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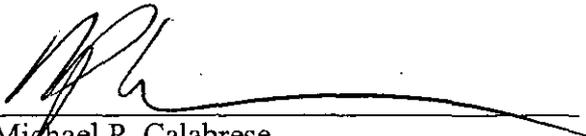
Office of
The City Attorney
City of San Diego

MEMORANDUM

(619) 533-5800

DATE: February 25, 2008
TO: Council Members
FROM: Michael P. Calabrese, Chief Deputy City Attorney
SUBJECT: Item 102 for Docket Agenda of February 25, 2008

At the request of District 2, we are providing the comparison documents for the Revised Report RC-2008-6 and Community Parking District Advisory Board Conflict of Interest Code submitted for Item 102. Please contact me if you have any questions.


Michael P. Calabrese
Chief Deputy City Attorney

MPC:sc

**COMMUNITY PARKING DISTRICT ADVISORY BOARD
CONFLICT OF INTEREST CODE**

**APPENDIX A
DESIGNATED POSITIONS, DUTIES, AND CATEGORIES**

<u>POSITION</u>	<u>DUTIES</u>	<u>CATEGORY</u>
Member or Alternate, Community Parking District Advisory Board	Serve as member or alternate member of CPD Advisory Board, as set forth in supporting materials to San Diego City Council Resolutions creating such CPD (see list below).	1, 2, 3
Consultant to Community Parking District Advisory Board	As specified in contract.	4

<u>District</u>	<u>Date Created</u>	<u>Resolution</u>
Centre City	December 2, 1997	R-289520
Uptown	December 2, 1997	R-289521
Mid-City	December 2, 1997	R-289522
Old Town	June 27, 2005	R-300584
Pacific Beach	June 27, 2005	R-300585
La Jolla	June 27, 2005	R-300586

COMMUNITY PARKING DISTRICT ADVISORY BOARD
CONFLICT OF INTEREST CODE

APPENDIX B
STATEMENT OF ECONOMIC INTEREST
DISCLOSURE CATEGORIES

Category 1

All reportable investments in, ownership of, employment by, and income and gifts from any person or entity that:

- (a) engages in business relating to parking equipment, facilities, services, or technology, including but not limited to the ownership or management of parking garages or valet parking services, the manufacture or sale of parking meters or parking enforcement technology, or the provision of parking consulting services, or
- (b) supplies goods or services to the Community Parking District Advisory Board.

For purposes of this category, the term "reportable investment" means (i) any investment in an entity that engages directly in business relating to parking equipment, facilities, services, or technology, or that directly supplies goods or services to the Community Parking District Advisory Board, and (ii) any investment one percent or more of the outstanding equity shares, or one percent or more of the outstanding debt, in a privately or publicly held company whose subsidiary, affiliate, or parent (as defined at Cal. Code Regs. tit. 2, §18703.1(d)) engages in such business or supplies such goods or services. For purposes of this category, a person is "employed by" a business entity if he or she is a director, officer, partner, trustee, or employee of, or holds any management position in, the business entity.

Category 2

All interests in 1) real property located within the jurisdictional boundary of the Community Parking District, as defined in the supporting materials to applicable San Diego City Council Resolutions and as shown in the maps attached hereto, or employment by, earned income from, or gifts from an owner of such real property, or 2) commercially zoned real property located within ten miles of such boundary, and, with respect to each such property that is rental property, the name of each tenant that is both a person or business entity described in Category 1 and a single source of annual income of \$10,000 or more. An interest in real property that is used by the reporting individual as his or her personal residence need not be reported unless the residence is also used for business purposes.

Category 3

All direct or indirect investments in, ownership of, employment by, and earned income and gifts from any business entity that is located within or owns real property within the

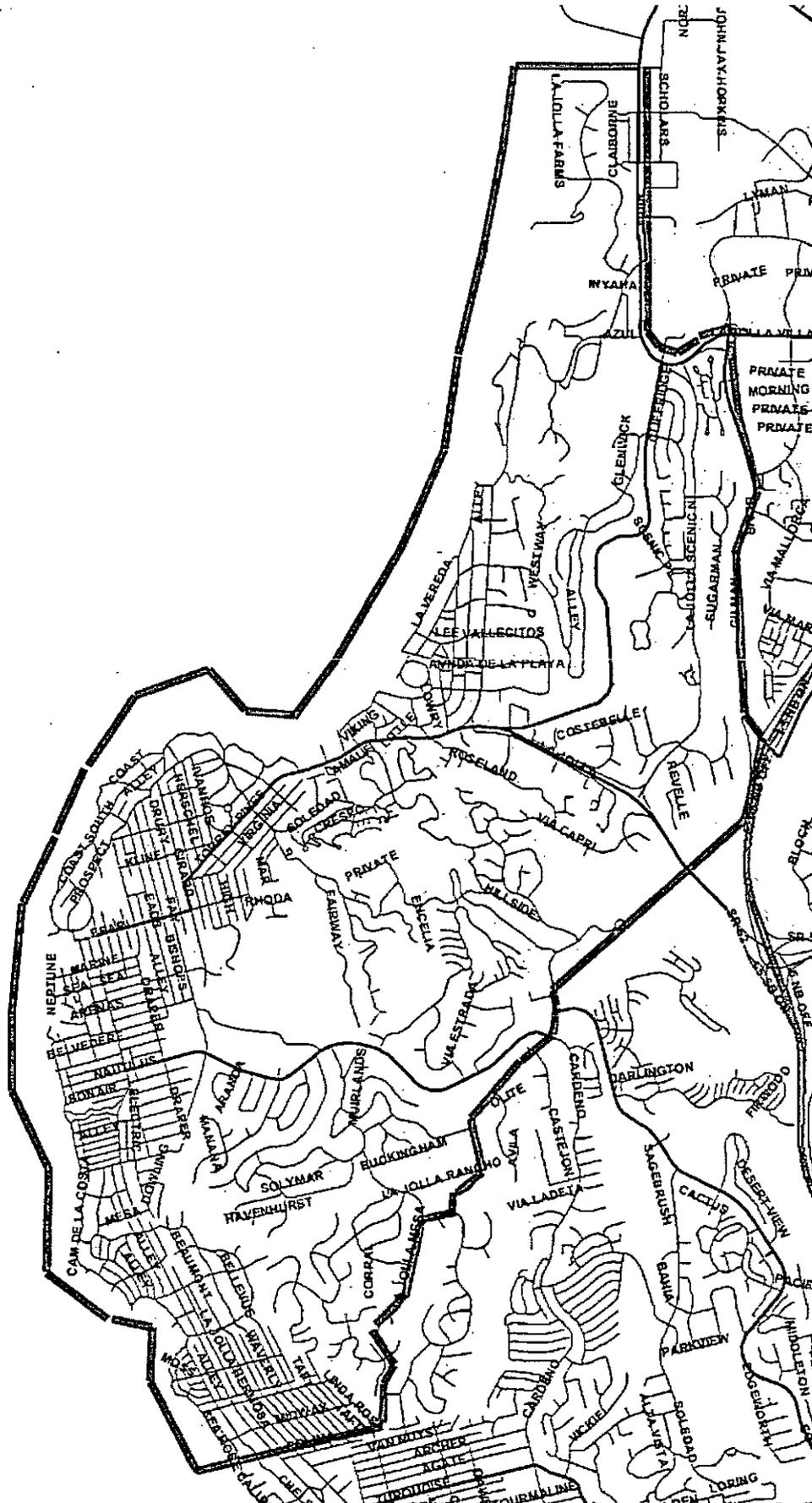
jurisdictional boundary of the Community Parking District, as defined in the supporting materials to applicable San Diego City Council Resolutions and as shown in the maps attached hereto, or within two miles of such boundary, and that either sells goods or renders services to the public. The report shall specify the location of each such business entity, the nature of the business entity's business, and the reporting individual's relationship to the business entity (including the individual's percentage of any investment or ownership interest in the business entity and the existence of any income or gifts received from the business entity). For purposes of this category, a person is "employed by" a business entity if he or she is a director, officer, partner, trustee, or employee of, or holds any management position in, the business entity.

Category 4

Consultants shall be included in the list of designated members and shall disclose in the same manner as Members and Alternates (Categories 1, 2, and 3), subject to the following limitation:

The City's Deputy Director for City Planning and Community Investment may determine in writing that a particular consultant, although a "designated position," is retained to perform duties that are limited in scope and that the consultant therefore need not fully comply with the disclosure requirements applicable to Members and Alternates. Such written determination shall include a description of the consultant's duties and, based on that description, a statement of the extent of the consultant's disclosure requirements. The Deputy Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

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OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

Michael J. Aguirre

CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178

TELEPHONE (619) 236-6220

FAX (619) 236-7215

February 22, 2008 Revised Report

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REPORT TO THE CITY COUNCIL

CREATION OF A CONFLICT OF INTEREST CODE FOR COMMUNITY PARKING DISTRICTS

The California Government Code requires that local agencies adopt conflict of interest codes designating positions that involve the making of decisions, or participation in the making of decisions, that may foreseeably have a material effect on one's financial interests.

The La Jolla Community Parking District Advisory Board [LJCPDAB] was created by resolution, R-300586, on June 27, 2005, pursuant to City Council Policy 100-18. The LJCPDAB was delegated the authority to manage parking policy within the La Jolla Community Parking District, subject to the constraints and Council oversight described in Council Policy 100-18.

Under Council Policy 100-18, the advisory board for a community parking district may be "the existing board of a business improvement district, a redevelopment corporation, a community development corporation, or other nonprofit corporation approved by the City Council." The creation of the La Jolla Community Parking District was proposed by Promote La Jolla, Inc., the BID for La Jolla; the City Council approved that proposal in resolution R-300586. In that approved proposal, Promote La Jolla proposed that the Parking District would be "guided by a nine-member Community Parking District Advisory Board," and gave that nine-member Advisory Board certain responsibilities. In the resolution creating the La Jolla Community Parking District, however, the City Council, consistent with Council Policy 100-18, designated Promote La Jolla as the La Jolla Community Parking District Advisory Board. The nine-member Advisory Board has, since its members were appointed in November of 2005, met regularly and developed a draft proposal for parking management in the District, but no parking management proposal for the District has ever been finalized or presented to the City Council.

In late 2007, a community group called "La Jollans for Clean Government, Inc." suggested that the nine-member Advisory Board was required, under the Government Code, to adopt and comply with a Conflict of Interest Code. The Office of the City Attorney, reviewing these contentions in light of the various governing documents, concluded that such a Code is necessary, and so advised the Board. Subsequently, the Board, at its February 6, 2008 meeting, approved specific code language that it had, with the City Attorney's advice, developed for itself, and passed a motion requesting that the City Council as its "Code Reviewing Agency," adopt such a Code. The Board also requested that the City Attorney's Office review certain revisions proposed by a community member who attended the February 6, 2008 meeting, and recommend that they be adopted if the City Attorney judged them to be legally necessary or advisable.

