 government technology jobs. Stated differently, about 17.4 percent of non-government office
18 workers in San Francisco are employed in the technology sector.

19 (c) In a March 15, 2011 report issued by the Office of the Controller, its Office of
20 Economic Analysis found that it is common practice in the technology industry to compensate
21 employees with stock options. It also found that future payroll expense tax liability associated
22 with stock options appears to be a significant incentive for successful technology companies
23 to relocate outside of San Francisco. As a result, the report suggests that San Francisco
24 consider modifying its payroll expense tax ordinance to reduce this incentive.

(d) Attracting and retaining growing businesses in San Francisco through thoughtful business tax reform is a key component to maintaining a strong local economy and tax base. Therefore,

[Supervisor's office to supplement Findings]

Section 2. The San Francisco Business and Tax Regulations Code is hereby amended by adding Section 906.4, to read as follows:

SEC. 906.4. STOCK COMPENSATION EXCLUSION.

(a) Definitions.

(1) "Eligible Person" shall mean a person who as of January 1, 2011: (i) is a Technology Business, (ii) employs at least 100 employees in San Francisco, (iii) was founded after 2001, and (iv) whose stock is not traded on a public stock exchange.

(2) "Technology Business" shall mean

(3) "Stock Compensation" shall mean

(b) For the 2011 and 2012 tax years, any Eligible Person may exclude from its payroll expense all compensation related to Stock Compensation.

(c) No exclusion shall be allowed under this Section to the extent that such exclusion reduces an Eligible Person's payroll expense tax liability below \$1,500 for any individual employee. In such case, the Eligible Person's payroll expense tax liability shall be fixed for such individual employees at \$1,500.

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

(1) File with the Tax Collector, on a form prescribed by the Tax Collector, an affidavit attesting to the facts establishing entitlement to the tax exclusion. The affidavit shall be supported by such other documentation as the Tax Collector shall prescribe.

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

4 (3) File an annual payroll expense tax return with the Tax Collector regardless of
5 the amount of tax liability shown on the return after claiming the exclusion provided for in this Section.

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

8 (f) The Office of the Treasurer and Tax Collector may adopt rules and regulations
9 regarding the exclusion provided under this Section.

10 (g) The Tax Collector shall verify that any exclusion claimed pursuant to this Section is
11 appropriate.

12 (h) A misrepresentation or misstatement by any person regarding eligibility for the
13 exclusion authorized by this Section that results in the underpayment or underreporting of the payroll
14 expense tax shall be subject to penalties.

15 (i) The Stock Compensation Exclusion in this Section may not be claimed concurrently with
16 any other payroll expense tax exclusion.

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

21 By: _____
22 STEPHANIE PROFITT
23 Deputy City Attorney
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