

File No. 101100

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: November 3, 2010

Board of Supervisors Meeting

Date _____

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Completed by: Victor Young

Date: October 29, 2010

Completed by: Victor Young

Date: _____

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FILE NO. 101100

ORDINANCE NO.

[Business and Tax Code Regulations Code - Adding to the Definition of "Control," Revising the Enforcement Authority, and Making Other Nonsubstantive Changes]

1
2 Ordinance amending Article 22 of the Business and Tax Regulations Code by
3 amending Sections 2201 through 2210, 2215, 2216, 2218, 2220, 2225, 2226, 2229, 2230,
4 2232, and 2233 and repealing Sections 2217, 2223, 2224, and 2237, to establish a
5 presumption that certain operators, signatories and owners control the business
6 affairs of the parking station, revise the Enforcing Agency's authority to permit the use
7 of all authority granted by law and by Article 6 of this Code, and make other
8 nonsubstantive changes.

9 NOTE: Additions are single-underline italics Times New Roman;
10 deletions are ~~strike-through italics Times New Roman~~.
11 Board amendment additions are double-underlined;
12 Board amendment deletions are ~~strikethrough-normal~~.

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

14 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended
15 by amending Sections 2201 through 2210, 2215, 2216, 2218, 2220, 2225, 2226, 2229, 2230,
16 2232, 2233 and repealing Sections 2217, 2223, 2224, and 2237 to read as follows:

17 **SEC. 2201. DEFINITIONS.**

18 (a) **Existing Defined Terms.** The terms "Operator," "Occupant," "Occupancy,"
19 "Parking Station," "Motor Vehicle," and "Rent" shall have the meaning set out in Article 9,
20 Section 601 of this Code.

21 (b) **Additional Defined Terms.** When used in this Article, the following terms shall
22 mean:

1 (1) "Affiliate," ~~when used in relation to any Person~~ means ~~another~~a Person who
2 owns or Controls, is owned or Controlled by, or ~~is undershared~~ common ownership or Control
3 with, ~~such another~~ Person.

4 (2) "Attendant Parking" means the service of parking an occupant's vehicle ~~at~~
5 an Attended Parking Station or in a Parking Station connected with the Attended Parking Station
6 provided by the Attended Parking Station Operator ~~of an Attended Parking Station at the Attended~~
7 ~~Parking Station or in a Parking Station connected with the Operator's Attended Parking Station.~~

8 (3) "Attended Parking Station" means a Parking Station in which the
9 Operator utilizes an attendant or cashier or other employee to issue Parking Tickets and/or
10 collect Rent and/or otherwise assist Occupants.

11 (4) "Automatic Vehicle Counter" means a mechanical or electronic device,
12 such as a hose counter, electric eye, arming and/or triggering loop, or other automated
13 counting device that records the passage of a vehicle.

14 (5) "Cancelled Transaction" means a Transaction that the Operator cancels
15 prior to payment ~~because of an RCE malfunction.~~

16 (6) "City Garage" means a Parking Station owned by the City and County of
17 San Francisco or by the San Francisco Parking Authority ~~for the City and County of San Francisco.~~

18 (7) "Collected Tickets" means the number of Parking Tickets returned to the
19 Operator by Occupants for payment of Rent.

20 (8) "Control" means the power to control the affairs and key decisions of
21 another person or corporation, in whatever manner exercised, whether directly or indirectly,
22 whether legally enforceable, and however exercisable or exercised over such corporation or
23 association. A presumption of control arises if the Operator, signatory or 10% owner is (or was) an
24 officer, director, partner or member of such corporation or association.
25

1 (9) "Discount Parking" means parking provided for reduced Rent to members
2 of a class of Occupants, including but not limited to early morning entry Occupants ("early-
3 bird"), scooter or motorcycle Occupants, carpool Occupants, and persons with a merchant
4 validation.

5 (10) "Discount Parking Ticket" means a Parking Ticket issued for Discount
6 Parking.

7 (11) "Enforcing Agency" means the Tax Collector for the City and County of
8 San Francisco.

9 (12) "Flat Rate Parking" means parking provided for preset Rent for a
10 prescribed or limited time Occupancy Period at a Parking Station that is not a Public Event
11 Parking Station.

12 (13) "Inventory" means the number of motor vehicles present in a Parking
13 Station at a given time.

14 (14) "Issued Tickets" means the total number of Parking Tickets issued to
15 Occupants, including Voided Tickets, and Parking Tickets otherwise used or consumed in the
16 operation of the Parking Facility for a given period.

17 (15) "Journal Tape" means a printed record of every Transaction, in
18 consecutive order, that is generated by RCE not capable of producing an electronic Log File
19 (e.g., a cash register or fee computer tape).

20 (16) "Log File" means an electronic read-only record generated by the RCE
21 that is a consecutive record by date and time of every Transaction and the actions of the RCE
22 and ancillary RCE devices.

23 (17) "Lost Ticket" means a Parking Ticket that has been issued to and
24 misplaced by an Occupant, which has not been returned to the Operator with payment of
25 Rent.

1 (18) "Monthly Occupant" means an Occupant who pays a flat fee for
2 Occupancy on a monthly basis.

3 (19) "Monthly Parking" means parking for which Rent is charged to the
4 Occupant as a fixed monthly fee.

5 (20) "NIST Book 44" means the National Institute of Standards and
6 Technology, Book 44, as adopted by the State of California pursuant to California Code of
7 Regulations Section 4400 et seq.

8 (21) "Occupancy Period" means the time elapsed between the entry and the
9 exit of an Occupant's Motor Vehicle from a Parking Station for which the Operator charges
10 Rent.

