

**In the Supreme Court of the State of California**

**CITY AND COUNTY OF SAN  
FRANCISCO,**

**Plaintiff and Appellant,**

**v.**

**REGENTS OF THE UNIVERSITY OF  
CALIFORNIA, et al.,**

**Defendants and Respondents.**

Case No. S242835

**SUPREME COURT  
FILED**

MAR 27 2018

Jorge Navarrete Clerk

First Appellate District, Division One, Case No. A144500 <sup>Deputy</sup>  
San Francisco County Superior Court, Case No. CPF-14-513-434  
Honorable Marla J. Miller, Judge

**REQUEST FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS  
AND AUTHORITIES; DECLARATION OF GONZALO C. MARTINEZ;  
PROPOSED ORDER**

XAVIER BECERRA  
Attorney General of California  
EDWARD C. DUMONT  
Solicitor General  
JANILL L. RICHARDS  
Principal Deputy Solicitor General  
\*GONZALO C. MARTINEZ (SBN 231724)  
Deputy Solicitor General  
GEOFFREY H. WRIGHT (SBN 307053)  
Associate Deputy Solicitor General  
ROBERT E. ASPERGER (SBN 116319)  
Deputy Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102  
(415) 510-3922  
Gonzalo.Martinez@doj.ca.gov  
*Attorneys for Defendant and  
Respondent Board of Trustees of the  
California State University*

TO APPELLANT AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rules 8.520, subd. (g) and 8.252, subd. (a) of the California Rules of Court, Respondent Board of Trustees of the California State University (CSU) moves this Court to take judicial notice of certain materials cited in CSU's Answering Brief on the Merits.

This motion is made on the following grounds:

- 1) Evidence Code sections 452, 453, and 459 authorize this Court to take judicial notice of the materials set forth in this motion; and
- 2) The materials are relevant to the issues addressed in CSU's brief.

This motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Gonzalo C. Martinez, and the attached exhibits, which are true and correct copies of the documents described.

Dated: March 27, 2018

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
EDWARD C. DUMONT  
Solicitor General  
JANILL L. RICHARDS  
Principal Deputy Solicitor General  
GEOFFREY H. WRIGHT  
Associate Deputy Solicitor General  
ROBERT E. ASPERGER  
Deputy Attorney General



GONZALO C. MARTINEZ  
Deputy Solicitor General  
*Attorneys for Defendant and Respondent  
Board of Trustees of the California State  
University*

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF CSU'S REQUEST FOR JUDICIAL NOTICE**

**I. INTRODUCTION**

Pursuant to Evidence Code sections 452, 453, and 459, and California Rules of Court, rules 8.252, subdivision (a), and 8.520, subdivision (g), Respondent California State University (CSU) hereby requests that this Court take judicial notice of the following three publicly available documents obtained from the Clerk's Office of the City and County of San Francisco:

(1) **Exhibit A**, a letter dated November 27, 1970 from Thomas M. O'Connor, former San Francisco City Attorney, to Thad Brown, former San Francisco Tax Collector, regarding San Francisco's original version of its parking-tax ordinance, No. 286-70 (File No. 228-70-1).

(2) **Exhibit B**, sections 601 and 616 from San Francisco's original parking-tax ordinance, No. 286-70 (File No. 228-70-1), which are referenced in the letter attached as Exhibit A.

(3) **Exhibit C**, a provision of San Francisco Ordinance No. 291-10 (File No. 101099), dated October 27, 2010, which amended the City's Business and Tax Code section 6.8-1.

True and correct copies of Exhibits A, B, and C are attached to the accompanying declaration.

**II. THE EVIDENCE CODE AND THE RULES OF COURT PERMIT THIS COURT TO TAKE JUDICIAL NOTICE OF THE MATERIALS REQUESTED**

The materials that are the subject of this request are relevant to this matter for the reasons explained in CSU's Answering Brief on the Merits. Specifically, they demonstrate that San Francisco's parking ordinance, as originally enacted, expressly exempted the State and state entities from any duties and responsibilities under the ordinance, and they further demonstrate that San Francisco has amended its ordinance in an attempt to impose a duty to collect and remit the tax on such entities. These materials provide helpful context to the present dispute between San Francisco and CSU. (Rule of Court 8.252, subd. (a)(2)(A).)

