



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

DATE: July 31, 2008

BOARD MEETING DATE: August 5, 2008

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Four-Fifths

TO: Honorable Board of Supervisors

FROM: Supervisor Mark Church and Supervisor Rich Gordon

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:

- (1) 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; and
- (2) Adopt a resolution calling an election for the purpose of submitting to the electors a proposition for the adoption of an ordinance to impose a business license tax at the rate of eight percent (8%) of gross receipts of parking facility operators in the unincorporated county.

VISION ALIGNMENT:

Commitment: Responsive, effective and collaborative government

Goal(s): Number 20: Government decisions are based on careful consideration of future impact, rather than temporary relief or immediate gain.

BACKGROUND:

At its meeting of July 22, 2008, this Board discussed the advisability of instituting 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 determined to continue the matter to its meeting of August 5, 2008, in order to allow consultation and discussion between industry representatives and the County. In particular, a special meeting of the Finance and Operations Committee of this Board

is scheduled for August 4, 2008, and it is possible that we will have additional information to share with the Board, based on consultations that take place at the committee meeting.

As discussed in earlier correspondence to this Board, the County does not presently impose a business license tax on commercial parking activities, although several other jurisdictions do so. 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 of gross revenues. Millbrae, in turn, has a business license tax on commercial parking operators equal to ten percent 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. Information that the County Manager's Office has received indicates that short and long term parking facilities located at the SFIA generated approximately \$50,000,000 in gross receipts during the 2005-2006 fiscal year. A private company concessionaire currently operates and manages the parking facilities located at SFIA.

DISCUSSION:

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 (and related provisions of the California Government Code) provides 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. Similarly, 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 recommending that an ordinance imposing a business license tax on vehicle rental businesses be introduced at the Board's August 5, 2008 meeting. The California Elections Code provides that resolutions calling for elections on ballot measures be adopted at least eighty-eight days prior to the election, and the next meeting of this Board after August 5, 2008 will be fewer than eighty-eight days before the November 5, 2008 general election.

Consequently, this Board is being asked to adopt a resolution on August 5, 2008 calling an election for the purpose of submitting to the electors this proposed business license tax. The resolution includes a provision noting the Board's inherent authority to withdraw a measure that the Board subsequently determines should not proceed to election. If the Board subsequently determines at its August 12, 2008 meeting not to approve imposition of the business license tax, the ballot measure can be withdrawn.

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 \$50,000,000 (the amount generated by SFIA lots during 2005-2006), 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 in excess of \$4,000,000 per year. The cost of placing this measure on the November 2008 ballot, as required under Proposition 218, could be as high as \$550,000, if no other county-wide measures are placed on the ballot. A second measure would add an additional \$100,000 in election-related costs. This amount would not be recoverable if the measure fails.