Office of The City Attorney City of San Diego

MEMORANDUM MS 59

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DATE: May 22, 2012

TO: Beth Murray, Deputy Director, Economic Development Department

FROM: City Attorney

SUBJECT: Guidelines for the Use of Parking Meter Funds for Various Types of Signs

Associated with the Downtown Wayfinding Signage Update Project

INTRODUCTION

As part of the Downtown Wayfinding Signage Update Project (Project), the Centre City Development Corporation (CCDC) is proposing to install various types of signs within the Downtown Community Parking District for the purpose of identifying the general boundaries of various neighborhoods within downtown San Diego and assisting drivers and pedestrians to find public parking and reach public destinations of interest within or in close proximity to downtown San Diego.

This Office previously issued a Memorandum of Law dated September 30, 2010, entitled "Guidelines for the Use of Parking Meter Funds for Parking and Traffic-Related Purposes" (September MOL). See City Att'y MOL No. 2010-20 (Sept. 30, 2010). The September MOL provided practical guidelines and considerations on the use of parking meter funds, including the use of such funds for signage. However, it did not address any specific set of facts.

This Memorandum expands on the September MOL as it pertains to the use of parking meter funds for signage by analyzing the facts provided by CCDC staff about the Project as set forth herein. This Memorandum is based solely on the specific facts set out in this Memorandum. As with any legal analysis, any alteration of the facts presented to this Office could affect the conclusions reached in this Memorandum.

QUESTION PRESENTED

May parking meter funds be used to purchase and install vehicular directional signs, gateway signs, kiosk signs, pedestrian directional signs, and sidewalk compasses within the Downtown Community Parking District as part of the Project?

SHORT ANSWER

With the exception of sidewalk compasses, the answer is generally yes, so long as the various signs for which parking meter revenue will be expended reasonably assist drivers to destination(s) that are public points of interest, are located within the Downtown Community Parking District and are situated within sufficient proximity to a parking meter zone to affect the flow of traffic therein, and the signs fully comply with the City's Sign Ordinance. On the other hand, parking meter revenue may not generally be used to purchase and install sidewalk compasses which are embedded on the sidewalk surface because they would not reasonably assist drivers with parking within parking meter zones.

BACKGROUND

Almost the entire downtown San Diego area, located to the west of Interstate 5 and bounded by Laurel Street to the north, comprises what is known as the Downtown Community Parking District (Downtown CPD). The Downtown CPD includes the neighborhoods of Little Italy, Cortez, Marina, Gaslamp Quarter, Horton, and East Village. It also includes San Diego Unified Port District property. Attached to this Memorandum as Exhibit 1 is a map illustrating the boundaries of the Downtown CPD. CCDC is the Downtown CPD Advisory Board. In its capacity as such, CCDC is proposing the Project to install a comprehensive integrated system of various types of signs within the downtown San Diego area.

The Project contemplates that over 200 signs will be purchased and installed throughout the Downtown CPD. These signs are of various types including gateway signs, vehicular directional signs, kiosk signs, pedestrian signs, and sidewalk compasses. Many of the different types of signs will share a similar color scheme, font, and distinctive fin-type markings so that drivers and pedestrians will readily identify the various types of signs as being inter-related and interconnected. As it relates to existing vehicular directional and kiosk signs, these signs will be replaced with new signs of this type so that all of the signs will share the same color scheme and

¹ An analysis of whether the proposed signs comply with the City's Sign Regulations found in Chapter 14, Article 2, Division 12 of the San Diego Municipal Code is beyond the scope of this Memorandum.

² As set forth in Council Policy 100-18, Community Parking Districts, and discussed in the September MOL, the purpose of such a district 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." Pursuant to the adoption of Resolution No. R-289520 on December 2, 1997, the San Diego City Council designated CCDC as the Downtown CPD Advisory Board.

distinctive markings. Additional vehicular directional and kiosk signs will also be installed throughout various locations in downtown San Diego. According to CCDC staff, the other types of signs do not currently exist within the Downtown CPD so no replacement will be necessary.

