



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
County Counsel



DATE: February 7, 2012
BOARD MEETING DATE: February 14, 2012
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Four-Fifths

TO: Honorable Board of Supervisors

FROM: John C. Beiers, County Counsel

SUBJECT: Imposition of a Business License Tax on Operators of Commercial Parking Facilities in the Unincorporated County at the Rate of Eight Percent (8%) of Gross Receipts

RECOMMENDATION:

Introduce an ordinance imposing a business license tax on operators of commercial parking facilities at the rate of eight percent (8%) of gross receipts of parking facility operators in the unincorporated county.

BACKGROUND:

At its meeting of January 31, 2012, this Board discussed imposing a business license tax on parking facility operators in the unincorporated area of the County in order to raise general fund revenues. At that meeting, the Board directed staff to prepare a form of ordinance imposing such a tax for the Board's consideration.

The County does not presently impose a business license tax on commercial parking activities, although several other jurisdictions do. For example, the cities of South San Francisco and San Bruno each impose a business license tax on commercial parking operators within their respective jurisdictions equal to eight percent (8%) of gross revenues. Millbrae, in turn, has a business license tax on commercial parking operators equal to ten percent (10%) of gross revenues.

There are commercial parking operators in the unincorporated area, including at San Francisco International Airport ("SFIA"), valet parking at restaurants, and hotel parking. The County Manager's Office is informed that short and long term parking facilities located at the SFIA generated approximately \$80,926,693 in gross receipts during the 2010-2011 fiscal year. Of the total gross parking revenue, \$62,288,943 falls within the unincorporated county. The remaining revenue falls within the jurisdiction of the City of South San Francisco. A private company concessionaire currently operates and manages the parking facilities located at SFIA.

DISCUSSION:

Section 7284 of the California Revenue and Taxation Code vests counties with the authority to impose a license tax upon every kind of lawful business transacted in the unincorporated area of the county. The activity subject to a county business license tax must be engaged in by private entities. Because the San Francisco Airport Commission operates its parking at SFIA through a private concessionaire arrangement, the County may impose a business license tax on such private entity at SFIA for the privilege of undertaking this activity. Aside from those at SFIA, we are unaware of any other government-owned parking facilities in the unincorporated area.

Under federal law, no entity may levy a tax **exclusively** upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee, or charge wholly utilized for airport or aeronautical purposes. Therefore, to the extent that the County proposes to impose a business license tax on operators of commercial parking facilities that would apply to facilities at SFIA, such a tax must also apply to other commercial parking facility operators in the unincorporated area. This ordinance, as proposed, would apply to all commercial parking operators in the unincorporated area, including restaurants with valet parking and hotels that separately charge for parking.

Although the County may adopt a business license tax such as the one discussed above for the purposes of generating general fund revenues, Proposition 218, incorporated in Articles XIII C and XIII D of the California Constitution (and related provisions of the California Government Code) provide that, because it is a general tax, it may be imposed only if it is approved by a majority vote of the County electorate in an election consolidated with a regularly scheduled general election for members of the Board of Supervisors. The Government Code provides that a local governmental agency may not present a proposal for a general tax to the electorate unless the agency's governing board has approved, by a two-thirds vote, an ordinance or resolution proposing the tax. Consequently, any proposal to impose a business license tax on commercial parking activities would need to be approved by no fewer than four members of this Board before it may be submitted to the County electorate.

Under California law, ordinances must be adopted at a regular meeting of this Board taking place at least five days after the ordinance is first introduced. We are therefore recommending that an ordinance imposing a business license tax on vehicle rental operators of commercial parking facilities be introduced at the Board's February 14, 2012 meeting. The Board can then adopt the ordinance at its meeting of February 28, 2012, which is its last regular meeting that is at least eighty-eight days before the June 5, 2012 election date. (The Election Code requires that an election be called at least eighty-eight days before the scheduled election date.) If the Board determines to adopt the ordinance at its meeting on February 28th, it should also adopt a resolution at that time calling for an election to submit the tax to a vote of the electorate in June. My office will have a form of resolution calling for such an election ready for the Board's consideration.

