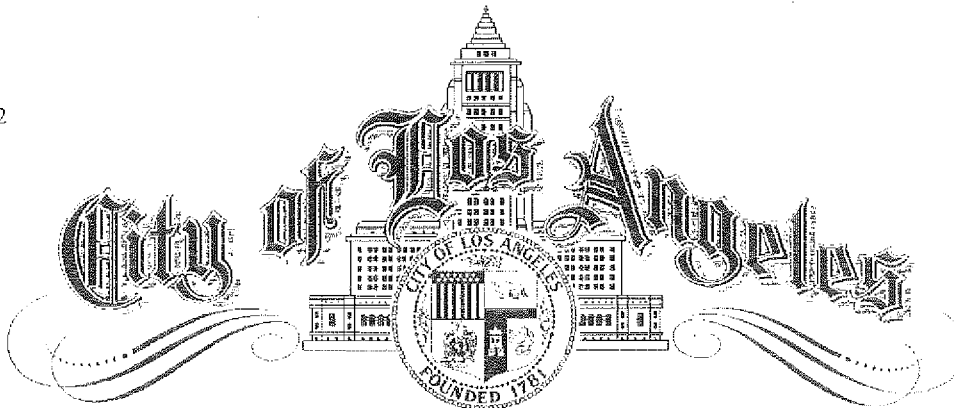


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**CARMEN A. TRUTANICH**  
City Attorney

REPORT NO. R 1 2 - 0 2 7 9

AUG 17 2012

REPORT RE:

**A BUDGET ORDINANCE AMENDING CHAPTER II OF ARTICLE 1.15 OF THE  
LOS ANGELES MUNICIPAL CODE TO REQUIRE THAT ALL AUTO PARK  
OPERATORS POST A BOND TO SECURE PAYMENT OF DELINQUENT PARKING  
OCCUPANCY TAXES**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Council File No. 12-0600

Honorable Members:

Pursuant to your request, this Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. This draft ordinance would amend Chapter II of Article 1 of the Los Angeles Municipal Code (LAMC) to require that all auto park operators post a bond to secure payment of delinquent parking occupancy taxes as directed by your Honorable Body. The draft ordinance would also amend Section 21.15.13 of Chapter II of Article 1.15 to allow the City to pursue all persons responsible for collecting and remitting the parking occupancy taxes to the City.

Pursuant to Council Rule 38, a copy of this draft ordinance has been provided to the Office of Finance with a request that they provide any comments they have to the City Council or its Committee when this matter is considered.

If you have any questions regarding this matter, please contact Assistant City Attorney Beverly Cook at (213) 978-7760. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By  (PBE)

PEDRO B. ECHEVERRIA  
Chief Assistant City Attorney

PBE:BC:sl  
Transmittal

ORDINANCE NO. \_\_\_\_\_

An ordinance amending Section 21.15.6 of Chapter II, Article 1.15, Parking Occupancy Tax, of the Los Angeles Municipal Code to require all auto park operators to post a bond to secure payment of delinquent parking occupancy taxes, and amending Section 21.15.13 of Chapter II, Article 1.15 of the Los Angeles Municipal Code to allow the City to pursue all persons responsible for collecting and remitting the parking occupancy taxes to the City.

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS:**

Section 1. Section 21.15.6 of Chapter II, Article 1.15 of the Los Angeles Municipal Code is amended to read as follows:

**SEC. 21.15.6. REGISTRATION OF OPERATORS.**

(a) Prior to commencing business, or within 15 days after the effective date of this Section, whichever is later, each operator of any parking facility providing parking space to occupants and not exempted by Section 21.15.5 shall register each parking facility with the Director of Finance and obtain a ("Parking Occupancy Registration Certificate") (PORC) which shall be at all times posted in a conspicuous place on the premises. Notwithstanding the foregoing, the certificate for any unattended parking facility may be maintained at any other business location of the operator. Said certificate shall among other things state the following:

1. The name of the operator;
2. The address of the parking facility;
3. The date upon which the certificate was issued; and

4. "This Parking Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of Article 1.15 of Chapter II of the Los Angeles Municipal Code by registering with the Director of Finance for the purpose of collecting from parking space occupants the Parking Occupancy Tax and remitting said tax to the Director of Finance. 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 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 City."

The PORC will expire on a date certain set by the Director of Finance. The operator must apply for renewal of the PORC before it expires if the operator intends to

continue to engage in business in the City. Except as provided below, the Director of Finance may renew a PORC in one-month intervals without issuing a new PORC.

The PORC may not be assigned or transferred. The operator shall immediately surrender to the Director of Finance the PORC for that location upon the operator's cessation of business at that location or upon the sale or transfer of the business.

The PORC shall not be issued until the operator has obtained and filed a bond in accordance with subsection (d) below.