Pursuant to this direction from the Board, the City Attorney's Office has drafted the accompanying documents, including a proposed conflict of interest code which reflects the following changes from the Code approved by the Board:

- The Code explicitly states that "reportable investments" include both direct and indirect investments;
- A reference to the definition of "parent company" in the FPPC's regulations has been added;
- The term "entity" has been changed to "business entity" throughout the Code, in order to utilize a term that has a defined meaning under the Government Code; and
- A clarifying reference has been added to make explicit that income and gifts are reportable not only if they come from persons or business entities located in the District, but also persons or business entities that own real property in the District.

Deleted: <#>Language limiting disclosure to investments equaling "one percent or more" of parent companies whose subsidiaries engage in parking-related business has been deleted, resulting in the Code reflecting state law under which an investment is reportable if it is worth \$2,000.00 or more.¶

It also bears noting that the Board, at the urging of interested citizens who attended their February 6, 2008 meeting, included in their recommended code a requirement to report real property interests not only within the District, but within ten miles of the district boundary. This requirement far exceeds requirements that the City has included in comparable codes, which typically extend such reporting for two miles.

In addition, language limiting disclosure to investments equaling "one percent or more" of parent companies whose parents, affiliates, or subsidiaries engage in parking-related business is included. It might be argued that state law requires that the Code make an investment reportable if it is worth \$2,000.00 or more. However, the La Jolla Board felt that, when an investment is in a company not directly engaged in parking related business, but doing so only through an affiliate, to require reporting down to the \$2,000.00 level should not be required because it would require reporting of a great many large companies with large affiliate networks, when in fact such investments could not reasonably give rise to an actual conflict. By requiring reporting of investments of 1% or more, the La Jolla Board intended to require reporting of investments that might actually influence a member's actions without requiring overly broad reporting.

The Advisory Board has suspended substantive business until such a Code is in place, out of concern that its actions could be invalidated under the Government Code if they are taken in the absence of a Code. Thus approval of the code in a timely manner is necessary to allow the Board to conduct substantive business. If the code is enacted now, Board members will be required to make their initial filings within thirty days.

Because the legal necessity for such a Code is a matter of some controversy, the Office of the City Attorney, at the Board's request, is drafting a letter seeking the formal advice of the Fair Political Practices Commission on the question. Such advice is expected by mid-March. In light of this, the resolution adopting the Code contains language making the application of this Code

conditional, so that if the FPPC rules that no code is needed, no further Council action will be needed to remove the Code.

Finally, the La Jolla Community Parking District is one of six community parking districts currently operating pursuant to City Council Policy 100-18. The legal issues regarding the identity of the LJCPD's Advisory Board are unique to La Jolla, and do not affect the other CPDs' Boards. Moreover, the legal underpinnings for finding that CPDABs are generally required to be subjected to Conflict of Interest Codes flow principally from City Council Policy 100-18 itself, and are therefore equally applicable to all six CPDs. Therefore, the proposed Code would apply equally to all six CPDs. However, because the above-mentioned FPPC advice letter could ultimately result in a determination that CPDs do not require Codes, the language conditioning the applicability of the Code on the FPPC's decision would also apply equally to all six CPD Boards.

Respectfully submitted,

MICHAEL J. AGUIRRE, CITY ATTORNEY

Michael P. Calabrese
Chief Deputy City Attorney

MPC:sc
RC-2008-4

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OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

Michael J. Aguirre
CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1600
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

February 22, 2008 Revised Report

REPORT TO THE CITY COUNCIL

CREATION OF A CONFLICT OF INTEREST CODE FOR COMMUNITY PARKING DISTRICTS

The California Government Code requires that local agencies adopt conflict of interest codes designating positions that involve the making of decisions, or participation in the making of decisions, that may foreseeably have a material effect on one's financial interests.

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Under Council Policy 100-18, the advisory board for a community parking district may be "the existing board of a business improvement district, a redevelopment corporation, a community development corporation, or other nonprofit corporation approved by the City Council." The creation of the La Jolla Community Parking District was proposed by Promote La Jolla, Inc., the BID for La Jolla; the City Council approved that proposal in resolution R-300586. In that approved proposal, Promote La Jolla proposed that the Parking District would be "guided by a nine-member Community Parking District Advisory Board," and gave that nine-member Advisory Board certain responsibilities. In the resolution creating the La Jolla Community Parking District, however, the City Council, consistent with Council Policy 100-18, designated Promote La Jolla as the La Jolla Community Parking District Advisory Board. The nine-member Advisory Board has, since its members were appointed in November of 2005, met regularly and developed a draft proposal for parking management in the District, but no parking management proposal for the District has ever been finalized or presented to the City Council.

In late 2007, a community group called "La Jollans for Clean Government, Inc." suggested that the nine-member Advisory Board was required, under the Government Code, to adopt and comply with a Conflict of Interest Code. The Office of the City Attorney, reviewing these contentions in light of the various governing documents, concluded that such a Code is necessary, and so advised the Board. Subsequently, the Board, at its February 6, 2008 meeting, approved specific code language that it had, with the City Attorney's advice, developed for itself, and passed a motion requesting that the City Council as its "Code Reviewing Agency," adopt such a Code. The Board also requested that the City Attorney's Office review certain revisions proposed by a community member who attended the February 6, 2008 meeting, and recommend that they be adopted if the City Attorney judged them to be legally necessary or advisable.

Pursuant to this direction from the Board, the City Attorney's Office has drafted the accompanying documents, including a proposed conflict of interest code which reflects the following changes from the Code approved by the Board:

- The Code explicitly states that "reportable investments" include both direct and indirect investments;
- A reference to the definition of "parent company" in the FPPC's regulations has been added;
- The term "entity" has been changed to "business entity" throughout the Code, in order to utilize a term that has a defined meaning under the Government Code; and
- A clarifying reference has been added to make explicit that income and gifts are reportable not only if they come from persons or business entities located in the District, but also persons or business entities that own real property in the District.

It also bears noting that the Board, at the urging of interested citizens who attended their February 6, 2008 meeting, included in their recommended code a requirement to report real property interests not only within the District, but within ten miles of the district boundary. This requirement far exceeds requirements that the City has included in comparable codes, which typically extend such reporting for two miles.

In addition, language limiting disclosure to investments equaling "one percent or more" of parent companies whose parents, affiliates, or subsidiaries engage in parking-related business is included. It might be argued that state law requires that the Code make an investment reportable if it is worth \$2,000.00 or more. However, the La Jolla Board felt that, when an investment is in a company not directly engaged in parking related business, but doing so only through an affiliate, to require reporting down to the \$2,000.00 level should not be required because it would require reporting of a great many large companies with large affiliate networks, when in fact such investments could not reasonably give rise to an actual conflict. By requiring reporting of investments of 1% or more, the La Jolla Board intended to require reporting of investments that might actually influence a member's actions without requiring overly broad reporting.

The Advisory Board has suspended substantive business until such a Code is in place, out of concern that its actions could be invalidated under the Government Code if they are taken in the absence of a Code. Thus approval of the code in a timely manner is necessary to allow the Board to conduct substantive business. If the code is enacted now, Board members will be required to make their initial filings within thirty days.

Because the legal necessity for such a Code is a matter of some controversy, the Office of the City Attorney, at the Board's request, is drafting a letter seeking the formal advice of the Fair Political Practices Commission on the question. Such advice is expected by mid-March. In light of this, the resolution adopting the Code contains language making the application of this Code

conditional, so that if the FPPC rules that no code is needed, no further Council action will be needed to remove the Code.

Finally, the La Jolla Community Parking District is one of six community parking districts currently operating pursuant to City Council Policy 100-18. The legal issues regarding the identity of the LJCPD's Advisory Board are unique to La Jolla, and do not affect the other CPDs' Boards. Moreover, the legal underpinnings for finding that CPDABs are generally required to be subjected to Conflict of Interest Codes flow principally from City Council Policy 100-18 itself, and are therefore equally applicable to all six CPDs. Therefore, the proposed Code would apply equally to all six CPDs. However, because the above-mentioned FPPC advice letter could ultimately result in a determination that CPDs do not require Codes, the language conditioning the applicability of the Code on the FPPC's decision would also apply equally to all six CPD Boards.

Respectfully submitted,

MICHAEL J. AGUIRRE, CITY ATTORNEY



Michael P. Calabrese
Chief Deputy City Attorney

MPC:sc
RC-2008-4

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COMMUNITY PARKING DISTRICT ADVISORY BOARD
CONFLICT OF INTEREST CODE

APPENDIX A
DESIGNATED POSITIONS, DUTIES, AND CATEGORIES

<u>POSITION</u>	<u>DUTIES</u>	<u>CATEGORY</u>
Member or Alternate, Community Parking District Advisory Board	Serve as member or alternate member of CPD Advisory Board, as set forth in supporting materials to San Diego City Council Resolutions creating such CPD (see list below).	1, 2, 3
Consultant to Community Parking District Advisory Board	As specified in contract.	4

<u>District</u>	<u>Date Created</u>	<u>Resolution</u>
Centre City	December 2, 1997	R-289520
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Mid-City	December 2, 1997	R-289522
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Pacific Beach	June 27, 2005	R-300585
La Jolla	June 27, 2005	R-300586

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COMMUNITY PARKING DISTRICT ADVISORY BOARD
CONFLICT OF INTEREST CODE

APPENDIX B
STATEMENT OF ECONOMIC INTEREST
DISCLOSURE CATEGORIES

Category 1

All reportable investments in, ownership of, employment by, and income and gifts from any person or entity that:

- (a) engages in business relating to parking equipment, facilities, services, or technology, including but not limited to the ownership or management of parking garages or valet parking services, the manufacture or sale of parking meters or parking enforcement technology, or the provision of parking consulting services, or
- (b) supplies goods or services to the Community Parking District Advisory Board.

For purposes of this category, the term "reportable investment" means (i) any investment in an entity that engages directly in business relating to parking equipment, facilities, services, or technology, or that directly supplies goods or services to the Community Parking District Advisory Board, and (ii) any investment one percent or more of the outstanding equity shares, or one percent or more of the outstanding debt, in a privately or publicly held company whose subsidiary, affiliate, or parent (as defined at Cal. Code Regs. tit. 2, §18703.1(d)) engages in such business or supplies such goods or services. For purposes of this category, a person is "employed by" a business entity if he or she is a director, officer, partner, trustee, or employee of, or holds any management position in, the business entity.

