RULES JUL 2 1 2010 #1

THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: July 16, 2010 **IBA Report Number:** 10-64

Rules Committee Meeting Date: July 21, 2009

Item Number: 1

Response to Grand Jury Report Titled "Management of the Uptown Community Parking District"

OVERVIEW

On May 24, 2010 the San Diego County Grand Jury issued a report to the Mayor and City Council entitled "Management of the Uptown Community Parking District". In response to a citizen's complaint regarding the management of the Uptown Community Parking District (UPCD), the Grand Jury investigated allegations related to fiscal management, public transparency and community input. In addition to reviewing the relevant City Council Policy (#100-18) and other related documentation, the Grand Jury interviewed certain UPCD board members/employees, senior City management staff and volunteer organizations/businesses in the UPCD.

The resulting report included four findings and three recommendations. Both the Mayor and the City Council are required to provide comments to the Presiding Judge of the San Diego Superior Court on each of the findings and recommendations within ninety days. This report presents the City Council's response as recommended by the IBA.

Prior to developing response recommendations for the City Council, the IBA reviewed the Mayor's response and discussed the Grand Jury's findings/recommendations with City Planning and Community Investment Department staff and the Executive Director of the Uptown Partnership. For each finding and recommendation, the City Council may 1) join the Mayor's response; 2) respond with a modification to the Mayor's response; or 3) respond independently of the Mayor.

In responding to each Grand Jury finding, the City is required to either 1) agree with the finding or 2) disagree wholly or partially with the finding. Responses to Grand Jury recommendations must indicate that the recommendation 1) has been implemented; 2) has not yet been implemented, but will be in the future; 3) requires further analysis; or

Office of Independent Budget Analyst
202 C Street, MS 3A • San Diego, CA 92101
Tel (619) 236-6555 Fax (619) 236-6556

4) will not be implemented because it is not warranted or is not reasonable. Explanations for responses are requested when applicable.

Of the seven items included in the Mayor's response, the IBA recommends that the City Council join the Mayor's response on all seven items. This recommendation is based on the understanding additional analysis related to 1) City parking/traffic related expenses and 2) the benefits/effectiveness of the UPCD is required before Grand Jury's recommendations can be thoughtfully considered. Staff has informed the IBA that they will need more than six months from the date of the Grand Jury's report to complete this analysis, but that the analysis will be completed within FY 2011. The City Council could also consider referring the Grand Jury's report to the City Auditor to determine if the issues warrant inclusion into a future audit work plan.

The table below provides a summary of the IBA's recommendations.

Findings:	01, 02, 03, 04	***Join the Mayor's Response***
Recommendations:	10-52, 10-53, 10-54	***Join the Mayor's Response***

The full text of the Mayor's responses, and the IBA's recommended responses on behalf of the City Council, can be found in Attachment 1 to this report.

Jeff Kawar
Fiscal & Policy Analyst

APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachments:

1) Recommended City Council Responses to Findings and Recommendations in San Diego County Grand Jury Report entitled "Management of the Uptown Community Parking District"

2) San Diego County Grand Jury Report entitled "Management of the Uptown Community Parking District"

3) City Attorney Memorandum concerning the "Use of Parking Meter Funds for Traffic-Related Issues"

4) City Council Policy 100-18: Community Parking Districts

Recommended City Council Responses to Findings and Recommendations in San Diego County Grand Jury Report entitled "Management of the Uptown Community Parking District"

GRAND JURY FINDINGS

Finding #01: **The City contracts with the Uptown Partnership to act in the best interest of the communities it serves.**

Mayor's Response: Agree. The Uptown Partnership serves as the advisory board for the Uptown Community Parking District for the purpose of implementing and managing improvements that address parking impacts in the Uptown community. Pursuant to City Council Policy 100-18, each Community Parking District Advisory Board is required to develop, through community input, an annual improvement/implementation plan and budget for the next year. The Community Parking District plan must include the following components: community input strategy and incorporation; a budget to include sources and amounts of District revenues and proposed use; and proposed improvements to address the District's parking impacts.

IBA Recommendation: Join the Mayor's Response.

Finding #02: **From FY 1999 to FY 2009 the Uptown Partnership spent three times more on salaries and other overhead expenses than on projects.**

Mayor's Response: Partially Disagree. City staff was unable to confirm the expense ratios stated in the report based in a preliminary review of summary tax return information. It is important to note that staff costs related to the provision of a direct service, such as selling parking cards, are not considered overhead. Also, an analysis of expenses from FY 1999 to FY 2009, based on tax returns or audits, would not include the project costs incurred by the City in implementing parking projects. It would however include as overhead the Uptown Partnership staff costs associated with providing additional project support, thus increasing the ratio. Further, Uptown staff expenses in support of a specific project are not treated as overhead. An example of such a project is the Normal Street median project. This project was contracted by the City and overseen by a City Project Manager. Uptown Partnership staff provided Community Relations services, public meeting coordination, and information dissemination.

City staff acknowledges that Uptown Community Parking District management could be more efficient. Therefore, the City will propose that Community Parking Districts' administrative costs be capped at a level consistent with the administrative caps on State and Federal programs.

IBA Recommendation: Join the Mayor's Response.

