File No. 121064

Committee Item No. 10
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Completed by: Victor Young **Date** November 30, 2012
Completed by: Victor Young **Date** _____

[Business and Tax Regulations Code, Police Code - Parking Stations - Revenue Control Equipment; License Regulations; Parking Tax Bonds; Administrative Citation Process]

Ordinance amending the San Francisco Business and Tax Regulations Code by amending Article 6 (Common Administrative Provisions) to revise the bonding requirements for parking operators; revise the time to bring an action to collect tax; clarify the extent of a surety's liability; revise the administrative citation appeal process; and make other minor technical changes; amending Article 22 (Parking Stations; Revenue Control Equipment) to clarify that non-City governmental entities operating parking stations are exempt from the revenue control equipment requirements; and amending the San Francisco Police Code Article 17 (Miscellaneous License Regulations) to clarify that governmental entities operating parking garages or parking lots are exempt from the permitting requirements applicable to other commercial parking garage and valet operations.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through 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 Sections 6.6-1, 6.10-3, 6.15-1, 6.17-2, 6.18-1, 6.19-8, and 2202 to read as follows:

SEC. 6.6-1. CERTIFICATE OF AUTHORITY FOR THIRD-PARTY TAXES.

(a) These additional provisions shall apply to operators under the transient hotel occupancy tax (Article 7), the parking space occupancy tax (Article 9), the utility users tax

(Article 10) and the access line tax (Article 10B).

(b) Every operator who is required to collect or remit any third-party tax must possess a valid certificate of authority issued by the Tax Collector.

(c) The application for a certificate of authority shall be on a form provided by the Tax Collector and shall set forth the name under which the person transacts or intends to transact business, the location of each of the person's places of business in the City, and such other information as the Tax Collector may require. The application shall be signed by the owner if a sole proprietor, by a member or partner, in the case of an association, or by an executive officer or some person specifically authorized by the corporation to sign the application in the case of a corporation. No person shall operate a business for which a certificate of authority is required under subsection (b) unless and until the Tax Collector has issued that person a certificate of authority. The holder of a certificate of authority must promptly notify the Tax Collector of any changes to the information stated in the certificate of authority application.

(d) Except as provided in subsections (f), (g), (h), and (k) below, the Tax Collector, within 45 days after the application is complete, shall issue a separate certificate of authority to the operator to collect third-party taxes from customers for each location at which the operator is required to collect such taxes. The certificate will expire on a date certain set by the Tax Collector. The operator must apply for renewal of the certificate, before it expires, if the operator intends to continue to engage in business in the City. Except as provided in subsections (f), (g), (h) and (k), the Tax Collector may issue successive, one-year renewals of an operator's certificate. Each certificate shall state the location of the place of business to which it applies and shall be prominently displayed at such location in plain view of all customers. Certificates of authority may not be assigned or transferred. The operator shall immediately surrender to the Tax Collector the certificate for that location upon the operator's cessation of business at that location or upon the sale or transfer of the business.

(e) The holder of a certificate of authority to collect parking taxes under Article 9 shall remain presumptively liable for the collection of parking taxes at the location named in the certificate, and for the reporting and remittance of such taxes to the Tax Collector, unless and until the holder of the certificate both (i) notifies the Tax Collector in writing that the holder has ceased to conduct a parking business at such location, and (ii) surrenders the certificate for that location to the Tax Collector.

(f) The Tax Collector may refuse to issue the certificate where, within the 45-day period referred to in subsection (d) above, the Tax Collector determines that the operator, or any signatory to the application, or any person holding a 10 percent or greater legal or beneficial interest in said operator ("10% owner") is not in compliance with any provision of Articles 6, 7, 9, 10, 10B, 12, 12-A, or 22 including but not limited to any failure to timely collect, report, pay, or remit any tax imposed by this Code, or where any such person is not in compliance with any provision of Sections *1215*~~*1216*~~ through 1223 inclusive of Article 17 of the Police Code.

Solely for purposes of determining under this Section whether any such operator, signatory or 10% owner is not in compliance with such Articles, the Tax Collector may disregard any corporation or association owned or controlled, directly or indirectly, by any such operator, signatory or 10% owner and consider such corporation or association's operations and liabilities as conducted by or as owned by any one or more of such corporation or association's officers, directors, partners, members or owners. For purposes of this Section, (i) the term "owned" means ownership of 50 percent or more of the outstanding ownership interests in such corporation or association, and (ii) the term "controlled" includes any kind of control, whether direct or indirect, whether legally enforceable, and however exercisable or exercised over such corporation or association. A presumption of control arises

if the operator, signatory or 10% owner is (or was) an officer, director, partner or member of such corporation or association.