The matters at issue in this motion are subject to judicial notice. (Rule of Court 8.252, subd. (a)(2)(C).) Under Evidence Code section 452, this Court may take judicial notice of any matter that would be subject to discretionary judicial notice by the trial court. (Evid. Code, section 459, subd. (a); see also *Haworth v. Superior Court* (2010) 50 Cal.4th 372, 379 [appellate court can take judicial notice of matters that were not before the trial court].)

Pursuant to Evidence Code sections 452, this Court may take judicial notice of "[r]egulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States." (Evid. Code, section 452(b).) This Court has previously taken judicial

notice of municipal ordinances and of the legislative history accompanying them. In *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, for example, it took judicial notice of a resolution adopted by the Berkeley City Council, and “the city manager’s memorandum to the mayor and city council recommending the resolution’s adoption.” (*Id.* at p. 7, fn. 2; see generally 31 Cal.Jur.3d (2018) Evidence § 30 [ “[A] court may take judicial notice of city and county ordinances, codes, and similar legislative enactments,” along with “the legislative history of a pertinent municipal enactment.”].)

All of the materials are publicly available documents and, as further described in the accompanying declaration, were obtained from the Clerk’s Office for the City and County of San Francisco.

These materials were not presented to the trial court (Rule of Court 8.252, subd. (a)(2)(B)), and do not relate to proceedings occurring after the order that is the subject of this appeal (*id.*, subd. (a)(2)(D)).

Copies of all materials are filed and served with this motion. (Rule of Court 8.252, subd. (a)(3).)

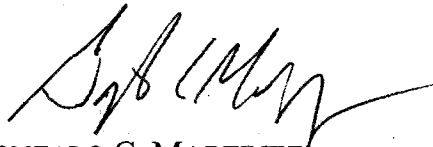
### **III. CONCLUSION**

For these reasons, CSU respectfully requests that the Court take judicial notice of Exhibits A, B, and C.

Dated: March 27, 2018

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
EDWARD C. DUMONT  
Solicitor General  
JANILL L. RICHARDS  
Principal Deputy Solicitor General  
GEOFFREY H. WRIGHT  
Associate Deputy Solicitor General  
ROBERT E. ASPERGER  
Deputy Attorney General



GONZALO C. MARTINEZ  
Deputy Solicitor General  
*Attorneys for Defendant and Respondent  
Board of Trustees of the California State  
University*

## **DECLARATION OF GONZALO C. MARTINEZ**

I, Gonzalo C. Martinez declare:

1. I am a Deputy Solicitor General, employed by the Office of the Solicitor General in the California Attorney General's Office, California Department of Justice. I am one of the attorneys representing California State University. I have personal knowledge of the contents of, and may competently testify concerning, this declaration.

2. I execute this declaration pursuant to California Rules of Court, rules 8.252 and 8.54, subd. (a)(2), which require a motion for judicial notice of matters outside the record to be accompanied by a supporting declaration.

3. The information in this declaration concerns a letter dated November 27, 1970, from Thomas M. O'Connor, former San Francisco City Attorney, to Thad Brown, former San Francisco Tax Collector, (Exhibit A); sections 601 and 616 of San Francisco's original parking tax ordinance, No. 286-70, which are cited in the November 27, 1970 letter (Exhibit B); and a provision of San Francisco Ordinance No. 291-10 (Exhibit C). The information provided is sufficient to allow the Court in its discretion to take judicial notice of these documents, as they will assist the Court in ruling on the appeal for the reasons set out in the accompanying memorandum and points and authorities.



4. **Exhibit A: Letter from Thomas O'Connor to Thad**

**Brown Regarding San Francisco Ordinance No. 286-70.** Ordinance No. 286-70 was enacted by the San Francisco Board of Supervisors in 1970. This letter is in the legislative history file for that ordinance (File No. 228-70-1), which was obtained at my direction from the Clerk's Office for the City and County of San Francisco. A true and correct copy is attached as Exhibit A.

