

SENATE No. 1323

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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 2006 official edition, are hereby
2 amended by inserting after chapter 64K the following chapter:-

3 Chapter 64L: Excise Upon Transfer of Parking Spaces

4 Section 1. As used in this chapter, the following words, unless the context otherwise
5 indicates, shall have the following meanings: "Motor vehicles", as defined in section one of
6 chapter 90 of the General Laws.

7 "Commercial", any parking facility as defined herein other than (a) one provided or
8 leased to occupants of a residence on the same or other premises for use only in connection with
9 and as an accessory to the occupancy of such residence, or (b) one operated exclusively by an
10 owner or lessee of a hotel, motel, or lodging house, as defined in chapter 64G, or a trailer park, to
11 the extent that the parking facility is provided to guests or tenants of such hotel, motel, lodging
12 house or trailer park for no additional consideration.

13 "Operator", any person operating an off-street, unmetered parking facility, including, but
14 not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in
15 possession, licensee or any other person otherwise operating such parking facility, and including
16 the commonwealth and political subdivisions, agencies and authorities thereof, except as
17 otherwise provided by law.

18 "Parking facility", any premises utilized in whole or in part for the provision of
19 commercial, unmetered, off-street parking for motor vehicles, whether in a building or not,
20 including facilities open to the public for a fee.

21 "Parking fee", the consideration received upon an express or implied contract or under a
22 lease or otherwise, whether or not separately stated, and whether or not paid, provided or allowed
23 by the person on whose behalf the motor vehicle is parked or stored or by some other person.

24 "Parking space", that portion of a parking facility normally allocated to the use of a single
25 motor vehicle.

26 "Person", an individual, partnership, trust or association joint stock company,
27 corporation, whether charitable or otherwise, society, club, organization, institution, estate
28 receiver, trustee, assignee or referee and any person acting in a fiduciary or representative
29 capacity, whether appointed by a court or otherwise, or any combination of individuals acting as
30 a unit.

31 "Transfer of the right to use", that transfer of right which occurs whenever a motor
32 vehicle enters a parking facility for consideration.

33 "Treasurer", the treasurer of a city or town which accepts the provisions of this Act.

34 SECTION 2. The provisions of this act shall not be construed to include parking facilities
35 operated by the United States or an instrumentality thereof.

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

40 SECTION 4. Reimbursement for an excise imposed under this Act shall be paid by the
41 person using such parking space to the operator and each operator shall collect from the person
42 using such parking space the full amount of the excise imposed by this Act.

43 SECTION 5. The amount of the excise collected by the operator from the person using
44 such parking space under the provisions of this Act shall be stated and charged separately from
45 the parking fee at the time that any transfer of the right to use such parking space is made, or any
46 evidence of such transfer is issued or used by the operator.

47 SECTION 6. On or before the twentieth day of each calendar month, every operator who
48 has made any transfer of the right to use any parking space on which an excise is payable under
49 the provisions of this Act during the preceding calendar month shall file a sworn return with the
50 treasurer, in such form as the treasurer shall prescribe, giving such information as the treasurer
51 shall require for the determinate of the excise imposed by this Act. Said excise shall be due and
52 payable on or before the due date of the return.

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

56 SECTION 8. Any operator who knowingly fails to file a return as provided in section 6,
57 or who knowingly files a fraudulent return, shall be subject to a fine of five hundred dollars for
58 each such failure or fraudulent return. If any recipient fails to file a return on or before its due
59 date, the city or town may suspend or revoke any license or permit issued to the recipient by the
60 city or town allowing the recipient the right or privilege to operate an off-street parking facility,
61 as defined in this chapter, in that city or town. Notice of suspension or revocation shall be
62 deemed sufficient if sent by certified mail to the last known place of residence or business of said
63 recipient. Notice of suspension or revocation shall be accompanied by a statement which
64 provides that the recipient may obtain a hearing upon his written request. The request must be
65 filed with the city or town before the expiration of the twenty-first day from the date of issuance
66 of said notification of suspension or revocation.

67 If a recipient charged with failing to file a return on or before its due date requests a
68 hearing before the expiration of the twenty-first day from the date of issuance of said notification
69 of suspension or revocation, the city or town shall forthwith schedule the matter before a person
70 referred to as a hearing officer, said hearing officer to be such person as the treasurer may
71 designate. Written notice of the date, time and place of said hearing shall be sent by certified
72 mail to the recipient. Said hearing shall be informal and the rules of evidence shall not apply.
73 The hearing officer shall keep a record of the hearing and the decision of the hearing officer,
74 which shall be in writing, shall be final subject to judicial review as provided by section 14 of
75 chapter 30A of the General Laws. Sums due a city or town under the provisions of this chapter
76 may be recovered by such city or town in an action brought in the name of the treasurer.

77 SECTION 9. This act shall take effect in a city or town on the first day of the first full
78 month not less than thirty days following its acceptance in the following manner: in a city having

79 a plan D or plan E charter by a majority vote of the city council; in any other city by vote of its
80 city council, approved by the mayor; and in a town by submission for acceptance to the
81 registered voters in the form of the following question which shall be printed upon the official
82 ballot to be used at election:-- "Shall the town impose an excise on the use of certain parking
83 facilities within the town?"

84 SECTION 10. Any Municipality that so adopts this chapter may also by vote of the
85 board of selectman or mayor and city council, or by the declaration of a state of emergency by
86 the board of selectman, town manager or mayor, temporarily suspend the collection of this excise
87 during the course of weather emergencies or other public safety or traffic related emergencies or
88 events that may require the clearing of public ways for the public good upon reasonable public
89 notification of such an emergency or event and shall refund any amount collected in error upon
90 proof of that error made to the treasurer.