

MARY NUESCA
ASSISTANT CITY ATTORNEY

MICHAEL REID
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Jan I. Goldsmith
CITY ATTORNEY

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

MEMORANDUM OF LAW

DATE: July 10, 2014

TO: Honorable Mayor and City Councilmembers

FROM: City Attorney

SUBJECT: Use of Parking Meter Funds and Parking Management-Related Revenue for Traffic Control for Special Events, Employee Parking Programs, and Landscaping and Maintenance

INTRODUCTION

On July 15, 2014, the San Diego City Council (Council) will consider the approval of the Fiscal Year 2015 Annual Plans (Plans) and accompanying budgets (Budgets) governing each Community Parking District (CPD) in San Diego.¹

On June 11, 2014, the Committee on Smart Growth and Land Use (Committee) considered the Plans and Budgets and requested that this Office review the appropriateness of certain proposed expenditures of parking meter revenue and parking management-related revenue (collectively, CPD Revenue) contained in the Plans and Budgets. In particular, the Committee asked this Office to analyze contemplated CPD Revenue expenditures for three categories of uses: (1) traffic control for special events; (2) employee parking programs; and (3) landscaping, maintenance, and trash removal at a public parking lot licensed to a CPD. This memorandum addresses the permissibility of these contemplated expenditures of CPD Revenue.²

¹ Throughout this memorandum, the term "City" refers to the City of San Diego, a municipal corporation, and the term "San Diego" refers to the territory within the City of San Diego's geographical boundaries.

² This memorandum is intended only as a guideline in setting the parameters on the appropriate use of CPD Revenue for the contemplated expenditures. There may be legal and policy issues in addition to those examined in this memorandum that require consideration before the City implements any specific project that utilizes CPD Revenue. The analysis of any expenditure for a particular project is highly fact-specific, requiring a detailed understanding of numerous factors. These factors include, among other things, the location of the project, the location of the nearest parking meter zone(s) to the project location, the purpose and context in which the project is being undertaken, and a clear understanding of the project's relation to addressing parking-related issues.

QUESTIONS PRESENTED

1. May the City allow the expenditure of parking meter revenue on traffic control for special events?
2. May the City allow the expenditure of parking meter revenue to subsidize parking for employees of private businesses?
3. May the City allow the expenditure of parking management-related revenue for landscaping, maintenance, and trash removal expenses at a public parking lot licensed to the Old Town CPD Advisory (Old Town Board) under a license agreement that requires the Old Town Board to perform such services in order to use the parking lot?

SHORT ANSWERS

1. Parking meter revenue may be spent on traffic control for special events to the extent traffic controllers are directing vehicles to parking located within or in close proximity to parking meter zones and they reasonably affect the parking of vehicles in parking meter zones.
2. Parking meter revenue may be spent to subsidize parking for private employees so long as the employees' location of parking is within or in close proximity to parking meter zones, the subsidy affects parking within or in close proximity to parking meter zones, and the amount of the subsidy is not excessive.
3. Parking management-related revenue may be used for landscaping, maintenance, and trash removal expenses at a public parking facility licensed to the Old Town Board under a license agreement that requires the Old Town Board to be responsible for such costs so long as the facility increases the availability, supply, and effective use of parking for residents, visitors, and employees within the Old Town CPD.

BACKGROUND

There is a distinction between parking meter revenue and parking management-related revenue as well as the appropriate use of the respective funds. Parking meter revenue is addressed in the San Diego Municipal Code (Municipal Code or SDMC) and refers to "parking meter funds generated from the purchase of parking meter time" and "[m]oney deposited in the parking meters and any parking meter funds generated through other methods of payment" SDMC §§ 82.08, 82.09. Parking management-related revenue is addressed in Council Policy 100-18 (Council Policy) and includes "City revenues which may be allocated to a Community Parking District in addition to parking meter revenue . . . includ[ing] . . . [f]ees paid by users to park in a facility operated by the Community Parking District" Council Policy § B.4. The analysis of proposed expenditures of these two types of revenue is generally similar, but differs in one key respect: parking meter revenue must be expended in a manner that affects the parking of vehicles in parking meter zones, whereas parking management-related revenue must affect parking within the CPD.