(g) Further, if any person subject to this Section violates any provision of Articles 6, 7, 9, 10, 10B, 12, 12-A, or 22, or a rule or regulation promulgated by the Tax Collector, including but not limited to any failure to timely collect, report, pay, or remit any tax imposed by this Code, failure to maintain accurate registration information, failure to sign any return or pay any tax when due, or failure to timely respond to any request for information, order for records or subpoena, or ~~*for any person subject to Article 9*~~ for failure to comply with the requirements of Article 22 of the Business and Tax Regulations Code or any provision of Sections *1215*~~*1216*~~ through 1223 inclusive of Article 17 of the Police Code, the Tax Collector may, after serving the person with written notice of his or her determination in the manner provided in Section 6.11-2 and an opportunity to be heard pursuant to the notice and review provisions of Section 6.13-1 et seq., *refuse to issue that person a new certificate of authority or may* revoke or suspend that person's certificate of authority. The Tax Collector may refuse to issue that person a new certificate of authority or to withdraw the suspension of an existing certificate until the person, signatory to the application for the certificate revoked or suspended, signatory to the application for a new certificate or withdrawal of the suspension, and all 10% owners have complied with the provisions of Articles 6, 7, 9, 10, 10B, 12, 12A, and 22 and corrected the original violation to the satisfaction of the Tax Collector. *For any person applying for or holding a certificate of authority to collect parking taxes, the Tax Collector shall promptly notify the Chief of Police in writing that it has revoked a person's certificate of authority, refused to issue a new certificate of authority, suspended an existing certificate of authority or determined that the person is not in compliance with the Business and Tax Regulations Code. The Tax Collector shall in writing request that the Chief of Police refuse to issue a commercial parking permit to the person or suspend or*

revoke the person's existing commercial parking permit and immediately close the business, pursuant to Sec. 1215.3.(b) of the Police Code.

(h) Before any certificate of authority shall be issued to any applicant to engage in the business of renting parking space in a parking station in this City *and annually, for as long as the business continues*, such applicant shall file with the Tax Collector a bond naming the City as exclusive beneficiary at all times the applicant engages in such business. Such bond shall be in the following amounts:

~~*Annual gross receipts for parking station*~~	~~*Bond amount*~~
~~*Less than $100,000.00*~~	~~*$20,000*~~
~~*$100,000.00 to $250,000.00*~~	~~*$50,000*~~
~~*$250,000.01 to $500,000.00*~~	~~*$100,000*~~
~~*$500,000.01 to $750,000.00*~~	~~*$150,000*~~
~~*$750,000.01 to $1,000,000.00*~~	~~*$200,000*~~
~~*$1,000,000.01 to $2,000,000.00*~~	~~*$400,000*~~
~~*$2,000,000.01 to $4,000,000.00*~~	~~*$800,000*~~

Annual gross receipts for parking station	***Bond amount***
Less than $100,000.00	*$20,000*
$100,000.00 to $250,000.00	*$50,000*
$250,000.01 to $500,000.00	*$100,000*

$500,000.01 to $750,000.00	*$150,000*
$750,000.01 to $1,000,000.00	*$200,000*
$1,000,000.01 to $1,250,000.00	*$250,000*
$1,250,000.01 to $1,500,000.00	*$300,000*
$1,500,000.01 to $1,750,000.00	*$350,000*
$1,750,000.01 to $2,000,000.00	*$400,000*
$2,000,000.01 to $2,250,000.00	*$450,000*
$2,250,000.01 to $2,500,000.00	*$500,000*
$2,500,000.01 to $2,750,000.00	*$550,000*
$2,750,000.01 to $3,000,000.00	*$600,000*
$3,000,000.01 to $3,250,000.00	*$650,000*
$3,250,000.01 to $3,500,000.00	*$700,000*
$3,500,000.01 to $3,750,000.00	*$750,000*
$3,750,000.01 to $4,000,000.00	*$800,000*
$4,000,000.01 and greater	*$800,000*

This bond requirement does not apply to an applicant that is a governmental entity.

The Tax Collector may, in his or her discretion, independently establish the annual gross receipts for a parking station and set the bond amount pursuant to the schedule above, based on that determination. If, at the end of any calendar year, the gross receipts for a parking station have increased such that a larger bond amount would be required under the

above schedule, the operator shall obtain a new bond in the increased amount by the following April 1. If at the end of any calendar year the gross receipts for the parking station have decreased, the operator may apply to the Tax Collector for a reduction of the bond amount.

(i) Upon application by the operator, the Tax Collector may, in his or her discretion, set the bond amount for a parking station at the following levels, provided the operator meets the following qualifications: (i) the operator has maintained a valid certificate of authority, including a bond for all locations, for the 3 years immediately preceding the date of the application; (ii) the Tax Collector has not issued a deficiency determination against the operator for any business location for the 3 years immediately preceding the date of the application; and (iii) the Tax Collector determines that it is in the best interest of the City. The reduced bond amount is applicable during the calendar year that it is approved. The Tax Collector may, in his or her discretion, approve renewal of the bond at the lower amount from year to year. If after approving an application for a reduced bond amount, the Tax Collector issues a deficiency determination against the operator for any business location, or the operator fails to obtain a Certificate of Authority for any business location, the approval may be rescinded and the higher bond amount provided under subsection (h) may be required.

Annual gross receipts for qualified parking station	***Bond amount***
Less than $100,000.00	*$10,000*
$100,000.00 to $250,000.00	*$25,000*
$250,000.01 to $500,000.00	*$50,000*
$500,000.01 to $750,000.00	*$75,000*
$750,000.01 to $1,000,000.00	*$100,000*

$1,000,000.01 to $1,250,000.00	*$125,000*
$1,250,000.01 to $1,500,000.00	*$150,000*
$1,500,000.01 to $1,750,000.00	*$175,000*
$1,750,000.01 to $2,000,000.00	*$200,000*
$2,000,000.01 to $2,250,000.00	*$225,000*
$2,250,000.01 to $2,500,000.00	*$250,000*
$2,500,000.01 to $2,750,000.00	*$275,000*
$2,750,000.01 to $3,000,000.00	*$300,000*
$3,000,000.01 to $3,250,000.00	*$325,000*
$3,250,000.01 to $3,500,000.00	*$350,000*
$3,500,000.01 to $3,750,000.00	*$375,000*
$3,750,000.01 to $4,000,000.00	*$400,000*
$4,000,000.01 and greater	*$400,000*

