

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

#102
2-26-08

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CITY CLERK'S OFFICE
SAN DIEGO, CA

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.

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.

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.

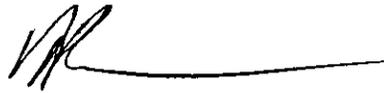
Because the legal necessity for such a Code is a matter of some controversy, the Office of the City Attorney, at the Board's request, is drafting a letter seeking the formal advice of the Fair Political Practices Commission on the question. Such advice is expected by mid-March. In light of this, the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

A handwritten signature in black ink, appearing to read 'MPC', followed by a long horizontal line extending to the right.

Michael P. Calabrese
Chief Deputy City Attorney

MPC:sc
RC-2008-4

#102
2/26/08

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

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CITY CLERK'S OFFICE
SAN DIEGO, CA

**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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Michael J. Aguirre
CITY ATTORNEY

February 12, 2008

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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.

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MICHAEL J. AGUIRRE, CITY ATTORNEY



Michael P. Calabrese
Chief Deputy City Attorney

MPC:sc
RC-2008-4

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

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Category 3

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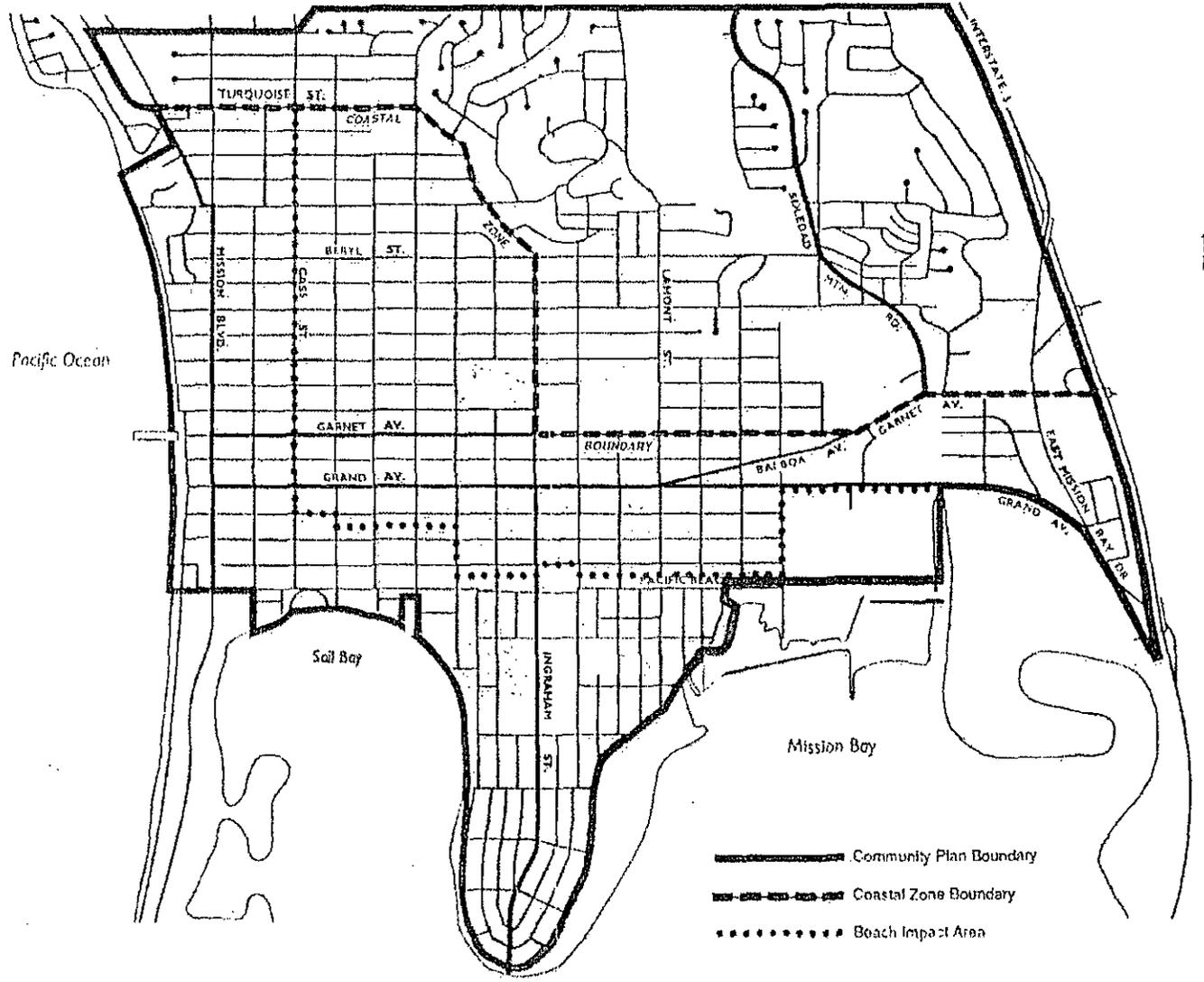
attached hereto, or within ten miles of such boundary, and that either sells goods or renders services or provides restaurant or hotel services to the public. The report shall specify the location of each such business entity, the nature of the business entity's business, and the reporting individual's 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.

