Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: May 11, 2017

TO: Honorable Mayor and Councilmembers

FROM: City Attorney

SUBJECT: Use of Parking Meter Revenue Generated Within Community Parking Districts

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This Office has been asked whether parking meter revenue generated within a Community Parking District (CPD) may be used to fund various improvements or projects. Expenditures of parking meter revenue must comply with the San Diego Municipal Code (Municipal Code or SDMC), Council Policy 100-18, and State and Federal laws. City Att'y MOL No. 2014-6 (July 10, 2014); City Att'y MS 2012-20 (May 22, 2012); City Att'y MS 2012-18 (Apr. 27, 2012); 2010 City Att'y MOL 20 (2010-20; Sept. 30, 2010). This memorandum briefly summarizes prior memoranda and the above-referenced opinions.

California law requires that, before the City installs parking meters and sets rates for parking meters, the City must establish a parking meter zone by enacting an ordinance. Cal. Veh. Code § 22508. Accordingly, the San Diego City Council enacted an ordinance establishing the City's parking meter zones[1] and the parameters on the use of parking meter revenue. SDMC §§ 82.08, 82.09(b).[2] In order for parking meter fees to be properly enacted fees rather than a special tax, those fees cannot exceed the reasonable cost of providing the service or regulatory activity for which the fees are charged. Cal. Gov't Code § 50076. Further, the fees cannot be levied for general revenue purposes. *Id.* The California Court of Appeal has specifically upheld the City's use of parking meter revenue for traffic-related purposes, which may affect or be affected by the parking of vehicles in the parking meter zones thus created, 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 [geographic boundaries] in

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[1] There are currently five CPDs in San Diego. Three of the City's CPDs, including Downtown, Uptown and Mid-City, have parking meter zones and generate parking meter revenue. The other CPDs, including Old Town and Pacific Beach, do not have parking meter zones.

[2] The City Council also adopted Council Policy 100-18, as amended on July 16, 2015, which provides guidance on the use of allocated parking meter revenue within CPDs.

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); *see also* SDMC § 82.09. To expand the use beyond that which has been blessed by the court, the City would need to conduct a fact-specific analysis to determine whether the proposed use of parking meter revenue is sufficiently related to traffic regulation and control. In the event of a legal challenge, the City bears the burden of demonstrating that expenditures of parking meter 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 San Francisco,* 151 Cal. App. 4th 1326, 1339 (2007). The most prudent approach, then, is to interpret the use of parking meter revenue in a judiciously conservative manner.

As explained in this Office's earlier memoranda, additional considerations apply to any proposed expenditure of parking meter revenue, including laws regarding gifts of public funds and equal protection. San Diego Charter section 93 prohibits gifts of public funds. To create a legally defensible position, the City must show that the expenditure of parking meter revenue for a traffic-related project serves a public purpose.[3] *Community Memorial Hospital v. County of Ventura*, 50 Cal. App. 4th 199, 207 (1996). Expenditures of parking meter revenue must also comply with principles of equal protection, which requires that parties are treated equally under the law if those parties are alike in all relevant aspects. U.S. Const. amend. XIV, § 1; Cal. Const. art. I, § 7. Reviewing courts will examine the expenditure based on a rational basis review as long as the expenditure does not distinguish between individuals within suspect classifications or affect fundamental rights or distinguish between individuals based on gender. A classification will be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for classification." *F.C.C. v. Beach Communications, Inc.,* 508 U.S. 307, 313 (1993).

The foregoing legal concepts are discussed at length in the attached legal memoranda. Upon request, this Office will continue to work with City staff to evaluate whether specific proposals for the expenditure of parking meter funds are legally permissible.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/ *Katherine Anne Malcolm*
Katherine Anne Malcolm
Deputy City Attorney

KAM:als
MS-2017-12
Doc. No.: 1502896
Attachments: City Att'y MOL No. 2014-6 (July 10, 2014)
City Att'y MS 2012-20 (May 22, 2012)
City Att'y MS-12-18 (Apr. 27, 2012)
2010 City Att'y MOL 20 (2010-20; Sept. 30, 2010)

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[3] City staff includes facts supporting the achievement of one or more public purpose in any staff report related to a specific proposal to expend parking meter revenue for traffic control.

ATTACHMENTS

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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

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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]

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[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 Agreement[4] 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.

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[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 revenue[5] 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)).

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[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 fees[7] 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.