~~(i)~~*(j)* Such bond shall be executed by the applicant as principal, and by a corporation or association which is licensed by the Insurance Commissioner of this State to transact the business of fidelity and surety insurance, as surety. The applicant shall keep the bond in full force and effect for the duration of the certificate of authority and all renewals thereof issued to such applicant. If the bond provides that the term thereof shall be continuous until cancelled, the applicant shall provide the Tax Collector with certification from the surety of the renewal or continuation of the bond ~~*at the same time that the applicant files its annual renewal of its Business Registration Certificate, and*~~ (i) when applying for renewal of an existing certificate of authority,

(ii) when requesting the withdrawal of a suspension of an existing certificate of authority, *(iii) when applying for a reduced bond amount pursuant to subsection (i),* or ~~(iii)~~*(iv)* upon written request of the Tax Collector.

~~(j)~~*(k)* The bond shall contain conditions that require the applicant to comply fully with all the provisions of the Business and Tax Regulations Code concerning the collection of third-party taxes from occupants of parking stations and the remittance of such taxes to the Tax Collector. The bond shall be payable to the City in the amount of all unpaid parking taxes on amounts of taxable rents collected by the applicant, together with all administrative collection costs, interest, penalties, and other costs and charges applicable thereto; provided, however, that the aggregate liability of the surety for any and all claims which may arise under such bond shall in no event exceed the face amount of such bond regardless of the amount due and owing to the City. The City may bring an action upon the bond for the recovery of any unpaid parking taxes, administrative collection costs, interest, penalties and other costs and charges at any time prior to the expiration of the period of limitations applicable to the collection of such unpaid taxes by the Tax Collector.

~~(k)~~*(l)* When there is a deficiency determination or jeopardy determination against an operator for third-party taxes, the Tax Collector shall issue the deficiency determination or jeopardy determination against the operator and the operator's surety. The liability of the surety shall not exceed the face value of the bond(s) *in effect during the period for which the deficiency is assessed*. The Tax Collector shall provide notice of such deficiency determination or jeopardy determination to the operator and the bond surety. *Either an operator or a surety or both may file a petition for redetermination.* An operator's petition for redetermination shall be construed by the Tax Collector as a petition on behalf of both the operator and the surety. The surety may request a hearing before the Tax Collector pursuant to Section 6.13-2. The taxpayer and surety hearing*s* may be consolidated at the discretion of the Tax Collector. ~~The~~

~~*surety may file a separate petition for redetermination.*~~ Upon the finality of such determination or decision on petition for redetermination, the operator and the surety shall be liable to the Tax Collector in the amount of the determination or decision on petition for redetermination. The surety's liability shall not exceed the face value of the bond(s) *in effect during the period for which the deficiency is assessed*. The surety shall be subject to the same requirements as the operator with regard to payment of the tax liability and exhaustion of administrative remedies prior to seeking judicial relief. The Tax Collector may exercise all remedies against the surety that are available to the Tax Collector as to an operator or any other person determined to be liable for a tax.

~~(l)~~*(m)* Before any certificate of authority shall be issued to any applicant to engage in the business of renting parking space in a parking station in this City, the applicant shall comply with Article 22. The applicant shall reimburse the Tax Collector's costs to inspect the parking station to confirm it complies with Article 22.

SEC. 6.10-3. COLLECTION OF TAX; LEGAL ACTIONS.

(a) The Tax Collector may bring an action in the courts of this State, or any other state, or of the District of Columbia, or of the United States and its territories or possessions, or any other forum where permitted by law to recover in the name of the City any amount of taxes due and payable under the Business and Tax Regulations Code and remaining unpaid, together with penalties, interest, and costs, including reasonable attorneys' fees.

In any action filed pursuant to this subdivision, the Complaint shall attach a certificate executed by the Tax Collector or his representative that contains the following information: (1) the name of the operator, taxpayer or other person determined to be liable for the tax; (2) the description of the operator's, taxpayer's or other person's business against which the tax has been assessed; (3) the location and/or address of the business; (4) the amount of the tax,

penalty and interest remaining unpaid as of the last day of the month prior to the month in which the Complaint is filed; and (5) the fact that the City has complied with all provisions of the Business and Tax Regulations Code in the computation and the levy of the tax, penalty or interest.

In prosecuting such actions, the Tax Collector shall be entitled to all of the provisional remedies provided by law. Any such action shall be commenced within 3 years from the date any amount of taxes became due and payable, or from the date the return is required to be filed or actually filed, whichever period expires later; except in the case of any deficiency determination pursuant to Sections *6.11-1 et seq.*, 6.12-1 et seq., or 6.13-1 et seq., in which case any such action shall be commenced within 3 years after such determination became final. However, there shall be no limitation on the time in which such actions may be commenced in cases of fraud, intent to evade the Business and Tax Regulations Code, or failure to file a return.