Finding #03: **City of San Diego elected officials and staff has a favorable opinion of the partnership's management of the Uptown Community Parking District. However, this opinion is not shared by all of the stakeholders in the community.**

Mayor's Response: Partially Disagree. The relationship between the City and the Uptown Partnership is governed by a contract. City of San Diego staff has no "opinion" on the management of the Uptown Partnership other than to determine compliance with the provisions outlined in the contract between the City and Partnership. In order to determine compliance with City requirements, staff reviews annual Implementation Plans and Budgets, and requests adjustments to eliminate ineligible expenses or to clarify expenses. Staff has questioned the description of certain activities to draw out detail or gain a greater understanding of the program or project. Staff then submits the revised documents to Council for approval.

IBA Recommendation: Join the Mayor's Response.

Finding #04: **The Uptown Partnership has implemented changes recommended by City officials to enhance transparency of management activities.**

Mayor's Response: Agree. In spring 2009, questions were raised regarding the governance, transparency, and management of the Community Parking Districts. These issues were summarized in a letter from Councilmembers Faulconer and Gloria sent to the Uptown Partnership Board in May 2009. The letter suggested several improvements to the Uptown Partnership Board and committee structure.

Uptown Partnership addressed the governance and transparency issues. The Uptown Partnership added information to its website to facilitate review of Uptown finances and activities; conducted meetings to gather input on community issues; and ultimately modified its governance structure and procedures to be more representative of affected communities. The Uptown Partnership increased its Board of Directors from nine (9) directors to 12 directors, set term limits, and added procedures for electing directors that do not rely solely on self-selection, as is customary for nonprofit corporations that have no members. The changes are noted on page 6 of the FY2011 Uptown CPD Implementation Plan and Budget (Attached).

Since the FY2011 Uptown CPD Implementation Plan and Budget was issued, a business representative from Bankers Hill – Park West has been seated on the Board along with a resident representative recommended by the Hillcrest Town Council.

IBA Recommendation: Join the Mayor's Response.

GRAND JURY RECOMMENDATIONS

For each recommendation in the Grand Jury Report, the City Council shall respond that the recommendation either has been implemented has not yet been implemented but will be implemented in the future, requires further analysis, or will not be implemented.

Recommendations:

10-52: Analyze the contract between the Uptown Partnership, Inc. and the City of San Diego to determine its impact on the City's General Fund revenues.

Mayor's Response: This recommendation has not yet been implemented. Pursuant to Council Policy 100-18 and Municipal Code Sections 82.08 and 82.09, revenue collected from parking meters may be expended towards the costs involved in the regulation, control, and management of the parking of vehicles and the control and management of traffic (including pedestrian and vehicle safety, comfort, and convenience) which may affect or be affected by the parking of vehicles in the parking meter zones. City staff will analyze existing expenses to determine the amount funded with parking meter revenues and the amount subsidized by the General Fund. If Uptown Community Parking District revenues currently allocated to Uptown Partnership could be used to defray parking-related expenses currently being subsidized by the General Fund then this could have a positive effect on the City's General Fund. The review and analysis will be conducted during the course of this fiscal year.

<u>IBA Recommendation:</u> Join the Mayor's Response.

10-53: Consider redirecting the uptown Community Parking District revenues to the City's General Fund.

Mayor's Response: This recommendation has not yet been implemented. The City Attorney provided a Memorandum on April 29, 2009 to the Budget and Finance Committee on the subject of the "Use of Parking Meter Funds for Traffic-Related Issues". As part of the analysis, it was noted that the City's parking meter fees are regulatory fees which must comply with state law and that the general standard of what constitutes a proper regulatory fee is set forth in California Government Code section 50076 which states: *"As used in this article, "special tax" shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes."* Therefore, parking meter revenue may only be applied to eligible/appropriate General Fund expenses. The analysis referenced in response to Recommendation 10-52 is required to determine the feasibility of this recommendation.

<u>IBA Recommendation:</u> Join the Mayor's Response.

10-54: Review and consider the need for the Uptown Community Parking District.

Mayor's Response: This recommendation has not yet been implemented. Given some restrictions on the use of the Parking Meter revenue and the interest and local knowledge of community members in developing projects to address local parking impacts, further review and analysis is required to determine the benefits and efficiencies of maintaining the Uptown Community Parking District. Such review and analysis will be conducted during the course of this fiscal year.

IBA Recommendation: Join the Mayor's Response.

MANAGEMENT OF THE UPTOWN COMMUNITY PARKING DISTRICT

INTRODUCTION

The 2009/2010 San Diego County Grand Jury received a citizen's complaint regarding the Uptown Partnership, Inc. (Uptown Partnership). The City of San Diego (City) contracts annually with the Uptown Partnership to administer the parking meter revenue allocated to the Uptown Community Parking District (UCPD). The UCPD is one of six established parking districts in the City. From FY 1999 to FY 2009, the administrative salaries and non-project expenses used to sustain Uptown Partnership totaled approximately $3.2 million.

The complaint alleged:

- Between FY 1999 and FY 2009, 40% of Uptown Partnership's allocated expenditures have been for salaries and overhead.
- The Uptown Partnership mismanaged parking revenue resulting in waste and excessive overhead that did not significantly improve or increase the availability of public parking.
- A lack of transparency of Uptown Partnership records makes it difficult for the public to obtain and understand the financial records.
- The Uptown Partnership's efforts to obtain required local stakeholder input are not effective and do not reflect information from a broad representation of the community.

