Amendment of the Whole
in Board
FILE NO. 050922 10/25/05 ORDINANCE NO. 249-05

[Payroll Expense Tax Exclusion for Qualified Renewable Clean Energy Technology Businesses.]

Ordinance amending the Payroll Expense Tax Ordinance to establish a tax exclusion for qualified renewable clean energy technology businesses, as specified.

Note: Additions are single-underline italics Times New Roman; deletions are strikethrough 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. The San Francisco Business and Tax Regulations Code is hereby amended by adding Sections 906.2 of Article 12-A (Payroll Expense Tax Ordinance), as follows:

SEC. 906.2. RENEWABLE CLEAN ENERGY TECHNOLOGY BUSINESS EXCLUSION.

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

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

Supervisors McGoldrick, Alioto-Pier, Mirkarimi, Elsbernd, Ma, Sandoval
BOARD OF SUPERVISORS
The term "person" includes the combination of all subsidiaries, affiliates and other business entities related by ownership including but not limited to partnerships, joint ventures, limited liability companies, corporations and other business organizations of whatever form. Any beneficial ownership of the stock of publicly traded corporations shall not be considered for purposes of this definition.

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

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

"Clean energy technology" means a business that develops the development, manufacture or application of scientific advances that produce or contribute to the production of renewable clean energy sources including utilizing electrical energy produced by wind, solar energy, hydropower, landfill gas, waste to energy, geothermal resources, ocean thermal energy conversion, quantifiable energy conservation measures, tidal energy, wave energy, biomass, including municipal solid waste, biofuels, or fuels derived from organic sources, hydrogen fuels derived from renewable energy sources, or fuel cells where the fuel is derived from renewable sources. Clean energy technology also means a business that produces electrical energy savings brought about by the use of solar and heat pump water heating, seawater air-conditioning district cooling systems, solar air-conditioning and ice storage, quantifiable energy conservation measures, use of rejected heat from co-generation and combined heat and power systems excluding fossil-fueled qualifying facilities that sell electricity to electric utility companies. It does not include: (A) the installation of clean energy technologies, (B) any fossil fuel based energy production, including but not limited to, clean coal, clean diesel, natural gas and hydrogen from natural gas, (C) any nuclear based
energy production, \( \text{(4)(D)} \) waste to energy via combustion or incineration, or \( \text{(5)(E)} \) other technologies that are detrimental to human health. The Board of Supervisors may amend this legislation to include future technologies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) The Controller, after five three years from the enactment of this Ordinance, shall perform an assessment and review of the effect of the clean energy technology tax exclusion. Based on such assessment and review the Controller shall prepare and submit an analysis to
the Board of Supervisors. The analysis shall be based on criteria deemed relevant by the
Controller, and may include but is not limited to, data contained in the annual reports to the
Board of Supervisors as required by subsections (i) and (j) of Section 1.

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

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

By: Carol A. Boardman
Deputy City Attorney
Ordinance amending the Payroll Expense Tax Ordinance to establish a tax exclusion for qualified clean energy technology businesses, as specified.

October 11, 2005  Board of Supervisors — CONTINUED
Ayes: 8 - Ammiano, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Sandoval
Noes: 2 - Daly, Peskin
Excused: 1 - Alioto-Pier

October 25, 2005  Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

October 25, 2005  Board of Supervisors — PASSED ON FIRST READING AS AMENDED
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

November 1, 2005  Board of Supervisors — FINALLY PASSED
Ayes: 9 - Alioto-Pier, Ammiano, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Sandoval
Noes: 2 - Daly, Peskin
I hereby certify that the foregoing Ordinance was FINALLY PASSED on November 1, 2005 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

Mayor Gavin Newsom

Date Approved: NOV 1 0 2005