The overall purpose of the signs is to form a clear integrated system to assist drivers and pedestrians in knowing where they are at any given location and in reaching available public parking as well as major streets, highways, and public points of interest within downtown San Diego. Attached as Exhibit 2 is an overview map of the downtown San Diego area along with a series of four close-up detailed maps illustrating the proposed locations of all of the various types of signs within the Downtown CPD. CCDC staff has represented that virtually all of the maintenance of the newly installed signs associated with the Project will paid for with monies other than parking meter funds.³

ANALYSIS

I. PARKING METER FUNDS MAY GENERALLY BE USED TO PURCHASE AND INSTALL VEHICULAR DIRECTIONAL SIGNS.

Vehicular directional signs are signs which are located in such a manner as to be readily visible to drivers to assist them with the preferred or most direct route to reach various destinations. These signs are typically located above or in proximity to traffic signals or on public light poles and direct drivers to such destinations with the use of arrows pointing in the direction that drivers need to turn in order to reach a particular destination. Attached as Exhibit 3 is an example of a proposed vehicular directional sign. The Project proposes the purchase and installation of such signs to direct drivers to public parking, major streets, highways, and public points of interest within downtown San Diego.

Vehicular directional signs are subject to the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD), which among other things sets the recommended minimum national standards for the design and installation of traffic signs. These standards include the shapes, colors and fonts used in signs. According to the Federal Highway Administration website, "[n]on-compliance of the MUTCD ultimately can result in loss of federal-aid funds as well as significant increase in tort liability." *See* http://mutcd.fhwa.dot.gov/kno-overview.htm (last visited May 1, 2012).

According to CCDC staff, the current vehicular directional signs in the Downtown CPD were installed about 12 years ago and are not in compliance with the 2009 edition of the MUTCD,

³ This Memorandum does not address the legality of the use of parking meter funds for sign maintenance. Further, this Memorandum does not discuss or opine on the scope of the Project as it relates to, among other things, the appropriate size of the signs or the number of signs of a particular type that may be funded, if at all, with parking meter revenue. Even if this Office determines that parking meter funds may be legally used for a particular purpose, the City has discretion to decide whether or not the expenditure of parking meter revenue for a particular purpose is an appropriate use of such funds.

which is the most recent edition (2009 MUTCD). Among other things, the current vehicular directional signs do not have the recommended differential between text and the background color as set forth by the 2009 MUTCD. All of these standards are intended to make traffic signs visibly clear and consistent nationwide to promote traffic safety. The proposed vehicular directional signs will fully comply with the 2009 MUTCD in all respects.

San Diego Municipal Code section 82.09 states that parking meter revenue may be used for the erection, repair, and replacement of street and curb signs for the direction of traffic and parking. This Office has previously opined that the use of parking meter funds must serve a functional purpose, not simply an aesthetic one. September MOL, pp. 7-8. Given that vehicular directional signs are traffic signs subject to the MUTCD and that compliance with the MUTCD serves a functional purpose, the use of parking meter revenue to purchase and install such signs would generally be an appropriate use of such funds.

At the same time, however, the use of parking meter revenue for such purposes is not without its limits. In order to use parking meter revenue to purchase and install vehicular directional signs, such signs must be within a parking meter zone or in sufficient proximity to one that it impacts parking or traffic within a parking meter zone. Furthermore, parking meter revenue available to CCDC must be spent within the Downtown CPD as CCDC is the Downtown CPD Advisory Board. See Council Policy 100-18, Community Parking Districts (Council Policy 100-18).

