

File No. 110155

Committee Item No. _____
Board Item No. 12

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date 4-19-11

Cmte Board

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Amended in Board 4-12-11

Completed by: Arthur Khoo
Completed by: _____

Date 4-14-11
Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

81

[Business and Tax Regulations Code - Payroll Expense Tax Exclusion in Central Market Street and Tenderloin Area]

Ordinance amending Article 12-A of the Business and Tax Regulations Code by adding Section 906.3 to establish a payroll expense tax exclusion for businesses located in the Central Market Street and Tenderloin Area and requiring persons with an annual payroll expense of over \$1,000,000 to enter into a Community Benefit Agreement with the Office of the City Administrator.

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

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

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

(a) In January of 2010, Mayor Gavin Newsom announced the Central Market Partnership – a public/private initiative to renew and coordinate efforts to revitalize the Central Market neighborhood (from approximately Fifth Street to Tenth Street) with a focus on cultivating an eclectic, community-serving arts district.

(b) As part of the Central Market Partnership, the City has developed the following tools to assist with this effort:

(1) An \$11.5 million loan fund for low-interest loans to small businesses in the area;

(2) Coordinated incentives, including a renewed effort to generate tax increment financing through a Redevelopment Area;

(3) The Better Market Street initiative, which will overhaul the streetscape and repave the corridor in 2014;

1 (4) Technical assistance and limited funding for arts groups looking to
2 relocate to Central Market;

3 (5) An NEA grant to undertake visible arts-oriented activities that will
4 generate positive foot traffic; and

5 (6) Partnerships with recently established Community Benefit Districts and
6 other Community Benefit Organizations whose focus is on improving the neighborhood as
7 well as an Interagency Working Group to target City attention and resources to the
8 neighborhood.

9 (c) Therefore, attracting businesses to the Central Market Street neighborhood is a
10 key component in the revitalization of the area.

11
12 Section 2. The San Francisco Business and Tax Regulations Code is hereby amended
13 by adding Section 906.3, to read as follows:

14 **SEC. 906.3. CENTRAL MARKET STREET AND TENDERLOIN AREA PAYROLL**
15 **EXPENSE TAX EXCLUSION.**

16 (a) The amount of ~~An exclusion from the payroll expense tax due under this Section~~
17 ~~shall be:~~

18 (1) ~~For any~~ allowed for each person maintaining who maintains a fixed place of
19 business in within the Central Market Street and Tenderloin Area on the effective date of this
20 ordinance, such person for payroll expense attributable to that fixed location; provided,
21 however, that in no event shall owe the lesser of that tax exclusion reduce a person's payroll
22 expense tax liability for 2010 or that to less than the person's Base Year payroll expense tax
23 liability for the year they are claiming the exclusion, including zero; liability.

24 (2) ~~For any person who commences to maintain a fixed place of business in~~
25 ~~the Central Market Street and Tenderloin Area after the effective date of this legislation, such~~

1 person shall owe the lesser of that person's payroll expense tax liability for the tax year prior
2 to the date the person commenced to maintain a fixed place of business in the Central Market
3 Street and Tenderloin Area or that person's payroll expense tax liability for the year they are
4 claiming the exclusion, including zero; or

5 (3) — For any person who commences to maintain a fixed place of business in
6 the Central Market Street and Tenderloin Area after relocating to San Francisco, such person
7 shall owe the lesser of the amount that person paid in payroll expense tax for that person's
8 initial year in San Francisco and that person's payroll expense tax liability for the year they are
9 claiming the exclusion, including zero.