The adoption of this Ordinance contributes to the Shared Vision 2025 Outcome of a

Collaborative Community by providing a continuing source of general funds for the County's programs and services.

FISCAL IMPACT:

As noted, business license taxes on commercial parking operators by other jurisdictions within the County range from eight to ten percent of gross receipts. Assuming annual gross revenues of approximately \$62,288,943, and revenue from other non-SFIA commercial parking operators, and a business license tax on commercial parking activities of eight percent, the County would generate approximately \$4,983,115 per year.

The cost of placing one measure on the June 2012 ballot, as required by Proposition 218, is estimated at \$200,000, and each additional measure would cost \$40,000. Your Board is considering three tax measures for the ballot: Your Board is considering three tax measures for the ballot: an increase to the Transient Occupancy Tax ("TOT"); this business license tax on commercial parking; and a business license tax on vehicle rentals. If the Board approves all three proposed measures, each will cost approximately \$93,333; if the Board approves just two measures, each will cost approximately \$120,000; if the Board approves only this measure, it will cost approximately \$200,000. These amounts would not be recoverable with respect to measures that fail.

ORDINANCE NO. _____
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

* * * * *

AN ORDINANCE IMPOSING A BUSINESS LICENSE TAX ON OPERATORS OF
COMMERCIAL PARKING FACILITIES AT A RATE OF EIGHT PERCENT (8%)
OF GROSS RECEIPTS OF PARKING FACILITY OPERATORS IN THE
UNINCORPORATED COUNTY

The Board of Supervisors of the County of San Mateo, State of California,

ORDAINS as follows

SECTION 1. The Board of Supervisors of the County of San Mateo declares the following:

- A. Section 7284 of the California Revenue and Taxation Code authorizes the Board of Supervisors of any County to license for revenue and resolution, and to fix the license tax upon, every kind of lawful business transacted in the unincorporated area of the County.
- B. Section 2 of Article XIII C of the California Constitution, and section 53723 of the California Government Code, authorize the County to impose a general tax upon a majority vote of the electorate.
- C. Pursuant to section 9140 of the California Elections Code, this Board may submit to the voters, without petition, a measure relating to the enactment of any ordinance.
- D. This Board deems it appropriate to adopt an ordinance, pursuant to the County's taxing authority, to impose a business license tax on operators of commercial parking facilities located in the unincorporated area of the County in order to generate revenue that will be placed in the general fund to support general County services and functions. This Board also deems it appropriate to submit this ordinance imposing a business license tax on operators of commercial parking facilities to a vote of the electorate.

SECTION 2. The following measure for addition of a provision to the San Mateo County Ordinance Code shall be submitted to the electorate on June 5, 2012.

"Shall Chapter 5.152 be added to the San Mateo County Ordinance Code, imposing a business license tax of eight percent of gross receipts on operators of commercial parking facilities located in the unincorporated area of San Mateo County?"

SECTION 3. Chapter 5.148, consisting of sections 5.152.010 through 5.152.150, of Title 5 of the San Mateo County Ordinance Code is hereby added as follows:

Chapter 5.152 Business License Tax on Commercial Parking Facility Operators

5.152.010 Commercial Parking Facility Defined.

"Commercial parking facility" means any facility that is operated by a private individual or entity (whether or not the facility is owned by a government agency) which provides, for any form of consideration, parking or storage for motor vehicles, recreational vehicles (except for recreational vehicle parking maintained, managed, kept or permitted or allowed to be operated or storage that is subject to transient occupancy tax pursuant to Chapter 5.136 of this Code), motorcycles, trailers, bicycles or other similar means of conveyance for passengers or property. This term shall not include facilities that would otherwise be within the foregoing definition when rented appurtenant to the rental of residential dwelling units that are not otherwise required to be licensed pursuant to this chapter. This term shall also not include facilities that only make storage or berthing space available for boats or other water craft.