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[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,

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[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 revenue[10] 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

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[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 XIIIC, 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

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

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

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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.[1] 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.[2] 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 inter-connected. 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

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[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,

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[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.[4] 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 CPD[5] 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

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

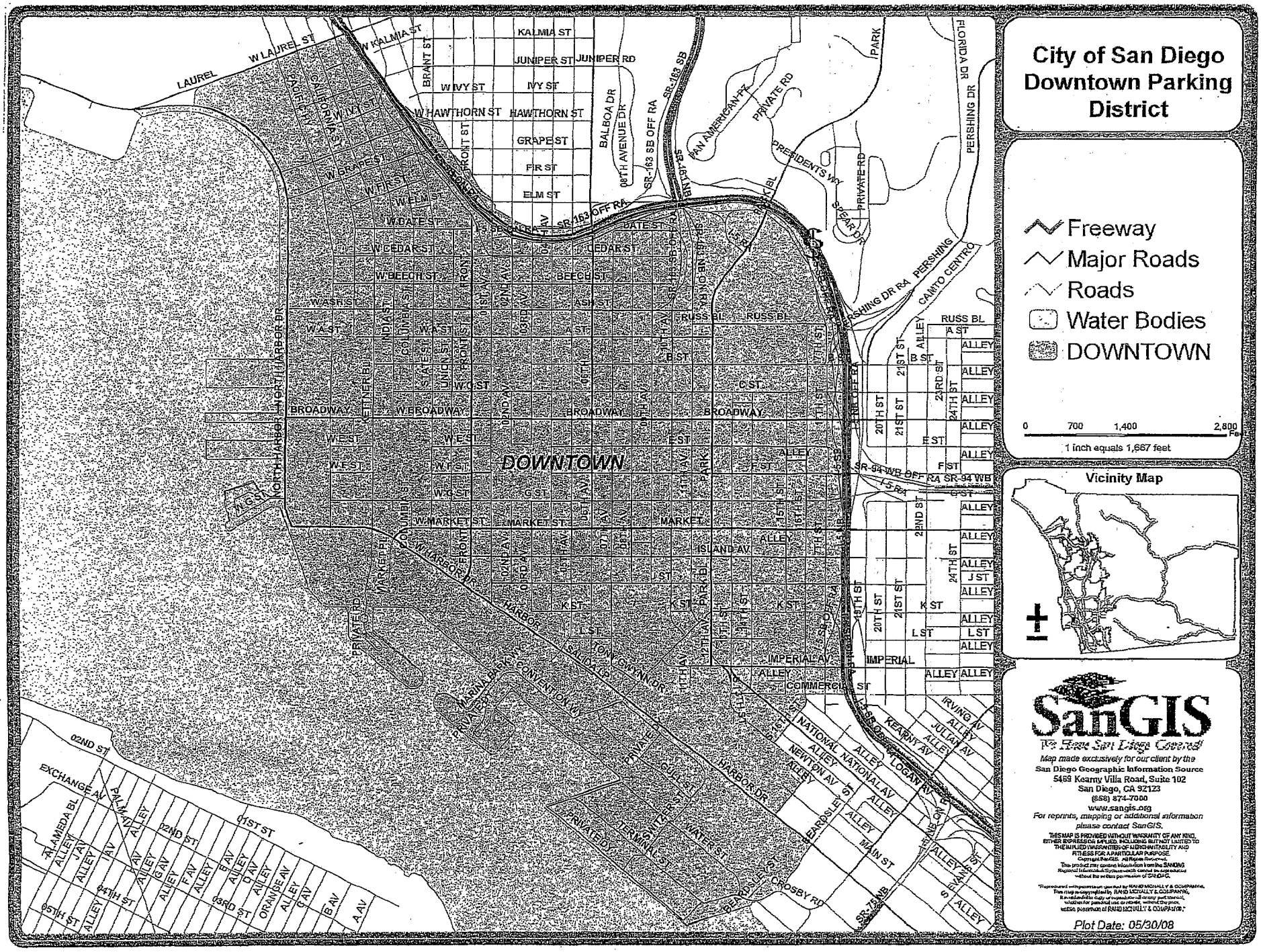
Parking meter revenue may generally be used to purchase and install vehicular directional signs, gateway signs, kiosk signs, and pedestrian directional signs as part of the Project provided that the signs serve a primarily functional purpose in reasonably assisting drivers in reaching their ultimate 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