11 (22) "Parking Meter" means a mechanical or electronic device, owned or
12 operated by the City and County of San Francisco, for the purpose of measuring the time a
13 vehicle is permissibly parked in a *Parking Space*~~parking space~~. For purposes of this Article, a
14 Parking Meter is not RCE.

15 ~~(23) "Parking Space" means a marked area or space designated for and only large~~
16 ~~enough for the parking of a single Motor Vehicle.~~

17 ~~(24)~~(23) "Parking Tax" means the tax and surcharge imposed on Rent charged
18 for Occupancy in a Parking Station imposed by Article 9 of the San Francisco Business and
19 Tax Regulations Code.

20 ~~(25)~~(24) "Parking Ticket" means the record provided by the Operator to the
21 Occupant setting forth the time and date that the Occupant's vehicle entered the Parking
22 Station that is used by the Operator to determine the Rent charged to the Occupant.

23 ~~(26)~~(25) "Pay and Display Parking Station" means an Unattended Parking
24 Station in which Occupants utilize a Pay Station to ~~repay~~pay Rent for a specified Occupancy
25

1 Period; and receive a Receipt or Parking Ticket that the Occupant displays conspicuously in his
2 or her vehicle as proof of payment.

3 ~~(27)~~(26) "Pay Station" means a mechanical or electronic device that accepts
4 payment or prepayment of Rent from an Occupant and ~~is capable of issuing~~issues a Parking
5 Ticket, release ticket or Receipt.

6 ~~(28)~~(27) "Periodic Report" means a report prepared daily, weekly, monthly, or
7 quarterly by the Operator showing, at a minimum, the total Rent collected for that period, the
8 identification numbers of the Parking Tickets used during that period, and the number of
9 vehicles ~~that~~ parked in the Parking Station during that period.

10 ~~(29)~~(28) "Person" means any individual, group, company, partnership,
11 association, joint stock company, trust, corporation, society, syndicate, club, business, or
12 governmental entity. "Person" shall not include the City or any of its departments or agencies.

13 ~~(30)~~(29) "Public Event Parking Station" means a Parking Station with more
14 than five ~~Parking Spaces~~parking spaces, the Occupants of which are principally attendees of
15 public events, such as a performing arts or sporting events, that occur fewer than 100 days in
16 any calendar year and for which an Occupant prepays a flat-rate Rent for a fixed Occupancy
17 Period.

18 ~~(31)~~(30) "RCE" means Revenue Control Equipment.

19 ~~(32)~~(31) "RCE Records" means the documents and reports generated by
20 Revenue Control Equipment, including but not limited to Log Files or Journal Tapes. Books of
21 account, accounting records, and other financial records provided by an Operator to the City
22 in the course of an audit to confirm the data in Log Files or Journal Tapes shall also be
23 considered RCE records.

24 ~~(33)~~(32) "Receipt" means the record issued by an Operator to an Occupant of
25 the Rent paid by or on behalf of the Occupant.

1 ~~(34)~~(33) "Release Ticket" means the ticket issued by an Operator in exchange
2 for payment of Rent that allows the Occupant to ~~exist~~exit the Parking Station.

3 ~~(35)~~(34) "Revenue Control Equipment" means an automated mechanical or
4 electronic device or devices that meet(s) the requirements of this Article. For purposes of this
5 Article, a Parking Meter is not RCE.

6 ~~(36)~~(35) "Service Agent" means a person or other entity engaged in the
7 business of installing, maintaining, or repairing RCE.

8 ~~(37)~~(36) "Substitute Ticket" means a Parking Ticket that an Operator
9 processes as a replacement for a Lost Ticket.

10 ~~(38)~~(37) "Transaction" means the calculation and payment of Rent for
11 Occupancy.

12 ~~(39)~~(38) "Transient Parking" means parking for which Rent is charged to the
13 Occupant by the hour or the fraction of the hour.

14 ~~(40)~~(39) "Unaccounted Ticket" means a ticket that is issued to an Occupant
15 and is not returned to the Operator. A Lost Ticket is an Unaccounted Ticket.

16 ~~(41)~~(40) "Unaccounted Ticket Ratio" means the ratio of Unaccounted Tickets
17 to Issued Tickets for a given period, expressed as a percentage of Issued Tickets.

18 ~~(42)~~(41) "Unattended Parking Station" means a Parking Station in which the
19 Operator does not use an attendant or cashier or other employee to issue Parking Tickets,
20 collect Rent, and/or otherwise assist Occupants.

21 ~~(43)~~(42) "Valet" means a person or a service company subject to the
22 requirements of Article 12 of the San Francisco Police Code as a Fixed Location Valet Parking
23 Service or a Special Event Valet Parking Service.

1 (44)(43) "Valet Lot" means a Parking Station, including a garage, lot or other
2 off-street space or facility, used by a Valet for the parking or storage of Motor Vehicles in
3 exchange for which the Valet receives compensation or other consideration.

4 (45)(44) "Voided Ticket" means a Parking Ticket that is not issued to an
5 Occupant, but that is used in the course of the Operator's testing, repair or maintenance of the
6 RCE.

7
8 **SEC. 2202. EXEMPTED PARKING STATIONS.**

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

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

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

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

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

1 **SEC. 2203. RCE REQUIREMENTS FOR ALL PARKING STATIONS.**

2 (a) Unless specifically exempted in this Article, a Parking Station must utilize
3 functioning RCE that meets the requirements of this Article whenever the Operator charges
4 Rent for Occupancy.

5 (b) RCE must record all Transactions either to a Log File or to a Journal Tape, as
6 required by this Article.