10 (b) For purposes of this Section, the following terms shall have the meanings set forth
11 below:

12 (1) "Central Market Street and Tenderloin Area" means the area located in
13 downtown San Francisco, generally including: parcels fronting the south side of Market Street from
14 Eleventh Street to Sixth Street; a portion of the parcels fronting the south side of Market Street from
15 Sixth Street to Fifth Street (odd numbered addresses from 999 to 933 Market Street); parcels fronting
16 the north side of Market Street from Van Ness Avenue to Eighth Street; 875 Stevenson Street; and
17 parcels in the area bordered by: Ellis Street from Polk Street to Mason Street (south side only);
18 Geary Street, from Polk Street to Taylor Street (south side only); Taylor Street, from Geary
19 Street to Ellis Street (west side only); Ellis Street, from Taylor Street to Mason Street (south
20 side only); Mason Street, from Ellis Street to Market Street (west side only); Market Street, from
21 Mason Street to Charles J. Brenham Place (north side only); Charles J. Brenham Place, from Market
22 Street to McAllister Street (east side only); McAllister Street, from Charles J. Brenham Place to Larkin
23 Street (north side only); Larkin Street, from McAllister Street to Eddy Street (east side only); Eddy
24 Street, from Larkin Street to Polk Street (north side only); and Polk Street, from Eddy Street to Ellis
25 Geary Street (east side only). The exclusion applies exclusively to the following Assessor's Lots: the

1 entirety of Blocks 0317, 0318, 0319, 0320, 0321, 0322, 0322A, 0323, 0324, 0331, 0332, 0333,
2 0334, 0335, 0336, 0337, 0338, 0339, 0340, 0342, 0343, 0344, 0345, 0346, 0347, 0348, 0349, 0350,
3 0716, 0717, and 0740, and 0835; Block 0813, Lots 7, 8, 9 and 10; Block 0835, Lots 1, 2 and 3;
4 Block 3701, Lots 50, and 59 and 65; Block 3702, Lots 1, 44, 44A, 45, 46, 47, 48, 48A, and 53 and
5 54; Block 3703, Lots 1, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 74, 75, 76, 78 and 88; Block
6 3704, Lots 70, 69, 68, 67 and 78; Block 3507, Lots 39, 40 and 41; Block 3508, Lots 1 and 39; Block
7 0355, Lots 3, 4, 5, 6, 7, 8, 9, 10 and 15; and Block 0351, Lots 1, 22, 39, 41, 46, 47, 49 and 51.

8 (2) An employee is a "qualified employee" "Base Year" means the 2010 tax
9 year for purposes a person who maintains a fixed place of computing business in
10 San Francisco the Central Market Street and Tenderloin Area on the effective date of this
11 exclusion if the employee spends at least 90% of work time on activities directly
12 related ordinance, provided that the person maintained a fixed place of business in the Area
13 for the entirety of such tax year. If the person did not maintain a fixed place of business in the
14 Area for the entirety of 2010, then the first full tax year that person maintains a fixed place of
15 business in the Area shall be the Base Year. For a person who moves a business to the
16 conduct of a trade or business located within the Central Market Street and Tenderloin Area and
17 performs at least 90% of work time within from another part of San Francisco, Base Year
18 means that person's full tax year for the boundaries of year prior to entering into a lease
19 agreement or buying real property in the Central Market Street and Tenderloin Area, provided
20 that person was doing business in San Francisco for the entirety of such tax year. For
21 purposes a person who commences to maintain a fixed place of business in San Francisco
22 after the effective date of this Section, outside independent contractors shall not be considered
23 employees of the business. ordinance. Base Year means that person's first full tax year in the
24 Area.

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 Office of Economic and
4 Workforce Development for review and evaluation. The Office of Economic and Workforce
5 Development will use this application to verify that applicants claiming the payroll expense tax
6 exclusion under this Section meet the eligibility requirements outlined in subsections subsection
7 (b)(1) and (b)(2) of this Section. The Office of Economic and Workforce Development and the Office
8 of the Treasurer and Tax Collector shall have the authority to prescribe the form of the
9 application and, consistent with this ordinance, the rules and regulations regarding eligibility for the
10 Central Market Street and Tenderloin Area payroll expense tax exclusion, which shall include
11 participation in the City's First Source Hiring Program as defined in Section 83.4 of the Administrative
12 Code.