The Uptown Partnership was incorporated in February 1999 as a tax-exempt, nonprofit corporation as described in the Internal Revenue Code [26 United States Code §501(c)(3)]. The Uptown Partnership was formed exclusively to manage the UCPD. The Uptown Partnership is governed by a volunteer board of directors and managed by a paid executive director and office staff. The communities served by the Uptown Partnership include Bankers Hill-Park West, Five Points, Hillcrest Central, Hillcrest East, and Mission Hills.

Council Policy 100-18

City Council Policy 100-18 was established and adopted by Resolution R-288408 on March 4, 1997, and amended by Resolution R-299836 on November 15, 2004, to govern the Community Parking Districts (CPD). The City Planning and Community Investment Department provides staff support and assistance by coordinating CPD activities and oversight of the City contracts with the CPD. Each contract details the organizational plan, project list, and budget for each district. The City Council must evaluate and approve all of the fiscal year contracts.

Council Policy 100-18 specifically describes:

- the procedures to establish a CPD
- the percentage of parking meter revenue available to a CPD

- how the parking management-related revenues are allocated to the CPD to implement and manage improvements that address parking issues
- the guidelines for revenue and other income utilization
- procedures to obtain the required community input on planning and budget

The intent of the Policy is:

> " ... to provide a mechanism whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts. ... This policy is not intended to reduce existing City revenue streams derived from various parking management-related fees, citations, permits, etc. Any references in this policy to allocating a portion of parking meter or other parking management-related fees to community parking districts is intended to apply only to new or prospective revenues. This policy will be implemented in a manner that precludes any reduction or diminishment of City revenues."

INVESTIGATION

The Grand Jury interviewed:

- Representatives of a community parking district board of directors
- Representatives of community parking district employees
- Representatives of City senior management staff and elected officials
- Representatives of volunteer organizations and businesses in the Uptown Community Parking District

The Grand Jury investigation reviewed:

- City of San Diego's budget
- City Council Policy 100-18
- State and federal income tax documents submitted by Uptown Partnership
- Uptown Partnership's planning and budget documents
- State academic research on parking management
- Internet and other media information

DISCUSSION

The City of San Diego is facing an estimated $17 million General Fund shortfall in FY 2010. The City's gross revenues generated from parking meters were approximately $6.9 million, as reported in the FY 2009 City budget. In accordance with City Council Policy 100-18, the City deducts 5% of all parking meter revenue for expenses and allocates 45% of the remainder to the Districts. The City Council is currently considering amending this policy to insure that the City administrative costs necessary to collect parking meter fees are fully recovered. The portion that goes to the individual community parking district is based on the parking meter revenue generated within the individual district boundaries. The CPD have approximately 5,100 parking meters. During FY 2009, 45% of parking meter revenue, after the City 5% expense deduction, was approximately $2.9 million. Of the $2.9 million, $800,000 was allocated to the Uptown Partnership to manage the UCPD.

The Uptown Partnership's budget includes an unallocated reserve of $3,234,012 through FY 2009. The FY 2010 Uptown Partnership's budget includes spending all of the unallocated reserve funds for a total budget of $4,331,970. The plan is to use the reserve monies rather than having to return them to the City's General Fund. This concept was noted in the Uptown Partnership Board of Director's Agenda of August 6, 2009.

The Partnership FY 2010 Implementation Plan and Budget describes the process used to determine the Partnership actions taken on behalf of the UCPD to comply with City Council Policy 100-18. An indicator of parking management success, an industry standard of 85% occupancy of available parking, was adopted by the Uptown Partnership. The document also describes the workings of the board meetings, committee meetings, workshops, newsletters, community surveys, professional consultant studies, meetings with other community organizations, and consultations with the City Planning and Community Development Department.

In May 2009, City Council members from two districts recommended changes in the Uptown Partnership structure and activities. The recommendations sought to improve transparency, diversity on the board of directors, and community outreach. The Uptown Partnership responded to the recommendations by adding three positions on the board, two of which are appointed by the City Council; limiting the terms of board members; and, by improving availability of Uptown Partnership information.

FACTS AND FINDINGS

Fact: The Uptown Partnership exists exclusively to manage the Uptown Community Parking District (UCPD), in accordance with City Council Policy 100-18.

Fact: The annual gross revenue generated from parking meters in the Uptown Community Parking District is approximately $1.9 million.

Fact: The City allocates approximately $800,000 of annual parking meter revenue from the UCPD to the Uptown Partnership.

Fact: From FY 1999 through FY 2009 the Uptown Partnership's financial records indicate:

- $8.6 million managed
- $3.2 million spent on salaries and other overhead
- $1.1 million spent on planning, consultants, and projects
- $4.3 million remaining in unspent reserves

Fact: The City FY 2010 contract with the Uptown Partnership includes the expenditure of approximately $4.3 million in parking meter revenue reserves.