In order to install parking meters and set rates for parking meters, State of California (State) law requires the City to establish a parking meter zone through the enactment of an

ordinance. Cal. Veh. Code § 22508. In compliance with State law, parking meter zones have been established over the years throughout the City wherever there are parking meters installed. Typically, a parking meter zone consists of an approximately one block section of the street or a portion of the street on which the parking meter or set of parking meters are located. The Council has enacted an ordinance establishing these parking meter zones and the associated parking meter rates. SDMC §§ 86.0123, 86.0125.

There are currently six CPDs in San Diego.³ As set forth in the Council Policy, the purpose of these CPDs is “to provide a mechanism whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts.” Council Policy at 1. Three of the City’s CPDs, including Downtown, Uptown and Mid-City, have parking meter zones and generate parking meter revenue. The other three CPDs, including La Jolla, Old Town and Pacific Beach, do not have parking meter zones, and thus can only generate revenue from parking in the form of parking management-related revenue.

In accordance with the Council Policy, each CPD is managed by a CPD Advisory Board (Advisory Board). The Council Policy states that “[a] percentage of the total parking meter revenues . . . generated within each [CPD] shall be allocated to that [CPD] on an annual basis. The percentage shall be forty-five (45%) each fiscal year.” Council Policy § B.2. The City receives the remaining fifty-five (55) percent of parking meter revenue.

In accordance with the Council Policy, each Advisory Board must annually develop, through community input, and recommend to the Council, a plan identifying proposed improvements and activities and a budget for the next year. The Council must approve the plan and budget, either by authorizing the City Manager to execute a written Agreement⁴ between the City and each Advisory Board, or through the annual citywide budgetary approval process.

All Agreements from Fiscal Year 2014 provide that the City shall reimburse the Advisory Boards for their expenditures related to their CPD Program. The Agreements do not provide a blanket authorization for any activity that might fall within an item of a plan or budget. The Agreements also provide that the City will not reimburse the Advisory Board for any expenditure that is ineligible under the Municipal Code and Council Policy. The same provisions are contained in the proposed Agreements for Fiscal Year 2015, with the exception of the Agreement with the Old Town Board. The Old Town Agreement allows the Old Town Board to retain the revenue generated by operating the public parking facility up to the amount estimated by the City to cover their costs of licensing the property. As such, the Agreements have safeguards protecting the City from expending parking meter revenue on ineligible expenses, even if such expenses are incurred by the Advisory Boards.

³ The six Districts are as follows: (1) Downtown; (2) Uptown; (3) Mid-City; (4) La Jolla; (5) Old Town; and (6) Pacific Beach. The first three were established in 1997, and the latter three were established in 2005.

⁴ Throughout this memorandum, the term “Agreement” refers to both memoranda of understanding (MOU or MOUs) and agreements entered into between the City and an Advisory Board. In Fiscal Year 2014, the City entered into Operating Agreements with the El Cajon Boulevard Business Improvement Association and University Heights Community Development Corporation for the Mid-City CPD Program, the Uptown Partnership for the Uptown CPD Program, and an MOU with Civic San Diego for the Downtown CPD Program. In Fiscal Year 2015, the Council will consider the adoption of Agreements with these entities, and for the first time, consider an Agreement with the Old Town Chamber of Commerce for the Old Town CPD Program.

This Office has advised that, in order for expenditures of parking meter revenue⁵ to be appropriate, they must comply with the Municipal Code, Council Policy, and State and Federal laws, including laws regarding special taxes, gifts of public funds, and equal protection. 2010 City Att’y MOL 20 (2010-20; Sept. 30, 2010); City Att’y MS 2012-18 (Apr. 27, 2012); City Att’y MS 2012-20 (May 22, 2012). The Discussion portion of this memorandum evaluates the compliance of three categories of expenditures with these legal principles. In the event of any legal challenge, the City bears the burden of demonstrating that expenditures of CPD Revenue are appropriate. *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.*, 165 Cal. App. 3d 227, 235 (1985); *see also Collier v. City & Cnty. of S. F.*, 151 Cal. App. 4th 1326, 1339 (2007). The most prudent approach, then, is to interpret the use of CPD Revenue in a judiciously conservative manner.