Category 2

All interests in 1) real property located within the jurisdictional boundary of the Community Parking District, as defined in the supporting materials to applicable San Diego City Council Resolutions and as shown in the maps attached hereto, or employment by, earned income from, or gifts from an owner of such real property, or 2) commercially zoned real property located within ten miles of such boundary, and, with respect to each such property that is rental property, the name of each tenant that is both a person or business entity described in Category 1 and a single source of annual income of \$10,000 or more. An interest in real property that is used by the reporting individual as his or her personal residence need not be reported unless the residence is also used for business purposes.

Category 3

All direct or indirect investments in, ownership of, employment by, and earned income and gifts from any business entity that is located within or owns real property within the

jurisdictional boundary of the Community Parking District, as defined in the supporting materials to applicable San Diego City Council Resolutions and as shown in the maps attached hereto, or within ten miles of such boundary, and that either sells goods or renders services or provides restaurant or hotel services to the public. The report shall specify the location of each such business entity, the nature of the business entity's business, and the reporting individual's relationship to the business entity (including the individual's percentage of any investment or ownership interest in the business entity and the existence of any income or gifts received from the business entity). For purposes of this category, a person is "employed by" a business entity if he or she is a director, officer, partner, trustee, or employee of, or holds any management position in, the business entity.

Category 4

Consultants shall be included in the list of designated members and shall disclose in the same manner as Members and Alternates (Categories 1, 2, and 3), subject to the following limitation:

The City's Deputy Director for City Planning and Community Investment may determine in writing that a particular consultant, although a "designated position," is retained to perform duties that are limited in scope and that the consultant therefore need not fully comply with the disclosure requirements applicable to Members and Alternates. Such written determination shall include a description of the consultant's duties and, based on that description, a statement of the extent of the consultant's disclosure requirements. The Deputy Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

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OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

Michael J. Aguirre
CITY ATTORNEY

February 12, 2008

REPORT TO THE CITY COUNCIL

CREATION OF A CONFLICT OF INTEREST CODE FOR COMMUNITY PARKING
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Respectfully submitted,

MICHAEL J. AGUIRRE, CITY ATTORNEY



Michael P. Calabrese
Chief Deputy City Attorney

MPC:sc
RC-2008-4

001226

COMMUNITY PARKING DISTRICT ADVISORY BOARD
CONFLICT OF INTEREST CODE

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**COMMUNITY PARKING DISTRICT ADVISORY BOARD
CONFLICT OF INTEREST CODE**

**APPENDIX B
STATEMENT OF ECONOMIC INTEREST
DISCLOSURE CATEGORIES**

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Category 3

All direct or indirect investments in, ownership of, employment by, and income and gifts from any business entity that is located within or owns real property within the jurisdictional boundary of the Community Parking District, as defined in the supporting materials to applicable San Diego City Council Resolutions and as shown in the maps

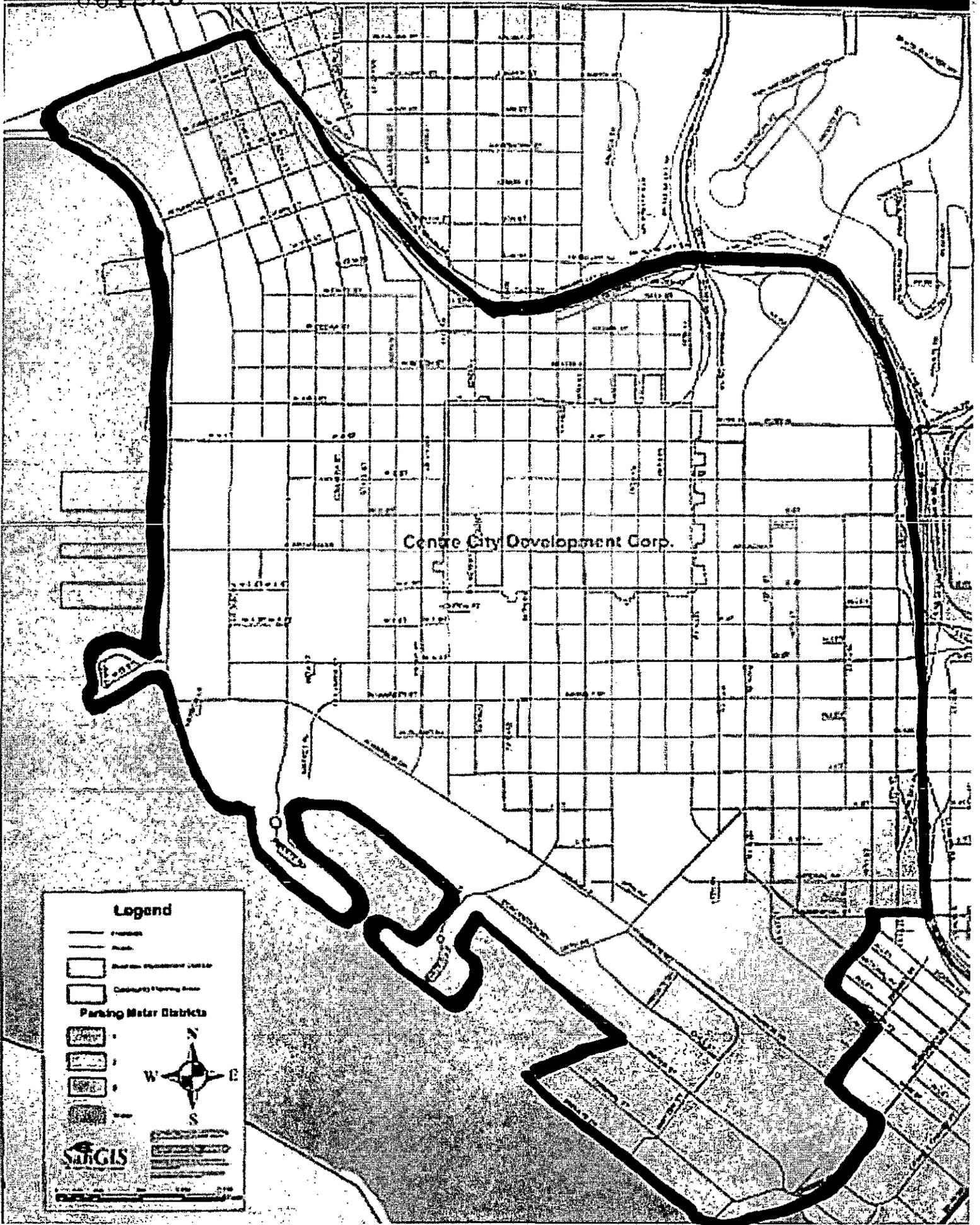
attached hereto, or within ten miles of such boundary, and that either sells goods or renders services or provides restaurant or hotel services to the public. The report shall specify the location of each such business entity, the nature of the business entity's business, and the reporting individual's relationship to the business entity (including the individual's percentage of any investment or ownership interest in the business entity and the existence of any income or gifts received from the business entity). For purposes of this category, a person is "employed by" a business entity if he or she is a director, officer, partner, trustee, or employee of, or holds any management position in, the business entity.

Category 4

Consultants shall be included in the list of designated members and shall disclose in the same manner as Members and Alternates (Categories 1, 2, and 3), subject to the following limitation:

The City's Deputy Director for City Planning and Community Investment may determine in writing that a particular consultant, although a "designated position," is retained to perform duties that are limited in scope and that the consultant therefore need not fully comply with the disclosure requirements applicable to Members and Alternates. Such written determination shall include a description of the consultant's duties and, based on that description, a statement of the extent of the consultant's disclosure requirements. The Deputy Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

Downtown Parking Meter District #1



Centre City Development Corp.

Legend

- Freeway
 - Road
 - District Boundary Line
 - District Parking Area
- Parking Meter Districts**
- 1
 - 2
 - 3
 - 4



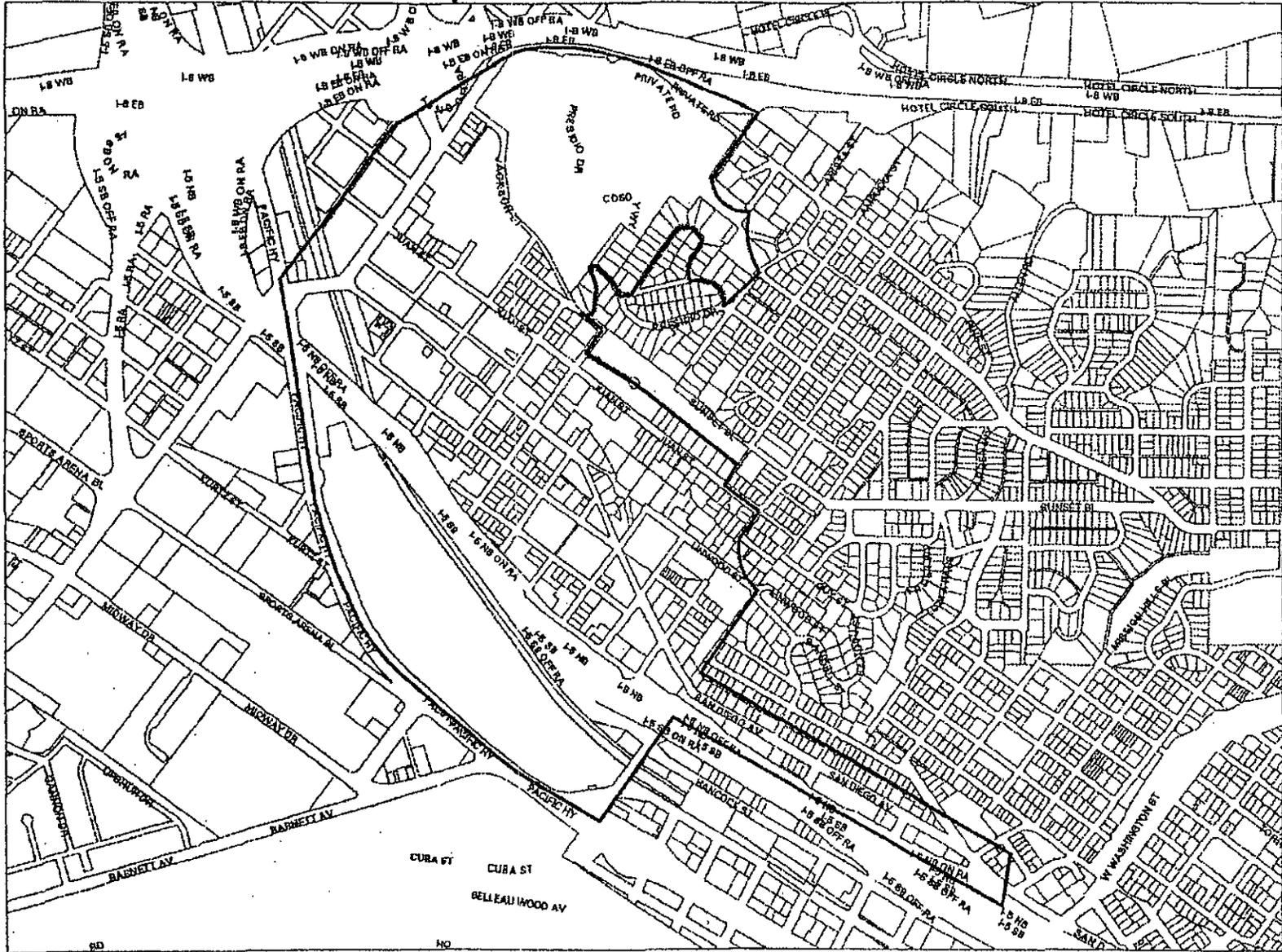
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Map of Downtown Parking Meter District #1