Fact: The Uptown Partnership was notified by the City to implement management changes to become more transparent. This included the formation of a standing committee to focus exclusively on solutions for parking problems in the Hillcrest

Business District. Additionally, the Uptown Partnership was notified to conduct meetings and activities in an open forum.

Fact: The City is facing a $17 million General Fund short fall in FY 2010.

FINDINGS

Finding 01: The City contracts with the Uptown Partnership to act in the best interest of the communities it serves.

Finding 02: From FY 1999 to FY 2009 the Uptown Partnership spent three times more on salaries and other overhead expenses than on projects.

Finding 03: City of San Diego elected officials and staff has a favorable opinion of the Partnership's management of the Uptown Community Parking District. However, this opinion is not shared by all of the stakeholders in the community.

Finding 04: The Uptown Partnership has implemented changes recommended by City officials to enhance transparency of management activities.

RECOMMENDATIONS

The 2009/2010 San Diego County Grand Jury recommends that the Mayor of the City of San Diego and the City Council of the City of San Diego:

10-52: **Analyze the contract between Uptown Partnership, Inc. and the City of San Diego to determine its impact on the City's general fund revenues.**

10-53: **Consider redirecting the Uptown Community Parking District revenues to the City's General Fund.**

10-54: **Review and consider the need for the Uptown Community Parking District.**

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

Responding Agency	Recommendations	Date
Mayor, City of San Diego	**10-52 through 10-54**	**8/23/10**
City Council, City of San Diego	**10-52 through 10-54**	**8/23/10**

Attachment 3

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: April 29, 2009

TO: Budget and Finance Committee

FROM: City Attorney

SUBJECT: Use of Parking Meter Funds for Traffic-Related Issues

---

This memorandum is in response to a request by Councilmember Sherri Lightner at the March 30, 2009, City Council hearing on the Parking Meter Utilization Improvement Program [Parking Program], outlining the proper use of funds generated by the City's parking meters for consideration at the hearing of the Budget & Finance Committee on May 1, 2009.

QUESTION PRESENTED

May funds generated by parking meters be used for traffic-related purposes?

SHORT ANSWER

Yes. So long as the parking meter fees imposed do not exceed the reasonable cost of the services necessary for the activity for which the fee is charged, parking meter funds may be used in the control of traffic which may affect or be affected by the parking of vehicles in designated parking meter zones.

BACKGROUND

On March 30, 2009, the City Planning & Community Investment Department presented the Parking Program to the City Council. The primary goal of the proposed Parking Program was to achieve a target parking meter utilization rate of 85 percent by allowing the Mayor to adjust the cost and hours of operation of the City's parking meters. At the hearing, the City Council raised several concerns, including whether funds generated by parking meters may be used for broader traffic-related purposes. Specifically, Councilmember Lightner requested the City Attorney prepare a memorandum for consideration at the Budget & Finance Committee outlining the parameters for proper use of parking meter funds under San Diego Municipal Code [SDMC] sections 82.08 entitled "Parking Meters – Use of Funds" and 82.09 entitled "Parking Meters – Collections – Accounting for Money" [Parking Meter Ordinance].

ANALYSIS

The parameters for the proper use of parking meter funds are established by the SDMC and applicable state law as detailed below. SDMC section 82.08 entitled "Parking Meters – Use of Funds" provides as follows:

> The coins required to be deposited in parking meters, as provided herein, are hereby levied and assessed as fees to provide for the proper regulation and control of traffic upon the public streets, and to cover the cost of supervision, inspection, installation, operation, maintenance, control and use of the parking spaces and parking meters described herein, and also the cost of supervising and regulating the parking of vehicles in the parking meter zones created hereby.

SDMC section 82.09 entitled "Parking Meters - Collections - Accounting for Money" provides:

> The City Manager is hereby authorized, and it shall be his duty, to designate some person or persons to make regular collections of the money deposited in said parking meters. It shall be the duty of such person or persons so designated to collect and deliver to the Treasurer of The City of San Diego all money deposited in the parking meters; the Treasurer shall keep accurate account of all the parking meter money so delivered to him. Money so deposited in the parking meters may be expended to meet the costs and expenditures involved in the inspection, repair, regulation, installation, operation, control and use of the parking spaces and parking meters described herein, and the costs involved in the regulation and control of the parking of vehicles and the

> control of traffic which may affect or be affected by the parking of vehicles in the parking meter zones created hereby, including the purchase, replacement, installation, repair, servicing and operation of mechanical or electrical traffic signals for the direction of said traffic or said parking, and the cost of painting streets, curbs and sidewalks with appropriate markings, lines and signs, and the purchase, construction, erection, repair and replacement of street and curb signs for the direction of said traffic or said parking, and for the cost of patrolling said parking motor zones and enforcing therein all traffic laws and regulations concerning the parking of vehicles and the movement of traffic which may affect or be affected by such parking of vehicles, or for any of said purposes.

Based on the above, the City's Parking Meter Ordinance allows parking meter fees to be used for the following traffic-related purposes:

(1) For the proper regulation and control of traffic upon the public streets;

(2) For the costs involved in the regulation and control of the parking of vehicles; and

(3) For the costs involved in the regulation and control of traffic which may affect or be affected by the parking of vehicles in the parking meter zones, including the purchase, replacement, installation, repair, servicing and operation of mechanical or electrical traffic signals for the direction of said traffic or said parking, and the cost of painting streets, curbs and sidewalks with appropriate markings, lines and signs, and the purchase, construction, erection, repair and replacement of street and curb signs for the direction of said traffic or said parking.