DISCUSSION

I. **PARKING METER REVENUE MAY BE USED FOR TRAFFIC CONTROL FOR SPECIAL EVENTS ONLY TO THE EXTENT IT REASONABLY AFFECTS THE PARKING OF VEHICLES IN PARKING METER ZONES**

A. **Compliance with City’s Regulations**

Consistent with State law, Municipal Code sections 82.08 and 82.09(b) set forth parameters on the use of parking meter revenue. Section 82.08 provides:

The parking meter funds generated from the purchase of parking meter time . . . are levied and assessed as fees to provide for the proper regulation, management, and control of traffic upon the public streets, and to cover the cost of supervision, inspection, installation, operation, maintenance, control and use of the parking spaces and parking meters described herein, and also the cost of supervising, managing, and regulating the parking of vehicles in the parking meter zones created hereby.

Municipal Code section 82.09(b) provides:

Money deposited in the parking meters and any parking meter funds generated through other methods of payment may be expended to meet the costs and expenditures involved in the inspection, repair, regulation, installation, operation, control and use of the parking spaces and parking meters described herein, and the costs involved in the regulation, management, and control of the parking of vehicles and the control of traffic, which may affect or be affected by the parking of vehicles in the parking meter zones created hereby, including the purchase, replacement, installation, repair, servicing and operation of mechanical or electrical traffic signals for the direction of said traffic or said parking, and the cost of painting streets, curbs and sidewalks with appropriate markings,

⁵ For this purpose, the term “parking meter revenue” is synonymous with “parking management-related revenue.”

lines and signs, and the purchase, construction, erection, repair and replacement of street and curb signs for the direction of said traffic or said parking, and for the cost of patrolling said parking meter zones and enforcing therein all traffic laws and regulations concerning the parking of vehicles and the movement of traffic which may affect or be affected by such parking of vehicles, or for any of said purposes.

Additional guidance on permissible uses of CPD Revenue is set forth in section C.2 of the Council Policy, which provides, in pertinent part:

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.

Traffic control for special events could regulate and control both traffic upon the public streets and the parking of vehicles. Presumably, the CPDs would employ traffic controllers to manage the CPD's parking inventory, to assist in alleviating traffic, and to provide mobility information to vehicles about the location, availability, and cost of parking. In this manner, the traffic controllers would address parking mobility issues and would increase the effective use of parking by assisting residents, visitors, and employees to locate available parking as promptly as possible in areas impacted by the high volume of vehicular activity related to special events. On the contrary, the CPDs might contemplate employing traffic controllers solely to divert traffic and congestion caused by the special event, which would have little to no effect on parking in the parking meter zones. Consistent with the Municipal Code and Council Policy, the City may allow the expenditure of parking meter revenue on traffic control for special events to the extent that traffic controllers are directing vehicles to parking located within, or in close proximity to, parking meter zones and they reasonably affect the parking of vehicles in parking meter zones.⁶

B. Compliance with Special Tax Laws

To qualify as a properly enacted fee rather than a special tax requiring a public vote, parking meter revenue must comply with State law provisions prescribing that any regulatory fee cannot exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and that the fee cannot be levied for general revenue purposes. Cal. Govt. Code § 50076. This Office has advised that “[i]f the City wants to fund . . . traffic-related projects with fees generated by the City’s parking meters, such projects must be necessary for the control of traffic which may affect or be affected by the parking of vehicles in a parking meter zone.” 2010 City Att’y MOL 20 (2010-20; Sept. 30, 2010) (quoting City Att’y MS (Apr. 29, 2009)).

⁶ The City should not allow the expenditure of parking meter revenue to the extent that the traffic controllers perform functions unrelated to traffic control, such as promoting the special event. If the traffic controllers perform multiple functions, some of which are unrelated to traffic control, then parking meter revenue should only be used to pay for the pro rata share of traffic control services that is directly tied to parking in the parking meter zones.