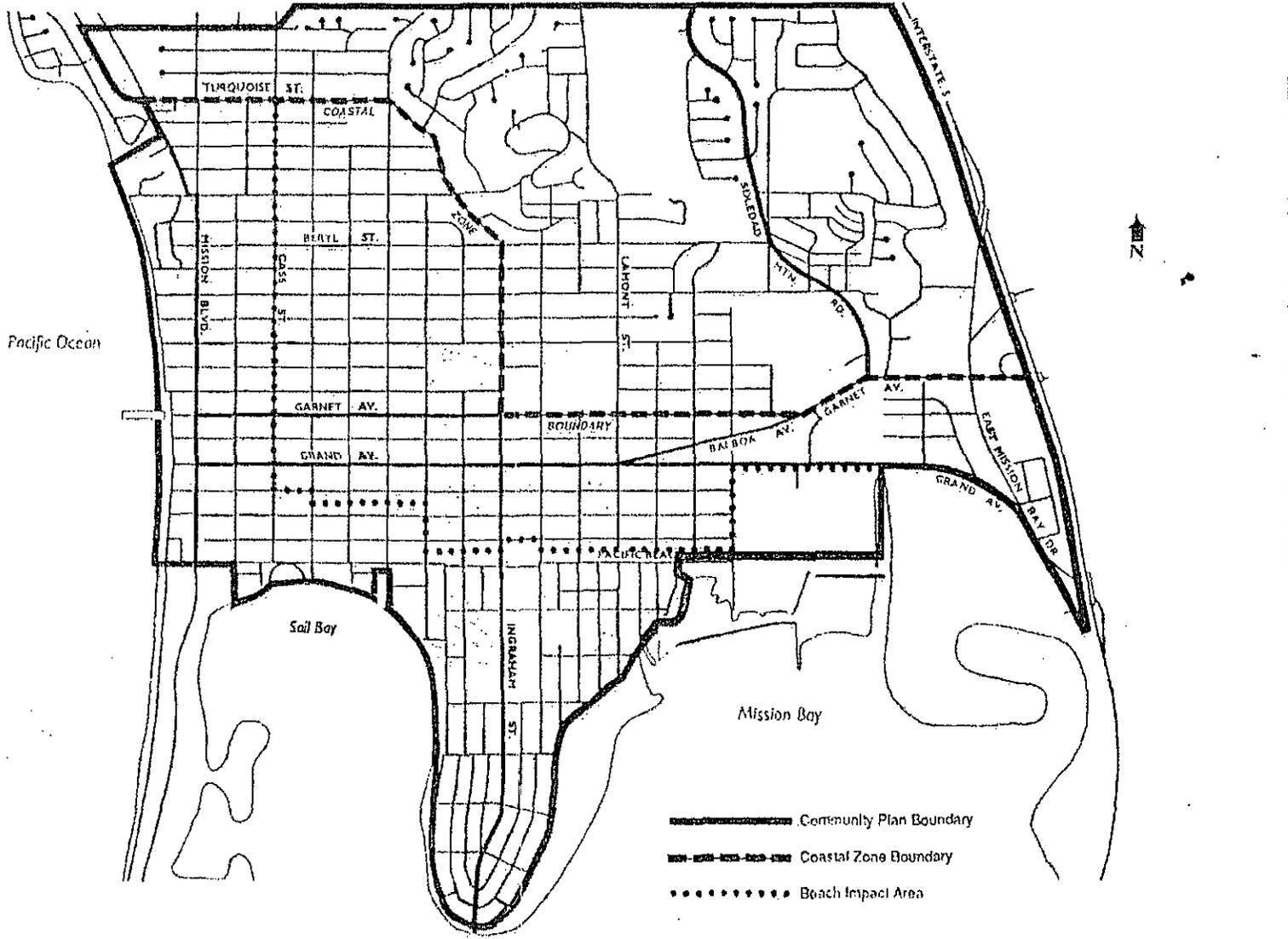
Old Town Community Parking District

Boundaries correspond to the Old Town Business Improvement District

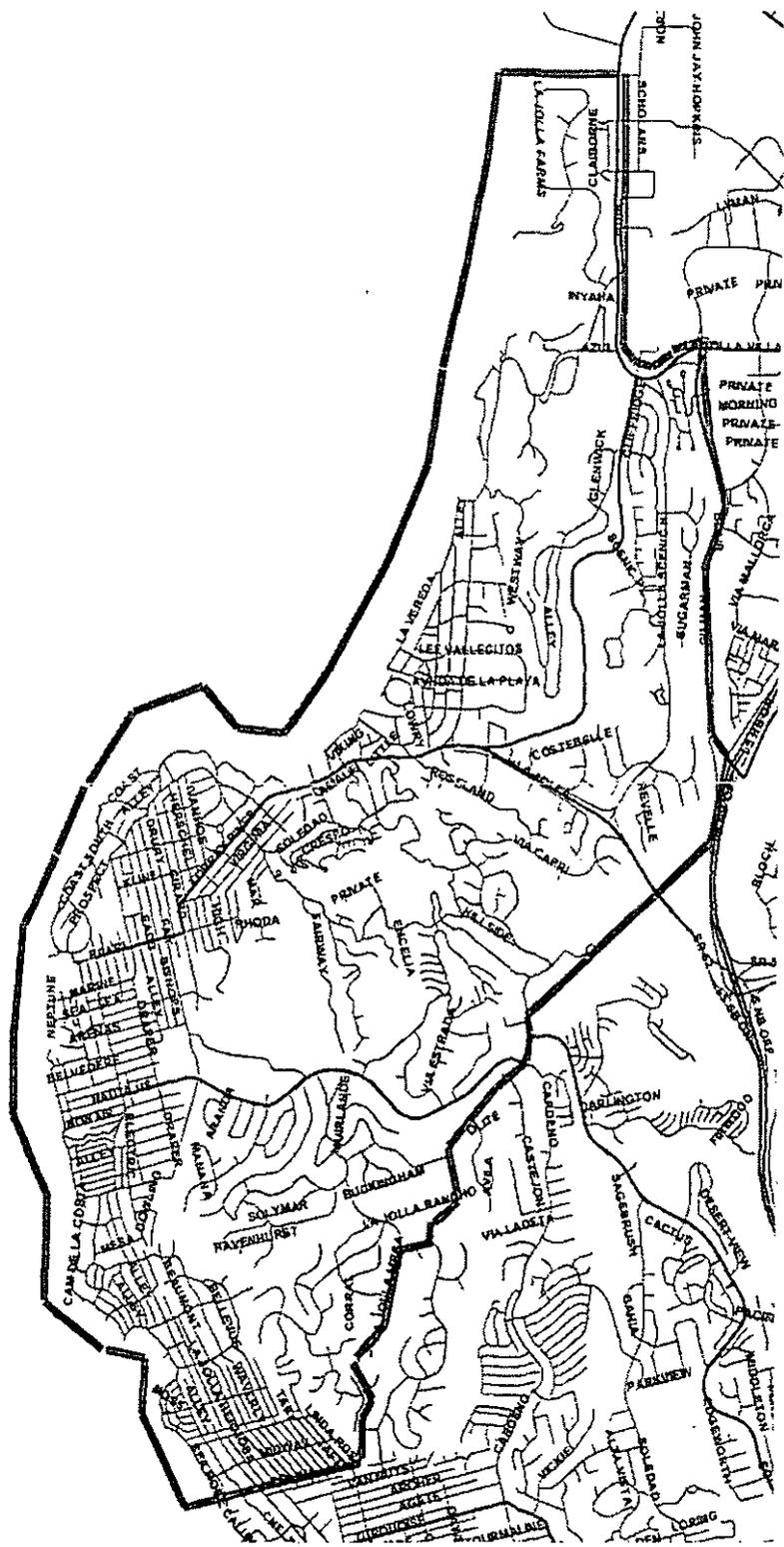


001231

001232



Pacific Beach Community Parking District
 Boundaries correspond to the Pacific Beach Coastal Zone and Community Plan Area