In addition, the replacement or installation of vehicular directional signs must primarily serve a functional purpose rather than an aesthetic one. As set forth in the September MOL with the example of street blade signs, this Office opined that "[t]he use of parking meter revenue to replace otherwise legible and functional street blade signs would not likely be a justifiable use of such funds because it does not address concerns related to the parking of vehicles within parking meter zones." See September MOL at 7. In other words, "enhancements of a purely aesthetic nature . . . would serve little or no practical purpose as it relates to traffic control and/or the parking of vehicles." Id. at 8. Council Policy 100-18 further supports this position by stating in relevant part that parking meter revenue may be used for "[p]roviding . . . vehicular convenience . . . provided that the activity primarily relates to parking or the control and management of traffic (including vehicular, bicycle, or pedestrian traffic) which may affect or be affected by the parking of vehicles within parking meter zones." See Council Policy 100-18 C.2.h.

Therefore, it is appropriate to use parking meter revenue to fund the purchase and installation of vehicular directional signs as part of the Project because these signs will be located within the Downtown CPD. Furthermore, the primary purpose of this Project as it relates to vehicular directional signs is a functional, not aesthetic one; that is, to assist in controlling traffic and

⁴ City staff has determined that certain areas around parking meter zones are in such relatively close proximity and contiguity to a parking meter zone that they would impact traffic and parking within a parking meter zone. Such areas of impact are known as parking meter impact zones. Given the number of parking meters which are spread out throughout the Downtown CPD, City staff has designated the entire Downtown CPD as a parking meter impact zone.

parking within parking meter zones and to bring the City's signage into compliance with the 2009 MUTCD. Additionally, the new vehicular directional signs will be purchased and installed as part of a comprehensive integrated system of traffic management within the Downtown CPD. As it pertains to identifying major points of interest, so long as the vehicular directional signs direct drivers to public points of interest, the expenditure of parking meter funds for such purposes should be appropriate. *See* September MOL at 6.

II. PARKING METER FUNDS MAY BE USED TO PURCHASE AND INSTALL CERTAIN TYPES OF GATEWAY SIGNS PROPOSED AS PART OF THE PROJECT.

In addition to vehicular directional signs, the Project proposes the purchase and installation of a number of gateway signs. Lighted, large pillar-shaped primary gateway signs with "Downtown" vertically inscribed will be used to identify the overall downtown San Diego area. These signs are in the nature of monuments. Attached as Exhibit 4 is an example of a proposed primary gateway sign. Smaller secondary gateway signs will be used to identify the various neighborhood districts within downtown San Diego. Attached as Exhibit 5 is an example of a proposed secondary gateway sign.

The purpose of the primary gateway signs is to inform first-time visitors and tourists to San Diego that they are entering or exiting downtown San Diego. For example one of these signs is proposed to be located on Harbor Drive near the San Diego International Airport. The main purpose of the secondary gateway signs is to inform drivers and pedestrians when they are moving between neighborhood districts within downtown San Diego.

In general, the purchase and installation of gateway signs within the Downtown CPD⁵ is an appropriate use of parking meter funds because the signs serve a functional purpose in assisting drivers in identifying the district in which they are located. Without such signs, drivers particularly those unfamiliar with downtown San Diego would not have information regarding when they had reached downtown San Diego or which particular downtown neighborhood they were in. This confusion could result in such drivers unnecessarily circling various districts before finding their ultimate destination, thereby adding to traffic congestion. By readily identifying downtown San Diego and the various neighborhoods within downtown, gateway signs assist with traffic control within parking meter zones in the Downtown CPD by allowing drivers to more quickly locate where they are so that they can more easily reach their final destination.

According to CCDC staff, many of the secondary gateway signs identifying the various districts will share similar font types, shapes, and colors. To the extent that any of the signs, such as the

⁵ This Office is informed by CCDC staff that one or more of the primary gateway signs may need to be located on California Department of Transportation (CalTrans) property with its consent. If any such signs are located on CalTrans property outside the Downtown CPD, parking meter revenue may not be used to fund the purchase or installation of any such signage. *See* Council Policy 100-18 B.2 and C.2.