(b) When the amount of any tax, penalty or interest which has become due and payable remains unpaid for 15 days, the Tax Collector may record a tax lien with the Assessor-Recorder, thereby creating a tax lien on all of the assessee's property and rights to property, including realty, personalty, or intangibles. The Tax Collector may record or file such tax lien in the office of the Recorder of any California county, with the California Secretary of State, and with any other California public entity that is otherwise authorized by law to record liens. The Tax Collector may record or file such tax liens in any other office of any other jurisdiction as permitted by law. The tax lien shall identify the Tax Collector as the lienor, and the amount of the lien. Simultaneously with the recording, a copy of the tax lien shall be mailed to or personally served upon the taxpayer or other person determined to be liable for the tax at said person's last known address based upon the information, contained in the Tax Collector records. The tax lien after recordation has the force, effect and priority of a

judgment lien and continues for 10 years from the date of recording, unless sooner released or otherwise discharged. This remedy and any other remedies for collection of any taxes, together with all administrative collection costs, interest, penalties and other costs and charges, including reasonable attorneys' fees, are cumulative and may be pursued alternatively and consecutively as the Tax Collector determines.

SEC. 6.15-1. REFUNDS.

(a) Except as otherwise provided in subdivision (c) below, the Controller shall refund or cause to be refunded the amount of any tax, interest or penalty that has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the City, provided the person that paid such amount files with the Controller, within the later of 1 year of payment of such amount or when the return accompanying such payment was due, a verified claim in writing therefor, stating under penalty of perjury: (i) the specific amount claimed to have *been* overpaid or paid more than once, or erroneously or illegally collected or received by the City, (ii) the tax periods at issue, and (iii) the grounds upon which the claim is founded, with specificity sufficient to enable the Tax Collector and other responsible City officials to understand and evaluate the claim. The Controller shall enter the claim in the claim register, and shall forthwith forward it to the City Attorney. If the City Attorney determines the claim is insufficient, the City Attorney shall give the claimant written notice of how the claim is insufficient, stating with particularity the defects or omissions therein. The City Attorney shall send the claimant that notice within 20 days after the claimant presents the claim. The City Attorney may reject any and all claims the Controller forwards to the City Attorney, and shall notify the claimant of such rejection. Allowance or compromise and settlement of claims under this Section in excess of $25,000 shall require the written approval of the City Attorney and approval of the Board of Supervisors by resolution. The City Attorney may allow or

compromise and settle such claims if the amount is $25,000 or less. No claim may be paid until the Controller certifies that monies are available from the proper funds or appropriations to pay the claim as allowed or as compromised and settled. For purposes of this Section, a claim shall be deemed to accrue on the later of the date the return was due or the tax was paid.

(b) The claim shall be on a form furnished by the Controller. A claim may be returned to the person if it was not presented using the form. A refund claim may be made only by the taxpayer or other person determined to be liable for the tax or said person's guardian or conservator. No other agent, including the taxpayer's attorney, may sign a refund claim. Class claims for refunds shall not be permitted. The customer who pays a third-party tax to an operator is the proper party to seek the refund of a disputed third-party tax. No operator or other person responsible for collecting or remitting a disputed third-party tax may obtain a tax refund unless that operator or other person has paid the tax to the Tax Collector pursuant to a deficiency determination or a jeopardy determination in which case the operator or other person who paid the tax, and not the individual customer, may seek a refund. If the claim is approved as set forth in subsection (a) above, the excess amount collected or paid may be refunded or may be credited on any amount due and payable, from the person from whom it was collected or by whom paid and the balance may be refunded to such person, his administrator or executors.

(c) The City Attorney, in his or her discretion and upon good cause shown, prior to the expiration of the 1-year limitations period, may waive the requirement set forth in subdivision (a) above that a taxpayer file a written verified claim for a refund in any case in which the Tax Collector and City Attorney determine on the basis of other evidence that (i) an amount of tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or

illegally collected or received by the City, and (ii) all other conditions precedent to the payment of a refund to the taxpayer have been satisfied.

(d) The City Attorney shall allow, reject or otherwise act upon a claim for refund in a manner specified in Government Code Section 912.6 within 45 days after it is presented to the Controller. If the claim is amended, the City Attorney shall act on the amended claim within 45 days after the amended claim is presented. The claimant may agree in writing to extend the period within which the City Attorney must act on the claim for refund prior to expiration of the original 45-day period. The claimant may deem the claim for refund denied and seek judicial relief if the City Attorney does not act upon the claim within the 45-day period, or such extended period to which the claimant has agreed.

(e) The Tax Collector may authorize the Controller to refund tax payments, without a refund claim having been filed, without the need for a refund claim, and without review by the City Attorney, if the Tax Collector determines:

(i) the tax was paid more than once; or

(ii) the amount paid exceeds the amount due as a result of an arithmetic or clerical error. The Tax Collector may authorize such a refund no later than 1 year after payment of the tax.

SEC. 6.17-2. PENALTIES FOR UNDERREPORTING OF TAX.

(a) Penalties for Negligence. If the Tax Collector determines that all or part of any tax required to be reported on any return was underreported and that such underreporting was attributable to negligence, the Tax Collector may impose a penalty in the amount of 5 percent of the amount of the underreported tax, in addition to the tax or amount of tax, if the negligence is for not more than 1 month, with an additional 5 percent for each month or

fraction of a month during which such negligence continues, up to 20 percent in the aggregate.

