

1 **Roger Jon Diamond, SBN 40146**
Attorney at Law
2 Main Street Law Offices
2115 Main Street
3 Santa Monica CA 90405-2215
4 Tel: 310.399.3259
5 Fax: 310.392.9029
6 Attorney for Defendants

7 Attorney for Defendants
8 **Sohrab Sahab and Prestige Parking, Inc.**

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12 **THE PEOPLE OF THE STATE OF**)
13 **CALIFORNIA,**)

14 **Plaintiff,**)

15 **vs.**)

16 **SOHRAB SAHAB and PRESTIGE**)
17 **PARKING, INC.,**)

18 **Defendants.**)
19)
20)
21)

Case No.: 6 CA 02508

**NOTICE OF MOTION FOR ORDER
GRANTING NEW TRIAL OR
DISMISSING COMPLAINT;
MEMORANDUM OF POINTS &
AUTHORITIES**

**DATE: 8/14/09
TIME: 8:30 A.M.
DEPT: 45**

22 **TO: THE PEOPLE OF THE STATE OF CALIFORNIA,**
23 **PLAINTIFF, AND TO CARMEN A. TRUTANICH, CITY ATTORNEY**
24 **AND RICHARD KRAFT, DEPUTY CITY ATTORNEY.**

26 **Please take notice that on August 14, 2009 at 8:30 a.m. or as soon**
27 **thereafter as counsel may be heard in Department 45 of the above entitled**
28

1 **court, defendants will move the Court for an Order dismissing the**
2 **Complaint or granting a new trial or arrest of judgment.**

3
4 Said motion will be heard on this Notice of Motion, the pleadings on file,
5 the testimony, and exhibits produced at trial, and such other evidence of which
6 the Court may take judicial notice, including Ordinance numbers 165949 (Court
7 Exhibit, original parking occupancy tax ordinance) and 180446 (billboard
8 inspection ordinance adopted by City Council on December 17, 2008) [Judicial
9 Notice Requested].
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12 Said Motion is made pursuant to Penal Code Sections 1179, 1181, 1182,
13 1185 and 1187.
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15 The grounds for the motions are as follows:

- 16 1) Los Angeles Municipal Code Section 11.00(m) does not
17 criminalize Section 21.15.7;
18
- 19 2) If Los Angeles Municipal Code Section 11.00(m) does
20 criminalize Section 21.15.7 such criminalization violates the
21 Due Process clause of the Fourteenth Amendment and Article I,
22 Section 7 of the California Constitution;
23
- 24 3) Defendants were not charged with violating Section 11.00(m)
25 nor were they found guilty of violating Section 11.00(m); they
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1 were charged only with violating Section 21.15.7 and that
2 section does not provide for criminal liability;

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4 4) Evidence of prior “bad acts” (e.g., owing taxes in 2002-2004
5 and failure to maintain records) was admitted over objection, to
6 the prejudice of defendants; such evidence should have been
7 excluded;
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10 5) The Court excluded evidence that the City of Los Angeles not
11 only has a civil remedy to collect the taxes allegedly owed to it,
12 the City Attorney has actually filed a civil suit to collect the very
13 taxes allegedly owed in this case, City of Los Angeles vs.
14 Prestige Parking, Inc., L.A.S.C. Nos. BC 396223 and BC
15 396396;
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17
18 6) The Court improperly restricted defendants’ presentation by
19 ordering its attorney not to even argue that a civil remedy is
20 available, thereby allowing the jury to believe that unless the
21 jury convicted the defendants the City would not be able to
22 collect the taxes allegedly due;
23

24
25 7) The Court would not allow the jury to be presented with
26 equitable entrapment defensive evidence, unless that evidence
27 consisted of official statements by high city officials;
28

1 8) Defendants cannot be convicted for failing to remit the taxes
2 because the obligation to remit the taxes only exists when the
3 statement is filed; if no statement is filed no tax is to be
4 remitted.
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6 **Respectfully Submitted;**
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10 **Roger Jon Diamond**
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12 **Attorney for Defendants**
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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. Introduction**

3 Defendants have moved the Court for a new trial, for dismissal and
4 for arrest of judgment.
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6 **II. Statement of the Case**