Although the City's Parking Meter Ordinance clearly allows for traffic-related expenditures, all regulatory fees must also comply with state law. The general standard of what constitutes a proper regulatory fee is set forth in California Government Code section 50076 which states: "As used in this article, 'special tax' shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes."

Case law has further defined what constitutes a proper regulatory fee. "Any fee which falls within the definition of a service or regulatory fee under Section 50076 is not a special tax under Proposition 13 (Cal. Const., Art. XIII A, § 4[1]) and thus is exempt from the requirement of a two-thirds affirmative vote by the District's qualified voters." *Beaumont Investors v. Beaumont-Cherry Valley Water District* (1985) 165 Cal. App. 3d 227, 234. "Regulatory fees, which are

[1] Proposition 13 was enacted in 1978 and requires two-thirds voter approval for special taxes (meaning taxes dedicated to a special fund or purpose, and not deposited into the City's general fund for general government purposes).

imposed under the government's police power, must not exceed the reasonable cost of the services necessary for the activity for which the fee is charged and for carrying out the purpose of the regulation; they may not be levied for unrelated purposes." *Isaac v. City of L.A.* (1998) 66 Cal. App. 4th 586, 595.

Prior to the passage of Proposition 13, in *DeAryan v. City of San Diego* (1946) 75 Cal. App.2d 292, 295 appellant challenged the City's Parking Meter Ordinance, alleging in part that the City was operating parking meters at a profit. The Court of Appeal of California, Fourth Appellate District affirmed judgment for the City and stated the following with regard to traffic-related issues:

> Section 15 of the ordinance in question, as amended, provides that receipts from this source may be used not only in defraying the expenses of installation, operation and control of such parking spaces and parking meters, *but also those incurred in the control of traffic which may affect or be affected by the parking of vehicles in the parking meter zones thus created, including those incurred in connection with painting lines and signs, maintaining mechanical traffic signals and other expenses of regulating traffic and enforcing traffic regulations with respect to all traffic which may affect or be affected by the parking of vehicles in parking meter zones. This ordinance permits the use of the money thus received for general traffic regulation and control in the areas in question, all of which is a part of the problem involved and designed to be benefited by the ordinance.* This is one entire problem in the congested areas and business districts which are affected by the ordinance and, as the evidence indicates, there are many matters of expense incident to the problem as a whole, aside from those directly connected with the operation of the meters, which were not segregated and itemized in such figures and records as were produced in evidence. (*Id.* at 296. Emphasis added.)

Subsequently, in *Mervynne v. Acker* (1961)189 Cal.App.2d 558, in reviewing the City's parking ordinance to assess whether it was subject to an initiative petition, the Court of Appeal of California for Fourth Appellate District stated the following regarding traffic-related issues: "We think there can be no serious question but that parking meters function primarily as an aid to traffic control. They have long been recognized judicially as a legitimate aid to traffic regulation." (*Id.* at 561. Internal citations omitted.)

After the enactment of Proposition 13 in 1978, in an unpublished opinion[2] in the case of *Rider v. City of San Diego* (June 13, 2005, D044907), the City's Parking Meter Ordinance was

[2] Although unpublished opinions are not citable pursuant to the California Rules of Court, the same court would review any future legal challenge to the Parking Meter Ordinance and the same analysis would likely apply.

challenged on grounds it constituted a special tax that required approval by two-thirds of the electorate because the revenues exceeded the reasonable cost of the services provided, namely the cost of supplying the parking meters themselves. In summarizing the case law relating to regulatory fees, the *Rider* court, citing an opinion of the California Supreme Court in *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, reiterated the guidelines distinguishing a regulatory fee from a special tax. The *Rider* court stated that taxes are imposed for revenue purposes, rather than for a special benefit conferred or privilege granted, and are compulsory rather than imposed in response to a voluntary decision to seek government benefits or privileges. Quoting *Sinclair*, the court went on to state that "*all* regulatory fees are necessarily aimed at raising 'revenue' to defray the cost of the regulatory program in question, but that fact does not automatically render those fees 'taxes.' . . . If regulation is the primary purpose of the fee measure, the mere fact that the measure also generates revenue does not make the imposition a tax."

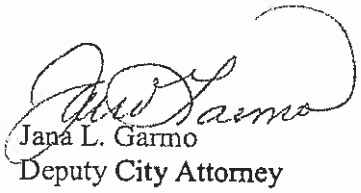
Consistent with these guidelines, the *Rider* court found the parking meter fee is only paid by a person who chooses to use a metered space, which is uncharacteristic of a special tax. The court also distinguished the fee from a special tax on grounds that the fees are not designed to recoup property tax monies lost due to the enactment of Proposition 13. Based on these characteristics, as well as the fact that the fee did not exceed the reasonable cost of providing the regulatory activity for which the fee was charged, the *Rider* court concluded as a matter of law the parking meter fees are not special taxes. Furthermore, in response to plaintiffs' argument that parking meter funds are limited to the actual deployment of the parking meters and are not available for traffic-related purposes, the *Rider* court cited *DeAryan* and held that key to its conclusion that the parking meter fees are not excessive and therefore valid regulatory fees "was the fact the object of parking meter fees is not solely to pay for the actual installation and maintenance of meters, but also to fund a much broader regulatory purposes, namely various aspects of the City's traffic control and enforcement."