(b) The holder of the PORC shall remain presumptively liable for the collection of the Parking Occupancy Tax at the location named in the certificate, and for the reporting and remittance of such taxes to the Director of Finance as set forth in Section 21.15.4 unless and until the holder of the PORC both: (i) notifies the Director of Finance in writing that the holder has ceased to conduct a parking business at such location and pays all Parking Occupancy Taxes then due to the City; and (ii) surrenders the PORC for that location to the Director of Finance.

(c) The Director of Finance may refuse to issue, or may revoke, the PORC at any time if the Director of Finance determines that the operator, or any signatory to the application, or any person holding a legal or beneficial interest, whether direct or indirect, actual or constructive, in said operator ("Beneficial Owner") is not in compliance with any provision of the Los Angeles Municipal Code, including without limitation any provision relating to the payment of Business Taxes or Parking Occupancy Taxes (including the bond requirement as set forth below) for any other location or business.

Solely for purposes of determining under this Section whether any such operator, signatory, or Beneficial Owner is not in compliance with any provision of the Los Angeles Municipal Code, the Director of Finance may disregard any corporation or association or other entity owned or controlled, directly or indirectly, by any such operator, signatory, or Beneficial Owner and consider such corporation, association, or other entity's operations and liabilities as conducted by or as owned by any one or more of such corporation, association, or other entity's officers, directors, partners, members, or owners. For purposes of this Section, (i) the term "owned" means ownership of 50 percent (50%) or more of the outstanding ownership interests in such corporation, association, or other entity; and (ii) the term "controlled" includes any kind of control, whether direct or indirect, actual or constructive, whether legally enforceable and however exercisable or exercised over such corporation, association, or other entity. A presumption of control arises if the operator, signatory, or Beneficial Owner is (or was at any relevant time) an officer, director, partner, or member of such corporation, association, or entity.

(d) BOND REQUIREMENT.

1. Effective January 1, 2013, auto park operators will be required to file a bond with the Office of Finance, naming the City of Los Angeles as

exclusive beneficiary, at all times the operator engages in such business. The bond shall be in the following amounts:

<b>If the annual gross receipts for the parking facility, or the estimated annual gross receipts for a new parking facility, are:</b>	<b>Then the bond amount shall be:</b>
<b>Less than \$50,000</b>	<b>\$5,000</b>
<b>\$50,000 - \$100,000</b>	<b>\$10,000</b>
<b>\$100,000.01 - \$250,000</b>	<b>\$25,000</b>
<b>\$250,000.01 - \$500,000</b>	<b>\$50,000</b>
<b>\$500,000.01 - \$750,000</b>	<b>\$75,000</b>
<b>\$750,000.01 - \$1,000,000</b>	<b>\$100,000</b>
<b>\$1,000,000.01 - \$2,000,000</b>	<b>\$200,000</b>
<b>\$2,000,000.01 - \$4,000,000</b>	<b>\$400,000</b>
<b>\$4,000,000.01 - \$6,000,000</b>	<b>\$600,000</b>
<b>Greater than \$6,000,000.01</b>	<b>\$800,000</b>

2. A bond, in the applicable amount as prescribed above, must be filed no later than February 28, 2013, for each parking facility conducted by an operator prior to January 1, 2013. For every parking facility commencing business on or after January 1, 2013, each operator must file the applicable bond no later than the close of business on the last day of the month following the month in which the operator commences operation of the parking facility.

3. The Director of Finance, or the Director's designee, may independently establish the annual gross receipts for a parking facility and set the bond amount pursuant to the above schedule, based on that determination. If, at the end of the calendar year, the gross receipts for a parking facility have increased to at least five percent above the amount that would be required for the next larger bond under the above schedule, the operator, as defined herein, shall obtain a new bond in the increased amount by the following February month-end. If at the end of any calendar year the gross receipts for the parking facility have decreased by at least five percent below the amount that would be required for the next smaller bond under the above schedule, the operator may apply to the Office of Finance for a reduction of the bond amount.

4. This bond requirement does not apply to an operator that is a governmental entity. However, this bond requirement is applicable to a non-governmental applicant operating a parking facility on behalf of a governmental entity.

5. This bond requirement is applicable for each parking facility conducted by the operator, whether in the capacity of owner, lessee, mortgagee in possession, licensee, valet or other service supplier or any other capacity.

6. The bond shall be executed by the operator as principal, and by a corporation or association which is licensed by the Insurance Commissioner of the State of California to transact the business of fidelity and surety insurance, as surety. The operator shall keep the bond in full force and effect for the duration of the PORC and all renewals thereof issued to such operator. If the bond provides that the term thereof shall be continuous until canceled, the operator shall provide the Director of Finance, or the Director's designee, 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 PORC.