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8 On May 29, 1990 the City Council adopted Ordinance No. 165949
9 that established the parking occupancy tax. The Ordinance does not indicate
10 how many votes were cast in favor of the Ordinance, which imposed a tax
11 upon each occupant of a parking lot in the amount of 10% of the parking fee.
12 The parking lot operator was required to collect the fee and pay the tax to the
13 City. See Section 21.15.4. The Ordinance was amended by Ordinance No.
14 176004 which became operative on December 1, 2004. The amendment was
15 not adopted by the electorate contrary to the requirements of Proposition 218.
16 Administration of the Ordinance was to be done by the City Clerk and the
17 taxes paid quarterly. See Section 21.15.7.
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22 The Code, as amended, requires the parking lot operator to make a
23 statement to the Director of Finance of the total fees charged and received,
24 and the amount of tax collected, by the 25th of the month following the
25 preceding calendar month when the tax was collected or should have been
26 collected. See Section 21.15.7.
27
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1 Section 21.15.8 provides on that interest and penalties “shall attach
2 and be paid by the operator....”

3 Section 21.15.9 provides the Director of Finance with additional
4 powers and duties. Section 21.15.10 provides for assessments by the Director
5 of Finance.
6

7 Finally, Section 21.15.13 provides:
8

9 Any tax required to be paid by any occupant under
10 the provisions of this article shall be deemed a debt owed
11 by the occupant to the City. Any such tax collected by an
12 operator which has not been paid to the City shall be
13 deemed a debt owed by the operator to the City. Any
14 person owing money to the City under the provisions of
15 this article shall be liable to an action brought in the name
16 of the City for the recovery of such amount. Any operator
17 who undertakes legal action to recover any unpaid
18 parking fee from an occupant may include the amount of
19 tax due from the occupant in the amount sought to be
20 recovered.
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22 Notwithstanding the absence of any criminal or penal sanction in
23 the Parking Occupancy Tax Ordinance as amended, the City Attorney filed a 310
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1 count misdemeanor complaint against Defendants on June 23, 2006 with respect
2 to 29 parking lots operated by defendant Prestige Parking, Inc. not by Sohrab
3 Sahab.
4

5 The Complaint double charged defendants pursuant to Los Angeles
6 Municipal Code Section 21.15.7. Specifically, 149 lot months counts charged
7 defendants with failing to make the monthly statement to the Director of Finance
8 and an additional 149 lot months charged the defendants with violating the same
9 Section 21.15.7 by not remitting the tax each month. Thus, these were two sets
10 of 149 lot months that were based on the same code section, L.A.M.C. 21.15.7.
11

12 This was a legal impossibility because Section 21.15.7 only requires
13 the remission of the tax “[a]t the time the statement is filed...” Obviously if no
14 statement is filed, the tax remission is not required. There is no penal
15 consequence for not making the tax remission. A condition precedent to the
16 obligation to pay (the failure of which is arguably a crime) is the filing of the
17 statement: “Each operator shall, on or before the 25th day of each calendar
18 month, make a statement to the Director of Finance of the total fees charged and
19 received, and the amount of tax collected for parking occupancies during the
20 preceding calendar month. At the time the statement is filed, the full amount of
21 the tax collected, and tax not collected but required to be collected, shall be
22 remitted to the Director of Finance....” This provision regarding the making of a
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1 statement or the filing of a statement is hopelessly confusing and unclear. This
2 is especially so because the initial ordinance (No. 165949) referred to the
3 statement being "...on forms provided by him...." but this phrase was omitted
4 from the amendment. Thus, defendants submit that it is not a crime to fail to
5 make the statement which the City Attorney alleged in the 310 count complaint
6 was not made, especially because the Ordinance as amended refers to filing the
7 statement.
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11 Defendants are not contending that there is no civil liability. Rather
12 they assert that the regulatory scheme contemplates the accruing of penalties and
13 interest, civil liability, and the revocation of police department parking lot
14 permits.
15

16 The evidence in this case established that defendants are the only
17 persons ever to have been prosecuted for violating Los Angeles Municipal Code
18 Section 21.15.7. No one else has ever been prosecuted criminally for violating
19 Section 21.15.7.
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22 Defendants responded to the 310 count complaint by pleading not
23 guilty. The plea of not guilty is a well recognized plea in criminal law. During
24 closing argument the prosecutor referred to guilty people who have pleaded not
25 guilty such as Jack Ruby who shot Lee Harvey Oswald on national television.
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1 The trial began on July 16, 2009 and ended on August 4, 2009 with
2 multiple guilty verdicts. The Court allowed defendant Sahab to remain free on
3 his own recognizance pending a hearing on this motion and pending sentencing.
4