7 (c) An Operator shall utilize RCE meeting the requirements of this Article to track
8 and account for Transactions and to record and account for Rent received and Parking Taxes
9 to be collected and remitted to the Tax Collector.

10 (d) Neither an Operator nor any of its Affiliates, agents or employees shall have
11 more than a five percent ownership interest or other monetary, equitable, or secured interest
12 in the manufacturer of, vendor of or Service Agent for the RCE used in any Parking Station
13 controlled by said Operator.

14 (e) In any case in which the Operator has an ownership interest of any kind or any
15 amount in the manufacturer of, vendor of or Service Agent for the RCE used in any Parking
16 Facility under the control of the Operator, the Operator shall not have access to the source
17 code or access to any part of the RCE software, hardware, data storage devices, or other
18 RCE equipment that would allow the Operator to modify or delete RCE Records or other data
19 that is generated or stored in the RCE, including but not limited to Rents charged, monies for
20 Rent collected, Occupancy Periods, and Parking Taxes collected or owed.

21 (f) All RCE that contains a time clock or recorder must meet or exceed the
22 specifications, tolerances, performance and testing standards for time clocks and time
23 recorders set out in the NIST Book 44, Section 5.55, and as it may from time to time be
24 amended. Time clocks, time recorders and other timing devices incorporated or used in RCE
25

1 must be electronic and must not be capable of recalibration or other adjustment other than
2 setting the current time and date.
3

4 **SEC. 2204. REQUIREMENTS FOR SMALL ATTENDED PARKING STATIONS.**

5 (a) The Operator of an Attended Parking Station may apply to the Enforcing Agency
6 for exemption from the requirements of ~~sections~~Sections 2203 and 2205 of this Article, provided
7 that the Operator demonstrates to the satisfaction of the Enforcing Agency that the gross
8 annual revenues of the Parking Station from Rent do not exceed \$25,000.

9 (b) If the Enforcing Agency grants the Operator an exemption from the requirements
10 of ~~sections~~Sections 2203 and 2205 of this Article, the Operator shall:

11 (1) Provide to each Occupant a Parking Ticket that has preprinted on it a
12 unique, sequential identification number. The Parking Ticket shall either have a stub or a split
13 portion that the Operator shall place on the windshield of the Occupant's vehicle. The
14 Operator shall not use a Parking Ticket more than once.

15 (2) Write the Occupant's vehicle license plate number on the Parking Ticket
16 in ink.

17 (3) Stamp the Parking Ticket with the time the Occupant entered the Parking
18 Station and the time the Occupant exited the Parking Station, using a mechanical or electronic
19 time-stamp or punch clock device.

20 (4) Upon an Occupant's payment of Rent, provide to the Occupant a hand-
21 written or machine generated Receipt stating the date and time of the Occupant's Motor
22 Vehicle's entry to and time of exit from the Parking Station, the Rent charged, the name of the
23 attendant, and the name and address of the Parking Station.

24 (5) Create a Periodic Report for each day that the Parking Station provides
25 parking in exchange for Rent.

1 (6) The Operator shall retain all Periodic Reports created pursuant to this
2 Section 2204 and all issued Parking Tickets for not less than five years after their creation.

3 (c) The Operator shall comply with all provisions of this Article, ~~except as to those~~
4 ~~exemptions unless an exemption from~~ the requirements of Sections 2203 and 2205 is granted in
5 writing by the Enforcing Agency.

6
7 **SEC. 2205. REQUIREMENTS FOR ATTENDED PARKING STATIONS.**

8 Except as specifically exempted or otherwise required by this Article, an Operator of an
9 Attended Parking Station that charges Rent for Occupancy by the hour or the fraction of an
10 hour shall utilize RCE that incorporates the functions set out in this Section.

11 (a) The Operator must provide a ~~receipt~~ticket issued by the RCE to the Occupant at
12 the time the Occupant's Motor Vehicle enters the Parking Station. The Parking Ticket must
13 state the time and date of entry, and the name and address of the Parking Station. Each
14 Parking Ticket issued by the Operator must contain a preprinted, unique, sequential
15 identification number that is not printed by the RCE. This preprinted issued-ticket, once issued,
16 shall directly correspond and be traceable to a transaction number generated by the RCE.

17 (b) The RCE must record the following information to a Journal Tape or Log File in
18 the sequential order in which the events occur:

- 19 (1) Time and date of a Motor Vehicle's entry to a Parking Station;
20 (2) Time and date of a Motor Vehicle's exit from a Parking Station;
21 (3) Amount of Rent charged;
22 (4) Value of any discounts to Rent provided;
23 (5) Amount of Parking Tax collected;
24 (6) Identity or identification number of the Operator's employee who
25 processed the Transaction.

1 (c) Each Transaction must be identified in the Log File or Journal Tape by a
2 nonresettable, sequential identification number assigned by the RCE.

3 (d) RCE must be capable of providing a legible Receipt to an Occupant at the time
4 that the Occupant pays Rent. Pay Stations and cashiers must offer the Occupant a Receipt at
5 the time that the Occupant pays Rent. A Receipt must contain the following information:

6 (1) Time and date of the entry of the Occupant's Motor Vehicle to the Parking
7 Station;

8 (2) Time and date of the exit of the Occupant's Motor Vehicle from the
9 Parking Station;

10 (3) Total amount Operator charged Occupant, including Rent and Parking
11 Tax;

12 (4) Parking Station address;

13 (5) Business telephone and address of Operator or Operator's agent
14 responsible for addressing consumer complaints.