KRS:mm:nja
Attachments
Document No.:303300_6
MS-2012-20

EXHIBIT 1


City of San Diego
Downtown Parking
District
Freeway
Major Roads
Roads
Water Bodies
DOWNTOWN
0 700 1,400 2,800 Feet
1 inch equals 1,667 feet
Vicinity Map
SanGIS
We Know San Diego County!
Map made exclusively for our client by the
San Diego Geographic Information Source
5469 Kearny Villa Road, Suite 102
San Diego, CA 92123
(858) 874-7000
www.sangis.org
For reprints, mapping or additional information
please contact SanGIS.
Plot Date: 05/30/08
DOWNTOWN
W LAUREL ST
LAUREL
W KALMIA ST
KALMIA ST
JUNIPER ST
JUNIPER RD
W IVY ST
IVY ST
W HAWTHORN ST
HAWTHORN ST
GRAPE ST
FIR ST
ELM ST
DATE ST
CEDAR ST
BEECH ST
ASH ST
RUSS BL
BROADWAY
MARKET ST
ISLAND AV
IMPERIAL AV
COMMERCIAL ST
NORTH HARBOR DR
HARBOR DR
PERSHING DR
CAMINO CENTRO
PRESIDENTS WY
PRIVATE RD
PARK
FLORIDA DR
BALBOA DR
06TH AVENUE DR
SR-163 SB OFF RA
SR-163 SB
SR-163 OFF RA
SR-94 WB OFF RA
SR-94 WB
I-5 RA
SR-75 NB
PANAMERICAN PL
CEDAR DR
MARINA PARK WY
CONVENTION WY
TONY GWYNN DR
SALIDA PL
PRIVATE RD
TERMINAL ST
WATER ST
BEARDSLEE ST
CROSBY RD
NATIONAL NATIONAL AV
NEWTON AV
MAIN ST
LOGAN AV
KEARNY AV
JULIAN AV
IRVING AV
EVANS ST
02ND ST
01ST ST
EXCHANGE AV
ALAMEDA BL
PALM ST
ALLEY
JAV
IAV
HAV
GAV
FAV
EAV
DAV
CAV
BAV
AAV
ORANGE AV
03RD ST
04TH ST
05TH ST

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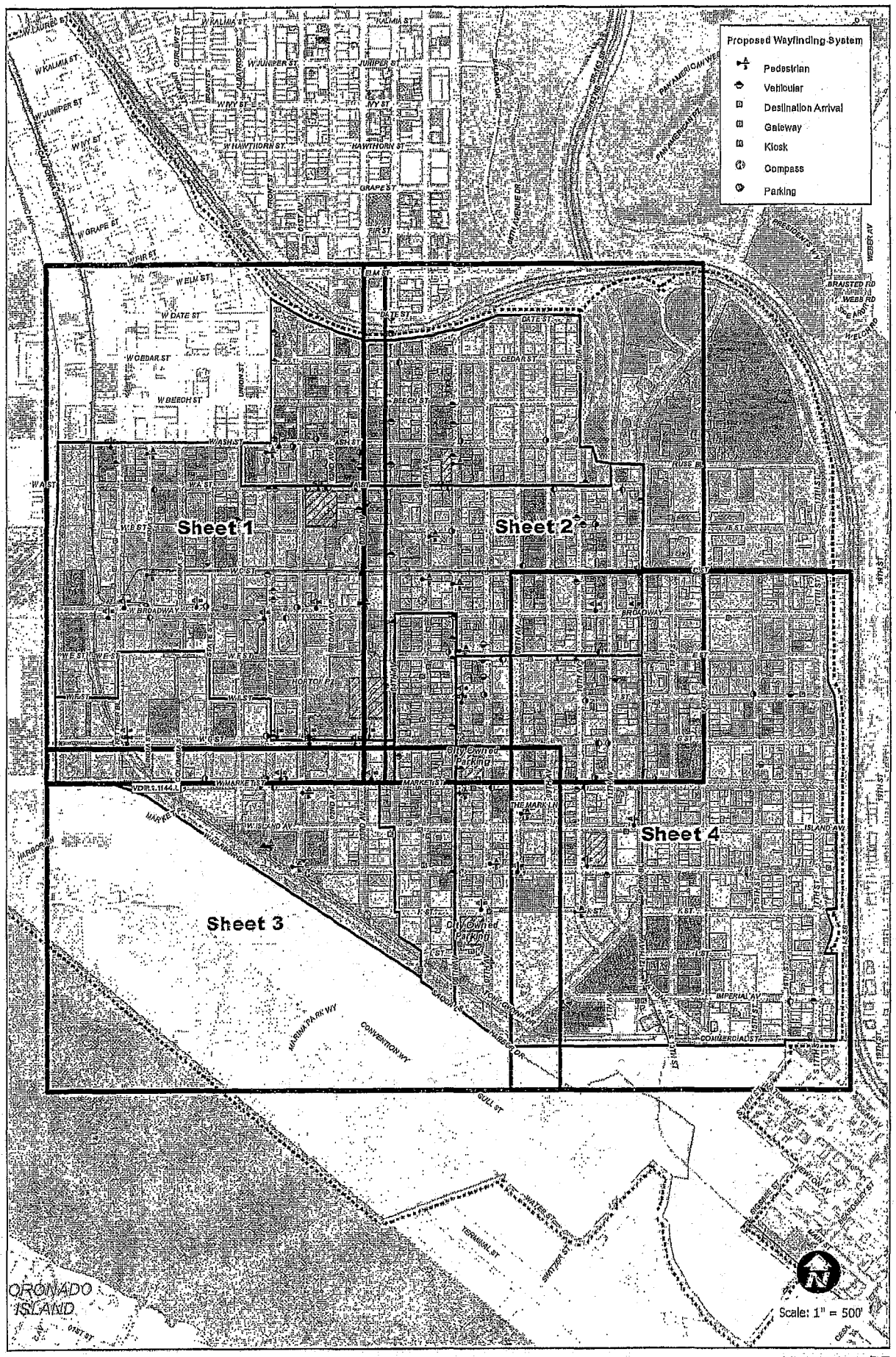