5 **III. ARGUMENT**

6 **A. A VIOLATION OF LOS ANGELES MUNICIPAL CODE**
7
8 **SECTION 21.15.7 DOES NOT CONSTITUTE A CRIME**

9 There is no criminal provision in Section 21.15.7. The City
10 Council could not have intended that Section 21.15.7 be construed
11 as a criminal statute. It is not written as a criminal statute.
12

13 When the City Council wants to criminalize conduct it knows
14 how to do it. There are numerous provisions in the Municipal Code
15 that are penal in nature. See for example, Sections 41.03 to 41.71,
16 46.91,¹ and 49.5.19.²
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20 ¹ SEC. 46.91. TOBACCO RETAILER'S PERMIT REQUIRED.

21 (Title and Section Amended by Ord. 179,436, Eff. 1/28/08.)

22 (a) It shall be a misdemeanor for any person or proprietor, within the City of Los Angeles, to act as a
23 tobacco retailer at a location for which a valid Tobacco Retailer's Permit has not been issued pursuant to this
24 article. A separate Tobacco Retailer's Permit is required for each location at which tobacco retailing is to occur.
25 No permit shall be issued to authorize tobacco retailing at any place other than a fixed location. Tobacco
26 retailing from any non-permanent location, including from vehicles, is prohibited. No permit shall be issued for
27 residences, newsstands, or locations where engaging in tobacco retailing is prohibited by federal, state or local
28 law.

(b) A person or proprietor without a valid Tobacco Retailer's Permit, including a person or proprietor
whose permit has been suspended, shall keep all tobacco products and tobacco paraphernalia out of public view.
The public display of tobacco products or tobacco paraphernalia in violation of this provision shall constitute
tobacco retailing without a permit.

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2 (c) Each day that a person or proprietor sells or offers for sale tobacco, tobacco products or tobacco
paraphernalia without a valid Tobacco Retailer's Permit shall constitute a separate violation.

3 ² Section 49.5.19: ENFORCEMENT.

4 (First Para. Repealed by Ord. No. 170,538, Eff. 7/13/95.)

5 A. Criminal Enforcement.

6 1. Any person who knowingly or willfully violates any provision of this article is guilty of a
misdemeanor. Any person who knowingly or willfully causes any other person to violate any provision of this
7 article, or who aids and abets any other person in the violation of any provision of this article, shall be liable
under the provisions of this section.

8
9 2. Prosecution of violation of any provision of the article shall be commenced within four years after the
date of the violation.

10 3. No person convicted of a misdemeanor under this article shall act as a lobbyist or as a City contractor
for a period of four years following the date of the conviction unless the court at the time of sentencing
11 specifically determines that this provision shall not be applicable.

12 4. For the purposes of this section, a plea of nolo contendere shall be deemed a conviction.

13 B. Civil Actions.

14 1. Any person who intentionally or negligently violates any provision of this article shall be liable in a
civil action brought by the City Attorney, the City Ethics Commission or by any person residing within the City
15 for an amount not more \$5,000 per violation, or for more than three times the amount the person failed to report
properly or unlawfully contributed, expended, gave or received, whichever is greater.

16
17 2. If two or more persons are responsible for any violation, they shall be jointly and severally liable.

18 3. Any person, other than the City Attorney, before filing a civil action pursuant to this subsection, shall
first file with the City Ethics Commission a written request for the Commission to commence the action. The
19 request shall contain a statement of the grounds for believing a cause of action exists. The Commission shall
respond within 40 days after receipt of the request indicating whether it intends to file a civil action. If the
20 Commission indicates in the affirmative and files an action within forty days thereafter, no other action may be
brought unless the action brought by the Commission is dismissed without prejudice.

21
22 4. In determining the amount of liability, the court may take into account the seriousness of the violation
and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an
23 action, a private plaintiff shall receive fifty percent (50%) of the amount recovered. The remaining fifty percent
shall be deposited into the City's General Fund. In an action brought by the City Attorney or the Commission,
24 the entire amount shall be paid to the General Fund.