15 (e) Data that is entered to or maintained in a Log File or a Journal Tape must
16 *only* be accessible to the Operator only in a read-only *format/format*, so that the Operator, the
17 Operator's employees, and Service Agents cannot delete or alter any of the recorded data.
18 The RCE vendor must disable any RCE data functions that would allow an Operator or its
19 agents or its employees to delete or modify data entered into the RCE.

20 (f) The Operator shall not alter or attempt to alter the data in a Log File or a Journal
21 Tape.

22 (g) Every day that the Parking Station is open for business, all information and data
23 received or generated by the RCE that is recorded to a Log File for that day must be
24 replicated or backed-up to a data tape, disk or hard drive or digital data storage medium in a
25 readily accessible read-only format, and said information and data must be maintained in

1 San Francisco by the Operator in that format for not less than five years from the date of its
2 creation.

3 (h) Each day that the Parking Station is open for business, all information and data
4 received or generated by RCE that is recorded to a Journal Tape for that day must be printed
5 out, ~~and maintained~~ The Operator must maintain the printed data in San Francisco ~~by the Operator~~
6 for not less than five years from the date of its creation.

7 (i) Where the Operator utilizes RCE that includes a computer, a network server, or
8 an Internet-based software or database program, all employees and agents of an Operator,
9 including but not limited to cashiers, attendants, bookkeepers, supervisors and managers, and
10 RCE maintenance personnel, must be individually identified by the RCE, and each
11 Transaction and data entry, including all payments received, Voided Tickets or Cancelled
12 Transactions, and Discount Parking Rent charged, must be attributed to such individual in the
13 Log File. The RCE must also record whenever the RCE software program is altered and by
14 whom.

15
16 **SEC. 2206. REQUIREMENTS FOR FLAT RATE PARKING STATIONS.**

17 The Operator of a Parking Station that provides Flat Rate Parking and does not provide
18 Public Event Parking is not required to comply with Sections ~~2205(b)(1),~~ 2205(b) (2), ~~2205(d)~~
19 ~~(1),~~ 2205(d) (2), and 2205(i) of this Article, but shall comply with all other provisions of Section
20 2205.

21
22 **SEC. 2207. REQUIREMENTS FOR MONTHLY-ONLY PARKING STATIONS.**

23 (a) The Operator of a Parking Station that only provides parking to Monthly
24 Occupants and never provides any other type of mode of parking is not required to utilize
25 RCE, but shall maintain records of the names and billing addresses of Occupants and the

1 amount of Rent charged, the value of any discounts provided, and the amount of Parking Tax
2 collected from each Occupant. The Operator shall maintain said records in San Francisco for
3 not less than ~~five~~ 5 years from the date of their creation.

4 (b) The Operator must provide each Monthly Occupant with a decal, ~~or~~ hangtag or
5 other means of identifying the Occupant's authorization to park in the Parking Station, and the
6 Operator must require that each Occupant utilize the decal or hangtag provided.

7 8 **SEC. 2208. REQUIREMENTS FOR UNATTENDED PARKING STATIONS.**

9 (a) An Operator of a Pay and Display Parking Station must have RCE located within
10 the Parking Station for the prepayment of Rent. The RCE must upon the payment of Rent
11 issue a Parking Ticket or Receipt to the Occupant that states the time and date issued, the
12 amount of Rent prepaid, and the Occupancy Period. The Parking Ticket or Receipt must
13 contain a statement instructing the Occupant to display it on the dashboard of his or her
14 vehicle, and must warn the Occupant that his or her vehicle may be towed for failing to display
15 the Parking Ticket or Receipt as required. The Operator shall clearly and conspicuously post a
16 ~~clear and conspicuous~~ sign at every location where the Occupant pays Rent, of which is at least
17 10 inches by 15 inches in size, and in type at least one inch high and 3/4 inches wide, repeating
18 the aforesaid display instructions and tow warning. Where an Operator has met the
19 requirements of this ~~section~~ Section, and the Occupant fails to display the Parking Ticket as
20 directed by the Operator, the Operator may in its discretion tow the vehicle in accordance with
21 California Vehicle Code ~~section~~ Section 22658, 22952, 55953 or other applicable law or charge
22 additional Rent. Such additional rent must be clearly stated in the rate posting signage
23 required by Section 2220(b) of this Article.

24 (b) An Unattended Parking Station that is not a Pay and Display Parking Station
25 must have individually numbered and clearly marked ~~Parking Spaces~~ parking spaces. The RCE

1 must upon the payment of Rent issue a Parking Ticket or Receipt to the Occupant that states
2 the time and date issued, the amount of Rent prepaid, and the Occupancy Period. The RCE
3 must be able to record the identification number of the ~~Parking Space~~parking space occupied by
4 the Occupant's vehicle to track period of Occupancy.

5 (c) The Enforcing Agency may issue such rules and regulations as are required to
6 provide for the remote payment of Rent at Unattended Parking Stations through the use of
7 telephones, cellular telephones, smart cards, debit cards or other electronic devices,
8 consistent with the purposes and provisions of this Article.

9 (d) An Operator of an Unattended Parking Station shall not tow or charge additional
10 Rent to any vehicle that entered the Unattended Parking Station while the RCE was not fully
11 operational and for a period of ~~eight~~8 hours after the RCE is restored to full function.

12 13 **SEC. 2209. EQUIPMENT REQUIREMENTS FOR PUBLIC EVENT PARKING STATIONS.**

14 (a) An Operator of a Public Event Parking Station shall at each vehicle entrance to
15 the Parking Station utilize an Automatic Vehicle Counter to record every vehicle entering the
16 Parking Station for purposes of parking.

17 (b) Automatic Vehicle Counters shall display the total number of vehicles that
18 entered the Parking Station utilizing a non-resettable mechanical or electronic counter.