Regulatory fees such as parking meter fees⁷ cannot be spent on unrelated revenue purposes. *Collier*, 151 Cal. App. 4th at 1339. Given that the source of this revenue is derived from drivers who park at a metered space, parking meter revenue must be expended to address legitimate parking-related concerns at parking meters. Cal. Govt. Code § 50076. Otherwise, the concern is that parking meter revenue is being collected and expended on unrelated purposes contrary to State law. *Id.*; see also *Isaac v. City of L.A.*, 66 Cal. App. 4th 586, 596 (1998). Ordinances that do not limit the way in which regulatory fees collected may be expended or which allow the expenditure of such revenue beyond the reasonably necessary expense of the regulatory effort have been deemed special taxes. See *Bixel Assocs. v. City of L.A.*, 216 Cal. App. 3d 1208, 1219-20 (1989).

The California Court of Appeal has specifically upheld the City's use of parking meter revenue for *traffic-related purposes*, stating that the City's Parking Meter Ordinance under Municipal Code sections 82.08 and 82.09 "permits the use of the money thus received for general traffic regulation and control in the areas in question, all of which is a part of the problem involved and designed to be benefited by the ordinance." *DeAryan v. City of San Diego*, 75 Cal. App. 2d 292, 296 (1946) (emphasis added); see also SDMC § 82.09. It is beyond question that one of the legitimate purposes of parking meters is "for the purpose of controlling vehicular traffic . . ." *Siegel v. City of Oakland*, 79 Cal. App. 3d 351, 357 (1978).

Thus, to avoid a classification of parking meter revenue as special taxes, the revenue must not be spent on unrelated revenue purposes beyond those reasonably necessary expenses of the regulatory program (i.e., those necessary to regulate and control traffic on public streets and the parking of vehicles in parking meter zones). In this situation, the pertinent issues are whether an expenditure of parking meter revenue toward traffic control services for special events would cause the parking meter fees collected to exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged, and whether this would cause parking meter fees to be charged for general revenue purposes. See Cal. Govt. Code § 50076. Although traffic control services could affect traffic and the parking of vehicles in the parking meter zones, an argument could be made that expending parking revenue to address the effects of special events causes the funds to be used for unrelated revenue purposes. Opponents could argue that the revenue pays for an activity that should be addressed instead by the party responsible for the special event or utilizing City funds unrelated to parking meter revenue. On the contrary, proponents could argue that the activity controls the parking of vehicles in the parking meter zones, increases the parking supply during times of high demand, and manages the existing parking inventory. The strength of these arguments is highly dependent on the particular facts. Depending on the facts, there is some risk that the use of parking meter revenue for traffic control services for special events could convert this revenue into a special tax.

⁷ A regulatory fee "is enacted for purposes broader than the privilege to use a service or to obtain a permit. Rather, the regulatory program is for the protection of the health and safety of the public." *Cal. Ass'n. of Prof'l Scientists v. Dep't of Fish & Game*, 79 Cal. App. 4th 935, 950 (2000). The collection of parking meter revenue is considered a regulatory fee because its stated purpose is to regulate and control traffic on public streets and the parking of vehicles in parking meter zones. SDMC §§ 82.08, 82.09.

C. Avoidance of a Gift of Public Funds

Expenditures of parking meter revenue must also comply with San Diego Charter (Charter) section 93, which states, in relevant part, that “[t]he credit of the City shall not be given or loaned to or in aid of any individual, association or corporation; except that suitable provision may be made for the aid and support of the poor.” This Charter section prohibits gifts of public funds in a manner similar to the California Constitution, which prohibits the California Legislature from “the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever . . .” Cal. Const. art. XVI, § 6. Cases interpreting the prohibition against a gift of public funds in the California Constitution are therefore instructive in interpreting Charter section 93.

An expenditure of public funds that benefits a private party constitutes an impermissible gift if the public agency does not receive adequate consideration in exchange or if the expenditure does not serve a public purpose. 2011 City Att’y Report 384 (11-17; Apr. 7, 2011) (citing *People v. City of Long Beach*, 51 Cal. 2d 875, 881-83 (1959); *Cal. Sch. Emps. Ass’n. v. Sunnyvale Elementary Sch. Dist.*, 36 Cal. App. 3d 46, 59 (1973); and *Allen v. Hussey*, 101 Cal. App. 2d 457, 473-74 (1950)). The expenditure of funds for a public purpose is not constitutionally prohibited even if the expenditure incidentally benefits a private party. *Orange Cnty. Found for Pres. of Pub. Prop. v. Irvine Co.*, 139 Cal. App. 3d 195, 200-01 (1983).

