

CASE NO. S242835

SUPREME COURT OF THE STATE OF CALIFORNIA **SUPREME COURT  
FILED**

CITY AND COUNTY OF SAN FRANCISCO,

JUN 08 2018

Petitioner and Appellant,

Jorge Navarrete Clerk

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,

Deputy

Respondents.

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After A Decision By The Court of Appeal  
First Appellate District,  
Division One  
No. A144500

San Francisco Superior Court  
(The Honorable Marla J. Miller)  
No. CPF-14-513-434

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**CITY AND COUNTY OF SAN  
FRANCISCO'S MOTION REQUESTING  
JUDICIAL NOTICE; DECLARATION OF  
PETER J. KEITH**

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CITY AND COUNTY OF SAN  
FRANCISCO

## SUMMARY

If the Court grants Respondent Trustees of the California State University (CSU)'s March 27, 2018 request for judicial notice of certain legislative history of San Francisco's parking tax, the Court should also grant San Francisco's cross-motion for judicial notice of additional legislative history of the parking tax, to correct an inaccurate statement in CSU's brief regarding this legislative history.

## BACKGROUND

This appeal concerns whether a city can require state universities that operate paid parking lots within the city to collect and remit city parking taxes owed by their customers.

On March 27, 2018, CSU filed a motion for judicial notice of San Francisco's original parking tax ordinance enacted in 1970, and a subsequent November 27, 1970 San Francisco City Attorney letter advising that this 1970 ordinance by its terms did not require parking tax collection by state universities; CSU also seeks judicial notice of a 2010 amendment. CSU offers these materials to provide "helpful context to the present dispute between San Francisco and CSU." (RJN at 4.)

However, CSU's brief makes an incorrect statement that San Francisco's amendment of its ordinance to require tax collection by the state universities was "recent[]," specifically in 2010. (CSU 23-24.) But additional legislative history (which CSU's request for judicial notice does not include) shows that San Francisco amended its ordinance in 1971 to require the state universities to collect and remit parking tax.

## DISCUSSION

If the Court does grant judicial notice of the legislative history presented by CSU, it should also take judicial notice of additional legislative history materials to correct an inaccurate statement in CSU's brief (at 23-24) that the ordinance was only "recently" amended in 2010 to require state universities to collect and remit parking taxes. In fact, as additional legislative history shows, the ordinance was amended in 1971 to require state universities to collect and remit parking taxes.

Therefore, San Francisco makes this cross-motion for judicial notice of the following materials from San Francisco Board of Supervisors File No. 228-70-5, related to San Francisco Ordinance No. 9-71:

1. Ordinance No. 9-71. (Exhibit A to attached Declaration of Peter J. Keith.)
2. A December 17, 1970 letter from the proponent of Ordinance No. 9-71, San Francisco Tax Collector Thad Brown to the San Francisco Board of Supervisors (without its enclosures), explaining that the purpose of Ordinance No. 9-71 is to "mandate[] that non-taxable entities such as governmental agencies collect parking charges from their employees or the general public if they are parking their automobiles in parking stations owned or operated by such entities and are paying a parking charge for such privilege of parking." The letter goes on to explain that the proposed amendment is in response to the City Attorney's November 27, 1990 opinion letter (of which CSU sought judicial notice) stating that the 1970 ordinance did not require parking tax collection by the state universities. (Exhibit B to the attached Declaration of Peter J. Keith.)

Judicial notice of an ordinance is authorized by Evidence Code § 452(b). Judicial notice of an ordinance proponent's letter to the legislative

body is likewise authorized as an indicia of legislative intent. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 7 n.2.)

Per California Rules of Court 8.252(a)(2)(A), the relevance of these materials is to correct CSU's incorrect statement that San Francisco's intent to reach state universities is "recent[]" and dates only to 2010. It in fact dates to 1971. Per Rule 8.252(a)(2)(B), these materials were not presented to the trial court because CSU did not request judicial notice of its materials to the trial court.