19 (c) An Operator of a Public Event Parking Station shall provide a Parking Ticket to
20 each Occupant upon entry to the Parking Station, and the Operator shall instruct the
21 Occupant to place the Parking Ticket on the dashboard of the vehicle or other conspicuous
22 place in the vehicle. Every Parking Ticket must display a unique, preprinted sequential
23 identification number, the date of the event, and the address of the Parking Station.

24 (d) Automatic Vehicle Counters used in a Public Event Parking Station must be
25 capable of issuing a Journal Tape or logLog File report or other record of the number of

1 vehicles that entered the Parking Station at the point where the Automatic Vehicle Counter
2 was located. The Automatic Vehicle Counter must state on the report the date of the activities
3 reported and the time period in which it was in operation.

4 (e) The Operator of a Public Event Parking Station must reconcile the number of
5 vehicles registered by Automatic Vehicle Counters with the number of Parking Tickets issued
6 to Occupants for every day that the Parking Station provides public event parking. An
7 Operator must document and explain in writing any discrepancies or differences between the
8 total number of Parking Tickets used and the number of vehicles counted by the Automatic
9 Vehicle Counters.

10 (f) The Operator of a Public Event Parking Station must retain the documentation of
11 the number of Parking Tickets used and any written explanation of the difference between the
12 number of Parking Tickets used and the number of vehicles counted by its Automatic Vehicle
13 Counters for not less than ~~five~~ 5 years from the date of the public event.

14 (g) Notwithstanding the requirements of Section 2212 of this Article, a Public Event
15 Parking Station is not required to accept electronic payment of Rent.

16
17 **SEC. 2210. EQUIPMENT REQUIREMENTS FOR VALET PARKING STATIONS.**

18 An Operator of a Valet Parking Station that charges Rent at a flat rate and does not
19 charge Rent to any Occupant by the hour or the fraction of an hour is not required to comply
20 with ~~Section~~ Sections 2205(b)(1), 2205(b)(2), 2205(d)(1), 2205(d)(2), and 2205(i) of this Article,
21 but shall comply with all other provisions of Section 2205. An Operator that provides valet
22 services and charges Rent for Occupancy by the hour or the fraction of ~~the~~ an hour is subject
23 to all provisions of Section 2205. The requirements of this Article as to Valets are in addition
24 to and do not alter the requirements set out in Section ~~835853~~ of this Code, Sections 1216

1 through 1223 inclusive of Article 17 of the Police Code, or other applicable ordinances. An
2 Operator that provides Attendant Parking is not subject to the exemptions of this Section.

3
4 **SEC. 2215. MANUAL REVENUE CONTROL PROCEDURES REQUIRED WHEN**
5 **REVENUE CONTROL EQUIPMENT IS NOT OPERATIONAL.**

6 (a) During any time that RCE is not functioning, the Operator may continue to
7 operate the Parking Station subject to the following conditions:

8 (1) The Operator and/or the Operator's agent shall not tow any vehicle that
9 entered the Parking Station during the time that the RCE is unable to issue legible Parking
10 Tickets or legible Receipts and for ~~eight~~ 8 hours after the RCE is restored to full function;

11 (2) The Operator shall manually record in ink on preprinted sequentially
12 numbered tickets the following information:

13 (A) Time and date of the entry of the Occupant's Motor Vehicle to the
14 Parking Station;

15 (B) Time and date of the exit of the Occupant's Motor Vehicle from the
16 Parking Station;

17 (C) Total amount Operator charged Occupant, including Rent and
18 Parking Tax;

19 (D) Parking Station address;

20 (E) Business telephone and address of Operator or Operator's agent
21 responsible for addressing consumer complaints.

22 (3) The Operator shall maintain a log written in ink recording the dates and
23 times and reasons that it utilized manual revenue control procedures. The Operator shall
24 maintain said log and all manually issued Parking Tickets for not less than ~~five~~ 5 years after
25 their creation.

1 (4) The Operator shall issue to every Occupant an individually and
2 sequentially numbered Receipt stating the date, the Occupancy Period, and the amount
3 charged, including Rent and Parking Tax.

4 (b) The Operator shall use good faith efforts to maintain and repair the RCE so that
5 it operates in conformance with the requirements of this Article. If malfunctioning RCE is not
6 restored to full function within 72 hours of the time that it ceased to operate in conformance
7 with this Article (excluding Sundays and holidays if the Operator uses a service repair
8 company), the Enforcing Agency may determine that the Operator has not made a good faith
9 effort to maintain or repair the RCE and is in willful violation of this Article. A determination
10 that the Operator has not attempted in good faith to maintain RCE or repair malfunctioning
11 RCE may be rebutted by the Operator's presentation of proof, that the Enforcing Agency in its
12 sole and absolute discretion deems to be credible, to establish the Operator's good faith
13 efforts to maintain or repair the RCE.

14
15 **SEC. 2216. INSPECTIONS OF PARKING STATIONS.**

16 The Enforcing Agency ~~shall~~may conduct periodic inspections of Parking Stations to
17 ensure that Parking Stations have operational RCE that ~~meet~~meets the requirements of this
18 Article.

