

HOUSE No. 3076

By Mr. Petruccelli of Boston, petition of Anthony Petruccelli and others relative to permitting cities and towns to impose an excise tax on the use of off-street parking facilities. Revenue.

The Commonwealth of Massachusetts

PETITION OF:

Anthony Petruccelli
Thomas M. Menino

Michael F. Rush
Elizabeth A. Malia

In the Year Two Thousand and Seven.

AN ACT PERMITTING CITIES AND TOWNS TO IMPOSE AN EXCISE ON THE USE OF OFF STREET PARKING FACILITIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws as appearing in the 2004 Official
2 Edition, are hereby amended by inserting after chapter 64K the
3 following chapter:—
4 Chapter 64L: Excise Upon Transfer of Parking Spaces
5 Section 1. As used in this chapter, the following words, unless
6 the context otherwise indicates, shall have the following meanings:
7 “Motor vehicles”, as defined in section one of chapter 90 of the
8 General Laws.
9 “Commercial”, any parking facility as defined herein other than
10 (a) one provided or leased to occupants of a residence on the same or
11 other premises for use only in connection with and as an accessory
12 to the occupancy of such residence, or (b) one operated exclusively
13 by an owner or lessee of a hotel, motel, or lodging house, as defined
14 in chapter 64G, or a trailer park, to the extent that the parking facility
15 is provided to guests or tenants of such hotel, motel, lodging house
16 or trailer park for no additional consideration.
17 “Operator”, any person operating an off-street, unmetered parking
18 facility, including, but not limited to, the owner or proprietor of such
19 premises, lessee, sublessee, mortgagee in possession, licensee or any
20 other person otherwise operating such parking facility, and including

21 the commonwealth and political subdivisions, agencies and authori-
22 ties thereof, except as otherwise provided by law.

23 “Parking facility”, any premises utilized in whole or in part for
24 the provision of commercial, unmetered, off-street parking for motor
25 vehicles, whether in a building or not, including facilities open to the
26 public for a fee.

27 “Parking fee”, the consideration received upon an express or
28 implied contract or under a lease or otherwise, whether or not sepa-
29 rately stated, and whether or not paid, provided or allowed by the
30 person on whose behalf the motor vehicle is parked or stored or by
31 some other person.

32 “Parking space”, that portion of a parking facility normally allo-
33 cated to the use of a single motor vehicle.

34 “Person”, an individual, partnership, trust or association joint
35 stock company, corporation, whether charitable or otherwise,
36 society, club, organization, institution, estate receiver, trustee,
37 assignee or referee and any person acting in a fiduciary or represen-
38 tative capacity, whether appointed by a court or otherwise, or any
39 combination of individuals acting as a unit.

40 “Transfer of the right to use”, that transfer of right which occurs
41 whenever a motor vehicle enters a parking facility for consideration.

42 “Treasurer”, the treasurer of a city or town which accepts the pro-
43 visions of this Act.

1 SECTION 2. The provisions of this act shall not be construed to
2 include parking facilities operated by the United States or an instru-
3 mentality thereof.

1 SECTION 3. Any city or town which accepts the provisions of
2 this Act, as hereinafter provided, may impose an excise on the
3 transfer of the right to use any parking space in a parking facility for
4 the purpose of parking a motor vehicle by any operator for a period
5 of more than two hours at a rate of 10% of the parking fee for each
6 transfer of the right to use such parking space.

1 SECTION 4. Reimbursement for an excise imposed under this
2 Act shall be paid by the person using such parking space to the oper-
3 ator and each operator shall collect from the person using such
4 parking space the full amount of the excise imposed by this Act.

1 SECTION 5. The amount of the excise collected by the operator
2 from the person using such parking space under the provisions of
3 this Act shall be stated and charged separately from the parking fee
4 at the time that any transfer of the right to use such parking space is
5 made, or any evidence of such transfer is issued or used by the oper-
6 ator.

1 SECTION 6. On or before the twentieth day of each calendar
2 month, every operator who has made any transfer of the right to use
3 any parking space on which an excise is payable under the provi-
4 sions of this Act during the preceding calendar month shall file a
5 sworn return with the treasurer, in such form as the treasurer shall
6 prescribe, giving such information as the treasurer shall require for
7 the determinate of the excise imposed by this Act. Said excise shall
8 be due and payable on or before the due date of the return.

1 SECTION 7. Every operator shall keep and preserve suitable
2 records of the number of such transfers of the right to use such
3 parking spaces and such other books and accounts as the treasurer
4 may require to determine the amount of the excise due under this
5 Act.

1 SECTION 8. Any operator who knowingly fails to file a return as
2 provided in section 6, or who knowingly files a fraudulent return,
3 shall be subject to a fine of five hundred dollars for each such failure
4 or fraudulent return. If any recipient fails to file a return on or before
5 its due date, the city or town may suspend or revoke any license or
6 permit issued to the recipient by the city or town allowing the recip-
7 ient the right or privilege to operate an off-street parking facility, as
8 defined in this chapter, in that city or town. Notice of suspension or
9 revocation shall be deemed sufficient if sent by certified mail to the
10 last known place of residence or business of said recipient. Notice of
11 suspension or revocation shall be accompanied by a statement which
12 provides that the recipient may obtain a hearing upon his written
13 request. The request must be filed with the city or town before the
14 expiration of the twenty-first day from the date of issuance of said
15 notification of suspension or revocation.

16 If a recipient charged with failing to file a return on or before its
17 due date requests a hearing before the expiration of the twenty-first
18 day from the date of issuance of said notification of suspension or
19 revocation, the city or town shall forthwith schedule the matter
20 before a person referred to as a hearing officer, said hearing officer
21 to be such person as the treasurer may designate. Written notice of
22 the date, time and place of said hearing shall be sent by certified
23 mail to the recipient. Said hearing shall be informal and the rules of
24 evidence shall not apply. The hearing officer shall keep a record of
25 the hearing and the decision of the hearing officer, which shall be in
26 writing, shall be final subject to judicial review as provided by
27 section 14 of chapter 30A of the General Laws. Sums due a city or
28 town under the provisions of this chapter may be recovered by such
29 city or town in an action brought in the name of the treasurer.

1 SECTION 9. This act shall take effect in a city or town on the
2 first day of the first full month not less than thirty days following its
3 acceptance in the following manner: in a city having a plan D or
4 plan E charter by a majority vote of the city council; in any other
5 city by vote of its city council, approved by the mayor; and in a town
6 by submission for acceptance to the registered voters in the form of
7 the following question which shall be printed upon the official ballot
8 to be used at election:— “Shall the town impose an excise on the use
9 of certain parking facilities within the town?”

1 SECTION 10. Any Municipality that so adopts this chapter may
2 also by vote of the board of selectman or mayor and city council, or
3 by the declaration of a state of emergency by the board of selectman,
4 town manager or mayor, temporarily suspend the collection of this
5 excise during the course of weather emergencies or other public
6 safety or traffic related emergencies or events that may require the
7 clearing of public ways for the public good upon reasonable public
8 notification of such an emergency or event and shall refund any
9 amount collected in error upon proof of that error made to the trea-
10 surer.