(b) Penalties for Intentional Disregard of Rules, Fraud, or Intend to Evade Tax. When it is determined by the Tax Collector that all or part of any tax required to be reported on any return was underreported and such underreporting was attributable to fraud or an intent to evade the Business and Tax Regulations Code, the Tax Collector may impose a penalty in the amount of 50 percent of the amount of the underreported tax. The taxpayer or other person determined to be liable for penalties pursuant to this Section is entitled to a notice of deficiency determination or jeopardy determination and to the appeal rights as to such determinations.

(c) Additional Penalty for Substantial Underreporting.

(1) For purposes of this section, "substantial underreporting of tax" means the tax finally determined by the Tax Collector under Articles 7, 9, 10, 10B, 11, or 12-A, of this Business and Tax Regulations Code exceeds the amount of tax reported on a taxpayer's original or amended return for a taxable period by 25 percent or more.

(2) If the Tax Collector determines that a taxpayer has made a substantial underreporting of tax for any taxable period, the Tax Collector may impose an additional penalty in an amount equal to 50 percent of the tax attributable to the substantially underreported amount. The penalty for substantial underreporting is in addition to any other penalty imposed under this Article 6.

(3) The additional penalty for substantial underreporting applies to all taxable periods ending on or after ~~*the effective date of this Ordinance*~~*June 19, 2010*.

SEC. 6.18-1. SUMMARY JUDGMENT; NOTICE; CERTIFICATE.

If any tax imposed pursuant to the Business and Tax Regulations Code is not paid by the last day of the month after the delinquency date, or after any jeopardy determination or deficiency determination of the Tax Collector becomes final pursuant to Sections 6.12-1 et seq. or 6.13-1 et seq., the Tax Collector may file, no sooner than 20 days after the mailing of the notice required in subsection (b), in the office of the Clerk of the Court, without fee, a certificate specifying as follows:

(a) The fact that a notice of intent to file the certificate has been sent, by certified mail, to the operator, taxpayer or other person determined to be liable for the tax at the person's last known address, not less than 20 days prior to the date of the certificate;

(b) The fact that the notice required in subsection (a) set forth the following information:

(1) The name of the operator, taxpayer or other person determined to be liable for the tax,

(2) The description of the operator's, taxpayer's or other person's business against which the tax has been assessed,

(3) The location and/or address of the business,

(4) The fact that judgment will be sought in the amount of the tax, penalty, *and* interest remaining unpaid at the time of the filing of the certificate, *and costs as permitted by law,*

(5) The fact that, upon issuance and recordation of the judgment, additional interest will continue to accrue at the rate prescribed by the Enforcement of Judgments Law (Title 9 of Part 2 of the Code of Civil Procedure), and that any bond premium posted or other costs to enforce the judgment shall be an added charge, and

(6) The fact that a recording fee in the amount set forth in Section 27361.3 of the California Government Code will be required to be paid for the purpose of the recordation of any release of the judgment lien;

(c) The name of the operator, taxpayer or other person determined to be liable for the tax;

(d) The amount for which judgment is to be entered;

(e) The fact that the City has complied with all provisions of the Business and Tax Regulations Code in the computation and the levy of the tax, penalty or interest; and

(f) The fact that a request is therein made for issuance and entry of judgment against the operator, taxpayer or other person determined to be liable for the tax.

SEC. 6.19-8. ADMINISTRATIVE APPEAL.

(a) Persons receiving an administrative citation may within fifteen (15) days from the date the citation is served, protest the citation by either 1) requesting a hearing by mail, or 2) scheduling an in person hearing. The hearing officer may not reduce the penalty amount and will only decide whether the person is responsible for the disputed penalty.

(b) Hearing by Mail. Persons receiving an administrative citation may protest the citation by paying the penalty amount and requesting a hearing by mail from the Tax Collector. The request must be made in writing, in the format prescribed by the Tax Collector. Protests must be mailed together with the penalty amount to the Office of the Treasurer & Tax Collector at the address provided on the administrative citation. The request must specify the basis for the protest in detail and must be accompanied by evidence supporting the request. The Tax Collector may request that the protesting party provide any additional information necessary to decide the validity of the citation. The Tax Collector shall evaluate the protest and notify the protesting party of the decision by mail within 30 days of receipt by the Tax Collector of all information and evidence. A copy of the decision will be mailed to the protesting party. A decision made in a hearing by mail is a final order and cannot be appealed.

(c) In Person Administrative Hearing. The person charged in the citation may appeal the citation by paying the penalty and filing a petition for redetermination pursuant to Section 6.13-1 of this Article. A hearing on the petition for redetermination of a citation shall proceed in the same manner as a petition for redetermination of tax. Any reference in Sections 6.13-1 et seq. to taxes, penalties or interest shall be deemed to also apply to the hearing of an administrative citation. If the person charged fails to appear for the hearing, a default judgment shall be entered against the person. The person will automatically be deemed liable for the penalty, together with any additional fees and interest.

(d) For the hearings provided under subsections (b) and (c) of this Section, the burden of proof shall be on the person protesting the citation.