Any expenditure of parking meter revenue for traffic control services for special events could be viewed as a public subsidy to the private party responsible for the special event. However, the resulting traffic control measures would serve the public purpose of alleviating traffic, parking, and mobility issues caused in the parking meter zones during special events and would positively affect parking. To create a legally defensible position for the City with respect to any claim that this expenditure entails an impermissible gift of public funds, this Office has recommended that City staff include the facts supporting the achievement of one or more public purposes in any staff report related to a specific proposal to expend parking meter revenue for traffic control for special events in accordance with the Plans and Budgets.⁸

D. Compliance with Principles of Equal Protection

Expenditures of parking meter revenue must also comply with principles of equal protection. The Equal Protection Clause of the Federal and State constitutions requires that governmental decision makers treat parties equally under the law if those parties are alike in all relevant respects. U.S. Const. amend. XIV, § 1; Cal. Const. art. I, § 7; *Las Lomas Land Co., LLC v. City of L.A.*, 177 Cal. App. 4th 837, 857 (2009). So long as the expenditure of parking meter revenue does not distinguish between individuals within suspect classifications or affect fundamental rights, or distinguish between individuals based on gender, reviewing courts will examine the expenditure based on a deferential standard known as rational basis review.

Under rational basis review, the classification at issue must bear a rational relationship to a legitimate State interest. *People v. Hofsheier*, 37 Cal. 4th 1185, 1200 (2006). The courts will presume that a classification is valid. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432,

⁸ The analysis of the gift of public funds issue is virtually identical in the context of any proposed expenditure of parking meter revenue to subsidize employee parking.

432 (1985). However, a classification must be non-arbitrary and founded upon pertinent and real differences, as distinguished from irrelevant and artificial ones. *Walters v. City of St. Louis, Mo.*, 347 U.S. 231, 237 (1954). A classification must rest upon some ground of difference that has a fair and substantial relation to the object of legislation. *Old Dearborn Distrib. Co. v. Seagram-Distillers Corp.*, 299 U.S. 183, 197 (1936). If a classification has some reasonable basis, it is not made impermissible simply because it is not made with mathematical precision or it results in some inequality. *Alviso v. Sonoma Cnty. Sheriff's Dept.*, 186 Cal. App. 4th 198, 208 (2010). A reviewing court will uphold a classification "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993).

The expenditure of parking meter revenue for traffic control for special events is generally consistent with the objective criteria set forth in the Municipal Code and Council Policy. Moreover, the expenditure does not involve suspect classifications, fundamental rights, or classifications based on gender. Under rational basis review, the expenditure would not violate general principles of equal protection.⁹

II. PARKING METER REVENUE MAY BE USED TO SUBSIDIZE EMPLOYEE PARKING WITHIN OR IN CLOSE PROXIMITY TO PARKING METER ZONES, BUT ONLY TO THE EXTENT THE SUBSIDY IS NOT EXCESSIVE

A. Compliance with City's Regulations

As described in Part I.A above, the Municipal Code allows the use of parking meter revenue to provide for the proper management and control of traffic on public streets and parking in parking meter zones. The expenditure of parking meter revenue to subsidize parking for employees of private businesses within or in close proximity to parking meter zones is consistent with the general objectives of the Municipal Code. This subsidy program could control parking within or in close proximity to parking meter zones by incentivizing groups of private employees (e.g., restaurant or office employees) who contribute to supply issues in the parking meter zones, to park in specified locations, thereby increasing the parking supply in certain locations and reducing traffic congestion.

The Council Policy provides that CPD Revenue may be used for "[m]anaging the existing parking inventory, including such measures as, but not limited to . . . existing on-street parking inventory . . . employee parking programs . . . and the mitigation of any adverse effects resulting from the implementation of such program(s)." Thus, the expenditure of parking meter revenue toward employee parking programs, which could include subsidized employee parking, is consistent with the Council Policy. However, any parking subsidy provided to employees must not be excessive and must be limited to a reasonable amount corresponding to the effect on parking in the parking meter zones. Also, any parking subsidy should apply equally to affected employees in the vicinity of the parking meter zones, without favoritism toward any businesses.

