Ordinance amending San Francisco Business and Tax Regulations Code by amending Article 12-A, Section 906.2 to expand eligibility for the clean technology payroll tax exclusion to include carbon trading, solar panel and other clean technology research and development-related businesses, and to include businesses with fewer than ten employees.

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 amending Section 906.2 of Article 12-A to read as follows:

SEC. 906.2. 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 clean energy technology business may exclude from the person's payroll expense all compensation paid to, on behalf of or for the benefit of the person's employees, 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 clean energy technology business activities efforts, 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 clean energy technology business.
(b) For purposes of this section, the following terms shall have the meanings set forth below: "person," "business," "association," "clean energy technology," and "clean energy technology business" have the following meanings:

(1) The term "person" includes the combination of all domestic 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.

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

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

(4) "Clean energy technology" means the development, manufacture or application of scientific advances that produce or contribute to the production of clean-energy utilizing energy produced by wind, solar energy, landfill gas, geothermal resources, ocean thermal energy conversion, quantifiable energy conservation measures, tidal energy, wave energy, biomass, biofuels, or hydrogen fuels derived from renewable sources. Clean energy technology does not include: (A) the installation of clean energy technologies, excluding (BA) any fossil fuel based energy production, including but not limited to, clean coal, clean diesel, natural gas and hydrogen from natural gas, (CB) any nuclear based energy production, (DC) waste to energy via combustion or incineration, or/and (ED) 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 one or more of the following activities:
(A) research and development and/or associated manufacturing applying scientific advances to the production, distribution or storage of clean energy;

(B) research and development and/or associated manufacturing applying scientific advances to prototype or commercially viable materials and products powered by clean energy, including but not limited to single passenger vehicles and fueling infrastructure;

(C) research and development and/or associated manufacturing applying scientific advances to prototype or commercially viable techniques, materials and products that materially improve energy efficiency, water conservation or air quality;

(D) research and development, manufacture and/or installation of solar panels; or

(E) carbon trading on new or existing markets, including but not limited to, verification of projects for carbon reduction credits.

(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.

(5) Obtain or maintain a Green Business recognition, For clean technology businesses in business sectors eligible for Green Business recognition from the City under Chapter 15 of the Environment Code and implementing regulations, if available as to that business, (1) qualify as a Green Business, and (2) complete and submit all required applications for Green Business recognition at least ninety days prior to the close of the City under Chapter 15 of the Environment Code during the tax year for which the payroll tax exemption is requested.

(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) The clean energy technology exclusion authorized under this Section shall be available to and may be taken by a person for each tax year that person holds a valid certificate of eligibility for a period of ten years from the effective date of this Section or the
commencement of the person's 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 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.

(f) The 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 a 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.

(g) If a person's calculated liability for the Payroll Expense Tax does not exceed $2,500, the ceiling specified in Section 905-A, for the tax year after applying the 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 Section 906.2 shall be January 1, 2006 except that the amendments to Section 906.2 made by Ordinance 08 do not apply to tax years beginning before January 1, 2009.

(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

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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 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 this Section.

(l) 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: Catharine Barnes
Deputy City Attorney
Ordinance amending San Francisco Business and Tax Regulations Code by amending Article 12-A, Section 906.2 to expand eligibility for the clean technology payroll tax exclusion to include solar panel and other clean technology research and development-related businesses, and to include businesses with fewer than ten employees.

December 9, 2008 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE
Ayes: 11 - Alioto-Pier, Campos, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

December 9, 2008 Board of Supervisors — PASSED ON FIRST READING AS AMENDED
Ayes: 9 - Alioto-Pier, Campos, Chu, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Sandoval
Noes: 2 - Daly, Peskin

December 16, 2008 Board of Supervisors — FINALLY PASSED
Ayes: 8 - Alioto-Pier, Campos, Chu, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi
Noes: 3 - Daly, Peskin, Sandoval
I hereby certify that the foregoing Ordinance was FINALLY PASSED on December 16, 2008 by the Board of Supervisors of the City and County of San Francisco.

Date Approved

12/19/2008

Angela Calvillo
Clerk of the Board

Mayor Gavin Newsom