La Jolla Community Parking District Boundaries

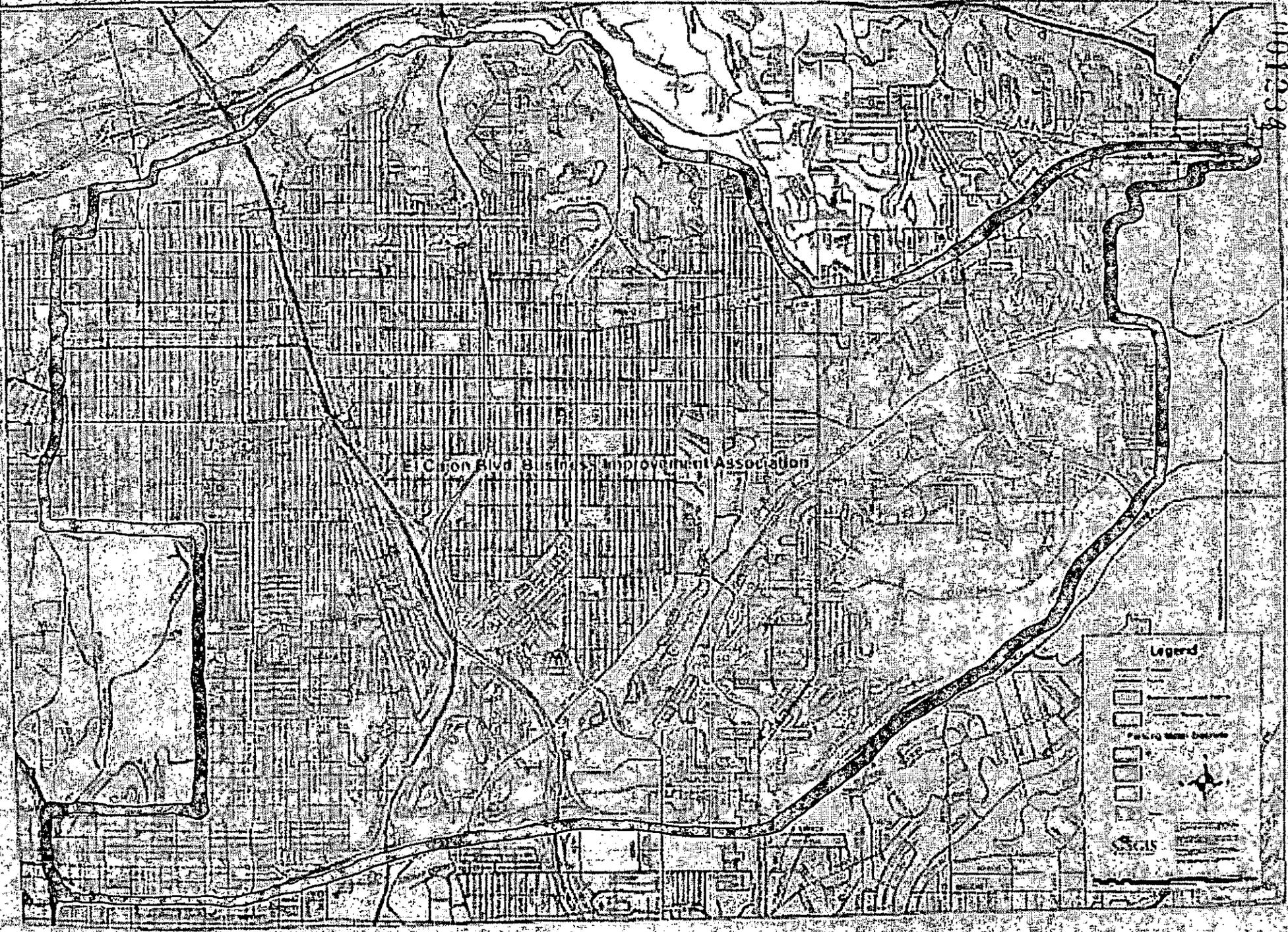
Mid-City Parking Meter District #3

001234

El Cerrito Blvd. Business Improvement Association

Legend

- Major Street
- Minor Street
- Parking Meter District
- North
- Scale



REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONI) 332
N/A 04/15
3. DATE: 02/13/08

001235

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):
CITY ATTORNEY

4. CT: COMMUNITY PARKING DISTRICT ADVISORY BOARD CONFLICT OF INTEREST CODE

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) MICHAEL CALABRESE, (619) 533-5872	6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) SONIA CASTRO, (619) 236-7032	7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED REPORT TO COUNCIL ATTACHED AS RC-2008-4	X
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8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST: N/A
DEPT.					
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>Karen Henderson</i>	2/13/08	8			
2				9	COO	<i>[Signature]</i>	2/13/08
3				10	CITY ATTORNEY	<i>[Signature]</i>	2/14/08
4				11	ORIG. DEPT	<i>Karen Henderson</i>	2/13/08
5				DOCKET COORD: _____ COUNCIL LIAISON _____			
7				✓	COUNCIL PRESIDENT	<i>[Signature]</i>	

SPOB CONSENT ADOPTION
 REFER TO: _____ COUNCIL DATE: 2/26/08

11. PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

See Attached Resolution.

11A. STAFF RECOMMENDATIONS:
APPROVE THE RESOLUTION.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): COUNCIL DISTRICT 1 (PETERS), 2 (FAULCONER), 3 (ATKINS), AND 7 (MADAFFER)
COMMUNITY AREA(S): CITY HEIGHTS, NORMAL HEIGHTS, KENSINGTON, NORTH PARK, GOLDEN HILL, PACIFIC BEACH, UPTOWN, OLD SAN DIEGO, CENTRE CITY, LA JOLLA
CALIFORNIA ENVIRONMENTAL QUALITY ACT [CEQA] PURSUANT TO STATE CEQA GUIDELINES SECTION 15060 (C)(3).
HOUSING IMPACT: NONE WITH THIS ACTION.
OTHER ISSUES: NONE WITH THIS ACTION.

001237

EXECUTIVE SUMMARY SHEET

Attention: Honorable Mayor and City Council
Origination Department: City Attorney Michael Aguirre
Subject: Community Parking District Advisory Boards'
Conflict of Interest Code
Council District(s): Districts 1, 2, 3, and 7
Staff Contact: Chief Deputy City Attorney Michael Calabrese

REQUESTED ACTION:

Approve a resolution to establish a conflict of interest code for the City's six Community Parking District ("CPD") Advisory Boards

EXECUTIVE SUMMARY:

The City Attorney recently opined that the La Jolla CPD Advisory Board is subject to the Political Reform Act's conflict of interest regulations and disclosure requirements. By extension, each of the other five CPDs would be subject to such regulations and requirements. Pursuant to the San Diego Municipal Code, the City Council is vested with the authority to review and adopt conflict of interest codes for the City's boards and commissions. Upon adoption of such a code by the City Council, the members are required to file financial disclosure forms. The level of disclosure required by each reporting individual is based on the responsibilities and authority of the particular board or commission on which the individual serves.

The conflict of interest code offered for Council consideration as part of this action pertains to the City's six Community Parking District Advisory Boards. The manner of organization of one or more of the boards, including the La Jolla CPD advisory board, raises a unique legal issue that the City Attorney addresses in the attached report.

RESOLUTION NUMBER R- _____

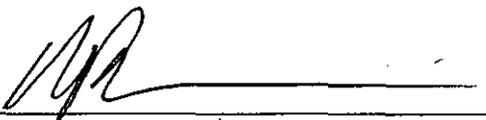
ADOPTED ON _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING COUNCIL POLICY NO. 100-18 PERTAINING TO COMMUNITY PARKING DISTRICT POLICY.

BE IT RESOLVED, by the Council of the City of San Diego, that Council Policy No. 100-18 titled "Community Parking District Policy" is amended as set forth in the Council Policy filed in the office of the City Clerk as Document No. RR-_____.

BE IT FURTHER RESOLVED, that the City Clerk is instructed to add the aforesaid to the Council Policy Manual.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Michael Calabrese
Chief Deputy City Attorney

MC:sc
04/01/08
Or.Dept: Gen. Svcs.
R-2008-858

001240

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

SUBJECT: COMMUNITY PARKING DISTRICT POLICY
POLICY NO.: 100-18
EFFECTIVE DATE: April __, 2008

PURPOSE:

The intent of this Policy is to provide a mechanism whereby communities unable to meet existing parking demands may devise and recommend to the City Council parking management solutions to meet their specific needs and resolve undesirable parking impacts. 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 dedicated to improvements and activities within the Community Parking District, as recommended by Community Parking District Advisory Boards and approved by the City Council. 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. This Policy is not intended to confer on any Community Parking District the authority to act on behalf of the City or otherwise to make, compel, or prevent any governmental decision. All parking management decisions are subject to prior approval by the City Council, unless otherwise specified herein.

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.

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- 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 making recommendations to the City, subject to the following:
 - (a) The City Council may designate as the Community Parking 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.
 - (b) Where the City Council designates as a Community Parking District Advisory Board an entity that is required, apart from its role as a Community Parking District Advisory Board, to file statements of economic interest under the California Political Reform Act, and such statements would be sufficiently broad to include interests related to parking management, the City may, in its contract with such entity and with the approval of the City Council, grant the entity decisionmaking authority consistent with applicable law.
 - (c) 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;

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- (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 for use within 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 for use within a Community Parking District on a case-by-case basis. Such additional revenues may be allocated for use within 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 for the City to implement and manage the proposed use(s);
 - c. The amount allocated is no more than necessary for the City to implement and manage the proposed use(s); and

COUNCIL POLICY

001244

- d. The City determines through a fiscal impact analysis that the Community Parking District's recommended 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 for use within 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 for use within 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.

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2. A Community Parking District's use of allocated revenues shall in all cases be subject to prior review and approval by the City Council. No funds shall be disbursed except in accordance with an approved plan and budget, as set forth in section D. Any material variance from an approved plan and budget requires approval of the City Council. Non-material variances from an approved plan and budget shall be submitted for independent review and approval by the Community Parking District Program Administrator. Each expenditure to be made pursuant to an approved plan and budget, to the extent not specifically identified in that plan and budget, shall be submitted for independent review and approval by the Community Parking District Program Administrator.
3. 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.

COUNCIL POLICY

4. Community Parking District revenues shall supplement, and not supplant, existing City funding sources and program revenues for each District.
5. 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.
6. 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, and of any variance from such plan and budget, shall rest with the City Council. Such approval may be granted by authorizing the City Manager to execute and, when appropriate, to amend a written Agreement between the City and each Community Parking District Advisory Board, or through the annual citywide budgetary approval process. The failure of a Community Parking District Advisory Board to submit an annual plan and budget shall not prevent the City Council from exercising any aspect of its ordinary legislative authority, including its authority with respect to parking policy affecting the relevant Community Parking District. Any implementation of an approved plan, to the extent that such implementation involves the making of governmental decisions, shall be submitted for independent review and approval by the Community Parking District Program Administrator..
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, in detail, how such revenues 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;