6. **Exhibit B: Sections 601 and 616 of San Francisco**

**Ordinance No. 286-70.** Ordinance No. 286-70 was enacted by the San Francisco Board of Supervisors in 1970. Sections 601 and 616 of that ordinance are referenced in the November 27 letter from Thomas O'Connor, attached as Exhibit A. These sections are in the legislative history file for that ordinance (File No. 228-70-1), which was obtained at my direction from the Clerk's Office for the City and County of San Francisco. A true and correct copy of Sections 601 and 616, as reflected in the legislative history file, are attached as Exhibit B.

7. **Exhibit C: San Francisco Ordinance No. 291-10.**

Ordinance No. 291-10 was enacted by San Francisco's Board of Supervisors in 2010. A true and correct copy of the first page of the Ordinance and of a provision amending San Francisco's Business & Tax Code section 6.8-1 is attached as Exhibit C. This document was obtained at my direction from the Clerk's Office for the City and County of San

Francisco. The complete ordinance is available from the Clerk's Office by requesting File No. 101099, or by searching for File No. 101099 using the legislative search function on the City's website, available at <https://sfgov.legistar.com/Legislation.aspx>.

I declare under penalty of perjury that the foregoing is true and correct and that I executed this declaration in San Francisco, California on March 27, 2018.

  
\_\_\_\_\_  
GONZALO C. MARTINEZ

# **EXHIBIT A**

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

1970 DEC 15 AM 9:04

BY \_\_\_\_\_

Letter Opinion No. 70-66

228-70-1

November 27, 1970

Mr. Thad Brown  
Tax Collector  
107 City Hall  
San Francisco, California 94102

Subject: File No. 228-70-1  
San Francisco Parking Tax  
University of California  
in San Francisco

Dear Mr. Brown:

This is in response to your letter of October 7, 1970, requesting my opinion as to whether or not the San Francisco Parking Tax imposes a duty upon the University of California and other exempt nonprofit institutions to act as agent to collect the parking tax from users of their parking facilities.

It is my opinion that the San Francisco Parking Tax, as presently written, does not impose any collection duties upon the United States of America, the State of California, or any political subdivision of either thereof, or upon any person who is beyond the taxing power of the Board of Supervisors.

The obligation to act as collection agent for the parking tax is imposed only upon a "person" as defined in the ordinance, and Section 601(a) of the parking tax ordinance defines "person" so as to exclude expressly "the United States of America, the State of California, and any political subdivision of either thereof upon which the City and County is without power to impose the tax herein provided." Accordingly, the ordinance does not impose upon the United States or the State of California or its tax exempt political subdivisions the obligation to collect the tax from nonexempt users.

In addition, Section 616 of the parking tax ordinance provides in pertinent part:

Exhibit A - 1

Mr. Thad Brown

2

November 27, 1970

"This Article shall not apply to any person as to whom . . . it is beyond the power of the Board of Supervisors to impose the tax herein provided."

The above section must be construed to mean that persons beyond the taxing power of the Board of Supervisors are exempt not only from the tax imposed by Article 9 but also from all other provisions in Article 9, including specifically the duty to act as collection agent for the parking tax.

In view of the conclusions set forth above, I have, at your request, prepared an amendment to the parking tax ordinance which, if enacted, will permit the collection of the parking tax by the United States, the State of California, the political subdivisions of either thereof and other persons beyond the taxing power of the Board of Supervisors.

Very truly yours,

THOMAS M. O'CONNOR  
City Attorney

# **EXHIBIT B**

AMENDING PART III OF THE SAN FRANCISCO MUNICIPAL CODE BY ADDING ARTICLE 9 THERETO, INPOSING A TAX ON THE PARKING OF MOTOR VEHICLES IN PARKING STATIONS; PROVIDING FOR THE REGISTRATION OF OPERATORS OF PARKING STATIONS; FOR THE METHOD AND PROCEDURE FOR COLLECTING SAID TAX; FOR THE DEPOSIT OF FUNDS THEREOF; PRESCRIBING PENALTIES FOR VIOLATIONS OF THE PROVISIONS HEREOF; AND ESTABLISHING AN EFFECTIVE DATE\*HEREOF.