~~*(a)* ***Period of Limitation for Appeal.*** *Persons receiving an administrative citation may appeal it within fifteen (15) days from the date the citation is served. The appeal must be in writing and must indicate a return address . It must be accompanied by the penalty amount, specifying the basis for the appeal in detail, and must be filed with the Tax Collector as indicated in the administrative citation.*~~

~~*(b)* ***Hearing Date.*** *As soon as practicable after receiving the written notice of appeal and the penalty amount, the Tax Collector or his or her representative shall fix a date, time and place for hearing before a hearing officer. Written notice of the time and place for the hearing may be served by first class mail, at the return address indicated on the written appeal. Service of the notice must be made at least ten (10) days prior to the date of the hearing to the person appealing the citation. The hearing shall be held no later than thirty (30) days after service of the notice of hearing, unless that time is extended by mutual agreement of the parties.*~~

~~*(c)* ***Notice.*** *Except as otherwise provided by law, the failure of any person with an interest in property affected by the administrative citation, or other person responsible for a violation, to receive a properly addressed notice of the hearing shall not affect the validity of any proceedings under this ordinance. Service by first class mail, postage prepaid, shall be effective on the date of mailing.*~~

~~(d) **Failure to Appeal.** Failure of any person to file an appeal in accordance with the provisions of this Section or to appear at the hearing shall constitute a failure to exhaust administrative remedies and a forfeiture of the penalty amount previously remitted.~~

~~(e) **Submittals for the Hearing.** No later than five (5) days prior to the hearing, the taxpayer and the Tax Collector shall submit to the hearing officer, with simultaneous service on the opposing party, written information including, but not limited to, the following: the statement of issues to be determined by the hearing officer and a statement of the evidence to be offered and the witnesses to be presented at the hearing.~~

~~(f) **Conduct of Hearing.** A hearing officer appointed by the Tax Collector shall conduct all appeal hearings under this ordinance. The Tax Collector shall have the burden of proof in such hearings. The hearing officer may accept evidence on which persons would commonly rely in the conduct of their serious business affairs, including but not limited to the following:~~

~~(1) A valid citation shall be prima facie evidence of the violation;~~

~~(2) The hearing officer may accept testimony by declaration under penalty of perjury relating to the violation and the appropriate means of correcting the violation;~~

~~(3) The person responsible for the violation, or any other interested person, may present testimony or evidence concerning the violation and the means and time frame for correction.~~

~~The hearing shall be open to the public and shall be tape-recorded. Any party to the hearing may, at his or her own expense, cause the hearing to be recorded and transcribed by a certified court reporter. The hearing officer may continue the hearing and request additional information from the enforcement officer or the appellant prior to issuing a written decision.~~

~~(g) **Hearing Officer's Decision; Findings.** The hearing officer shall make findings based an the record of the hearing arid issue a proposed decision based on such findings within ten (10) days of the hearing. The hearing officer may also recommend that the Tax Collector reduce, waive or conditionally reduce the penalties stated in a citation or any late fees assessed if mitigating~~

~~*circumstances are shown and the hearing of officer finds specific grounds for reduction or waiver in the evidence presented at the hearing. The hearing officer may recommend conditions and deadlines for the correction of violations or the payment of outstanding civil penalties. Copies of the findings and decision shall be served upon the taxpayer and the Tax Collector by certified mail.*~~

~~*(h)* ***Tax Collector's Decision.*** *The decision of the hearing officer shall be a recommendation to the Tax Collector, and the Tax Collector, within five (5) days of receipt of such recommendation, shall adopt, modify, or deny such recommendation. If the Tax Collector concludes that the violation charged in the citation did not occur or that the person charged in the citation was not the responsible party, the Tax Collector shall refund the penalty amount on deposit. The Tax Collector's decision on the hearing officer's recommendation is final. Such decision shall be served on the taxpayer by certified mail.*~~

SEC. 2202. EXEMPTED PARKING STATIONS.

The requirements of this Article shall not apply to any Parking Station:

(a) That does not charge Rent at any time;

(b) That is a Parking Station operated by the City and County of San Francisco and uses Parking Meters;

(c) In which all Rent paid for Occupancy is paid by a resident or a registered guest of a hotel or motel by adding the Rent to the room bill or charge to the resident, or registered guest, as long as the charges for the hotel room and the charges for parking are subject to the Tax on the Transient Occupancy of Hotel Rooms set out in Article 7 of the San Francisco Business and Tax Regulations Code;

(d) That is located in a residential building or development that provides Monthly Parking as a convenience or additional amenity to its residents. This exemption shall apply only to Rent paid by persons who are residents of the building or development in which the Parking Station is located, and where parking is provided as a convenience or additional amenity to such residents.

(e) That is a Parking Station operated by a governmental entity other than the City and County of San Francisco. A Parking Station operated by a person other than a governmental entity is not exempt from the provisions of this article, even if the Parking Station is located on property owned by a governmental entity.

Section 2. The San Francisco Police Code is hereby amended by amending Sections 1215 and 1216 to read as follows:

SEC. 1215. COMMERCIAL PARKING PERMITS.

(a) Definitions. The following definitions shall apply in Police Code Sections 2.9, 2.26 and 1215 through 1215.7 and Business and Tax Regulations Code Section 22.

(1) Chief of Police. The Chief of the San Francisco Police Department, or designee.

(2) Commercial parking permit. A permit the Chief of Police issues under this Section to operate a parking garage or parking lot.

(3) Covered crimes. The crimes of assault, battery, burglary, robbery, theft including identity theft, receipt of stolen property, breaking or removing parts from a vehicle, malicious mischief to a vehicle, unlawful use or tampering by bailee of a vehicle, altering a vehicle identification, tax fraud or evasion, and any offense related to the use of alcohol, narcotics or controlled substances while operating or in connection with a vehicle, committed anywhere in the United States of America.