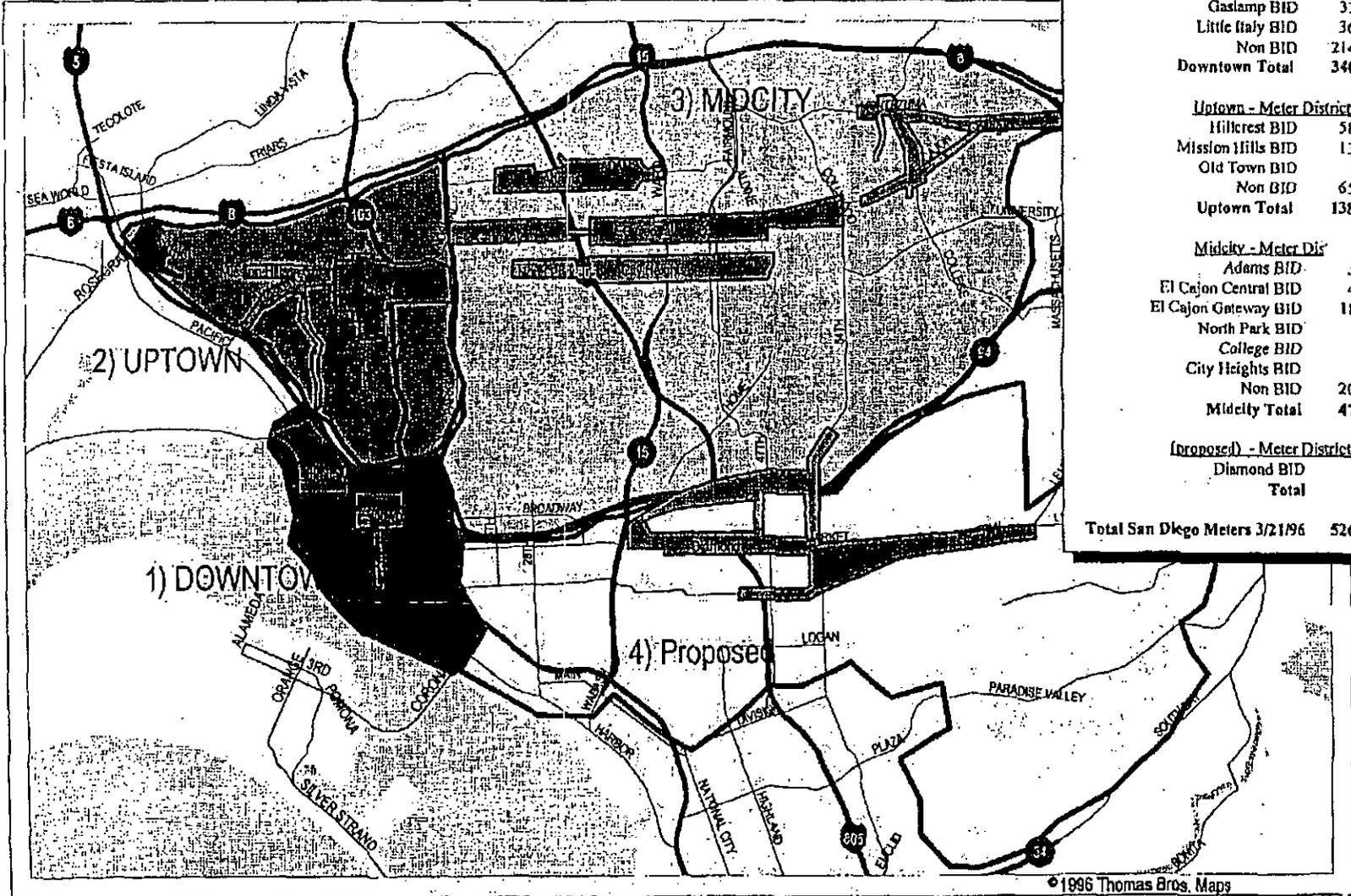
CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

- 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.
 6. A Community Parking District Advisory Board shall have no authority to act on behalf of the City or to make any governmental decisions. It shall act in a solely advisory capacity in making recommendations to the City Council, which, if approved, shall be carried out subject to City Council supervision. The City Council may authorize the City Manager to exercise such supervision on its behalf. To the extent that this Policy may be subject to interpretation, it shall be construed consistent with this statement of legislative intent.

HISTORY:

Adopted by Resolution R-288408 3/04/1997
Amended by Resolution R-299836 11/15/2004
Amended by Resolution R-_____ 4/___/2008

Parking Meter District Map



SAN DIEGO METER INFORMATION	
<u>Downtown - Meter District 1</u>	
Downtown BID	568
Gaslamp BID	333
Little Italy BID	362
Non BID	2145
Downtown Total	3408
<u>Uptown - Meter District 2</u>	
Hillcrest BID	584
Mission Hills BID	139
Old Town BID	0
Non BID	657
Uptown Total	1380
<u>Midcity - Meter District 3</u>	
Adams BID	36
El Cajon Central BID	46
El Cajon Gateway BID	188
North Park BID	0
College BID	0
City Heights BID	0
Non BID	204
Midcity Total	474
<u>Proposed - Meter District 4</u>	
Diamond BID	0
Total	0
Total San Diego Meters 3/21/96	5262

© 1996 Thomas Bros. Maps

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

~~CITY OF SAN DIEGO, CALIFORNIA~~

~~COUNCIL POLICY~~ SUBJECT: COMMUNITY PARKING
DISTRICT POLICY

POLICY NO.: 100-18

EFFECTIVE DATE: ~~November 15, 2004~~ April, 2008

PURPOSE:

The intent of this Policy is to provide a mechanism whereby communities unable to meet existing parking demands may devise and ~~implement~~ recommend to the City Council 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~~ dedicated to improvements and activities within the Community Parking District, as recommended by Community Parking District Advisory Boards and approved by the City Council. 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. This Policy is not intended to confer on any Community Parking District the authority to act on behalf of the City or otherwise to make, compel, or prevent any governmental decision. All parking management decisions are subject to prior approval by the City Council, unless otherwise specified herein.

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

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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~~ making recommendations to the City, subject to the following:
 - (a) The City Council may designate as the Community Parking 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.
 - (b) Where the City Council designates as a Community Parking District Advisory Board an entity that is required, apart from its role as a Community Parking District Advisory Board, to file statements of economic interest under the California Political Reform Act, and such statements would be sufficiently broad to include interests related to parking management, the City may, in its contract with such entity and with the approval of the City Council, grant the entity decisionmaking authority consistent with applicable law.
 - (c) 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;

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COUNCIL POLICY

- (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.
 - 4.4. ~~The Community Parking District Program shall be administered by the City Manager on~~ 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~~ for use within 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 for use within a Community Parking District on a case-by-case basis. Such additional revenues may be allocated ~~to~~ for use within 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

COUNCIL POLICY

- authorized revenues, is sufficient for the City to implement and manage the proposed use(s);
- c. The amount allocated is no more than necessary for the City 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~~ recommended 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~~ for use within 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~~ for use within a Community Parking District shall be made only from new or

CITY OF SAN DIEGO, CALIFORNIA
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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. A Community Parking District's use of allocated revenues shall in all cases be subject to prior review and approval by the City Council. No funds shall be disbursed except in accordance with an approved plan and budget, as set forth in section D. Any material variance from an approved plan and budget requires approval of the City Council. Non-material variances from an approved plan and budget shall be submitted for independent review and approval by the Community Parking District Program Administrator. Each expenditure to be made pursuant to an approved plan and budget, to the extent not specifically identified in that plan and budget, shall be submitted for independent review and approval by the Community Parking District Program Administrator.

3. 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).

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- 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.~~

4. Community Parking District revenues shall supplement, and not supplant, existing City funding sources and program revenues for each District.~~4.~~

5. 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.~~

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

D. Community Parking District Management

1. ~~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, and of any variance from such plan and budget, shall rest with the City Council. Such approval may be granted by authorizing the City Manager to execute and, when appropriate, to amend a written Agreement between the City and each Community Parking District Advisory Board, or through the annual citywide budgetary approval process. The failure of a Community Parking District Advisory Board to submit an annual plan and budget shall not prevent the City Council from exercising any aspect of its ordinary legislative authority, including its authority with respect to parking policy affecting the relevant Community Parking District. Any implementation of an approved plan, to the extent that such implementation involves the making of governmental decisions, shall be submitted for independent review and approval by the Community Parking District Program Administrator.

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

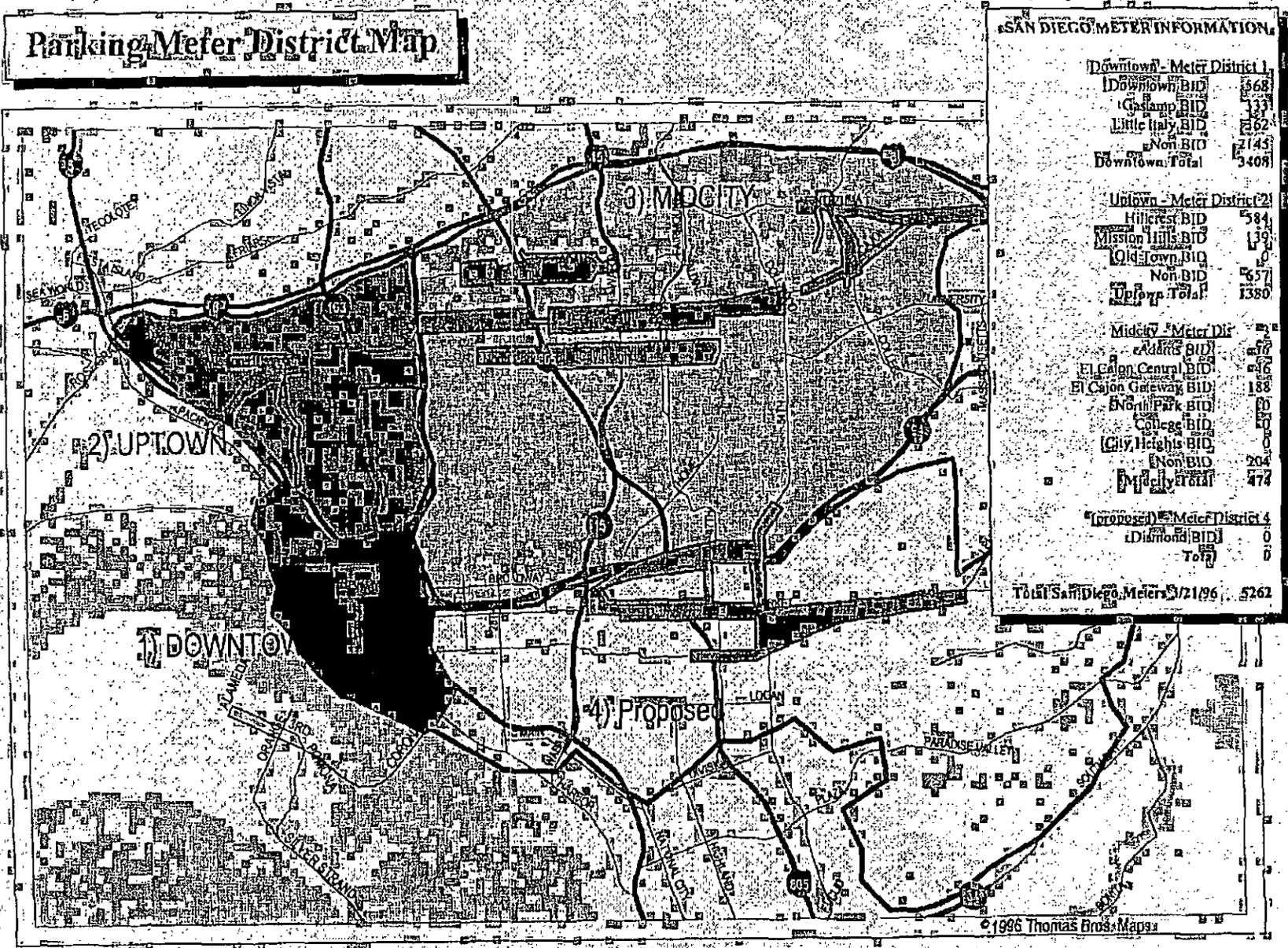
- a. How community input will be obtained and incorporated into the management of the District;
- b. A budget, including the sources and amounts of District revenues and in detail, how each such revenues are proposed to be used; and

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- c. Proposed improvements to address the District's parking impacts, and their proposed financing.
- 3 ~~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.
6. A Community Parking District Advisory Board shall have no authority to act on behalf of the City or to make any governmental decisions. It shall act in a solely advisory capacity in making recommendations to the City Council, which, if approved, shall be carried out subject to City Council supervision. The City Council may authorize the City Manager to exercise such supervision on its behalf. To the extent that this Policy may be subject to interpretation, it shall be construed consistent with this statement of legislative intent.