13 (2) File an annual affidavit with the Office of Economic and Workforce Development
14 affirming that they continue to meet the eligibility criteria as determined by the Office of Economic and
15 Workforce Development. The annual affidavit should detail the total number of individuals hired
16 during the year, the number of individuals who were referred by the San Francisco Workforce
17 Development System during the year, and the duration of employment for each individual
18 hired during the year. The affidavit must be filed with the Office of Economic and Workforce
19 Development on or before January 31 of each year subsequent to the Office of Economic and
20 Workforce Development's initial approval of the application.

21 (3) Maintain records and documents in a reasonable method of
22 documentation that manner acceptable to the Tax Collector can review or verify. Such records
23 and documents must objectively that tracks employees whose compensation qualifies for the
24 Central Market Street and Tenderloin Areasubstantiate any exclusion, and provide such
25 documentation claimed under this Section and be provided to the Tax Collector upon request.

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

4 (5) Any person whose annual payroll expense exceeds one million dollars
5 (\$1,000,000) shall enter into a binding Community Benefit Agreement with the Office of
6 Economic and Workforce Development City Administrator in order to be eligible for the payroll
7 expense tax exclusion under this Section. Such Community Benefit Agreement may include
8 commitments to engage in community activities in the Central Market Street and Tenderloin
9 Area as well as participation in workforce development opportunities.

10 (d) The Office of Economic and Workforce Development shall:

11 (1) Together with the Office of the Treasurer and Tax Collector, No later than
12 the effective date of this ordinance, adopt rules, regulations and forms regarding eligibility and the
13 application process for the Central Market Street and Tenderloin Area payroll expense tax exclusion.
14 The Office of Economic and Workforce Development may amend such rules, regulations and
15 forms may be amended from time to time as necessary.

16 (2) Review all applications for completeness and upon approval, issue a certificate
17 of eligibility to the applicant. The decision of the Office of Economic and Workforce Development
18 regarding eligibility for the exclusion shall may not be final appealed by an applicant.

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

21 (e) The Tax Collector shall verify that any exclusion claimed pursuant to this Section
22 is appropriate.

23 (f) The Central Market Street and Tenderloin Area exclusion authorized under this Section
24 shall be available to and may be taken by each person for each tax year that person holds a valid
25 certificate of eligibility for a period not to exceed six years from the effective date of this ordinance or

1 the commencement of the person's business in the Central Market Street and Tenderloin Area,
2 whichever is later. The date the Tax Collector first received the person's application for a business
3 registration certificate for the person's Central Market Street and Tenderloin Area business shall be
4 presumed to 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 (fg) The Central Market Street and Tenderloin Area exclusion authorized under this Section
7 shall expire on the eighth anniversary date of the effective date of this Section. A person may not use or
8 claim any unused portion of the Central Market Street and Tenderloin Area exclusion after the
9 expiration date of this Section. Unless exempted under Sections 906 of this Article, every person
10 engaging in a business in the Central Market Street and Tenderloin Area in the City shall pay the tax
11 imposed under this Article on the full amount of the person's payroll expense attributable to the City
12 from and after the expiration of this Section.

13 (gh) If a person's calculated liability for the ~~P~~payroll ~~E~~xpense ~~T~~ax does not exceed the
14 ceiling specified in Section 905-A for the tax year after applying the Central Market Street and
15 Tenderloin Area exclusion under this Section, the person shall be exempt from payment of the ~~P~~payroll
16 ~~E~~xpense ~~T~~ax for that tax year as provided in Section 905-A.

17 (hi) The Tax Collector shall submit an annual report to the Board of Supervisors for each
18 year for which the Central Market Street and Tenderloin Area exclusion authorized under this Section
19 is available that sets forth aggregate information on the dollar value of the Central Market Street and
20 Tenderloin Area exclusions taken each year, the number of businesses taking the exclusion and the
21 change in the number of businesses located in the Central Market Street and Tenderloin Area of the
22 City.