5.152.020 Operator Defined.

"Operator" means any private person or entity who, as owner, lessee, employee, agent, concessionaire, contractor, or otherwise, operates, maintains, manages, keeps, permits or allows to be operated, maintained, managed, kept, or permitted any commercial parking facility in or upon the premises owned, leased, managed, operated or controlled by such person within the unincorporated area of the County of San Mateo. "Operator" includes, but is not limited to, those who operate commercial airport parking, restaurant valet parking, and hotel (as that term is defined in section 5.136.010 of this Code) parking where the parking is not charged to the customer as part of the room rate subject to a transient occupancy tax pursuant to Chapter 5.136 of this Code.

5.152.030 Gross Receipts Defined.

"Gross receipts" includes the total of amounts actually received or receivable for the performance or provision of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, including, but not limited to, amounts received or receivable for the privilege of parking in a commercial parking facility. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. Excluded from "gross receipts" shall be the following:

- (a) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (b) Such part of the price of services refunded either in cash or by credit to the consumer or customer upon rescission of the contract;
- (c) Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business shall not be excluded.

5.152.040 Business License Tax Imposed.

Every operator of a commercial parking facility operated within the unincorporated area of the County shall pay a business license tax of eight percent (8%) of the gross receipts received from the commercial parking facility.

5.152.050 Registration.

Within thirty (30) days after the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, each operator of a commercial parking facility shall register said commercial parking facility with the Tax Collector and obtain from him a "Commercial Parking Facility Business License Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the commercial parking facility;
- (3) The date upon which the certificate was issued;
- (4) "This Commercial Parking Facility Business License Certificate signifies that the person named on the face hereof has fulfilled the requirements of this chapter by registering with the Tax Collector. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a commercial parking facility without strictly complying with all local applicable laws, including, but not limited to, those requiring a permit from any board, commission, department or office of this County. This certificate does not constitute a permit."

5.152.060 Reporting and Remitting of Business License Tax.

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax Collector, make a return to the Tax Collector, on forms provided by the Tax Collector, of the operator's gross receipts from the commercial parking facility. At the time the return is filed, the full amount of the business license tax due shall be remitted to the Tax Collector. The Tax Collector may establish shorter reporting periods for any operator if the Tax Collector deems it necessary in order to insure collection of the tax and the Tax Collector may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason.

5.152.070 Penalties and Interest.

- (a) Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of Ten Percent (10%) of the amount of the tax in addition to the amount of the tax.
- (b) Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of Ten Percent (10%) of the amount of the tax in addition to the amount of the tax and the Ten Percent (10%) penalty first imposed.
- (c) Fraud. If the Tax Collector determines that the nonpayment of any remittance due under this chapter is due to fraud of the operator, a penalty of Twenty-Five Percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs (a) and (b) of this section.
- (d) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent (1%) per

month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid. Interest shall be imposed on penalties from thirty (30) days after an operator is notified of a delinquency.

- (e) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.
- (f) Penalties imposed by this section are in addition to any other penalties provided for in other sections of this code.

5.152.080 Failure to Report Tax. Determination of Tax by Tax Collector.

If any operator shall fail or refuse to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the Tax Collector shall proceed in such manner as the Tax Collector may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Collector shall procure such facts and information as the Tax Collector is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to make such report and remittance, the Tax Collector shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Tax Collector shall give a notice of the amount so assessed serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may, within ten (10) days after the serving or mailing of such notice, make application in writing to the Tax Collector for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Collector shall become final and conclusive and immediately due and payable. If such application is made, the Tax Collector shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the Tax Collector shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in section 5.152.090.

5.152.090 Appeal.

Any operator aggrieved by any decision of the Tax Collector with respect to the amount of such tax, interest and penalties, if any, may appeal to the Board of Supervisors by filing a notice of appeal with the Clerk of the Board of Supervisors within fifteen (15) days of the serving or mailing of the determination of tax due. The Board of Supervisors shall fix a time and place for hearing such appeal, and the Clerk of the Board of Supervisors shall give notice in writing to such operator at his last known place of address. The findings of the Board of Supervisors shall be final and conclusive and

shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

5.152.100 Records.

It shall be the duty of every parking facility operator liable for the payment to the County of any license tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such license tax as the operator may have been liable for the payment to the County, which records the County Tax Collector shall have the right to inspect at all reasonable times.