Little Italy secondary gateway sign with its mosaic base and other features, do not share similar characteristics involving color scheme, font, or sign shape with other secondary gateway signs proposed in the Project, it could be argued that such differences serve a primarily aesthetic function and do not further the control of parking and traffic within parking meter zones or the purpose of the Project, which is to provide a clear integrated system of traffic management within the Downtown CPD. While reasonable aesthetic design components may be incorporated into signage, caution is advised against having such aesthetics dominate the functional components of the signage or deviate significantly from other similar type of signage in the Project.

III. PARKING METER FUNDS MAY BE USED TO PURCHASE AND INSTALL THE KIOSK SIGNS PROPOSED AS PART OF THE PROJECT.

Kiosk signs are signs intended for pedestrians, which contain maps of the downtown San Diego area identifying streets and major public points of interest. A kiosk sign typically consists of two vertical posts supporting a central panel, which contains a map. Attached as Exhibit 6 is an example of a proposed kiosk sign. CCDC staff has represented that no individual private businesses will be identified in any of the kiosk signs; only public points-of-interest will be identified. The Project contemplates that the handful of existing kiosk signs in the Gaslamp Quarter will be replaced with new kiosk signs. According to CCDC staff, the existing kiosk signs are routinely vandalized. The new kiosk signs apparently are more durable as they will not involve the use of glass or plastic. Furthermore, these new kiosk signs will share the same color scheme and distinctive fin-type markings as many of the other signage types.

As opposed to vehicular directional signs and gateway signs, kiosk signs are intended solely for pedestrian use. San Diego Municipal Code section 82.09 makes no explicit reference to the use of parking meter funds for pedestrian purposes. However, Council Policy 100-18 provides that parking meter funds may be used for "[p]roviding for pedestrian comfort and convenience . . . provided that the activity primarily relates to parking or the control and management of traffic (including vehicular, bicycle, or pedestrian traffic) which may affect or be affected by the parking of vehicles within parking meter zones." See Council Policy 100-18 C.2.h.

In order for such signs to reasonably affect the parking of vehicles within parking meter zones, drivers on the street must be reasonably aware of the existence of the kiosk signs. Although intended for pedestrians, kiosk signs can also be seen from afar by drivers passing by. Provided that the kiosk signs are placed in locations such that drivers will be aware of their existence, such signs could further the control of parking and traffic management by assisting drivers who park in proximity to such signs to reach their ultimate destination.

The particular kiosk signs proposed as part of the Project clearly appear to assist drivers in reaching their ultimate destination because these kiosk signs will also provide information visible to drivers regarding the name of the neighborhood district on a fin-like protrusion at the top of the sign. Drivers, especially those unfamiliar with the area, could reasonably opt to park within a nearby parking meter zone with the knowledge that a kiosk sign was available to assist them in

readily determining their location on the map as well as finding public points-of-interest. By serving this function and being located within the Downtown CPD, the kiosk signs proposed as part of the Project assist with the control and management of parking and traffic affecting the parking of vehicles within parking meter zones.

As set forth in the September MOL, there is a potential issue with regard to the replacement of existing kiosk signs with new kiosk signs, particularly if the existing kiosk signs are perfectly functional. *See* September MOL at 7. However, so long as the replacement of the existing kiosk signs is primarily for a functional purpose that furthers the purpose of the use of parking meter revenue, rather than an aesthetic one, such replacement is an appropriate use of parking meter funds. Here, the existing kiosk signs are being replaced as part of a comprehensive update of the City's downtown signage system whereby all of the signs will share certain similar characteristics to assist drivers and others with wayfinding and parking. Furthermore, the new kiosk signs will be better adapted to such a purpose because they will be more durable than existing kiosk signs which are routinely vandalized.