25 5. No action alleging a violation of this article may be filed more than four years after the date the
violation occurred.

26 C. Injunctive Relief. Any person residing within the City of Los Angeles including the City Attorney,
27 may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this article.

1 In contrast to these sections, Section 21.15.7 and the other
2 provisions of the Parking Occupancy Tax Ordinance contain civil
3 remedies. There is a reference to “debt” and procedures for
4 collection the tax and enforcing the Ordinance.
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6 Indeed, Section 21.15.7 does not make non-payment of the
7 tax criminal because the duty to pay the tax on time is linked to the
8 filing of the monthly statement. If no statement is filed, there is no
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12 D. Costs of Litigation. The court may award to a party, other than an agency, who prevails in any civil
13 action authorized by this article, his or her costs of litigation, including reasonable attorneys fees. If the costs or
14 fees are awarded against the City, the payment of such award shall be the responsibility of the City.

15 E. Limitation of Actions. No civil action alleging a violation of this article shall be filed more than four
16 years after the date of the violation. (Amended by Ord. No. 170,538, Eff. 7/13/95.)

17 F. Discipline. Any appointed officer or employee who violates any provision of this article shall be
18 subject to administrative discipline by his or her appointing authority. Such discipline shall be administered in
19 accordance with procedures, prescribed by law or established by City policy, applicable to the officer or
20 employee. (Former Subsec. F. Repealed, Former Subsec. G. Redesignated as new Subsec. F. by Ord. No.
21 172,942, Eff. 1/21/00, Oper. 7/1/00.)

22 G. Enforcement of Community Redevelopment Agency and Housing Authority Ethics Regulations.
23 (Added by Ord. No. 175, 877, Eff. 5/5/04.)

24 1. In the event that the Community Redevelopment Agency of the City of Los Angeles and/or the
25 Housing Authority of the City of Los Angeles adopt governmental ethics regulations governing the conduct of
26 their officers and employees and former officers and employees, violations of those regulations shall be subject
27 to the civil enforcement proceedings set forth in Subsections B through E of this section and to the
28 administrative enforcement provisions of Charter Section 706.

2. The City Ethics Commission is authorized to conduct administrative enforcement investigations and
proceedings and to impose administrative penalties and orders for violations of governmental ethics regulations
adopted by the Community Redevelopment Agency of the City of Los Angeles and/or the Housing Authority of
the City of Los Angeles. Those proceedings shall be governed by the City Ethics Commission's enforcement
regulations contained in Section 24.1.2 of the Los Angeles Administrative Code, as amended.

3. Any officer or employee of the Community Redevelopment Agency or the Housing Authority who
violates any provision of the governmental ethics regulations adopted by those agencies shall be subject to
administrative discipline by his or her appointing authority. That discipline shall be administered in accordance
with procedures, prescribed by law or established by agency policy, applicable to the officers or employees.

1 violation for non-payment (non-remission). Rather, a “penalty” is
2 imposed that can be collected by the City in a civil action. If the
3 failure to pay the tax on time were a crime, no one would pay late to
4 cut off the accrual of the penalty (and interest) because such a late
5 payment would constitute admission of a criminal act or omission.
6
7 Clearly such a provision would make no sense. The obvious goal of
8 the Ordinance is to maximize revenue to the City, not punish one
9 who pays late by jailing him or her. It should be noted for purposes
10 of construction that the Code itself [Section 11.00(c)] provides that
11 “The provisions of this Code and all proceedings under it are to be
12 construed with a view to effect its objectives and to promote
13 justice.”
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18 Moreover the confusion about making a statement and filing
19 a statement militates against a determination that the Parking
20 Occupancy Tax Ordinance is a criminal statute.
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22 The City responds that L.A.M.C. Section 11.00(m)³ is a
23 catchall provision that makes every failure “to comply with any of
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26 ³ It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this
27 Code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of
28 this Code, shall be guilty of a misdemeanor unless that violation or failure is declared in this Code to be an
infraction. An infraction shall be tried and be punishable as provided in Section 19.6 of the Penal Code and the
provisions of this section. Any violation of this Code that is designated as a misdemeanor, may be charged by
the City Attorney as either a misdemeanor or an infraction.