5.152.110 Refunds.

- (a) Whenever the amount of any tax, interest, or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the County under this chapter, it may be refunded as provided in subparagraphs (b) and (c) of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Collector within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Collector.
- (b) At the election of the operator, any amount overpaid, paid more than once or erroneously or illegally collected or received, may be refunded or credited against future taxes owed under this Chapter 5.152.
- (c) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

5.152.120 Collection of Tax.

- (a) Actions to Collect. Any tax required to be paid under the provisions of this chapter shall be deemed a debt owed by the operator to the County. Any person owing money to the County under the provisions of this chapter shall be liable to an action brought in the name of the County of San Mateo for the recovery of such amount.
- (b) Recording Certificate. Lien. If any amount required to be paid to the County under this ordinance is not paid when due, the Tax Collector, may within three (3) years after the amount is due file for record in the office of the San Mateo County Recorder a certificate specifying the amount of tax, penalties and interest due, the name and address as it appears on the records of the Tax Collector of the operator liable for same and the fact that the Tax Collector has complied with all provisions of this ordinance in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid together with penalties and interest constitutes a lien upon all real property in the County owned by the operator or afterwards and before the lien expired acquired by him. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the time of filing of the certificate unless sooner released or otherwise discharged.
- (c) Priority and Lien of Tax. The amounts required to be paid by any operator under this ordinance with penalties and interest shall be satisfied first in any of the

following cases:

- (1) Whenever the person is insolvent;
- (2) Whenever the person makes a voluntary assignment of his assets;
- (3) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased;
- (4) Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount under this ordinance levied upon by process of law. This ordinance does not give the County a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien.

The preference given to the County by this section shall be subordinate to the preferences given to claims for personal services by sections 1204 and 1206 of the Code of Civil Procedure.

- (d) **Warrant for Collection of Tax.** At any time within three (3) years after any operator is delinquent in the payment of any amount herein required to be paid off within (3) years after the last recording of a certificate of lien under section 5.148.120(b), the Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this ordinance. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Tax Collector may pay or advance to the sheriff, marshal or constable, the same fees, commissions and expenses for his services as are provided by law for similar services pursuant to a writ of execution. The Tax Collector, and not the court, shall approve the fees for publication in a newspaper.
- (e) **Seizure and Sale.** At any time within three (3) years after any operator is delinquent in the payment of any amount, the Tax Collector may forthwith collect the amount in the following manner: The Tax Collector shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall be only of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.
- (f) **Successor's Liability. Withholding by Purchaser.** If any operator liable for any amount under this ordinance sells out his business or quits the business, his successor or assignee shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Tax Collector showing that it has been paid or a certificate stating that no amount is due.
- (g) **Liability of Purchaser. Release.** If the purchaser of a commercial parking facility fails to withhold amounts from the purchase price as required, he shall become personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within sixty (60) days after receiving a written request from the purchaser for a certificate, or within sixty (60) days from the date the former owner's records are made available for audit,

whichever period expires the later, but in any event not later than ninety (90) days after receiving the request, the Tax Collector shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Tax Collector of the amount that must be paid as a condition of issuing the certificate. Failure of the Tax Collector to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the operator sells his business or at the time the determination against the operator becomes final, whichever event occurs the later.

5.152.130 Effective Date.

The business license tax provided for in this ordinance shall become effective on July 1, 2012 and all gross receipts of commercial parking facility operators from and after that date shall be subject to the business license tax imposed by this Chapter 5.152.

5.152.140 Violations.

Any commercial parking facility operator or other person who fails or refuses to pay the license tax required herein, or to furnish the County Tax Collector with data required by the Tax Collector in connection with collection of the business license tax, or who renders false or fraudulent data, is guilty of a misdemeanor, and is punishable as otherwise provided in this code and by general law. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made is guilty of a misdemeanor and is punishable as otherwise provided in this code and by general law."

5.152.150 Severability.

If any provision of this Chapter 5.152 or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby."

SECTION 4. The business license tax provided for in this ordinance shall become effective on July 1, 2012; provided however, that this ordinance and the license tax imposed hereby shall not become effective unless the proposal to impose the license tax receives a majority vote of the electorate in the general election to take place on June 5, 2012.

* * * * *