IV. PARKING METER FUNDS MAY GENERALLY BE USED TO PURCHASE AND INSTALL PEDESTRIAN DIRECTIONAL SIGNS.

Pedestrian directional signs provide information on major public points of interest by directing pedestrians with the use of arrows on where to turn to reach a particular destination. Attached as Exhibit 7 is an example of a pedestrian directional sign. Such signs are similar in appearance to vehicular directional signs except that pedestrian directional signs focus on providing information to pedestrians on sidewalks rather than drivers on streets. Accordingly, pedestrian directional signs are typically mounted lower to the ground and have a much smaller font than vehicular directional signs. Although they appear more similar to vehicular directional signs, the purpose of pedestrian directional signs is most similar to that of kiosk signs; both of which direct aid pedestrians in reaching their final destination. Assuming that drivers would be reasonably aware of the existence of the pedestrian directional signs and provided that such signs are located within the Downtown CPD, the same general analysis used with kiosk signs in section III above is applicable to pedestrian directional signs.

V. PARKING METER FUNDS MAY NOT GENERALLY BE USED TO PURCHASE AND INSTALL SIDEWALK COMPASSES.

Sidewalk compasses are thick bronze plaques that are embedded into the existing concrete sidewalk such that the top surface of the plaque is flush with the concrete surface. The bronze plaque contains the name of the neighborhood district for which it is to be located along with an insignia of that district. Additionally, the plaque doubles as a compass providing information to pedestrians not only as to the neighborhood district that they are within, but also directions as to which way is north, south, east, and west. Attached as Exhibit 8 is an example of a sidewalk compass.

While sidewalk compasses serve a functional purpose in this regard, the primary purpose of these compasses is aesthetic enhancement. Unlike a pedestrian sign which can be viewed from afar and which provides directions to specific major public destinations of interest or a gateway sign which assists with the flow of vehicular traffic by letting drivers instantly know what neighborhood district that they are within, a sidewalk compass has limited utility as it can only be viewed by pedestrians, not drivers, and only when the pedestrians are almost stepping on top of the compass.

Given that drivers would not reasonably be aware of the existence of sidewalk compasses much less be able to view them from the street, the purchase and installation of a sidewalk compass do not primarily relate to the parking or control and management of traffic which may affect the parking of vehicles within parking meter zones. Without such a direct factual nexus, parking meter funds may not be used to purchase and install sidewalk compasses.

CONCLUSION

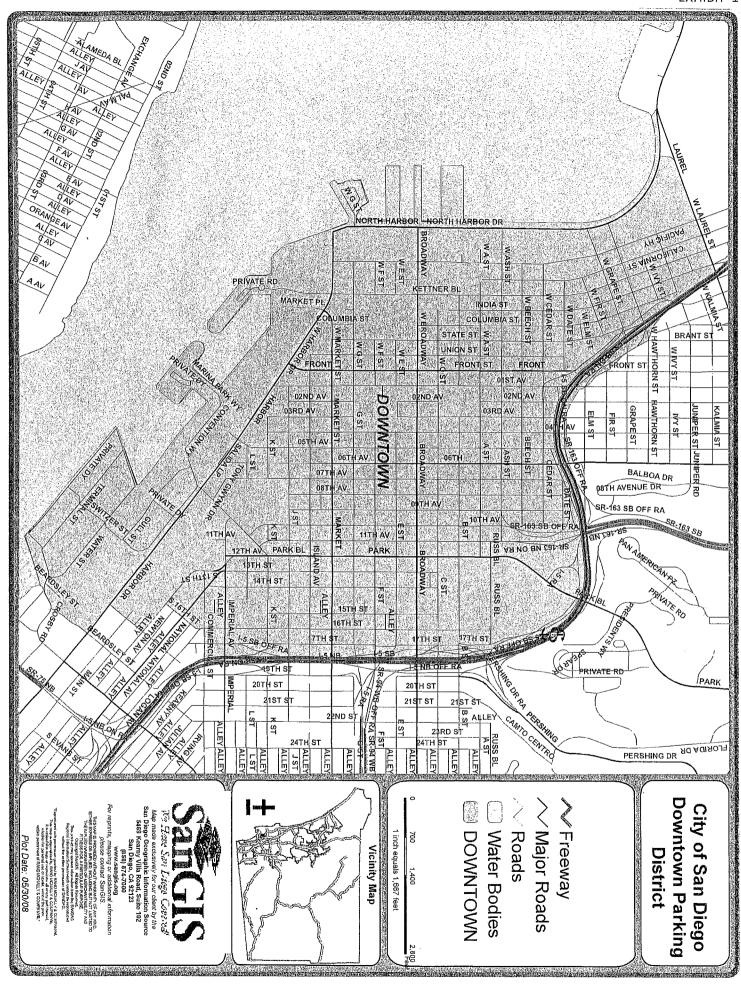
Parking meter revenue may generally be used to purchase and install vehicular directional signs, gateway signs, kiosk signs, and pedestrian directional signs as part of the Project provided that the signs serve a primarily functional purpose in reasonably assisting drivers in reaching their ultimate destination rather than an aesthetic purpose, the signs are located within the Downtown CPD and they assist in managing parking or traffic within parking meter zones. However, parking meter funds may not generally be expended for sidewalk compasses mounted flush against the top of the sidewalk surface because this would not assist drivers to park and reach their ultimate destination because drivers would be generally unaware of their existence.