23 (i) The Office of the City Administrator ~~Economic and Workforce Development~~ shall
24 submit an annual report to the Board of Supervisors for each year for which the Central
25 Market Street and Tenderloin Area exclusion authorized under this Section is available that

1 sets forth any and all Community Benefit Agreements that have been entered into with the
2 Office of the City Administrator of Workforce Development during that year.

3 (ik) The Assessor-Recorder shall submit an annual report to the Board of Supervisors for
4 each year for which the Central Market Street and Tenderloin Area exclusion authorized under this
5 Section is available that sets forth any identifiable increases in property value resulting from
6 businesses' location, relocation or expansion to or within the Central Market Street and Tenderloin
7 Area.

8 (il) The Controller, not later than after three years after the effective date of this ordinance,
9 shall perform an assessment and review of the effect of the Central Market Street and Tenderloin Area
10 payroll expense tax exclusion on the Central Market Street and Tenderloin Area. Based on such
11 assessment and review the Controller shall prepare and submit an analysis to the Board of Supervisors.
12 The analysis shall be based on factors that the Controller deems relevant, and may include, but shall
13 not be limited to, data contained in the annual reports to the Board of Supervisors as required by
14 subsections (h) and (i), (j) and (k) of this Section.

15 (km) The Central Market Street and Tenderloin Area payroll expense tax exclusion set forth
16 in this Section may not be claimed concurrently with any other payroll expense tax exclusion.

17 (ln) A misrepresentation or misstatement by any person regarding eligibility for the Central
18 Market Street and Tenderloin Area payroll expense tax exclusion authorized by this Section that results
19 in the underpayment or underreporting of the payroll expense tax shall be subject to penalties as
20 provided in Section 6.17-2 of Article 6 of the San Francisco Business and Tax Regulations
21 Code.

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

24 By:

25 
STEPHANIE PROFITT
Deputy City Attorney

Mayor, Supervisors Kim, Chiu, Farrell, Cohen, Wiener, Chu
BOARD OF SUPERVISORS

LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Payroll Expense Tax Exclusion in Central Market Street and Tenderloin Area]

Ordinance amending Article 12-A of the Business and Tax Regulations Code by adding Section 906.3 to establish a payroll expense tax exclusion for businesses located in the Central Market Street and Tenderloin Area and requiring persons with an annual payroll expense of over \$1,000,000 to enter into a Community Benefit Agreement with the Office of the City Administrator.

Existing Law

San Francisco imposes a payroll expense tax on business entities based on the compensation they pay to employees and others for work or services performed in San Francisco. (Business and Tax Regulations Code Section 901 et seq.) The tax rate is 1.5% of taxable payroll expense. This tax is determined each year based on the payroll expenses of the entity.

Amendments to Current Law

The proposed amendment would amend Section 906 to establish a payroll expense tax exclusion for businesses in the Central Market Street and Tenderloin Area, provided, however, that in no event shall the tax exclusion reduce a business's payroll expense tax liability to less than the business's payroll expense tax liability for its Base Year.

Base Year means the 2010 tax year for a person who maintains a fixed place of business in the Area on the effective date of the ordinance. For a person that moves a business to the Area from another part of San Francisco, Base Year means that person's full tax year for the year prior to entering into a lease agreement or buying real property in the Area. Finally, for a business that commences to maintain a fixed place of business in San Francisco after the effective date of this ordinance, Base Year means that business's first full tax year in the Area.

Businesses with annual payroll expenses greater than \$1,000,000 must enter into a Community Benefit Agreement with the City Administrator in order to be eligible to claim the tax exclusion. The exclusion will be available for a period of 8 years from the effective date of this legislation and businesses may avail themselves of the exclusion for 6 years. After the legislation expires, no unused portions of the exclusion may be claimed.

FILE NO.

Background Information

Under Business and Tax Regulations Code Section 901 et seq., businesses pay a payroll expense tax based on the compensation paid to employees and others for work or services rendered in San Francisco. (Section 901.1) This proposed amendment would amend Section 906 to establish a payroll expense tax exclusion for the purpose of encouraging entities to retain and hire employees to work in the Central Market Street and Tenderloin Area.