Dated: June 8, 2018

DENNIS J. HERRERA  
City Attorney  
CHRISTINE VAN AKEN  
Chief of Appellate Litigation  
PETER J. KEITH  
Chief Attorney, Neighborhood &  
Residential Safety Division

By: 

PETER J. KEITH  
Attorneys for Plaintiff/Appellant  
CITY AND COUNTY OF SAN  
FRANCISCO

### **DECLARATION OF PETER J. KEITH**

I, Peter J. Keith, declare:

1. I am the Deputy City Attorney assigned to represent the City and County of San Francisco in this action. I have personal knowledge of the contents of this declaration, and, if called upon to testify, I could and would testify competently to the contents of this declaration.

2. My office requested from the Clerk of the Board of Supervisors for the City and County of San Francisco a certified copy of

the complete legislative file for Ordinance No. 9-71, namely File No. 228-70-5, and received from the Clerk said copy certified on May 29, 2018.

3. Attached as Exhibit A to this declaration is a true and correct copy of Ordinance No. 9-71 as passed, from the certified copy of the complete legislative file supplied by the Clerk.

4. Attached as Exhibit B to this declaration is a true and correct copy of the December 17, 1970 letter from the proponent of Ordinance No. 9-71, Tax Collector Thad Brown, to the San Francisco Board of Supervisors, without its enclosures, from the certified copy of the complete legislative file supplied by the Clerk.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 8, 2018.



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PETER J. KEITH

### INDEX TO EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	S.F. Ordinance No. 9-71 (1971)
B	Letter from Tax Collector Thad Brown to the San Francisco Board of Supervisors (December 17, 1970) (without enclosures)

# EXHIBIT A

1 AMENDING ARTICLE 9, PART III OF THE SAN FRANCISCO MUNICIPAL CODE BY  
2 AMENDING SECTION 601 THEREOF, RELATING TO IMPOSITION OF A TAX ON THE  
3 PARKING OF MOTOR VEHICLES IN PARKING STATIONS, TO REVISE THE DEFINI-  
4 TIONS OF THE TERMS "PERSON" AND "OPERATOR" AND BY AMENDING SECTION  
5 616 THEREOF TO CLARIFY THE STATUS OF GOVERNMENTAL AGENCIES.

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

7 Section 1. Sections 601 and 616 of Article 9 of Part III of the  
8 San Francisco Municipal Code are hereby amended to read as follows:

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

11 (a) "Person." A natural person, receiver, administrator,  
12 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
13 copartnership, joint venture, club, company, joint stock company,  
14 business trust, municipal corporation, the State of California, any  
15 political subdivision of the State of California, the United States,  
16 any instrumentality of the United States, domestic or foreign  
17 corporation, association, syndicate, society, or any group of indi-  
18 viduals acting as a unit, whether mutual, cooperative, fraternal,  
19 nonprofit or otherwise. Whenever the term "person" is used in any  
20 clause prescribing and imposing a penalty, the term as applied to  
21 corporations and business entities shall mean the officers thereof.

22 (b) "Operator." Any person operating a parking station in the  
23 City and County of San Francisco, including, but not limited to, the  
24 owner or proprietor of such premises, lessee, sub-lessee, mortgagee  
25 in possession, licensee or any other person otherwise operating such  
26 parking station. A person who otherwise qualifies as an operator as  
27 herein defined shall not, by reason of the fact that he was exempt  
28 from the tax herein imposed, be exempted from the obligations of an  
29 operator hereunder.  
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1 (c) "Occupant." A person who, for a consideration, uses,  
2 possesses or has the right to use or possess any space for the  
3 parking of a motor vehicle in a parking station under any lease, con-  
4 cession, permit, right of access, license to use or other agreement  
5 or otherwise.

6 (d) "Occupancy." The use or possession or the right to the  
7 use or possession of any space for the parking of a motor vehicle in  
8 a parking station.

9 (e) "Parking Station." The term "parking station" shall include,  
10 but is not limited to: (1) any outdoor space or uncovered plot,  
11 place, lot, parcel, yard or enclosure, or any portion thereof, where  
12 motor vehicles may be parked, stored, housed or kept, for which any  
13 charge is made; (2) any building or structure, or any portion thereof  
14 in which motor vehicles may be parked, stored, housed or kept, for  
15 which any charge is made.