Therefore, the City's Parking Meter Ordinance would likely withstand legal challenge if the fees collected are properly accounted for, do not exceed the reasonable cost of providing the regulatory activity for which the fee is charged, and are used to fund traffic-related projects in designated parking meter zones as specified in *DeAryan* as well as for other enumerated purposes.

CONCLUSION

Based on the foregoing, parking meter funds may be used in the control of traffic which may affect or be affected by the parking of vehicles in designated parking meter zones so long as the parking meter fees imposed do not exceed the reasonable cost of the services necessary for the activity for which the fee is charged. The services necessary for the activity of providing parking meters may include: the purchase, replacement, installation, repair, servicing and operation of mechanical or electrical traffic signals; the cost of painting streets, curbs and sidewalks with appropriate markings, lines and signs; and the purchase, construction, erection, repair and replacement of street and curb signs for the direction of said traffic or said parking. If the City wants to fund other traffic-related projects with fees generated by the City's parking meters, such projects must be necessary for the control of traffic which may affect or be affected by the parking of vehicles in a parking meter zone.

JAN I. GOLDSMITH, City Attorney

By 
Jana L. Garmo
Deputy City Attorney

JLG:cfq
cc: Mayor Jerry Sanders
City Councilmembers
Independent Budget Analyst, Andrea Tevlin

CITY OF SAN DIEGO, CALIFORNIA

COUNCIL POLICY

CURRENT

SUBJECT: COMMUNITY PARKING DISTRICT POLICY
POLICY NO.: 100-18
EFFECTIVE DATE: November 15, 2004

PURPOSE:

The intent of this Policy is to provide a mechanism whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts. This Policy anticipates that such communities, at their initiative, and with the approval of the City Council, can be responsible for establishing and managing a Community Parking District. This Policy specifies the procedures to be followed to establish a Community Parking District. This Policy also provides for, and specifies the procedures under which, certain parking management-related revenues earned by the City within the geographic boundaries of an existing or newly designated Community Parking District may be allocated to the Community Parking District to implement and manage improvements that address parking impacts. This Policy is not intended to reduce existing City revenue streams derived from various parking management-related fees, citations, permits, etc. Any references in this Policy to allocating a portion of parking meter or other parking management-related fees to Community Parking Districts is intended to apply only to new or prospective revenues. This Policy will be implemented in a manner that precludes any reduction or diminishment of City revenues.

POLICY:

A. Establishment of Community Parking Districts

1. A community planning group or a business improvement district may submit to the City Manager a request to form a Community Parking District when existing City mechanisms for implementing parking management solutions have been insufficient or such mechanisms do not exist within the community. The City Manager shall convey all such requests, along with the Manager's recommendation regarding each, to the City Council or any of its committees for its consideration. In the event that an organization submits a request that affects an existing Community Parking District, the City Manager will present the request to the board of the existing Community Parking District prior to forwarding the request to the City Council or any of its committees for action. A request to form a Community Parking District shall contain each of the following:

   a. A map or other description of the geographic area proposed to be designated as a Community Parking District.

   b. Data to verify that the proposed geographic area is in fact adversely impacted by parking demands. Such data may be provided by a parking study commissioned by the City Manager or by a qualified private traffic engineer who would be required to submit his/her data and findings to the City Manager for review; a

combination of project-specific parking studies which, in the aggregate, present credible information regarding parking impacts in the geographic area; or such other information as the City Manager may determine to be credible and persuasive.

c. A conceptual plan for how the Community Parking District will be managed, including, but not limited to:

(1) The legal entity proposed to be designated as the Community Parking District Advisory Board for the purpose of managing the District. The City Council may designate as the District Advisory Board the existing board of a business improvement district, a redevelopment corporation, a community development corporation, or other nonprofit corporation approved by the City Council. As wide a representation of community interests within the proposed geographic area as is possible shall be sought;

(2) How community input will be obtained and incorporated into the management of the District;

(3) The sources and amounts of District revenues;

(4) Examples of or proposed improvements that would address the District's parking impacts;

(5) Anticipated financing for these improvements, provided that no existing financing obligations or commitments shall be jeopardized or restricted; and

(6) A first year budget.

2. Prior to consideration of the proposal by the City Council or any of its committees, the requesting entity shall make the proposal publicly available for review and shall conduct a noticed public meeting for affected citizens in the proposed Community Parking District. The requesting entity shall also provide notice of this public meeting to all affected Community Planning Groups.

3. Geographic areas that, prior to December 31, 1997, were established as Parking Meter Districts are hereby now designated as established Community Parking Districts, and the organizations designated by the City Council as Parking Meter District Advisory Boards are hereby now designated as the established Community Parking District Advisory Boards.

4. The Community Parking District Program shall be administered by the City Manager. On an annual basis, 5% of the Community Parking District Program allocation as

listed in the City Budget will be allocated to the City Manager to be applied to the City's administrative costs of the program.