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

Section 1. Part III of the San Francisco Municipal Code is hereby amended by adding Article 9 thereto, reading as follows:

ARTICLE 9

TAX ON OCCUPANCY OF PARKING SPACE IN PARKING STATIONS

Sec. 601. Definitions. When used in this Article the following terms shall mean or include:

(a) "Person." An individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit excepting the United States of America, the State of California, and any political subdivision of either thereof upon which the City and County is without power to impose the tax herein provided.

(b) "Operator." Any person operating a parking station in the City and County of San Francisco, including, but not limited to, the owner or proprietor of such premises, lessee, sub-lessee, mortgagee in possession, licensee or any other person otherwise operating such parking station.

(c) "Occupant." A person who, for a consideration, uses, possesses or has the right to use or possess any space for the parking of a motor vehicle in a parking station under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any operator or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person.

Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of any unpaid tax or amounts of tax required to be collected, interest and penalties.

Sec. 616. Saving Clause. This Article shall not apply to any person as to whom, or to any occupancy as to which, it is beyond the power of the Board of Supervisors to impose the tax herein provided. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

Sec. 617. Violations, A Misdemeanor. Any person violating any of the provisions of this Article shall be guilty of a misdemeanor, and shall be punishable therefor by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the County Jail for a period of not more than six months or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Article is committed, continued or permitted by such person and shall be punishable accordingly.

Any operator or other person who fails or refuses to register as herein required, or to furnish any return required to be made, or



# **EXHIBIT C**

1 [Business and Tax Regulations Code: Common Administrative Provisions; Parking Tax;  
2 Business Registration]

3 **Ordinance amending the San Francisco Business and Tax Regulations Code by:**  
4 **(1) amending Article 6 (Common Administrative Provisions) to revise provisions**  
5 **relating to: certificates of authority to collect third-party taxes; prepayment and**  
6 **remittance requirements for hotel and parking operators; enforcement procedures and**  
7 **penalties; and to otherwise clarify and update the provisions of Article 6; (2) amending**  
8 **Article 9 (Tax on Occupancy of Parking Space in Parking Stations), Article 10 (Utility**  
9 **Users Tax), and Article 12 (Business Registration), to lengthen the time period that**  
10 **service suppliers must preserve records from 4 years to 5 years and to extend the**  
11 **payment date of the registration certificate; and (3) repealing Sections 608 through**  
12 **608.8 of Article 9 (Tax on Occupancy of Parking Space in Parking Stations); and**  
13 **(4) amending the San Francisco Administrative Code by amending Article XIII (Funds),**  
14 **Chapter 10 (Finance, Taxation, and Other Fiscal Matters), to correct references to the**  
15 **California Government Code.**

16 NOTE: Additions are single-underline italics Times New Roman;  
17 deletions are ~~strike-through italics Times New Roman~~.  
18 Board amendment additions are double-underlined;  
19 Board amendment deletions are ~~strikethrough normal~~.

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

21 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended  
22 by repealing Sections 6.11-4, 6.14-1, and 6.18-4 and amending Sections 6.1-1, 6.2-8, 6.2-9,  
23 6.2-13, 6.2-17, 6.2-18, 6.2-21, 6.4-1, 6.5-2, 6.6-1, 6.7-1, 6.7-2, 6.8-1, 6.9-1, 6.9-2, 6.9-3, 6.9-4,  
24 6.9-5, 6.10-1, 6.10-2, 6.10-3, 6.11-1, 6.11-2, 6.11-3, 6.12-2, 6.12-5, 6.13-1, 6.13-3, 6.13-5,  
25 6.13-6, 6.15-1, 6.15-2, 6.15-3, 6.15-4, 6.16-1, 6.17-1, 6.17-2, 6.17-3, 6.17-4, 6.18-1, 6.18-2,  
6.18-3, 6.18-5, 6.19-1, 6.19-3, 6.19-4, 6.19-5, 6.19-6, 6.19-9, 6.21-1, and 6.22-1, to read as