⁹ For similar reasons, the expenditure of parking meter revenue to subsidize employee parking would not violate general principles of equal protection.

B. Compliance with Special Tax Laws

Similar to the discussion in Part I.B above, the expenditure of parking meter revenue for subsidized employee parking could convert this revenue into a special tax unless the expenditure is reasonably necessary to regulate and control traffic on public streets and the parking of vehicles in parking meter zones. In this regard, there could be legitimate arguments on both sides of this issue. The strengths and weaknesses of these arguments would depend on the particular circumstances applicable to a specific subsidy program. Opponents could argue that subsidized employee parking is an “unrelated revenue purpose” in that it provides financial benefits to local employees and their employers, and that any effects on traffic and parking in parking meter zones is slight or incidental. They also could argue that persons other than employees contribute to parking supply issues in the parking meter zones, such that it is unreasonable to provide subsidized parking solely to employees. Proponents could assert that subsidized employee parking would control the parking of vehicles in the parking meter zones, increase the parking supply during peak hours of employment, and manage the existing parking inventory. Without knowing the full details of a proposed program for subsidized employee parking, it is difficult to gauge whether this type of subsidy would convert the parking meter revenue into a special tax.

III. PARKING MANAGEMENT-RELATED REVENUE MAY BE USED FOR LANDSCAPING, MAINTENANCE, AND TRASH REMOVAL EXPENSES AT A PUBLIC PARKING LOT UNDER THE UNIQUE CIRCUMSTANCES WHERE THE OLD TOWN BOARD MUST PERFORM THESE SERVICES UNDER THE TERMS OF A LICENSE AGREEMENT FOR THE USE OF THE PARKING LOT

A. Compliance with City’s Regulations

The Old Town Board is negotiating a license agreement with the City to use City-owned property for the operation of a public parking facility. The CPD intends to use the property to increase its parking supply in the CPD and generate parking management-related revenue. Initially, the costs of the license will be paid for by the Old Town Board with funds other than parking meter revenue or parking management-related revenue. However, after generating revenue from the operation of this lot, the Old Town Board will use such revenue to offset its expenses associated with the license, including the costs of meeting its obligations for landscaping, maintenance, and trash removal. Under the terms of the proposed license agreement, the Old Town Board is required to maintain the property in good order and in a safe, healthy and sanitary condition at all times. Under this unique arrangement, the expenses for landscaping, maintenance, and trash removal are akin to common area maintenance expenses (a component of rent) charged by a landlord to a tenant under certain types of leases. The issue is whether the Old Town Board may use parking management-related revenue generated at this facility for landscaping, maintenance, and trash removal obligations at this facility.

Municipal Code sections 82.08 and 82.09 set forth the limitations on the use of parking meter revenue as opposed to parking management-related revenue, and require parking meter funds to be expended in a manner that affects the parking of vehicles in the parking meter zones. Because the funds at issue are not parking meter funds, these Municipal Code sections are likely inapplicable. However, to the extent these Municipal Code sections apply to parking management-related revenue, it is reasonable to interpret them to require such revenue to be expended in a manner that affects the parking of vehicles within the CPD. The contemplated

expenditure towards landscaping, maintenance and trash removal enables the Old Town Board to meet its obligations under the license and use the property as a parking facility to increase the CPD's parking supply. So long as the facility will result in additional parking available to visitors and residents within the CPD, maintenance of the facility is consistent with the Municipal Code.