19
20 ~~SEC. 2217. ENFORCING AGENCY SURVEY OF PARKING STATIONS AND REPORTING.~~

21 ~~(a) — In order to gather information necessary to enforce this Article, the Enforcing Agency~~
22 ~~shall conduct and complete by May 1, 2007 a survey of all Parking Stations and Operators doing~~
23 ~~business in the City. The Survey shall include but is not limited to:~~

24 ~~(1) — The monthly average and maximum occupancy of the Parking Facility for~~
25 ~~Transient Parkers and Monthly Parkers;~~

1 ~~(2) Confirmation for each Parking Station that it has in place RCE meeting the~~
2 ~~requirements of this Article;~~

3 ~~(3) The number of consumer complaints received by the Enforcing Agency~~

4 ~~(b) The Enforcing Agency shall maintain records of complaints regarding Parking Stations~~
5 ~~and Operators that are sufficient to track an Operator's compliance with the requirements of this~~
6 ~~Article.~~

7 ~~(c) The Enforcing Agency shall by February 1, 2008 report to the Board of Supervisors the~~
8 ~~Enforcing Agency's progress implementing and enforcing the requirements of this Article and the~~
9 ~~results of the amnesty program effected under section 608 of the Code.~~

10
11 **SEC. 2218. REQUIRED BUSINESS PRACTICES FOR ALL PARKING STATIONS.**

12 (a) **Auditable Record.** An Operator shall implement and utilize appropriate
13 business practices that, in conjunction with RCE, create an auditable record of the following
14 information for each Occupant:

- 15 (1) Rent charged and paid;
16 (2) Rent discount, if given;
17 (3) Occupancy Period (or entry and exit times) for Rent charged;
18 (4) Parking Tax collected.

19 (b) **Maintenance of Parking Tickets.** An Operator must keep in San Francisco
20 each issued or cancelled Parking Ticket for not less than five years from the date the Parking
21 Ticket was issued. Parking Tickets must be provided to any City auditor or other auditor
22 authorized by the Enforcing Agency immediately upon request.

23 (c) **Maintenance of Log Files.** An Operator shall keep in San Francisco each Log
24 File in an accessible read-only electronic storage format, for not less than five years from the
25 date of the earliest Transaction recorded in said Log File. An Operator must also maintain a

1 printout of all Log Files for not less than ~~five~~ years. Upon request, the Operator shall
2 immediately provide to any City ~~adivitor~~ auditor or other auditor authorized by the Enforcing
3 Agency, the Log File in an electronic format readable by the City.

4 (d) **Maintenance of Journal Tapes.** An Operator shall keep in San Francisco each
5 Journal Tape for not less than ~~five~~ years from the date of the earliest Transaction recorded in
6 said Journal Tape. The Journal Tape must be provided to any City auditor or other auditor
7 authorized by the Enforcing Agency immediately upon request.

8 (e) **Improper Use of Discount Parking.** An Operator that provides Discount
9 Parking or Flat Rate Parking must establish business practices and control measures to
10 prevent its employees and managers from using a discount Parking Ticket to avoid reporting
11 the full amount of Rent collected or to avoid remitting the correct amount of Parking Tax due.

12 (f) **Reconciliation of Records.** No less than monthly, for every day that the
13 Parking Station provides parking to the public in exchange for Rent, an Operator shall
14 reconcile the number of Parking Tickets issued with the number of vehicles that the RCE
15 recorded as having entered the Parking Station, and shall create a Periodic Report setting out
16 that information.

17 (g) **Training in Use of RCE.** An Operator shall train its employees and managers in
18 the required uses of RCE, including but not limited to: recording Transactions; maintaining
19 Parking Tickets, Log Files, and Journal Tapes; and, reconciling the count and identification
20 numbers of Parking Tickets used with the number of vehicles that parked in the Parking
21 Station and the amount of Rent received in any given period.

22 23 **SEC. 2220. CONSUMER PROTECTION.**

24 (a) **Public Complaints.** The Enforcing Agency shall receive complaints from
25 members of the public as to an Operator's failure to comply with the provisions of this Article.

1 Where the Enforcing Agency determines that an Operator may have violated the terms of this
2 Article, in addition to any other action that the Enforcing Agency may take pursuant to this
3 ordinance, the Enforcing Agency will notify the District Attorney so that it may pursue its own
4 investigation and take appropriate action. Whenever a written or oral complaint is made to the
5 Enforcing Agency that there has been a violation of this Article, the Enforcing Agency shall
6 refer the complaint to the District Attorney's Office and may also investigate the complaint or
7 allegation itself or refer the matter to the City Attorney.

8 (b) **Rates Posted.** The Operator shall post the rates for Rent in effect at the time
9 the Occupant enters the Parking Station at the entrance to the Parking Station, and at every
10 place where the Occupant pays Rent, including cashiers booths and Pay Stations. An
11 Operator shall not charge an Occupant more than the Rent posted for the Occupant's actual
12 Occupancy Period. Rent rates shall be posted no further than ~~eight~~8 feet from every entrance
13 of the Parking Station, in a manner and in a typeface that can be easily read from a distance
14 of ~~four~~4 feet.

15 (c) **Notice to Occupants of Receipt Requirement.** In addition to the signage
16 requirements of California Vehicle Code ~~section~~Section 22658 and other applicable sections of
17 that Code, the Operator shall post a clear and conspicuous sign at every vehicle entrance to
18 the Parking Station and at every location where Occupants pay Rent that informs Parkers of
19 the Operator's obligation to provide a ~~receipt~~Receipt when requested and providing phone
20 numbers to contact the Parking Facility's manager and the Enforcing Agency. ~~The Enforcing~~
21 ~~Agency shall through appropriate rules determine the specific language and size of said signs.~~

22
23 **~~SEC. 2223. VIOLATION.~~**

24 (a) ~~Any of the following shall be considered a violation of this Article:~~

1 (1) ~~Failure of an Operator to provide to an Occupant a Receipt as required in this~~
2 ~~Article. Each time an Operator fails to provide a Receipt shall be considered a separate violation.~~