HISTORY:

Adopted by Resolution R-288408-03 3/04/1997
Amended by Resolution R-299836 11/15/2004
Amended by Resolution R-_____ 4/ /2008



RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION ADOPTING THE CONFLICT OF INTEREST CODE FOR COMMUNITY PARKING DISTRICT ADVISORY BOARDS.

WHEREAS, certain provisions of the Political Reform Act, Government Code sections 87300 and 87302 require local agencies to adopt conflict of interest codes designating positions that involve the making or participation in making of decisions which may foreseeably have a material effect on financial interests, and for each position, the financial interests which are reportable; and

WHEREAS, pursuant to City Council Policy 100-18, the City Council has created the following Community Parking Districts:

<u>District</u>	<u>Date Created</u>	<u>Resolution</u>
Centre City	December 2, 1997	R-289520
Uptown	December 2, 1997	R-289521
Mid-City	December 2, 1997	R-289522
Old Town	June 27, 2005	R-300584
Pacific Beach	June 27, 2005	R-300585
La Jolla	June 27, 2005	R-300586

pursuant to proposals submitted under Council Policy 100-18, and has, in the referenced Resolutions, established the boundaries thereof, and designated Advisory Boards therefore; and

WHEREAS, the City Attorney has advised that the members of such Advisory Boards have decision-making authority sufficient to subject them to the conflict-of-interest and financial-disclosure requirements of the Political Reform Act, and that the City Council, as the

code reviewing body for the advisory group, must adopt a conflict-of-interest code requiring appropriate financial disclosure by such advisory group members; and

WHEREAS, the City Attorney has requested from the California Fair Political Practices Commission a formal written opinion concerning the application of the Act to the members of such Advisory Boards; and

WHEREAS, the City Council believes in light of the City Attorney's advice that it is prudent, pending receipt of an opinion from the Fair Political Practices Commission, to adopt a conflict-of-interest code for such Advisory Boards so that they may continue lawfully to conduct their business; and

WHEREAS, the Office of the City Attorney, has, after consultation with such Advisory Boards, proposed a conflict-of-interest code designed to meet the specific needs of such Advisory Boards consistent with the requirements of the Political Reform Act; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the model code set forth at Cal. Code Regs. tit. 2, §18730, together with Appendix A and Appendix B hereto, are hereby approved as the listed Community Parking District Advisory Boards' Conflict of Interest Code.

BE IT FURTHER RESOLVED, that a copy of Appendix A and Appendix B, the Community Parking District Advisory Boards' Code, as adopted, be placed on file in the Office of the City Clerk as Document No. RR-_____.

BE IT FURTHER RESOLVED, that the persons whose positions are designated in the amended Conflict of Interest Code shall file their statements of economic interest with the City Clerk.

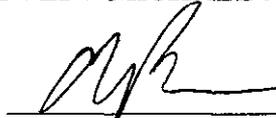
BE IT FURTHER RESOLVED, that the statements of economic interest filed by designated persons be retained by the Office of the City Clerk and be made available for public inspection and reproduction.

BE IT FURTHER RESOLVED, that the Conflict of Interest Code for the Community Parking District Advisory Boards becomes effective upon the date of final passage of this resolution, and shall remain effective until and unless the Fair Political Practices Commission determines that no such code is required for the Community Parking District Advisory Boards.

BE IT FURTHER RESOLVED, that this activity is not a project and therefore not subject to California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060 (c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Michael P. Calabrese
Chief Deputy City Attorney

MPC:sc

04/02/08

Aud.Cert.: N/A

Or.Dept: City Planning and Community Investment

R-2008-859

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

**COMMUNITY PARKING DISTRICT ADVISORY BOARD
CONFLICT OF INTEREST CODE**

**APPENDIX A
DESIGNATED POSITIONS, DUTIES, AND CATEGORIES**

<u>POSITION</u>	<u>DUTIES</u>	<u>CATEGORY</u>
Member or Alternate, Community Parking District Advisory Board	Serve as member or alternate member of CPD Advisory Board, as set forth in supporting materials to San Diego City Council Resolutions creating such CPD (see list below).	1, 2, 3
Consultant to Community Parking District Advisory Board	As specified in contract.	4

<u>District</u>	<u>Date Created</u>	<u>Resolution</u>
Centre City	December 2, 1997	R-289520
Uptown	December 2, 1997	R-289521
Mid-City	December 2, 1997	R-289522
Old Town	June 27, 2005	R-300584
Pacific Beach	June 27, 2005	R-300585
La Jolla	June 27, 2005	R-300586

COMMUNITY PARKING DISTRICT ADVISORY BOARD
CONFLICT OF INTEREST CODE

APPENDIX B
STATEMENT OF ECONOMIC INTEREST
DISCLOSURE CATEGORIES

Category 1

All reportable investments in, ownership of, employment by, and income and gifts from any person or entity that:

- (a) engages in business relating to parking equipment, facilities, services, or technology, including but not limited to the ownership or management of parking garages or valet parking services, the manufacture or sale of parking meters or parking enforcement technology, or the provision of parking consulting services, or
- (b) supplies goods or services to the Community Parking District Advisory Board.

For purposes of this category, the term "reportable investment" means (i) any investment in an entity that engages directly in business relating to parking equipment, facilities, services, or technology, or that directly supplies goods or services to the Community Parking District Advisory Board, and (ii) any investment one percent or more of the outstanding equity shares, or one percent or more of the outstanding debt, in a privately or publicly held company whose subsidiary, affiliate, or parent (as defined at Cal. Code Regs. tit. 2, §18703.1(d)) engages in such business or supplies such goods or services. For purposes of this category, a person is "employed by" a business entity if he or she is a director, officer, partner, trustee, or employee of, or holds any management position in, the business entity.

Category 2

All interests in 1) real property located within the jurisdictional boundary of the Community Parking District, as defined in the supporting materials to applicable San Diego City Council Resolutions and as shown in the maps attached hereto, or employment by, earned income from, or gifts from an owner of such real property, or 2) commercially zoned real property located within two miles of such boundary, and, with respect to each such property that is rental property, the name of each tenant that is both a person or business entity described in Category 1 and a single source of annual income of \$10,000 or more. An interest in real property that is used by the reporting individual as his or her personal residence need not be reported unless the residence is also used for business purposes.

Category 3

All direct or indirect investments in, ownership of, employment by, and earned income and gifts from any business entity that is located within or owns real property within the

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jurisdictional boundary of the Community Parking District, as defined in the supporting materials to applicable San Diego City Council Resolutions and as shown in the maps attached hereto, or within ten miles of such boundary, and that either sells goods or renders services to the public. The report shall specify the location of each such business entity, the nature of the business entity's business, and the reporting individual's relationship to the business entity (including the individual's percentage of any investment or ownership interest in the business entity and the existence of any income or gifts received from the business entity). For purposes of this category, a person is "employed by" a business entity if he or she is a director, officer, partner, trustee, or employee of, or holds any management position in, the business entity.

Category 4

Consultants shall be included in the list of designated members and shall disclose in the same manner as Members and Alternates (Categories 1, 2, and 3), subject to the following limitation:

The City's Deputy Director for City Planning and Community Investment may determine in writing that a particular consultant, although a "designated position," is retained to perform duties that are limited in scope and that the consultant therefore need not fully comply with the disclosure requirements applicable to Members and Alternates. Such written determination shall include a description of the consultant's duties and, based on that description, a statement of the extent of the consultant's disclosure requirements. The Deputy Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

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OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

Michael J. Aguirre
CITY ATTORNEY

April 2, 2008 Supplemental Report

REPORT TO THE CITY COUNCIL

OPTIONS FOR CREATION OF A CONFLICT OF INTEREST CODE FOR COMMUNITY
PARKING DISTRICTS OR, IN THE ALTERNATIVE, REVISIONS TO CITY COUNCIL
POLICY 100-18

As discussed in the City Attorney's February 12, 2008 Report to Council and its February 22, 2008 Revised Report, the California Government Code, specifically the Political Reform Act [PRA], Cal. Gov't Code §87100 *et seq.*, requires local agencies to adopt conflict of interest codes designating positions whose holders make governmental decisions, or participate in the making of such decisions, that may foreseeably have a material effect on members' financial interests.

On February 26, 2008, the City Council considered a proposal to adopt a Conflict of Interest [COI] Code for the City's six Community Parking District Advisory Boards [CPDABs]. Citizens had expressed concern that one of the CPDABs, the La Jolla Community Parking District Advisory Board, was proceeding with its business in violation of the PRA because it was a decision-making body but had not been made subject to a COI Code and had not filed Statements of Economic Interest [SEIs]. The Office of the City Attorney investigated this contention and ultimately agreed, finding in a memorandum issued on December 14, 2007, as clarified in a letter dated December 17, 2007, that the LJCPDAB was required to comply with a COI Code and file SEIs thereunder. This conclusion was based principally on the language of City Council Policy 100-18, which defines the duties and powers of the CPDABs generally, and was therefore equally applicable to all six CPDABs.

In the ensuing weeks, the Office of the City Attorney worked closely with the members of the LJCPDAB and the La Jolla community, crafting a proposed code at a series of publicly noticed meetings. Drafts of this code, as it evolved, were also shared with the other five CPDABs, with invitation to comment, through the City's Staff liaison to those CPDABs.