B. Revenues Subject to Allocation to a Community Parking District

1. A percentage of the total parking meter revenues generated within each Community Parking District shall be allocated to that Community Parking District on an annual basis. The percentage shall be forty-five (45%) each fiscal year. In addition to this 45% allocation, the City may allocate all or a portion of the parking management-related revenues to a Community Parking District on a case-by-case basis. Such additional revenues may be allocated to a Community Parking District so long as all of the following requirements are met:

   a. Any City administrative costs necessary to implement and collect the fees are fully recovered;

   b. The City conducts, or causes to be conducted, an analysis of the proposed use(s) of the additional parking management-related revenues, and the analysis indicates that the amount allocated, along with any other authorized revenues, is sufficient to implement and manage the proposed use(s);

   c. The amount allocated is no more than necessary to implement and manage the proposed use(s); and

   d. The City determines through a fiscal impact analysis that the Community Parking District's proposed use(s) is/are in the City's long-term best interest.

2. For the purpose of this Policy, City revenues which may be allocated to a Community Parking District in addition to parking meter revenue, if any, may include:

   a. Fees paid by users to park in a facility operated by the Community Parking District;

   b. Valet parking fees;

   c. Residential or shopper parking permit fees;

   d. Parking in-lieu fees levied on new development; and

   e. Any other authorized fees obtained to regulate parking in a Community Parking District.

3. Community Parking District revenues shall be allocated to each Community Parking District based on the percentage of average annual gross collections generated within each District. Monies collected will be disbursed pursuant to the adoption and

approval of an implementation plan submitted to the City Council, as provided in section C below. The Community Parking District Program Administrator shall maintain a map and other relevant data showing the location of each parking meter, revenue earned by each meter, and other revenue sources, for the purpose of projecting and verifying parking management-related revenues allocable to each District.

4. The City will conduct an annual fiscal year-end reconciliation of actual parking management-related revenues. To the extent that actual revenues are less than or greater than the approved budget estimate, the difference will be incorporated in the following fiscal year's Community Parking District allocation.

C. Use of Allocated Community Parking District Funds

1. An allocation of parking meter or other parking management-related revenue to a Community Parking District shall be made only from new or prospective revenues resulting from meter installations or the implementation of other parking management activities within the District, and the allocation shall not result in any reduction of current City revenues or anticipated increases in City revenues.

2. Community Parking District revenues shall be primarily used to address parking supply and mobility issues. Improvements and activities that increase the availability, supply, and effective use of parking for residents, visitors, and employees within the adopted Community Parking Districts shall be the principal focus of expenditure of the funds. Community Parking District revenues shall be used in accordance with Municipal Code §82.08 and §82.09 and may be used for such purposes as, but not limited to, the following:

   a. Increasing the parking supply (e.g., self-parking, valet-parking, on-street parking, surface parking, and structured parking lots). This may include the acquisition of land, project design, financing, construction, and/or operation of public parking facilities.

   b. Managing the existing parking inventory, including such measures as, but not limited to, parking evaluations, reconfiguration of existing on-street parking inventory, residential permit parking programs, employee parking programs, enforcement, and/or mitigation of any adverse effects resulting from the implementation of such program(s).

   c. Providing mobility information such as signing, marketing, and communicating the location, availability, cost, etc. of district-wide parking options.

   d. Providing funding for community shuttles within the boundaries of the Community Parking District.

e. Promoting alternative forms of transportation to reduce parking demand (e.g., community shuttles, public transit, bicycling, and walking).

f. Providing for extraordinary maintenance and landscaping activities associated with or required by any of the activities listed above.

g. Providing for extraordinary security activities associated with or required by any of the activities listed above.

3. Community Parking District revenues shall supplement, and not supplant, existing City funding sources and program revenues for each District.

4. The cost of new meters or other parking related equipment and their installation in existing and proposed Community Parking Districts will be shared between the City and the Community Parking District based upon the percentage by which the meter revenues are shared as described in sections B above, unless otherwise proposed in the Community Parking District plan and approved by the City Council.

5. The use of solar-powered parking technology shall be encouraged.

D. Community Parking District Management

1. Annually, each Community Parking District Advisory Board shall develop, through community input, and recommend to the City Council an annual improvement/ implementation plan and budget for the next year. Approval of the Community Parking District plan and budget shall rest with the City Council. Such approval may be granted by authorizing the City Manager to execute a written Agreement between the City and each Community Parking District Advisory Board, or through the annual citywide budgetary approval process.

2. A Community Parking District plan shall include each of the following:

a. How community input will be obtained and incorporated into the management of the District;

b. A budget, including the sources and amounts of District revenues and how each are proposed to be used; and

c. Proposed improvements to address the District's parking impacts, and their proposed financing.

3. In addition to proposed improvements, if any, the plan may include recommendations regarding the following:

a. Parking meter rates, hours of meter enforcement, parking meter time limits, and additions or removals of parking meters;

b. Establishment or removal of time limited parking areas;

c. Implementation of valet parking fees, residential or shopper permit parking fees, and in-lieu fees;

d. The acquisition of any private property for a public purpose necessary to implement the plan; and

e. Any other relevant matters pertaining to the effective management of parking demand within the District.

