

FILE NO. 051818

ORDINANCE NO.

1 [Green Business Program.]

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3 **Ordinance amending the Environment Code by adding Chapter 15 to authorize a City-**  
4 **wide Green Business Program and amending Business and Tax Regulations Code**  
5 **Section 906.2 to require a clean technology business to be a recognized Green**  
6 **Business in order to be eligible for a payroll tax exclusion under that section.**

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

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

11 Section 1. The San Francisco Environment Code is hereby amended by adding  
12 Chapter 15, to read as follows:

13 SEC. 1500. FINDINGS. The Board of Supervisors and Mayor of the City and County of San  
14 Francisco wish to authorize the creation of a Green Business program in order for the City to  
15 encourage and recognize businesses that demonstrate environmental leadership, exceed minimum  
16 regulatory requirements and take voluntary steps to conserve natural resources and prevent pollution.

17 SEC. 150.1 GREEN BUSINESS PROGRAM. In compliance with this ordinance, the  
18 Department of Public Health, the Department of the Environment and the Public Utilities Commission  
19 are authorized to form a joint program to develop and implement a City-wide Green Business program  
20 to encourage and recognize businesses that: conserve the use of natural resources, such as electricity,  
21 water and fuel; reduce, reuse, recycle and compost materials; reduce the use and generation of  
22 hazardous materials and hazardous waste; and take affirmative steps to prevent pollution. The City  
23 departments shall use the Association of Bay Area Government's Bay Area Green Business Program  
24 as a model and baseline for San Francisco's Green Business program and may use more stringent  
25 standards and criteria. In developing and implementing the program, the departments shall target

1 various business sectors operating in the City and may consult with: relevant federal, State, and  
2 regional agencies, such as the California Department of Toxic Substances Control and Bay Area Air  
3 Quality Management District; City departments that issue permits and enforce regulatory programs,  
4 including the Department of Building Inspection, the Fire Department and the Port of San Francisco;  
5 governmental land owners; and other interested entities such as the Association of Bay Area  
6 Governments and San Francisco's Small Business Commission. Only ~~businesses that operate~~  
7 operations in the City; which are in compliance with all City contracts, City-issued permits and laws;  
8 and are in compliance with all applicable environmental laws and regulations are eligible to  
9 participate in the program. A Green Business recognition will be valid for up to one year from  
10 issuance and may be extended for up to two additional years based on self-certification of continuing  
11 qualification by the business. At the end of the qualification period, the business must reapply. A  
12 Green Business recognition automatically terminates upon a change in ownership or ~~if the business~~  
13 ceases operation at that location ~~relocation of a business.~~ In coordination with and on behalf of  
14 the participating departments, the decision of the Director of the Department of the Environment on  
15 whether a business qualifies as a Green Business shall be final.

16 SEC. 1502. REGULATIONS. In coordination with and on behalf of the participating  
17 departments, the Director of the Department of the Environment, after a public hearing, shall adopt  
18 and may amend guidelines, rules, regulations and forms to implement a Green Business recognition  
19 program for various business sectors, including the application process, eligibility criteria and  
20 qualification as a Green Business. Eligibility and qualifications shall include, without limitation,  
21 thresholds and standards for: recycling and waste reduction; energy conservation; water  
22 conservation; and pollution prevention in light of feasible resources and technologies. Prior to  
23 adoption or amendment of guidelines, rules or regulations, the Director of Public Health shall certify  
24 to the Director of the Department of the Environment that the guidelines, rules or regulations are

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1 consistent with local, state and federal environmental and health regulations and with the Department  
2 of Public Health's environmental and health objectives. The participating departments shall review  
3 eligibility and qualification criteria at least once every other year and the Director of the Department  
4 of the Environment shall amend the regulations as necessary.

5 SEC. 1503. NOTICE. The Director of the Department of the Environment shall conduct  
6 outreach to all businesses that are eligible to participate in programs established under this Chapter  
7 and shall afford all eligible businesses the same opportunities ~~for eligible businesses to participate~~  
8 in the program. The Director of the Department of the Environment shall periodically post a list of  
9 Green Businesses on its website.