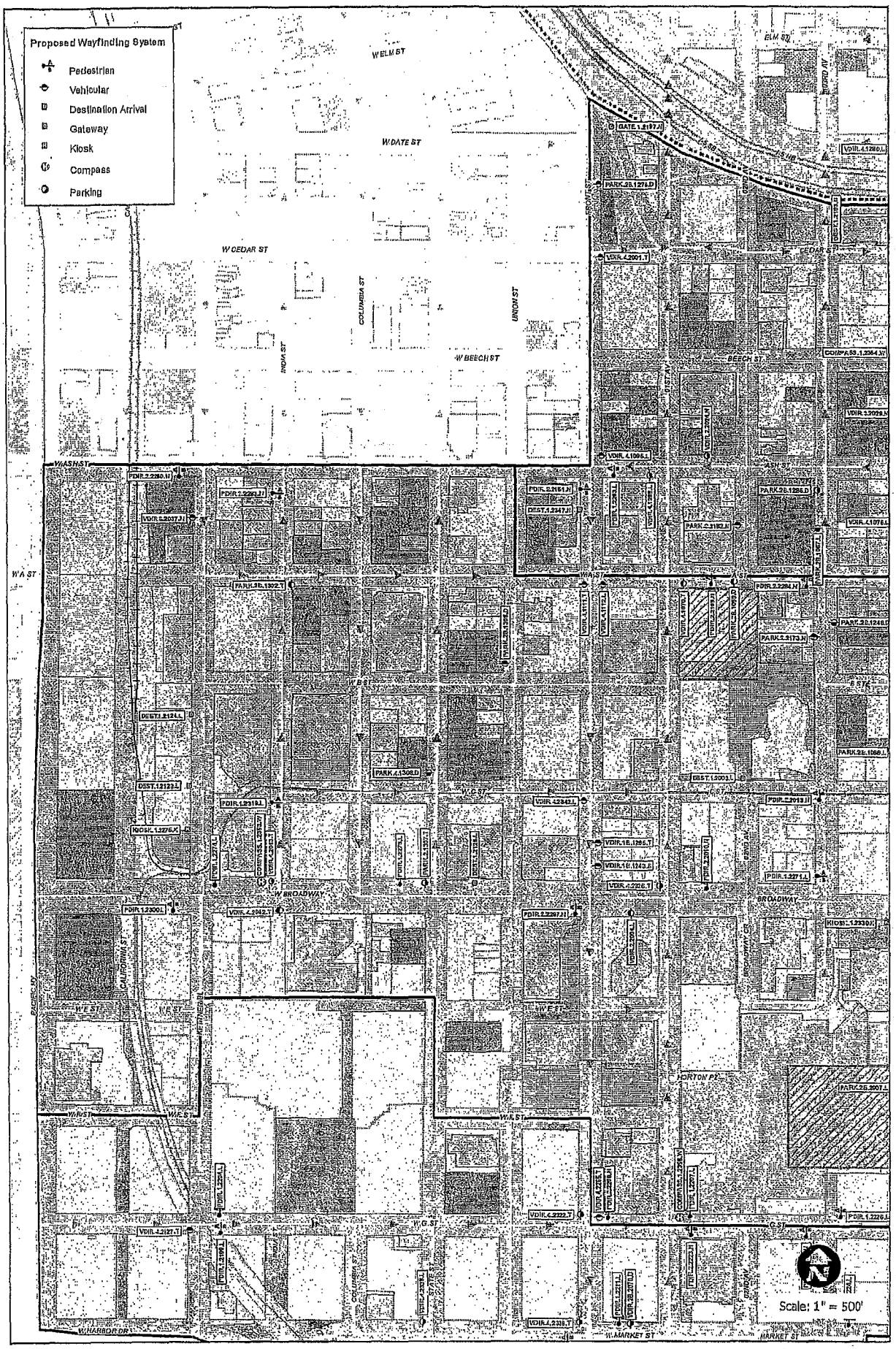
Downtown Wayfinding Signage Update

Proposed Sign Locations within PBID Districts

Index Map

RICK ENGINEERING COMPANY

EXHIBIT 2



