

1 [Business and Tax Regulations Code - Prevent Termination of Payroll Expense Tax Exclusion  
for Small Business Net New Payroll if Voters Adopt Gross Receipts Tax]

2 **Ordinance amending the San Francisco Business and Tax Regulations Code Article**  
3 **12-A by amending section 906.5 to prevent the Payroll Expense Tax Exclusion for Small**  
4 **Business Net New Payroll for years 2012 through 2015 from terminating in the event**  
5 **the voters of the City and County of San Francisco pass a gross receipts tax.**

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

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

11  
12 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended  
13 by amending Section 906.5, to read as follows:

14 **SEC. 906.5. NET NEW PAYROLL EXCLUSION.**

15 (a) The purpose of this Section is to increase the number of jobs within the City and  
16 County of San Francisco by providing an incentive for Small Businesses to create new jobs or  
17 to relocate existing jobs to the City and County of San Francisco.

18 (b) Notwithstanding any other provisions of this Article, for purposes of this Section the  
19 following terms shall have the meaning set forth below:

20 (1) "Small Business" means a person whose Base Year Payroll Expense is  
21 between \$1 and \$500,000.

22 (2) "Base Year" means the 2011 tax year for a person who had Payroll Expense in  
23 2011. If a person did not have Payroll Expense in the 2011 tax year, then the first year that  
24 the person incurs Payroll Expense shall be that person's Base Year. If a person is exempt

1 from filing a Payroll Expense Tax return pursuant to Business and Tax Regulations Code 6.9-  
2 2 in the ~~first year that the person incurs Payroll Expense~~Base Year, the person's Base Year  
3 Payroll Expense shall be \$150,000 for the purposes of calculating this exclusion.

4 (3) "San Francisco Labor Law" means the Health Care Security Ordinance,  
5 codified at San Francisco Administrative Code Chapter 14; the Minimum Wage Ordinance,  
6 codified at San Francisco Administrative Code Chapter 12R; the Paid Sick Leave Ordinance,  
7 codified at San Francisco Administrative Code Chapter 12W; the Minimum Compensation  
8 Ordinance, codified at San Francisco Administrative Code Chapter 12P; the Health Care  
9 Accountability Ordinance, codified at San Francisco Administrative Code Chapter 12Q; and  
10 the prevailing wage requirements, codified at San Francisco Administrative Code Chapter  
11 6.22.

12 (c) A Small Business may exclude from its Payroll Expense the lesser of \$250,000 or  
13 the amount of Payroll Expense that is greater than its Base Year Payroll Expense for the  
14 2012, 2013, 2014 and 2015 tax years; provided, however, that in no event shall this exclusion  
15 reduce a person's Payroll Expense Tax liability for ~~2012, 2013, 2014 or 2015 to less than the~~  
16 ~~person's Base Year Payroll Expense Tax liability~~any year 2012, 2013, 2014, or 2015 to less  
17 than the following: the person's Base Year Payroll Expense Tax liability, multiplied by the  
18 Payroll Expense Tax rate in effect for the year being reported, divided by 1.5 percent.

19 (d) In order to be eligible for the Payroll Expense Tax exclusion authorized under this  
20 Section, persons wishing to claim the exclusion must:

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

24 (2) Timely file with the Tax Collector an annual Payroll Expense Tax return  
25 claiming the exclusion provided for in this Section, regardless of the amount of tax liability

1 shown on the return after claiming the exclusion provided for in this Section. All returns shall  
2 be filed by the due date set forth in Article 6 of the San Francisco Business and Tax  
3 Regulations Code.

4 (3) If, after the timely filing of a person's Payroll Expense Tax return, it is  
5 determined that the person was delinquent in remitting any taxes, fees or penalties owed to  
6 the City and County of San Francisco at the time of filing, that person shall be ineligible to  
7 claim the exclusion under this Section for the period covered by the return.

8 (4) If, prior to or after the timely filing of a person's Payroll Expense Tax return, the  
9 San Francisco Office of Labor Standards Enforcement determines that a person violated a  
10 San Francisco Labor Law during the period covered by the return, or, in response to an  
11 investigation by the San Francisco Office of Labor Standards Enforcement, a person paid, or  
12 was required to pay, restitution to former or current employees during the period covered by  
13 the return, then such person shall be ineligible to claim the exclusion provided by this Section  
14 for the period covered by the return.

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

17 (f) The San Francisco Office of Labor Standards Enforcement shall, no later than the  
18 first of December of each year that the exclusion under this Section is in effect, provide to the  
19 Tax Collector a list of all persons it determined to have violated a San Francisco Labor Law,  
20 including the year the violation occurred.

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

23 (h) A misrepresentation or misstatement by any person regarding eligibility for the  
24 exclusion authorized under this Section that results in the underpayment or underreporting of  
25 the Payroll Expense Tax shall be subject to penalties and interest.

1 (i) The Office of the Treasurer and Tax Collector may adopt rules and regulations  
2 regarding the exclusion provided under this Section.

3 (j) The exclusion provided by this Section may not be claimed concurrently with any  
4 other Payroll Expense Tax exclusion.

5 (k) The Tax Collector shall submit an annual report to the Board of Supervisors for  
6 each year for which the exclusion authorized under this Section is available. The report shall  
7 set forth aggregate information on the dollar value of the exclusions taken each year and the  
8 number of persons claiming this exclusion.

9 (l) The exclusion set forth in this Section shall expire by operation of law on  
10 December 31, 2015, and the City Attorney shall cause it to be removed from future editions of  
11 the Business and Tax Regulations Code unless the Board of Supervisors or the voters extend  
12 the exclusion prior to December 31, 2015. ~~Alternatively, should the voters of the City and County  
13 of San Francisco pass a gross receipts tax prior to December 31, 2015, the exclusion under this Section  
14 shall terminate upon the effective date of such gross receipts tax.~~

15 (m) The exclusion provided for under this Section may be applied only in calculating a person's  
16 Payroll Expense Tax liability according to the Payroll Expense Tax rate in effect for each of the years  
17 the exclusion provided for under this Section applies. The preceding sentence applies notwithstanding  
18 whether the voters of the City and County of San Francisco pass any form of gross receipts tax.

19 (n) The Controller's Office of Economic Analysis shall issue a report to the Budget  
20 and Finance Committee of the Board of Supervisors at the end of the four-year term of the  
21 Net New Payroll Exclusion, assessing the effects of the Exclusion on incentivizing job creation  
22 and payroll growth among small businesses that applied for the Net New Payroll Exclusion.

23  
24 Section 2. Effective Date. This ordinance shall become effective 30 days from the  
25 date of passage.

Supervisor Farrell  
BOARD OF SUPERVISORS

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Section 3. This section is uncodified. In enacting this Ordinance, the Board intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams, or any other constituent part of the Business and Tax Regulations Code that are explicitly shown in this legislation as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the legislation.

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

By: \_\_\_\_\_  
STEPHANIE PROFITT  
Deputy City Attorney