Supervisors Mirkarimi, Dufty  
BOARD OF SUPERVISORS

1     **SEC. 6.8-1. CITY, PUBLIC ENTITY AND CONSTITUTIONAL EXEMPTIONS.**

2             Nothing in Articles 6, 7, 9, 10, ~~10B10A~~, 11, 12, or 12-A shall be construed as imposing a  
3 tax upon:

4             (1) The City;

5             (2) The State of California, or any county, municipal corporation, district or other  
6 political ~~subdivisions~~~~sub-division~~ of the State, except where any constitutional or statutory  
7 immunity from taxation is waived or is not applicable;

8             (3) The United States of America, or any of its agencies or subdivisions, except where  
9 any constitutional or statutory immunity from taxation is waived or is not applicable; or

10            (4) Any person exempted from the particular tax by the Constitution or statutes of the  
11 United States or the Constitution or statutes of the State of California.

12            *The foregoing exemption from taxation does not relieve an exempt party from its duty to collect,*  
13 *report, and remit third-party taxes.*

14  
15     **SEC. 6.9-1. DETERMINATIONS, RETURNS AND PAYMENTS; DUE DATE OF TAXES.**

16            Except for jeopardy determinations under Section 6.12-2, and subject to prepayments  
17 required under Section 6.9-2, all amounts of taxes and fees imposed by Articles 6, 7, 9, 10,  
18 ~~10B10A~~, 11, and 12-A are due and payable, and shall be delinquent if not paid to the Tax  
19 Collector on or before the following dates:

20            (a) For the transient hotel occupancy tax (Article 7) and the parking space occupancy  
21 tax (Article 9), for each calendar quarter, on or before the last day of the month following each  
22 respective quarterly period;

23            (b) For the payroll expense tax (Article 12-A), on or before the last day of February of  
24 each year;

**In the Supreme Court of the State of California**

**CITY AND COUNTY OF SAN  
FRANCISCO,**

**Plaintiff and Appellant,**

**v.**

**REGENTS OF THE UNIVERSITY OF  
CALIFORNIA, et al.,**

**Defendants and Respondents.**

Case No. S242835

[Proposed] ORDER

Good cause appearing,

IT IS HEREBY ORDERED that Respondent's request for judicial notice is granted and the Court will take judicial notice of Exhibits A, B, and C contained with this motion.

Date:

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: City and County of San Francisco v. Regents of the University of California, et al.  
Case No.: S242835

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 27, 2018, I served the attached **REQUEST FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF GONZALO C. MARTINEZ; PROPOSED ORDER** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Peter Julian Keith  
Office of the City Attorney  
1390 Market Street, 6th Floor  
San Francisco, CA 94102

Benjamin Peters Fay  
Jarvis Fay Doporto & Gibson, LLP  
492 Ninth Street, Suite 310  
Oakland, CA 94607

Elise Karen Traynum  
University of California,  
Hastings College of the Law  
200 McAllister Street  
San Francisco, CA 94102

Dila Mignouna  
Munger, Tolles & Olson LLP  
1155 F Street N.W., Seventh Floor  
Washington, DC 20004-1357

Bradley S. Phillips  
Benjamin J. Horwich  
Munger, Tolles & Olson LLP  
560 Mission Street, Twenty-Seventh Floor  
San Francisco, CA 94105-2907

Clerk of Court  
San Francisco Superior Court  
c/o Honorable Marla J. Miller  
400 McAllister Street  
San Francisco, CA 94102  
Case No. CPF-14-513-434

Margaret Louisa Wu  
University of California  
Office of General Counsel  
1111 Franklin Street, 8th Floor  
Oakland, CA 94607

Clerk of Court  
California Court of Appeal  
First District  
350 McAllister Street  
San Francisco, CA 94102  
Case No. A144500

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 27, 2018, at San Francisco, California.

Ryan Carter  
Declarant



Signature

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