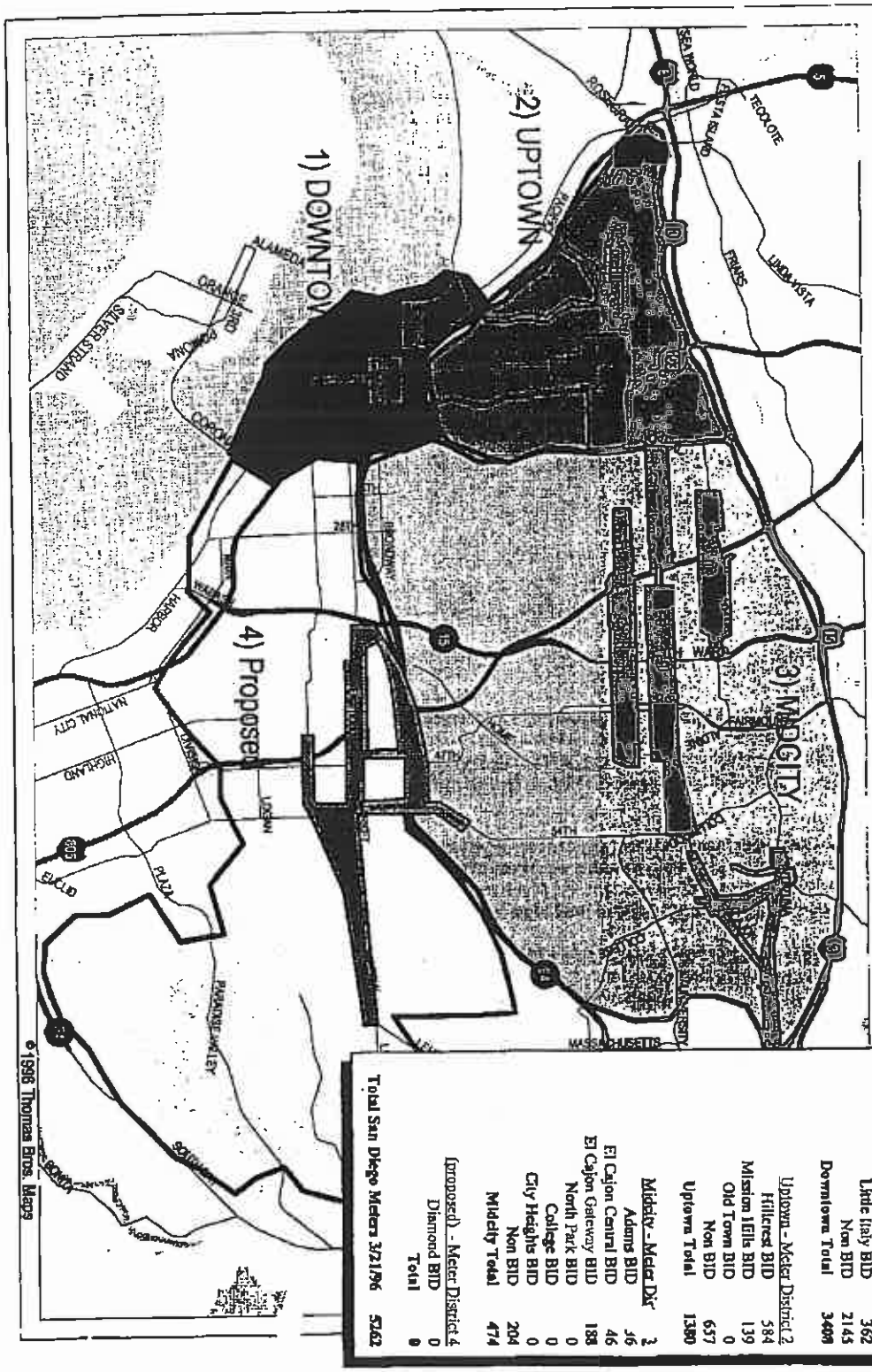
4. Each Community Parking District Advisory Board shall comply with all State and Federal laws and regulations pertaining to nonprofit corporations, including making its annual filing of IRS Form 990 available to the public, and shall comply with State public records and open meeting laws with regard to the use of Community Parking District funds.

5. Each Community Parking District shall be provided a seat on the City's Parking Advisory Board, and each Community Parking District Advisory Board shall recommend a member of its board to fill the seat.

HISTORY:

Adopted by Resolution R-288408 03/04/1997
Amended by Resolution R-299836 11/15/2004

Parking Meter District Map



SAN DIEGO METER INFORMATION

Downtown - Meter District 1	
Downtown BID	568
Gaslamp BID	333
Little Italy BID	362
Non BID	2145
Downtown Total	**3408**
Uptown - Meter District 2	
Hillcrest BID	584
Mission Hills BID	139
Old Town BID	0
Non BID	657
Uptown Total	**1380**
Midcity - Meter Dis	
Adams BID	2
El Cajon Central BID	56
El Cajon Gateway BID	46
North Park BID	188
College BID	0
City Heights BID	0
Non BID	204
Midcity Total	**474**
(proposed) - Meter District 4	
Diamond BID	0
Total	**0**
Total San Diego Meters 3/21/96	**5262**

CP-100-18