16 (f) "Motor Vehicle." The term "motor vehicle" includes every  
17 self-propelled vehicle operated or suitable for operation on the  
18 highway.

19 (g) "Rent." The consideration received for occupancy valued in  
20 money, whether received in money or otherwise, including all receipts,  
21 cash, credits, and property or services of any kind or nature, and  
22 also the amount for which credit is allowed by the operator to the  
23 occupant, without any deduction therefrom whatsoever.

24 (h) "Return." Any return, filed or required to be filed as  
25 herein provided.

26 (i) "Tax Collector." The Tax Collector of the City and County  
27 of San Francisco.

28 (j) "Controller." The Controller of the City and County of  
29 San Francisco.  
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(k) "City and County." The City and County of San Francisco.

(l) "Tax." The tax imposed by this Article.

(m) "Parking Meter." Any device which, when the recording device thereof is set in motion, or immediately following the deposit of any coin, shall register the period of time that any motor vehicle may be parked adjacent thereto.

Sec. 616. Saving Clause. Nothing in this ordinance shall be construed as requiring the payment of any tax by the United States of America, or by the State of California, or by any municipal corporation, or by any of their subdivisions; nor shall this ordinance be construed as requiring the payment of any tax prohibited by the Constitution of the United States or by the Constitution of the State of California.

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.

APPROVED AS TO FORM:  
THOMAS M. O'CONNOR, City Attorney  
By S/John J. Doherty  
Deputy City Attorney

# **EXHIBIT B**

428-70-5  
CITY AND COUNTY OF SAN FRANCISCO

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
DEPARTMENT OF FINANCE AND RECORDS

OFFICE OF  
TAX COLLECTOR  
CITY HALL  
SAN FRANCISCO, CALIF. 94102  
TEL.: 558-6161

1970 DEC 18 AM 11:31

December 17, 1970

BY DE

SUBJECT: Parking Tax Ordinance

Through Thomas J. Mellon,  
Chief Administrative Officer

Honorable  
Board of Supervisors  
Room 235, City Hall  
San Francisco, California

Attention: Robert J. Dolan,  
Clerk of the Board

Gentlemen:

Please find attached a proposed amendment to the Parking Tax Ordinance which mandates that non-taxable entities such as governmental agencies collect parking charges from their employees or the general public if they are parking their automobiles in parking stations owned or operated by such entities and are paying a parking charge for such privilege of parking.

For your additional information please find attached copies of correspondence from the Vice Chancellor in charge of administration for the University of California, San Francisco, a letter from the Tax Collector to the City Attorney asking for an opinion and an opinion from the City Attorney outlining the reasons therefore and his suggested amendment for the correction of this deficiency.

Very truly yours,

Approved by:

*Virgil L. Elliott*  
Virgil L. Elliott,  
DIRECTOR, FINANCE & RECORDS

TB:gc

*Thad Brown*  
Thad Brown,  
TAX COLLECTOR

**PROOF OF SERVICE**

I, CATHERYN M. DALY, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On June 8, 2018, I served the following document(s):

**CITY AND COUNTY OF SAN  
FRANCISCO'S MOTION REQUESTING  
JUDICIAL NOTICE; DECLARATION OF  
PETER J. KEITH**

on the following persons at the locations specified:

California Court of Appeal  
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San Francisco, CA 94102

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***Co-Counsel for Respondent Regents of  
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in the manner indicated below:

- BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.
- BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. **A declaration from the messenger who made the delivery**  **is attached** or  **will be filed separately with the court.**
- BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be served electronically through **TrueFiling** in portable document format ("PDF") Adobe Acrobat.
- BY FACSIMILE:** Based on a written agreement of the parties to accept service by fax, I transmitted true and correct copies of the above document(s) via a facsimile machine at telephone number Fax # to the persons and the fax numbers listed above. The fax transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and **a copy of the transmission report**  **is attached** or  **will be filed separately with the court.**

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed June 8, 2018, at San Francisco, California.

  
CATHERYN M DALY