(4) Entertainment Establishment. Any building, space, or structure operating under a "Place of Entertainment" permit issued pursuant to San Francisco Police Code section 1060 et seq. or operating under an "Extended Hours Premises" permit issued pursuant to San Francisco Police Code section 1070 et seq.

(5) Parking garage. Any building or structure, or any portion of a building or structure, where members of the public may park or store motor vehicles for a charge. This definition does not include

(A) any parking garage in a residential building or development that provides parking for a charge as a convenience or amenity for residents or their guests only,;

(B) any parking garage on San Francisco Unified School District property where a Qualified Nonprofit makes special event parking available to members of the public for a charge, pursuant to a Special School Parking Event Permit under Article 9, Section 608 of the Business and Tax Regulations Code*; and*

(C) any parking garage in a residential building that rents not more than five spaces to non-residents of the building on a monthly basis and is registered with the Tax Collector pursuant to Article 9, Section 609 of the Business and Tax Regulations Code.

(6) Parking lot. Any outdoor or uncovered space, including any plot, place, lot, parcel, yard or enclosure, or any portion of such a space, where members of the public may park or store motor vehicles for a charge. This definition does not include

(A) any outdoor or uncovered space that is part of a residential building or development that provides parking for a charge as a convenience or amenity for residents or their guests only,;

(B) any outdoor or uncovered lot on San Francisco Unified School District property where a Qualified Nonprofit makes special event parking available to members of the public for a charge, pursuant to a Special School Parking Event Permit under Article 9, Section 608 of the Business and Tax Regulations Code*; and*

(C) any outdoor or uncovered space that is part of a residential building that rents not more than five spaces to non-residents of the building on a monthly basis and is

registered with the Tax Collector pursuant to Article 9, Section 609 of the Business and Tax Regulations Code.

(7) Person. Any individual, firm, company, corporation, partnership, joint venture, association, organization or other legal entity. When Sections 1215 through 1215.6 require a person to provide or list a name, the person must provide or list any prior names and aliases.

(8) Prevailing Party. Prevailing Party has the same meaning as set forth in California Code of Civil Procedure Section 1032, or any successor provision. "Prevailing Party" includes the City in actions where the City obtains an injunction and/or civil penalties or other monies under Sections 1215 through 1215.6 or under State law.

(9) Qualified Nonprofit. A volunteer led organization having a formally recognized exemption from income taxation pursuant to Section 501©(3) of the Internal Revenue Code of 1986, as amended, and with a mission of benefitting one or more San Francisco public schools.

(b) Permit Requirement. *Except as provided in this subsection (b), a~~A~~* person may not operate a parking garage or parking lot, directly or indirectly, unless the person holds a commercial parking permit issued by the Chief of Police. This Section requires a separate commercial parking permit for each parking garage and parking lot. The Chief of Police shall close immediately any parking garage or parking lot operating without the required commercial parking permit. A parking garage or parking lot that is registered with the Tax Collector pursuant to Article 9, Section 609, of the Business and Tax Regulations Code is not required to hold a commercial parking permit under this Section.

Notwithstanding the foregoing paragraph, ~~A~~a governmental entity operating a parking garage or parking lot on that governmental entity's property is not required to obtain a commercial parking permit for that parking garage or parking lot; however, any other person operating a parking

garage or parking lot on a governmental entity's property must hold a commercial parking permit issued by the Chief of Police for each such parking garage and parking lot.

(c) Annual Permit. Each commercial parking permit shall authorize the permittee to operate the permitted parking garage or parking lot for one year from the date the Chief of Police issues the permit, unless the Chief of Police suspends or revokes the permit. Each commercial parking permit shall expire by operation of law at the end of the one year period. Notwithstanding Section 2.10 of the Police Code, a permittee wishing to operate beyond the one year permit term must obtain a new commercial parking permit before the existing permit expires.

SEC. 1216. FIXED LOCATION VALET PARKING AND SPECIAL EVENT VALET PARKING PERMITS.

No corporation, partnership or other business entity or employee thereof may solicit the storage or parking of any motor vehicle for which a parking space may or may not be rented unless the corporation, partnership or business entity holds a valid valet parking permit issued by the Chief of Police~~.~~*; notwithstanding the foregoing provision, a governmental entity that solicits the storage or parking of any motor vehicle for which a parking space may or may not be rented is not required to obtain a valid valet parking permit issued by the Chief of Police, provided that all persons engaged by the governmental entity to perform said activities are employees of the governmental entity.*

(a) A fixed location valet parking permit shall be required for any valet parking operator who performs valet parking services at a restaurant or other place of public assembly which utilizes valet parking services on a daily or regularly scheduled basis. Any location which uses valet parking services more than once each week and more than 52 times per year requires a fixed location permit. Application for location valet parking permits shall

include verification by the owner of an off-street parking garage or lot that a specified number of parking spaces will be guaranteed for the use of the applicant.

A holder of a fixed location valet parking permit may assess the owner or operator of a motor vehicle which it accepts for valet parking a reasonable fee for its services; provided, that the person who has hired the permittee has agreed in writing that fees may be charged of such owners and operators, that the permittee meets all applicable parking tax obligations which may be connected with such charges, and further provided, that the permittee shall provide each such owner and operator with advance notice of the applicable fees to be charged.

(b) An annual special event valet parking permit shall be required of any valet parking operator who performs valet parking services at locations other than those defined as fixed locations in Subdivision (a) of this Section.