7. The bond shall contain conditions that require the operator to comply fully with all the provisions of Articles 1 and 1.15 of Chapter 2 of the Los Angeles Municipal Code. The bond shall be payable to the City of Los Angeles in the amount of all unpaid Parking Occupancy Taxes on amounts of taxable parking fees collected by the applicant or operator, together with all administrative collection costs, interest, penalties, and other costs and charges applicable thereto; provided however, 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 of Los Angeles. The City may bring an action upon the bond for recovery of any unpaid Parking Occupancy 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 Director of Finance or the Director's designee.

8. The surety may cancel the bond(s) at any time by filing with the Principal, thirty (30) days written notice of its desire to be relieved of liability with mandatory copy sent to the Office of Finance. The surety shall not be discharged from any liability already accrued under the bond(s), or which shall accrue before the expiration of the thirty (30) day period.

9. The operator and the surety have the express duty to notify the Office of Finance no later than thirty (30) days prior to the termination of a bond agreement.

10. When there is an assessment of Parking Occupancy Taxes against an operator, the Director of Finance, or the Director's designee, shall issue the assessment against the operator, and the operator's surety. The liability of the surety shall not exceed the face value of the bond(s). The Director of Finance, or the Director's designee, shall provide notice of such assessment to the operator and the surety.

An operator's request for an administrative hearing shall be construed by the Director of Finance, or the Director's designee, as a request on behalf of both the operator and the surety. The surety may request an administrative hearing pursuant to LAMC Section 21.15.10. The taxpayer and surety hearing may be consolidated at the discretion of the Director of Finance. Upon the exhaustion of the administrative appeals process, the operator and the surety shall be liable to the City of Los Angeles in the amount of the determination or decision reached by the Assessment Review Officer or by the Board of Review. In the event that the amount of the determination exceeds the amount of the bond(s), the surety shall be liability for the amount of the bond(s) and the operator shall remain liable for the full determination. If neither the operator nor the surety request an administrative hearing, the operator and the surety shall be liable to the City of Los Angeles in the amount of the assessment, provided that the surety's liability shall not exceed the face amount of the bond.

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 Director of Finance may exercise all remedies against the surety that are available to the Director of Finance as to an operator or any other person determined to be liable for a tax.

11. Interest and penalty shall continue to accrue on all unpaid Parking Occupancy Taxes that are determined to be owed and due at the exhaustion of the administrative appeals process.

12. An operator that fails to qualify for the issuance of a bond by a surety will be required to establish a deposit account in favor of the City of Los Angeles in the amount of fifty percent of the prescribed bond amount for each parking facility conducted by the operator. The same time periods prescribed for the filing of a bond with the Office of Finance will be applicable for the establishment of such deposit account.

13. Funds placed into an applicant's or operator's deposit account in favor of the City of Los Angeles are subject to collection by the Office of Finance as partial or full satisfaction for delinquent Parking Occupancy Taxes as determined at the exhaustion of the administrative appeals process.

14. An operator that either fails to renew a bond or has received thirty (30) day notice from the surety that the bond will be canceled must file a new bond or evidence of a deposit account with the Office of Finance no later than thirty (30) days after the bond's termination.

15. An operator that fails to submit the bond filing(s) to the Office of Finance or fails to establish a deposit account within the prescribed time periods will also be subject to the revocation or denial of a Police Auto Park Permit.

Sec. 2. Section 21.15.13 of Chapter II, Article 1.15 of the Los Angeles Municipal Code is amended to read as follows:

Any tax required to be paid by any occupant under the provisions of this Article shall be deemed a debt owed by the occupant to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. In addition to the operator itself, the Director of Finance may collect an operator's liabilities, including interest and penalties, from any person or persons the Director of Finance determines was responsible for performing the acts of collecting, accounting for, and remitting the Parking Occupancy Taxes to the City and failed to do so, or who had the power to control the financial decision-making process by which the operator allocates funds to creditors in reference to the operator's obligation to remit the Parking Occupancy Taxes to the City. When it is not clear who the person or persons responsible to the City are, the Director of Finance may presume the President, Chief Executive Officer, and/or Chief Financial Officer of a corporation or any managing partner or member of an association to be a person responsible for performing such acts. The Director of Finance is authorized to name all such persons potentially responsible for performing such acts in a notice of assessment pursuant to Section 21.15.10 and may send such notice to the same address to be used for the operator's assessment as set forth in Sections 21.15.10 and 21.16 in this chapter and such persons shall have the same rights as the operator to appeal the assessment as set forth in said sections. The liability of such persons shall be joint and several with each other and with the operator. Any person owing money to the City under the provisions of this Article shall be liable to an action brought in the name of the City for the recovery of such amount. Any operator who undertakes legal action to recover any unpaid parking fee from an occupant may include the amount of tax due from the occupant in the amount sought to be recovered.



Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of \_\_\_\_\_.

By

\_\_\_\_\_  
Deputy

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By Beverly A. Cook  
BEVERLY A. COOK  
Assistant City Attorney

Date 8/16/2012

File No. CF 12-0600