Section C.2.a of the Council Policy provides that parking meter revenue may be used to increase parking supply, including any related acquisition of land, operation of public parking facilities, and extraordinary maintenance and landscaping activities. The Old Town Board's acquisition of a possessory interest in the property to operate a public parking facility would increase the parking supply, which is clearly in accordance with the Council Policy. However, given that the expenditure would be directly toward landscaping, maintenance, and trash removal, it must be analyzed further for conformance with the Council Policy. This Office has previously advised that the use of parking meter revenue¹⁰ to pay for landscaping and maintenance could be permissible if it is "beyond what is ordinary or usual" and "tied to the use of parking or traffic control measures that address parking concerns within parking meter zones."¹¹ 2010 City Att'y MOL 20 (2010-20; Sept. 30, 2010). Moreover, this Office has advised that "it would likely be an appropriate use of parking meter revenue to maintain required landscaping for public parking structures and parking lots that are proximately located to parking meter zones such that they could increase the supply and address the demand for parking spaces in these areas." *Id.*

In this instance, the Old Town Board would be legally required to pay for landscaping, maintenance, and trash removal under the contemplated license agreement with the City. The Old Town Board must comply with this requirement to retain the right to use the property for its public parking facility. Thus, the Old Town Board's need to perform landscaping, maintenance, and trash removal at the property is essential to its ability to provide a public parking facility at that location and impact the parking of vehicles in the CPD. For these reasons, the contemplated landscaping, maintenance, and trash removal activity is "extraordinary" within the meaning of the Council Policy and is appropriate under the Council Policy.

B. Compliance with Special Tax Laws

Similar to the analysis described in Part I.B above, the CPD's expenditure of parking management-related revenue for landscaping, maintenance, and trash removal could potentially convert the fees into a special tax unless the expenditures are reasonably necessary to regulate and control traffic on public streets and the parking of vehicles in the CPD.¹² The Old Town Board's use of the property under the proposed license agreement would assist with the

¹⁰ Despite our Office's use of the term "parking meter revenue" in the prior memorandum, the term "parking management-related revenue" is equally applicable for purposes of analysis under the Council Policy.

¹¹ Similarly, the use of the term "parking meter zones" is synonymous with "CPD" for purposes of analysis under the Council Policy.

¹² This analysis assumes that fees charged for use of the parking facility would be regulatory fees that, similar to the parking meter fees, regulate and control traffic on public streets and the parking of vehicles in the Old Town CPD. In the likely alternative that these fees instead were classified as charges imposed for the use of government property, the fees would meet the California Constitution article XIII C, subdivision (e) exception to the definition of a "tax" and not subject to any "reasonable cost" limitations. In such case, the Old Town Board could charge whatever the market will bear for the use of the lot.

regulation of traffic and parking by increasing the CPD's parking supply and generating additional parking revenue. The Old Town Board's payment of landscaping, maintenance, and trash removal costs is an essential component of the CPD's continued use of the property. Therefore, the Old Town Board's payment of these costs is a legitimate expense and, as mentioned above, is akin to the payment of a rental charge. Conceivably, the only way this contemplated expenditure would pose an issue from the special tax perspective is if the Old Town Board allowed excessive maintenance and landscaping activity, used for purely aesthetic purposes unrelated to the regulation and control of traffic on public streets and the parking of vehicles within the CPD.

CONCLUSION

Parking meter revenue may only be expended for parking and traffic-related purposes that impact parking within or in close proximity to parking meter zones or within the CPD. State law prohibits the expenditure of regulatory fees, such as parking meter funds, for purposes unrelated to the specific regulatory activities for which they were assessed or for any unrelated revenue purpose.

City staff must conduct a fact-specific analysis of any proposed traffic control or parking-related project for the expenditure of parking meter revenue to ensure that the expenditure does not contravene applicable laws. To ensure compliance with all applicable laws, the City may wish to conduct an objective study establishing the direct relationship between the expenditure of parking meter revenue for traffic control services and subsidized employee parking, on the one hand, and the alleviation of parking issues in the parking meter zones, on the other hand.

The Old Town Board may spend parking management-related revenue to pay for landscaping, maintenance, and trash removal expenses at a public parking facility if the facility is used to increase the availability, supply, and effective use of parking for residents, visitors, and employees within the CPD and the CPD is contractually obligated to perform those services in order to use the property.

JAN I. GOLDSMITH, CITY ATTORNEY

By /s/ Michael T. Reid

Michael T. Reid
Deputy City Attorney

MTR:nja

cc: Scott Chadwick, Chief Operating Officer
David Graham, Deputy Chief Operating Officer – Neighborhood Services
Andrea Tevlin, Independent Budget Analyst

ML-2014-6

Doc. No. 815067_2