1 the requirements of [the] Code...” a crime. This cannot be literally
2 true. If it were, the last sentence of Section 11.00(m) essentially
3 criminalizes the failure of every single municipal employee who
4 missed any deadline to do anything by a time certain and creates a
5 separate misdemeanor for each day they are late. Furthermore,
6 since arguably the Mayor and every other supervisor above
7 employees who miss deadlines are ‘permitting’⁴ the offense to
8 continue, they too are committing a misdemeanor each day the
9 deadline is not met. The Mayor, the City Council members, and
10 every other elected official would be guilty of misdemeanors for
11 violating sections 11.11, 11.5.4, 11.5.5, 11.5.6, 11.5.6(D), 11.5.6(F),
12 11.5.7(c)(4), and 21.26(i).
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21 Every violation of this Code is punishable as a misdemeanor unless provision is otherwise made, and shall be
22 punishable by a fine of not more than \$1,000.00 or by imprisonment in the County Jail for a period of not more
23 than six months, or by both a fine and imprisonment.

24 Every violation of this Code that is established as an infraction, or is charged as an infraction, is punishable by
25 a fine as set forth in this Code section, or as otherwise provided in this Code, not to exceed \$250.00 for each
26 violation.

27 Each person shall be guilty of a separate offense for each and every day during any portion of which any
28 violation of any provision of this Code is committed, continued or permitted by that person, and shall be
punishable accordingly.

⁴ Section 11.00(j) provides that “Whenever in this Code any act or omission is made unlawful it shall include
causing, permitting, aiding, abetting, suffering or concealing the fact of the act or omission.” ***Arguably under
this standard, the admission by Investigator Brian A. Young that he destroyed his notes of his investigation
could constitute “concealing the fact of the act or omission” if those notes contained anything incriminatory
which he had neglected to put in his reports.***

1 It is no answer to say that these sections do criminalize
2 failures to act, but that the City Attorney has the discretion not to
3 file criminal charges against the public officials who may fail to do
4 what is required of them. If the City Attorney has discretion not to
5 file charges with respect to these sections he would also have
6 discretion to file charges and seek jail time. If the city Attorney had
7 this discretion, the balance of power would be distorted in favor of
8 the City Attorney, who could go after anyone criminally.
9 Obviously that cannot be the case. We cannot let the City Attorney
10 rummage through the Municipal Code to find “omissions” or
11 failures to comply with requirements of the Code.
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16 Additionally, if it is a criminal offense to fail to do anything
17 or permit anything to be done in violation of the Code as outlined
18 above, it invites every mentally unstable individual and control
19 freak who encounters the City’s bureaucracy to perform private
20 person arrests under Sections 834 and 837(1) of the California Penal
21 Code of public employees who miss deadlines prescribed by the
22 Municipal Code. The City Attorney might not prosecute those
23 offenses, but the fact that they are legitimized could result in chaos
24 with vigilante squads roaming City Hall looking for bureaucrats and
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1 elected officials to arrest. Every time the City Ethics Commission
2 imposes a fine on candidates for office – such as it did with former
3 City Attorney Rockard Delgadillo who initiated this action –
4 vigilantes would be empowered under the City Attorney’s analysis
5 to arrest them for the theoretical criminal violation of Section
6 11.00(m). In fact, because Section 11.00(c) of the Code
7 incorporates the “objectives” of the City in the interpretation of the
8 Code provisions, that has arguably made objectives of Section 103
9 of the Charter key to interpretation of what is required to carry out
10 the Code provision. Section 103 of the Charter provides that:
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15 Every City office and department, and every City
16 official and employee, is expected to perform their
17 functions with diligence and dedication on behalf of the
18 people of the City of Los Angeles. In the delivery of City
19 services and in the performance of its tasks, the
20 government shall endeavor to perform at the highest
21 levels of achievement, including efficiency, accessibility,
22 accountability, quality, use of technologically advanced
23 methods, and responsiveness to public concerns within
24 budgetary limitations. Every analysis and review of the
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1 performance of the government and its officers shall seek
2 to ascertain whether these high standards are being met,
3 and if not, shall recommend methods of improvement.
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5 Under the above standard, every act of *inefficiency* on the
6 part of municipal employees and individuals could be deemed
7 criminal and subject to arrest by vigilantes.
8