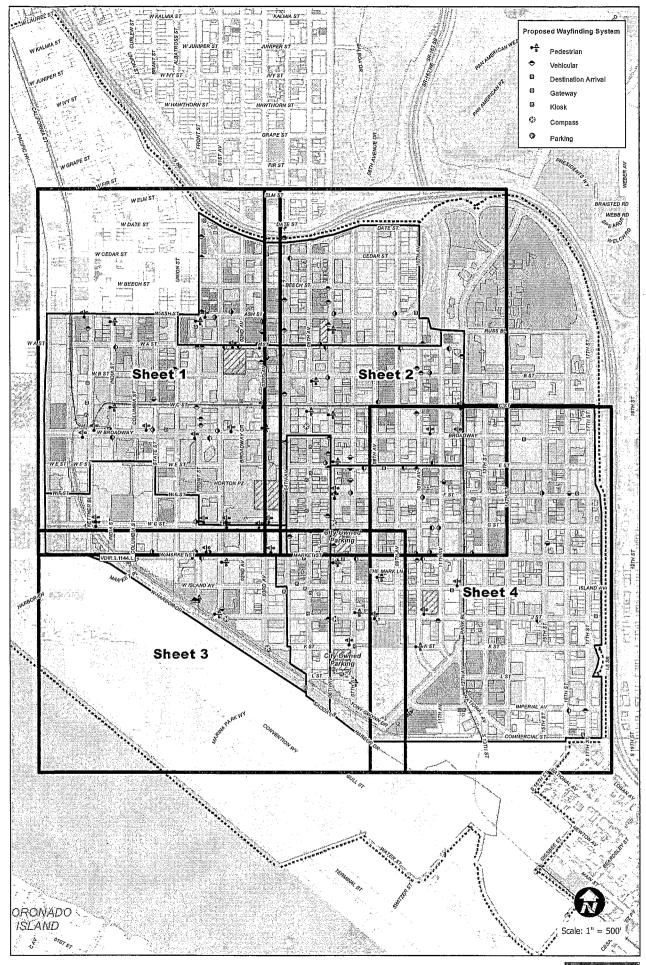
JAN I. GOLDSMITH, CITY ATTORNEY

By: <u>/s/Kenneth R. So</u> Kenneth R. So