3 (2) ~~Operating a Parking Station without utilizing RCE or business practices and~~
4 ~~procedures required by this Article.~~

5 (3) ~~Failure of an Operator to cooperate with any City agency as required by this~~
6 ~~Article.~~

7 (4) ~~Failure of an Operator to maintain RCE Records as required by this Article.~~

8 (5) ~~Failure of an Operator to report accurately in monthly or quarterly Parking Tax~~
9 ~~statements required under this Article and the Business and Tax Regulations Code the dates and times~~
10 ~~that it did not utilize RCE as required by this Article.~~

11 (6) ~~Failure of an Operator to use good faith efforts to repair non functioning RCE.~~

12 (7) ~~Failure of an Operator to certify its conformance with the provisions of this~~
13 ~~Article concurrent with payment or remittance of Parking Taxes, as required by this Article and~~
14 ~~Business and Tax Regulations Code Section 6.7.2.~~

15 (b) ~~Except as provided in Section 2223(a)(1), each day that an Operator does not comply~~
16 ~~with the provisions of this Article shall be considered a separate violation.~~

17 (e) ~~Intentionally tampering with RCE, including but not limited to altering or deleting data~~
18 ~~gathered or maintained by RCE in order to defraud the City or to defraud Occupants shall constitute a~~
19 ~~serious and willful violation of this Article.~~

20 (d) ~~Substituting a Parking Ticket with a Discount Parking Ticket for the purposes of falsely~~
21 ~~reporting or falsely recording the amount of Rent collected from an Occupant shall constitute a serious~~
22 ~~and willful violation of this Article.~~

23 (e) ~~An Operator's refusal to produce RCE Records timely when requested by the Enforcing~~
24 ~~Agency or other authorized agencies as required under Sections 2223, 2230 and 2236 of this Article or~~
25

1 when requested under Section 6.4-1 and 6.5-1 of the Business and Tax Regulations Code shall
2 constitute a serious and willful violation of this Article.

3 (f) — An Operator's commission of any of the acts described in Sections 2229(a), 2229(b), and
4 2229(c) constitutes a serious and willful violation of this Article.

5 (g) — A serious and willful violation of this Article may constitute tax fraud for which the
6 Enforcing Agency may suspend or revoke the Operator's business registration certificate and
7 certificate of authority to collect third party parking taxes pursuant to Section 6.6-1(g) of the Business
8 and Tax Regulations Code.

9
10 **SEC. 2224. ADMINISTRATIVE PENALTIES.**

11 (a) — Citations. An administrative penalty may be assessed by the Enforcing Agency for a
12 violation of the provisions of this Code, as specified in Section 2223 of this Code. The penalty may be
13 assessed by means of an administrative citation issued by a person authorized by the Enforcing Agency
14 to do so.

15 (b) — Penalty Amounts.

16 (1) — Violation of the following Sections of this Code are subject to a penalty of \$100: 2223(a)
17 (1); 2223(a)(6).

18 (2) — Violation of the following Sections of this Code are subject to a penalty of \$500: 2223(a)
19 (2), 2223(a)(3), 2223(a)(4), 2223(a)(5), 2223(a)(7).

20
21 **SEC. 2225. ENFORCEMENT.**

22 (a) The Enforcing Agency, the District Attorney, the Police Department and the City
23 Controller or authorized representatives of those agencies shall have the authority to inspect
24 Parking Stations, RCE, RCE Records, and books of account to ensure that an Operator is in
25

1 compliance with this Article, that all required RCE is functioning as required by this Article,
2 and that Rent and Parking Taxes are accurately reported and collected.

3 ~~(b) In enforcing the provisions of this Article, the Enforcing Agency shall utilize the~~
4 ~~administrative notice, citation, hearing, appeal and judicial review procedures set out in Article 6 of~~
5 ~~the Business and Tax Regulations Code. The Enforcing Agency's exercise of those procedures is not a~~
6 ~~prerequisite for and does not preclude any other means of enforcement available to the City or the~~
7 ~~District Attorney, including but not limited to criminal and civil legal action, which may be pursued~~
8 ~~independently of administrative action.~~

9 (e)(b) In enforcing the provisions of this Article, the Enforcing Agency may use all
10 authority granted to it by law, including but not limited to its authority to audit and inspect,
11 investigate, attach liens, revoke licenses, revoke certificates of registration, revoke certificates
12 of authority, issue administrative citations, and seize and sell property under the Business and
13 Tax Regulations Code.

14 (d)(c) The Enforcing Agency is authorized to promulgate regulations and issue rules,
15 interpretations, and determinations consistent with the purposes of this Article as may be
16 necessary and appropriate to implement or enforce the provisions of this Article.

17 (e)(d) An Operator is strictly liable for the acts of its employees, managers, and agents
18 that violate any provision of this Article.

20 **SEC. 2226. CIVIL PENALTIES.**

21 (a) **Civil Penalties and Enforcement.** Violation of this Article shall be subject to a
22 civil penalty of up to ~~\$5,000~~\$25,000 per violation. In addition to the enforcement authority and
23 powers granted to the Tax Collector in the San Francisco Business and Tax Regulations
24 Code, the City and County of San Francisco may initiate a civil action against any person to
25 compel compliance or to enjoin violations of this Article.

1 (b) **Recovery of Attorneys' Fees.** If the City and County of San Francisco initiates
2 a civil action against any person to compel compliance or to enjoin violations of this Article, at
3 the time the action is filed, the City may elect to seek recovery of attorneys' fees and costs
4 incurred in that enforcement action. Where the City makes this election, the prevailing party
5 shall be entitled to recover attorneys' fees. In no event shall the award of attorneys' fees to a
6 prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the
7 action.