9 It is no coincidence that this case is the only case where the
10 Parking Occupancy Tax has ever been used criminally. Even Boyd
11 Hudson, the Prestige Parking attorney testified that he thought there
12 was potential civil liability. No one had ever contended a failure to
13 act would constitute a crime. If the City Attorney is correct, a
14 payment one day late would constitute a crime (or an admission of a
15 prior criminal omission). That cannot be the law. The regulatory
16 system set up by the City Council did not include criminal
17 enforcement.
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22 On December 17, 2008, the City Council adopted Ordinance
23 No. 180446 (copy attached) which requires payment of \$342.00 by
24 a person in control of an offsite sign structure. If the payment is not
25 made in time a penalty accrues. There is no reference to a criminal
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1 violation. Yet, if the City Attorney is correct, one who pays late
2 would be subject to a 6 month jail sentence.

3 If the City Attorney is correct – that the failure to comply
4 with any requirement of the Code is guilty of a crime, the
5 Superintendent of the Department of Building and Safety could be
6 jailed for 6 months if he/she failed to issue an order to Comply after
7 observing even a **single violation** of the Municipal Code fee
8 Section 91.6205.18.6 of Ordinance 180446.

9 If any failure to act in a timely fashion is a crime under
10 Section 21.15.7, the provision is unconstitutional. The regulatory
11 provisions regarding the Parking Occupancy Tax Ordinance would
12 constitute a 5th Amendment trap.

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18 **B. THE COURT ERRED IN ALLOWING PRIOR BAD ACT**
19 **EVIDENCE RE FAILURE TO MAINTAIN RECORDS AND**
20 **UNDERPAYMENT OF TAXES**
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22 Defendants were unfairly subjected to prejudice by the
23 constant referring and emphasis by the City Attorney to alleged prior
24 under-reporting of taxes and failure to maintain records. The City
25 Attorney and prosecution witnesses made constant references to the
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1 alleged failure of witness Sara Sebastian to bring or maintain records for
2 years prior to 2005.

3 The case turned into a “tax evasion” case, not a “failure to file”
4 case. Defendants were not charged with violating Section 21.15.11 but
5 the constant references to that section and alleged violation prejudiced the
6 jury. It is not even clear what records must be kept. The code section
7 merely obligates the operator to keep and preserve “all records as may be
8 necessary to determine the amount of such tax...” What may be necessary
9 is too vague to withstand constitutional scrutiny.

10 Allegations regarding underpayment or non-payment of taxes prior
11 to 2005 were unfair and prejudicial. Defendants did not “open the door”
12 to such evidence by introducing evidence as to the pre-2005 audit. That
13 evidence was not offered to prove prior compliance (for which rebuttal
14 evidence would be admissible even if such evidence constituted prior bad
15 acts) but was offered to prove that defendants were led to believe that
16 Greg Holder allowed a “moratorium” until he produced new account
17 numbers and/or until he came up with a figure to settle a prior dispute.

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25 **C. THE COURT ERRED IN PROHIBITING ANY REFERENCE**
26 **TO CIVIL REMEDIES**
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1 Not only does the City have a civil remedy to collect unpaid taxes,
2 the City is actually pursuing such a remedy. The City has already filed
3 two civil suits against Prestige Parking to collect the taxes. The Court
4 prohibited defense counsel from introducing evidence of the civil suits
5 prohibited defense counsel from introducing evidence of the civil suits
6 (e.g. copies of the civil complaints). The court also prohibited defense
7 counsel from even arguing the hypothetical availability of such a civil
8 remedy.
9

10 Thus, the jury was allowed to engage in “reverse jury nullification,”
11 i.e., find the defendants guilty solely to allow the City to collect taxes in
12 the mistaken belief that convicting the defendants is the only way for the
13 City to collect back taxes.
14