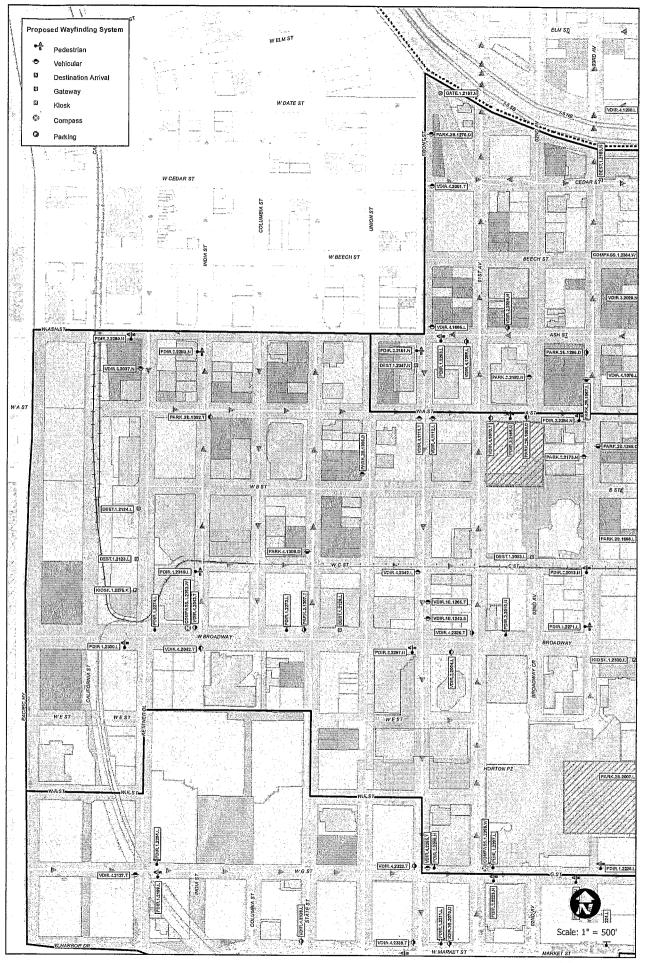
Deputy City Attorney

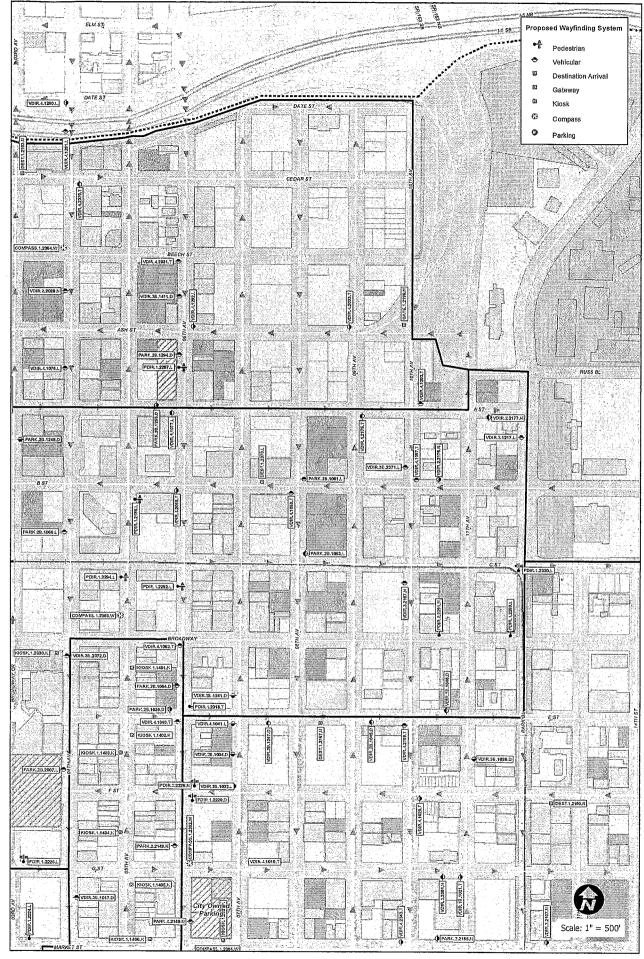
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