

FILE NO. 051818

AMENDMENT OF THE WHOLE
ORDINANCE NO. 21-06

1 [Green Business Program.]

2
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

Mayor Newsom, Supervisor Maxwell, *Supervisor SANDOVAL*
BOARD OF SUPERVISORS

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
25

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
25

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.

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.

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.

17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20
21 By: 
22 Rona H. Sandler
23 Deputy City Attorney
24
25



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 051818

Date Passed:

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

January 24, 2006 Board of Supervisors — PASSED ON FIRST READING

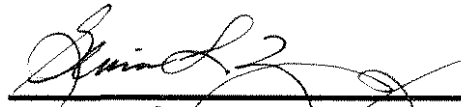
Ayes: 10 - Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick,
Mirkarimi, Peskin, Sandoval
Excused: 1 - Alioto-Pier

January 31, 2006 Board of Supervisors — FINALLY PASSED

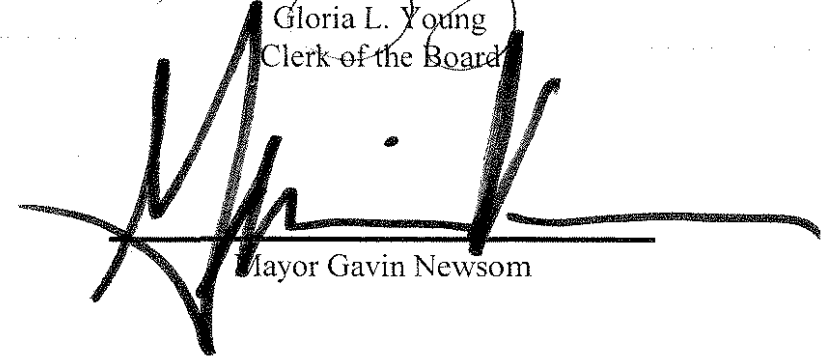
Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, Mirkarimi,
Peskin, Sandoval
Absent: 1 - McGoldrick

File No. 051818

I hereby certify that the foregoing Ordinance
was FINALLY PASSED on January 31, 2006
by the Board of Supervisors of the City and
County of San Francisco.



Gloria L. Young
Clerk of the Board



Mayor Gavin Newsom

02-03-06

Date Approved