10 SEC. 1504. DISCLAIMER. Recognition by the City of a business as a Green Business shall not  
11 be construed as an endorsement by the City of the business or confer any legal right or privilege to the  
12 business. The participating departments may discontinue any program established under this Chapter  
13 at any time.

14 SEC. 1505. PENALTIES. False or misleading statements or misrepresentations made by any  
15 person regarding a business's eligibility or qualifications for or compliance with the Green Business  
16 program is a violation of this Chapter and is subject to an administrative penalty up to \$500 per  
17 violation in addition to any other available remedies. In coordination with and on behalf of the  
18 participating departments, whenever the Director of the Department of the Environment finds that  
19 information in a business's application or any required submission is inaccurate or misleading or a  
20 business that has a Green Business recognition is violating or has violated the terms of the Green  
21 Business program eligibility or qualifications, the Director may revoke that business's recognition as a  
22 Green Business, which revocation shall be final.

23 Section 2. The San Francisco Business and Tax Regulations Code is hereby amended  
24 by amending Section 906.2 to read as follows:  
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1 SEC. 906.2. CLEAN ENERGY TECHNOLOGY BUSINESS EXCLUSION.

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

11 (b) For purposes of this section, the terms "person," "business," "association,"  
12 "clean energy technology" and "clean energy technology business" have the following  
13 meanings:

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

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

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

23 (4) "Clean energy technology" means the development, manufacture or  
24 application of scientific advances that produce or contribute to the production of clean energy  
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1 utilizing energy produced by wind, solar energy, landfill gas, geothermal resources, ocean  
2 thermal energy conversion, quantifiable energy conservation measures, tidal energy, wave  
3 energy, biomass, biofuels, or hydrogen fuels derived from renewable sources. Clean energy  
4 technology does not include: (A) the installation of clean energy technologies, (B) any fossil  
5 fuel based energy production, including but not limited to, clean coal, clean diesel, natural gas  
6 and hydrogen from natural gas, (C) any nuclear based energy production, (D) waste to energy  
7 via combustion or incineration, or (E) other technologies that are detrimental to human health.  
8 The Board of Supervisors may amend this legislation to include future technologies.

9 (5) "Clean energy technology business" means a business in which at least  
10 seventy five percent of all business activities carried on during the tax year are directly related  
11 to clean energy technology.

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  
15 Department 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  
2 regardless of the amount of tax liability shown on the return after claiming the exclusion  
3 provided for in this Section.

4                   (5)     Obtain or maintain a Green Business recognition, if available as to that  
5 business, from the City under Chapter 15 of the Environment Code during the tax year for  
6 which the payroll tax exemption is requested.

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

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

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

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

20                  (e)     The clean energy technology exclusion authorized under this Section shall be  
21 available to and may be taken by a person for each tax year that person holds a valid  
22 certificate of eligibility for a period of ten years from the effective date of this Section or the  
23 commencement of the person's clean energy technology business in the City, whichever is  
24 later. The date the Tax Collector first received the person's application for a business  
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1 registration certificate for the person's clean energy technology business shall be presumed to  
2 be the date of commencement of such business unless the person establishes a different  
3 commencement date to the satisfaction of the Tax Collector.

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

11 (g) If a person's calculated liability for the Payroll Expense Tax does not exceed  
12 \$2,500 for the tax year after applying the clean energy technology exclusion under this  
13 Section, the person shall be exempt from payment of the Payroll Expense Tax for that tax  
14 year as provided in Section 905-A.

15 (h) The effective date of this ordinance shall be January 1, 2006.

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

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

6 (k) The Controller, after three years from the enactment of this Ordinance, shall  
7 perform an assessment and review of the effect of the clean energy technology tax exclusion.  
8 Based on such assessment and review the Controller shall prepare and submit an analysis to  
9 the Board of Supervisors. The analysis shall be based on criteria deemed relevant by the  
10 Controller, and may include but is not limited to, data contained in the annual reports to the  
11 Board of Supervisors as required by subsections (i) and (j) of this Section4.

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

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

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By: \_\_\_\_\_  
Rona H. Sandler  
Deputy City Attorney

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