15 Throughout this case, the prosecution has conducted itself as though
16 the criminal prosecution itself is the City’s instrument by which to collect
17 what the City thinks it is due. This runs counter to the standards
18 enunciated in a body of law stretching back to 1918. People v. Serrano
19 (1992) 11 Cal.App.4th 1672, 15 Cal.Rptr.2d 305 upheld the long stated
20 proposition that threatening criminal or administrative sanctions against a
21 person in order to obtain collateral advantage in a civil proceeding or to
22 collect a debt is extortion:
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1 "[G]ood faith, or the fact that the end accomplished by
2 such means is rightful, cannot avail one as a defense in
3 [an extortion] prosecution, any more than such facts
4 would constitute a defense where one compels payment
5 of a just debt by the threat to do an unlawful injury to the
6 person of his debtor. ..." (People v. Beggs (1918) 178 Cal.
7 79, 84 [172 P. 152]; see also Lindenbaum v. State Bar
8 (1945) 26 Cal.2d 565, 573 [160 P.2d 9]-In the crime of
9 attempted extortion, it "is immaterial that the money
10 which petitioner sought to obtain through threats may
11 have been justly due him[.]" and People v. Whipple
12 (1929) 100 Cal.App. 261, at p. 263 [279 P. 1008], citing
13 Beggs for the proposition that "one who obtained
14 payment from a thief of the value of property stolen by
15 [11 Cal.App.4th 1678] him, by threatening him with an
16 accusation and prosecution thereon unless he made such
17 payment, was guilty of the crime of extortion, without
18 regard to the exercise of good faith in exacting the
19 amount justly due.") **""[T]he law does not contemplate
20 the use of criminal purposes as a means of collecting a
21 debt. To invoke such process for the purpose named
22 is, as held by all authorities, contrary to public
23 policy[.]'"**(Merchants Col. Agency v. Roantree (1918) 37
24 Cal.App. 88, 90 [173 P. 600].) **[Emphasis added]**⁵

25
26 ⁵ By its collateral use of the criminal prosecution to (1) create beneficial political publicity for elected officials
27 including the Mayor, City Attorney (both former and current), and the City Controller (both former and current),
28 (2) frighten other taxpayers into paying debts they allegedly owe regardless of the illegitimacy of the use of
criminal procedure for that purpose, and (3) to collect a debt from the instant defendants, the criminal division of
the City Attorney's office has effectively crossed into territory that resembles the situation discussed in *People v.*
Municipal Court (Byars), 77 Cal.App.3d 294 (1978) and may have set the stage for recusal of the prosecutor.

1 The Court erred in imposing these restrictions on discussion of the
2 City's civil remedies.

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4 **D. THERE WAS NO EVIDENCE THAT DEFENDANTS MADE**
5 **A STATEMENT TO OR FILED A STATEMENT WITH THE**
6 **DIRECTOR OF FINANCE AND THEREFORE THERE WAS**
7 **NO DUTY TO REMIT TAXES THE FAILURE OF WHICH**
8 **WOULD CONSTITUTE A CRIME**
9

10 Section 21.15.7 only makes it an offense to fail to remit the tax to
11 the Director if a “statement is filed....” The City Attorney produced no
12 evidence that statements were filed. Indeed, the City Attorney contended
13 that defendants failed to make or file the statement. Thus, there was no
14 offense in failing to remit the tax.
15
16

17 Section 21.15.7 has been misused by the City Attorney to double
18 the alleged “crimes.” If the failure to make the statement or file the
19 statement is a crime (and defendants were charged with 149 counts) it
20 cannot also be a crime (and a violation of the same section) to fail to make
21 the payment. The City Attorney is double counting. The Code Section
22 cannot be used to double the amount of crimes. All the guilty verdicts
23 with respect to the failure to remit must be set aside. Otherwise the City
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1 Attorney will have obtained twice the amount of convictions authorized
2 under Section 21.15.7.

3 **E. THE COURT ERRED IN NOT INSTRUCTING ON**
4 **EQUITABLE ENTRAPMENT**
5

6 Defendants concede that there is no case on point but hopes to use
7 this case to make new law. Given that it is the first ever prosecution for
8 failure to pay the Parking Occupancy Tax it is *prima facie* a case of first
9 impression on the facts. Further, given that the law has been on the books
10 without ever having been prosecuted as a crime since its enactment, the
11 prosecution at best is suspect as any criminal aspect of the law is
12 *desuetudinal*.
13
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16 We have in this case the only utilization of the Parking Occupancy
17 Tax Ordinance for a criminal prosecution. It has been conceded that this
18 Ordinance has never been used before this case and has not been used
19 since. There are published reports that other parking lot operators are
20 delinquent because the tax rate is so severe.
21
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23 Defendants were led to believe that until the prior audit was
24 completed and a final figure determined, and the mistaken assessment
25 corrected, they could refrain from making payments. They were lulled
26 into this state of mind.
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1 The Court stated during the trial this evidence would go to
2 mitigation of criminal sanctions should there be convictions, but would
3 not constitute a defense to the charges. The Court erred. This is
4 understandable given the absence of case authority. Defendants are
5 making this contention to preserve the issue for appeal.
6