Special event valet parking permit holders shall provide the appropriate Police Department District Station(s) with seven days' advance written notice of the location, date and hours of each special event valet parking operation for which a permit is requested, or, if seven days' notice is impossible, the permit holders shall notify the District Station(s) as soon after the permit holder's services are engaged for any event as is possible. The District Station Captain shall have the right to prohibit the use of a special event valet parking permit at a given location if he or she finds that there are insufficient on-street parking spaces in the locale and the permit holder has presented no adequate plan to park the vehicles legally.

There shall be no appeal from the Captain's denial unless the notice of an intended event at a particular location has been given at least twenty days before the event, in which case appeal shall lie only to the Chief of Police, or his or her designate.

No holder of a special event valet parking permit may require any payment from vehicle operators for valet parking services.

Section 3. Effective Date. This ordinance shall become effective 30 days from the date of passage.

Section 4. 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: _____
JEAN ALEXANDER
Deputy City Attorney

FILE NO. 121064

LEGISLATIVE DIGEST

[Business and Tax Regulations Code – Police Code; Parking Stations - Revenue Control Equipment; License Regulations; Parking Tax Bonds; Administrative Citation Process.]

Ordinance amending the San Francisco Business and Tax Regulations Code by 1) amending Article 6 (Common Administrative Provisions) to revise the bonding requirements for parking operators; revise the time to bring an action to collect tax; clarify the extent of a surety's liability; revise the administrative citation appeal process; and make other minor technical changes; 2) amending Article 22 (Parking Stations; Revenue Control Equipment) to clarify that non-City governmental entities operating parking stations are exempt from the revenue control equipment requirements; and 3) amending the San Francisco Police Code by amending Article 17 (Miscellaneous License Regulations) to clarify that governmental entities operating parking garages or parking lots are exempt from the permitting requirements applicable to other commercial parking garage and valet operations.

Existing Law

The City imposes a "parking space occupancy tax" on the occupancy of parking space in "parking stations," and defines an "operator" for purposes of collecting and remitting the tax on behalf of the occupants subject to the tax. Existing law generally requires that an operator of a parking station 1) hold a certificate of authority issued by the Tax Collector; 2) file with the Tax Collector a bond in the annual amount of $20,000 to $800,000 based on gross receipts from a parking station to secure payment of parking tax deficiencies and related administrative costs; and 3) install and maintain specified "revenue control equipment." Existing law also provides for an administrative process to appeal administrative citations for violation of the parking tax law.

An operator of a parking garage or parking lot must generally hold a commercial parking permit issued by the Chief of Police. An operator of a valet parking operation must generally hold a valet parking permit issued by the Chief of Police.

Amendments to Current Law

This legislation would require the Tax Collector to notify the Chief of Police that it has revoked any person's certificate of authority, refused to issue a new certificate of authority, suspended a certificate of authority, or determined that the person is not in compliance with the parking tax. In such instances, this legislation further requires the Tax Collector to request that the Chief of Police refuse to issue a commercial parking permit to the person or suspend or revoke the person's existing commercial parking permit and immediately close the business, pursuant to Section 1215.3.(b) of the Police Code.

This legislation would increase the number of gross receipts increments in the existing bond amounts. It would provide that a person that has demonstrated compliance with the parking tax law may apply to the Tax Collector for a reduced bond amount of between $10,000 and $400,000, which reduction could be granted and renewed on an annual basis at the discretion of the Tax Collector.

This legislation would clarify that the obligation of a surety under a bond is limited to the face value of the bond(s) in effect during the period for which a parking tax deficiency is assessed and make minor changes in the process for appealing an administrative citation.

Governmental entities except the City and County of San Francisco that operate parking garages and parking lots would be exempt from the requirement to install and maintain revenue control equipment. Governmental entities that operate parking garages and parking lots on their own property would be exempt from the requirement to hold a commercial parking permit. Governmental entities that use their own employees to perform valet parking operations would be exempt from the requirement to obtain a valet parking permit.

Background Information

This legislation would ensure that the Chief of Police is aware of the parking tax status of applicants for commercial parking and valet parking permits issued by him or her; make technical changes to certain administrative appeals procedures; provide an incentive for ongoing compliance with the requirements of the parking tax law through reduced bonding obligations; and clarify the application of certain parking tax laws and permitting requirements to governmental entities.

SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS

CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

November 29, 2012

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

File No. 121064 [Business and Tax Regulations, Police Codes - Parking Stations - Revenue Control Equipment; License Regulations; Parking Tax Bonds; Administrative Citation Process]

Small Business Commission Recommendation: **Approval**

Dear Ms. Calvillo:

On November 26, 2012 the Small Business Commission held a hearing on Board of Supervisors File No. 121064 and voted 6-0 to recommend approval.

The Small Business Commission finds that this ordinance will expand opportunities for small business parking lot operators by making the procurement of the required bond more achievable through providing an increased number of gross receipts increments. Additionally, by providing businesses with a proven track record of compliance with reduced bond requirements, responsible business owners will be rewarded for their continued compliance and will have additional opportunities to expand their businesses as they will be able to leverage their limited capital to secure additional bonds for expansion locations.

The obtaining of a bond is the most significant barrier to entry to this industry and the Supervisor is to be commended for introducing this legislation.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

Cc: Jason Elliott, Mayor's Office
Supervisor Campos
Greg Kato, Tax and Treasurers Office