8
9 **SEC. 2229. CONSUMER ACTION AND RELIEF.**

10 An Occupant may bring an action against an Operator and/or an Operator's employee
11 or agent who fails to provide a Receipt upon request or who charges the Occupant Rent
12 based on an inaccurate statement of duration of Occupancy and may recover from the
13 Operator any or all of the following: (1) an order enjoining the violation; (2) civil damages;
14 (3) punitive damages, if the court determines that the violation was willful; and (4) any other
15 relief that the court deems proper. The court shall award court costs and *attorney's attorneys'*
16 fees to a prevailing private plaintiff in litigation filed under this *subsection* Section.

17
18 **SEC. 2230. CRIMINAL PENALTIES.**

19 (a) It shall be a misdemeanor to violate the requirements of Sections 2218 or 2220
20 of this Article, or of Section 604(a) of this Code.

21 (b) Nothing in this Article shall preclude the District Attorney from prosecuting
22 violations of the provisions of this Article as a felony under applicable State law.

1 **SEC. 2232. LIMITATION OF ACTIONS.**

2 Unless otherwise provided by state law, any criminal, civil, or administrative action
3 brought under this Article shall be commenced not more than ~~four~~4 years from the date of the
4 Transaction, except for fraud in which case Section 6.11-2 of the Business and Tax
5 Regulations Code shall apply.
6

7 **SEC. 2233. COOPERATION WITH CITY AGENCIES.**

8 An Operator and its owners, managers, and employees must cooperate with the
9 Enforcing Agency or any other City agency having an interest in the operation of the Parking
10 Station, including but not limited to City auditors, the District Attorney's Officeoffice, and any
11 other City officials, employees or agents assigned by ordinance, regulation or authorized by
12 the Enforcing Agency to administer or implement this Article, by providing immediate access
13 to all RCE, RCE Records, Parking Tickets, books and records of accounts, and other
14 documentation regarding an Operator's receipt of Rent, remittance of Parking Taxes, and
15 compliance with this Article and the Business and Tax Regulations Code.
16

17 ~~**SEC. 2237. EFFECTIVE AND OPERATIVE DATES.**~~

18 ~~—————This Article shall become effective 30 days after final adoption by the Board of Supervisors. So~~
19 ~~that Operators may obtain RCE that conforms to the requirements of this Article and so that Operators~~
20 ~~wishing to do so may apply for the Amnesty Program under section 608 of the Business and Tax~~
21 ~~Regulations Code, the requirements of sections 2203, 2205, 2206, 2208, 2209, 2210, 2211, and 2213 of~~
22 ~~this Article shall not become operative until the termination of the Amnesty Application Period set out~~
23 ~~in section 608.8 of the Business and Tax Regulations Code. Operators that have RCE meeting the~~
24 ~~requirements of this Article on the effective date of this Article shall continue to use RCE complying~~
25 ~~with this Article during the Amnesty Application Period. Operators that do not have RCE that complies~~

1 ~~with the requirements of sections 2203, 2205, 2206, 2208, 2209, 2210, 2211, and 2213 of this Article,~~
2 ~~shall during the Amnesty Application Period conform to the requirements of Section 2204(b)(1-6) and~~
3 ~~2204(e) of this Article.~~

4
5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By: Julie Van Nostern
8 JULIE VAN NOSTERN
9 Deputy City Attorney

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Supervisors Mirkarimi, Duffy
BOARD OF SUPERVISORS

LEGISLATIVE DIGEST

[Adding to the definition of "control," revising the enforcement authority, and making other nonsubstantive changes.]

Ordinance amending Article 22 of the Business and Tax Regulations Code by amending Sections 2201 through 2210, 2215, 2216, 2218, 2220, 2225, 2226, 2229, 2230, 2232, and 2233 and repealing Sections 2217, 2223, 2224, and 2237, to establish a presumption that certain operators, signatories and owners control the business affairs of the parking station, revise the Enforcing Agency's authority to permit the use of all authority granted by law and by Article 6 of this Code, and make other nonsubstantive changes.

Existing Law

Article 22 of the Business and Tax Regulations Code, Parking Stations; Revenue Control Equipment, establishes revenue control equipment ("RCE") requirements for all parking stations based on size and mode of operation. (Sections 2203-2211) Article 22 also mandates operator business practices that create an auditable record of transactions. (Section 2218) As the Enforcing Authority, the Tax Collector is required to conduct periodic inspections of Parking Stations to ensure compliance with this ordinance. (Section 2216)

This ordinance includes consumer protection measures (Section 2220), including receipt and signage requirements, and a private right of action for consumers. (Section 2229) A violation of the business practices requirements or the consumer protection provisions is a misdemeanor. (Section 2230(a))

An operator is strictly liable for the acts of its employees, managers and agents who violate this ordinance. (Section 2225(e))

Amendments to Current Law

This ordinance amends Article 22 to establish a presumption that an operator, signatory or 10% owner, who is (or was in the past) also an officer, director, partner or member of the business entity, has the power to "Control" the affairs and decisions of the business. (Section 2201(8)) This ordinance also corrects errors, deletes outdated provisions, and makes other nonsubstantive changes to clarify the existing law.

Background Information

Article 22 was added to the Business and Tax Regulations Code by Ordinance No. 234-06, File No. 060892, App. 9/14/2006 to improve collection and enforcement of the City's parking tax. These amendments simplify and clarify the procedures for enforcing Article 22 RCE

FILE NO.

requirements, by making clear that the RCE requirements will be enforced per Article 6 like other provisions of the BTRC.