7
8 **F. THE PARKING OCCUPANCY TAX ORDINANCE AND**
9 **AMENDMENT ARE INVALID BECAUSE TAX MEASURES**
10 **REQUIRE A VOTE OF THE ELECTORATE**
11

12 *AB Cellular LA v City of Los Angeles* 59 CR 3rd 95, 150 CA 4th
13 747, 761 (2007) interpreted the effect on tax measures in light of the
14 November 1996 passage of Proposition 218. In that case, the court held
15 that:
16

17 Subdivision (h)(1)(B) of section 53750 provides that, for
18 purposes of article XIII C, a tax is increased if a decision
19 by an agency "[r]evises the methodology by which [a] tax
20 . . . is calculated, if that revision results in an increased
21 amount being levied on any person or parcel."
22

23 Subdivision (h)(2)(B) provides that a tax is not deemed
24 increased if it "[i]mplements or collects a previously
25 approved tax, . . . so long as the rate is not increased
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1 beyond the level previously approved by the agency, and
2 the methodology previously approved by the agency is
3 not revised so as to result in an increase in the amount
4 being levied on any person or parcel." (§ 53750, subd.
5 (h)(2)(B).) Section nine of the Omnibus Act mirrored
6 section 5 of Proposition 218.
7
8

9 When it changed the nature of the Ordinance from quarterly
10 remittance of tax revenues to monthly remittance, the City Council
11 effectively made the levy more burdensome by the change in
12 methodology. Prior to the change, the levy was less burdensome because
13 the parking operator could keep the revenues in an interest bearing
14 account for the quarter and keep the interest. Additionally, in an
15 inflationary period, the dollars remitted to the City at the end of the
16 quarter would be worth less than they were when collected. Effectively,
17 the City Council increased the tax without submitting the matter to the
18 electorate for a vote. The prior methodology of collection and the
19 calculations upon which it was based acted as the opposite of a "COLA"
20 ("Cost Of Living Allowance") escalator that is sometimes used by
21 governments in calculating taxes and entitlement payments to account for
22 inflation. In the prior system, the COLA factor operated in favor of the
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1 parking operator; in the revised system, it resulted in an increase in
2 revenue to the City and effectively took away the benefit of both inflation
3 and three months worth of interest on the revenue from the operator.
4

5 The AB Cellular (150 Cal.App.4th 761, 762) court was clear that
6 methodology of collection is a significant factor:
7

8 We arrive at this conclusion after employing a liberal
9 construction of Proposition 218 to limit local government
10 revenue and enhance taxpayer consent. A taxing
11 methodology must be frozen in time until the electorate
12 [150 Cal.App.4th 762] approves higher taxes. This
13 interpretation dovetails with the declarations in section 2
14 of Proposition 218 because it limits “the methods by
15 which local governments exact revenue from taxpayers
16 without their consent,” and it provides “effective tax
17 relief” and requires “voter approval of tax increases.”
18
19 Contrary to the City’s position, a local government’s
20 methodology cannot evolve—even if it is due to external
21 factors such as the MTSA—and avoid submitting it to
22 voter approval. Fn. 8 The Proposition 218 voters rebelled
23 against local government taxes that are moving targets.
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1 No doubt a useful precursor to the successful denial of
2 new taxes, in whatever form, is their transparency and
3 consistency, for if taxes are fluid then their increase may
4 well become an intractable problem that would “frustrate
5 the purposes of voter approval.”
6

7
8 **IV. CONCLUSION**

9 For the foregoing reasons defendants respectfully request the Court to set
10 aside the verdicts and either dismiss the Complaint or order a new trial.
11

12 **Respectfully Submitted,**
13

14
15 _____
16 **Roger Jon Diamond**

17 **Attorney for Defendants**
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