At the February 26, 2008 City Council meeting, Councilmembers suggested that the treatment of the CPDABs as decisionmaking bodies, subject to the PRA, was not their intent. Rather, Councilmembers suggested that the CPDABs were intended to be purely advisory in nature. Further, Councilmembers expressed concern that, if members were required to file SEIs, the requirement would be seen as an unwarranted compromise of CPDAB members' privacy, and thus would discourage citizen participation in these volunteer boards. The Office of the City Attorney responded that the explicit current language of CP 100-18 compelled a conclusion that COI Codes and SEI filing were mandatory, but that it might be possible to amend CP 100-18 to remove all decisionmaking authority from the CPDABs. The Council thus requested that the

Office of the City Attorney return to the Council on either April 1, 2008 or April 15, 2008, to present two alternatives. First, the Council wished to consider a COI Code for the CPDABs that would be as limited as possible. Second, the Council wished to have the City Attorney's Office present revisions to CP 100-18 that would eliminate the language that had led to the finding that CPDABs had decisionmaking authority, thus potentially eliminating the need for any of the CPDABs to file SEIs.

This report describes the alternatives that the Council requested on February 26, 2008. Members of the six CPDABs and the Citywide Parking Advisory Board have had a full opportunity to review both the revised COI Code and the revised CP 100-18, and have given feedback both in writing and in two publicly noticed meetings of the Citywide Parking Advisory Board. The Council is requested to take either Alternative Action A or Alternative Action B as described below. The Office of the City Attorney strongly recommends Action A, the adoption of a Conflict of Interest Code, for the reasons stated below.

I. Alternative A: Adoption of a Conflict of Interest Code

The Conflict of Interest Code that would be adopted as an attachment to Alternative Resolution A closely resembles the draft COI Code that the Council considered on February 26, 2008. Only one substantive change is reflected in the Code proposed with this Supplemental Report. In the Code that the Council previously considered, CPDAB members' real estate holdings would have been reportable not only if they were located within the CPDAB boundaries, but also within ten miles of CPD boundaries. This extension of the boundary for reportable real property interests had been specifically recommended by the La Jolla CPDAB at the urging of citizens at a public meeting, but was not endorsed by any of the other CPDABs. In addition, it would far exceed comparable provisions in similar COI Codes for other City boards and commissions. COI Codes for the governing bodies for literally dozens of other City agencies, boards, and commissions all use two miles as the standard for disclosure of real property interests. Thus, the Office of the City Attorney called the City Council's attention to the fact that the ten mile provision recommended by the La Jolla CPDAB would be inconsistent with many other comparable codes. After consultation with the remaining CPDABs and the Citywide PAB, the Office of the City Attorney recommends modifying this requirement to conform to the two mile standard that the City commonly follows. The proposed COI Code also limits disclosure, where the subject property is outside of the CPD boundary but within the two mile radius, to commercial property that is used for a parking-related business.

A small number of CPDAB members have also expressed general objection to Categories 3 (Interests in businesses providing goods and services within the CPD boundaries) and 4 (Consultants who contribute to governmental decisions) of the proposed COI Code. However, it is the opinion of the Office of the City Attorney that both provisions are necessary to ensure that the COI Code meets the requirements of the PRA. Regarding Category 3, under the PRA, while a COI Code may be narrowly tailored to reach only those interests related to the agency's subject matter, the COI Code must reach all interests "if it is reasonably foreseeable that [the agency's decisions] will have a material effect" on the interest. Cal. Gov't Code §87103. There can be little doubt that a retail business located within the boundaries of a CPD might foreseeably be affected by decisions on parking policy in the CPD. Regarding Category 4, the PRA is very clear in stating that consultants who contribute to governmental decisions are "public officials"

and thus subject to the Act's conflict of interest and disclosure requirements. Cal. Gov't Code §82048 ("Public Official" means every member, officer, employee *or consultant* of a state or local government agency.") Category 4 is thus a standard provision of City of San Diego COI Codes. However, it does contain a provision permitting the City to exempt individual consultants from disclosure upon finding that such individuals "perform duties that are limited in scope" and thus do not contribute to governmental decisions in a manner that would give rise to a state law disclosure requirement.

II. Alternative B: Revisions to City Council Policy 100-18

The Council's February 26, 2008 directive also included the presentation of an alternative that would strip all decisionmaking power from the CPDABs, rendering them as purely advisory bodies and, as the Council stated its intention, hopefully eliminating any disclosure requirement. We have drafted such revisions in consultation with the CPDABs' representatives. These revisions are briefly described below. However, for reasons explained in the next section ("Recommendation"), we strongly advise the Council against this alternative, as it will most likely not achieve the desired goal of preventing the CPDABs from being subject to disclosure under state law.

The proposed revisions to CP 100-18 would eliminate or modify all of the provisions that formed the basis of this Office's conclusion that CPDABs are subject to the PRA, while retaining, to the greatest extent possible, the provisions that would not bring the CPDABs under the PRA's reach. The net effect would be to retain the CPDABs advisory role but to clarify that this is their only role. Thus, references to CPDABs "managing" parking in their jurisdiction have been deleted. To the extent that CPDABs will continue to make recommendations on parking policy, language has been added making all such recommendations subject to Council approval. To the extent that implementation of broad policies will occur through day-to-day decisions of CPDABs, the revised language would make all such decisions subject to City Staff approval, which would have to occur after meaningful, substantive review.

One unique situation required special attention in making these recommendations. The Downtown CPD has for its CPDAB the Centre City Development Corporation, which is separately required to file SEIs under its own COI Code. Of the six CPDs, only the Downtown CPD is managed by a CPDAB that is subject to a COI Code for reasons unrelated to parking management. Thus, an attempt to exempt the Downtown CPDAB from SEI filing would be unavailing, as its members must file for unrelated reasons. The Downtown CPDAB wished not to be constrained by the numerous new requirements for City approval of its decisions, and thus requested that, in light of its independent duty to file SEIs, it be permitted different treatment under the proposed revisions to CP 100-18. Thus, section (A)(1)(c) was modified to provide that, if a CPDAB must file SEIs in any event, the City may by contract "grant the entity decisionmaking authority consistent with applicable law."

III. Recommendation

The Office of the City Attorney strongly recommends that the Council adopt a Conflict of Interest Code for the CPDABs. In making this recommendation, we are mindful of the fact that the Council expressed reservations about this course at the February 26, 2008 meeting. We also acknowledge that the CPDAB representatives who have given input on this issue have generally opposed the idea of filing financial disclosures, and that some have said that they would decline to serve if forced to reveal their financial interests.

We have attempted to craft a COI Code that will minimize privacy concerns by confining disclosures to the narrowest scope consistent with state law. At the same time, we cannot ignore the public interest in knowing whether policymakers, whether *de jure* or *de facto*, have divided loyalties when contributing to governmental decisions. In addition, we were struck by public testimony at the most recent La Jolla CPDAB meeting, where speakers, with unmistakable crowd approval, objected to the idea of stripping the La Jolla CPDAB of its decisionmaking power. The sentiment expressed was that the formation of the La Jolla CPD was viewed as a deal between the City and the La Jolla community in which the City delegated the power to manage parking to the community, acting through the CPDAB, and the community accepted not only the power but the commensurate responsibility. If the community had believed, when the CPD was formed in 2005, that the CPDAB would not have real power but would be "purely advisory," the community would not have supported its formation.

More important, as a matter of law, we have concluded that the proposed revisions to CP 100-18 will most likely not achieve the result that the Council suggested it intends. While these revisions conform to the Council's directives in that they would strip the CPDABs of all nominal decisionmaking power, a Fair Political Practices Commission [FPPC] regulation applicable to this situation strongly suggests that CPDAB members will be required to file SEIs in any event. Where a board or commission is nominally "purely advisory," it will nonetheless be considered a decisionmaking agency under state law if "[i]t makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency." Cal. Code Regs. tit. 2 §18701(a)(1)(A)(iii). *The FPPC would view the proposed amendments as placing form over substance.*

Although this regulation is not relevant under the current version of CP 100-18, which by its terms grants CPDABs with explicit power to manage parking, it will become relevant if the Council attempts to strip that power away in order to avoid a requirement that CPDABs file SEIs. Thus, we have reviewed the history of CPDAB recommendations and their consideration by the Council. This inquiry was initially guided by anecdotal recollections of City Staff, who reported to us that City Council has rarely or never rejected or modified a CPDAB recommendation.¹ Our review of the

¹ Staff in the City Planning and Community Investment Department, which serves as a liaison to the CPDABs, did suggest that collaboration between themselves and the CPDABs occurs regularly, and that CPDAB recommendations are commonly shaped by this collaboration before the CPDABs finalize them and present them to the City Council. It was suggested that this review might constitute "amendment or modification by another public official." We are unable to read the regulation in this way, for two reasons. First, the regulation clearly

legislative record on this score confirms this. Since the first version of CP 100-18 was created in 1997, and three districts (then called "Parking Meter Districts") were formed late that year, the City Council has, so far as we have been able to determine, never modified or rejected a CPDAB recommendation, but has approved annual plans from the CPDABs, without modification, on a dozen or more occasions.²

In light of this, the conclusion that CPDAB recommendations "are, and over an extended period of time have been, regularly approved without significant amendment or modification" by the City Council appears inevitable. Thus, even a modification of CP 100-18 that would strip the CPDABs of their nominal decisionmaking authority would not effectuate the goal of exempting them from SEI filing. The FPPC regulation compels application of the PRA regardless of any change that may be made to the Council Policy.

For these reasons, while we have presented two alternatives as requested, the Office of the City Attorney strongly advises the immediate adoption of the proposed COI Code for CPDABs.

Respectfully submitted,

MICHAEL J. AGUIRRE, CITY ATTORNEY



Michael J. Aguirre
City Attorney

MPC:sc
RC-2008-9

modification of CPDAB recommendations would have to occur after the CPDAB actually makes those recommendations. Second, while City Council modification or rejection of CPDAB recommendations would be relatively easy to analyze due to the wealth of record keeping under the Brown Act, informal shaping of those recommendations by Staff would likely be impossible to adequately document. Thus, if the regulation were applied as has been suggested, CPDAB members and Staff could suggest that recommendations had been informally shaped despite that lack of a record that the public might examine. Since a main purpose of the PRA is to shine light on government proceedings, we must avoid a reading that would tend to cloud those proceedings in secrecy.

²The current CP 100-18 calls for annual submission of parking management plans by the CPDABs for Council approval. We have been unable to verify that each CPDAB has actually submitted a plan in each year or its existence. Staff reports that in some years, plans were not submitted. Although it appears to us that annual plans for all three then-existing CPDABs were approved without modification in each year from 2001 through 2005, our review of this history is ongoing as of the April 2, 2008, deadline for the submission of this Report. We will supplement this information as appropriate.