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000164



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

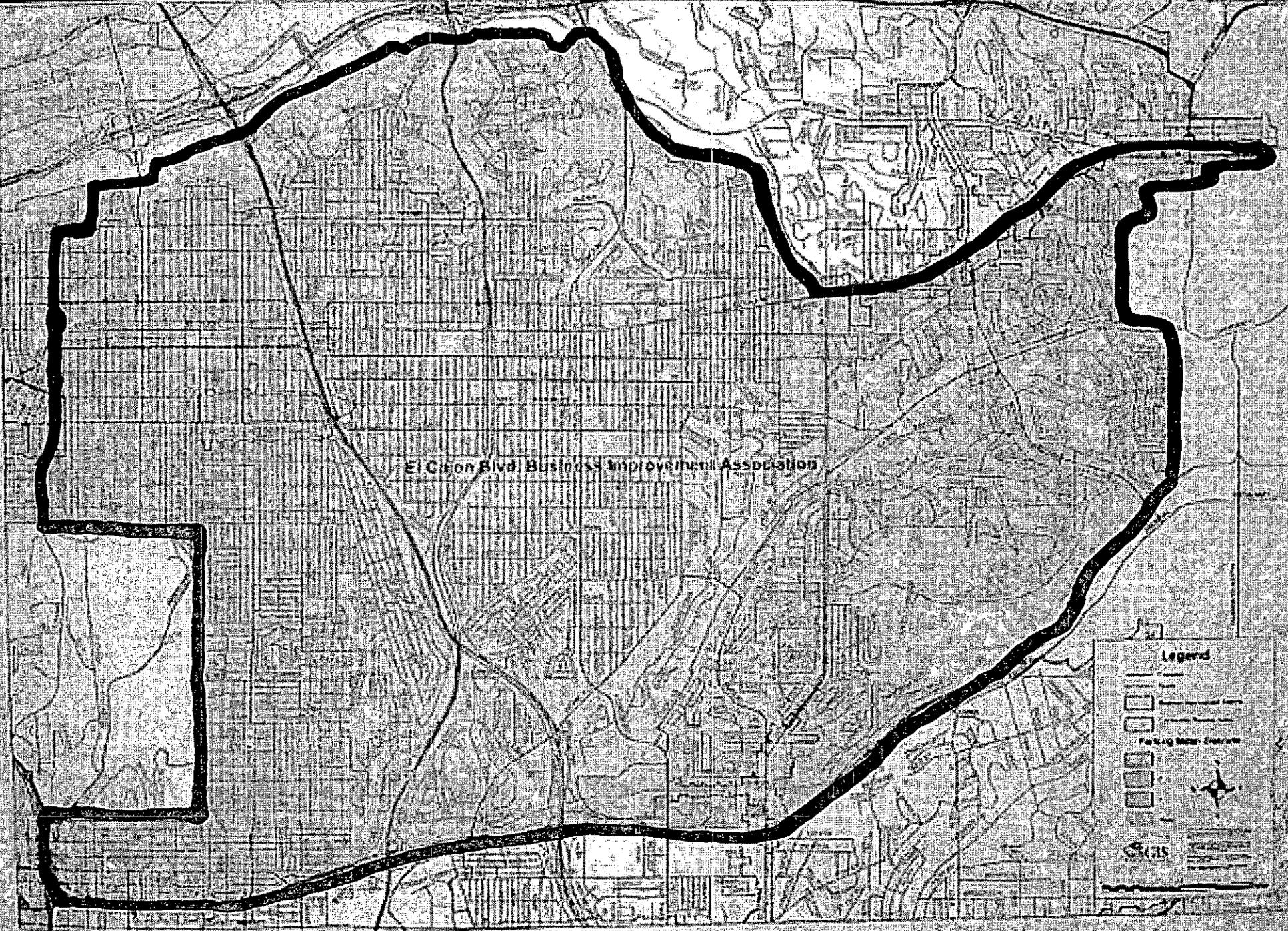
Mid-City Parking Meter District #3

000166

El Ciron Blvd. Business Improvement Association

Legend

- District Boundary
- Street
- Parking Meter Station
- North
- Scale



000167

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

N/A 102

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):
CITY ATTORNEY

3. DATE: 2/26
02/13/08

4. SUBJECT:

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

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					N/A
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 Hansen</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 Hansen</i>	2/13/08
5				DOCKET COORD: _____ COUNCIL LIAISON _____			
6				<input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION			
7				<input type="checkbox"/> 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.

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-_____

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
02/13/08
Aud.Cert.: N/A
Or.Dept: City Planning and Community Investment
R-2008-673

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: _____

JERRY SANDERS, Mayor (date)