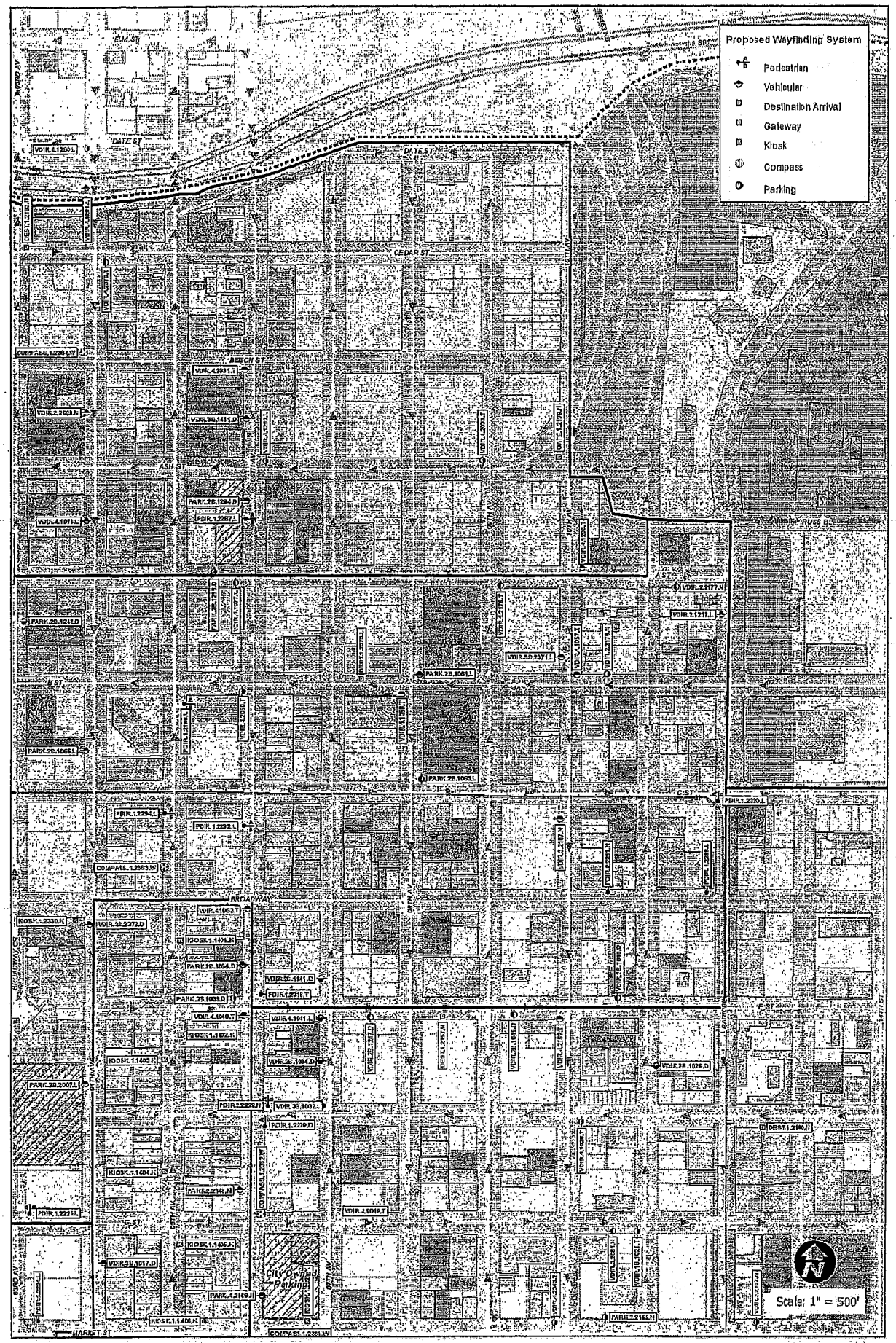
Downtown Wayfinding Signage Update

Proposed Sign Locations within PBID Districts

Sheet 1 of 4

RICK ENGINEERING COMPANY

EXHIBIT 2



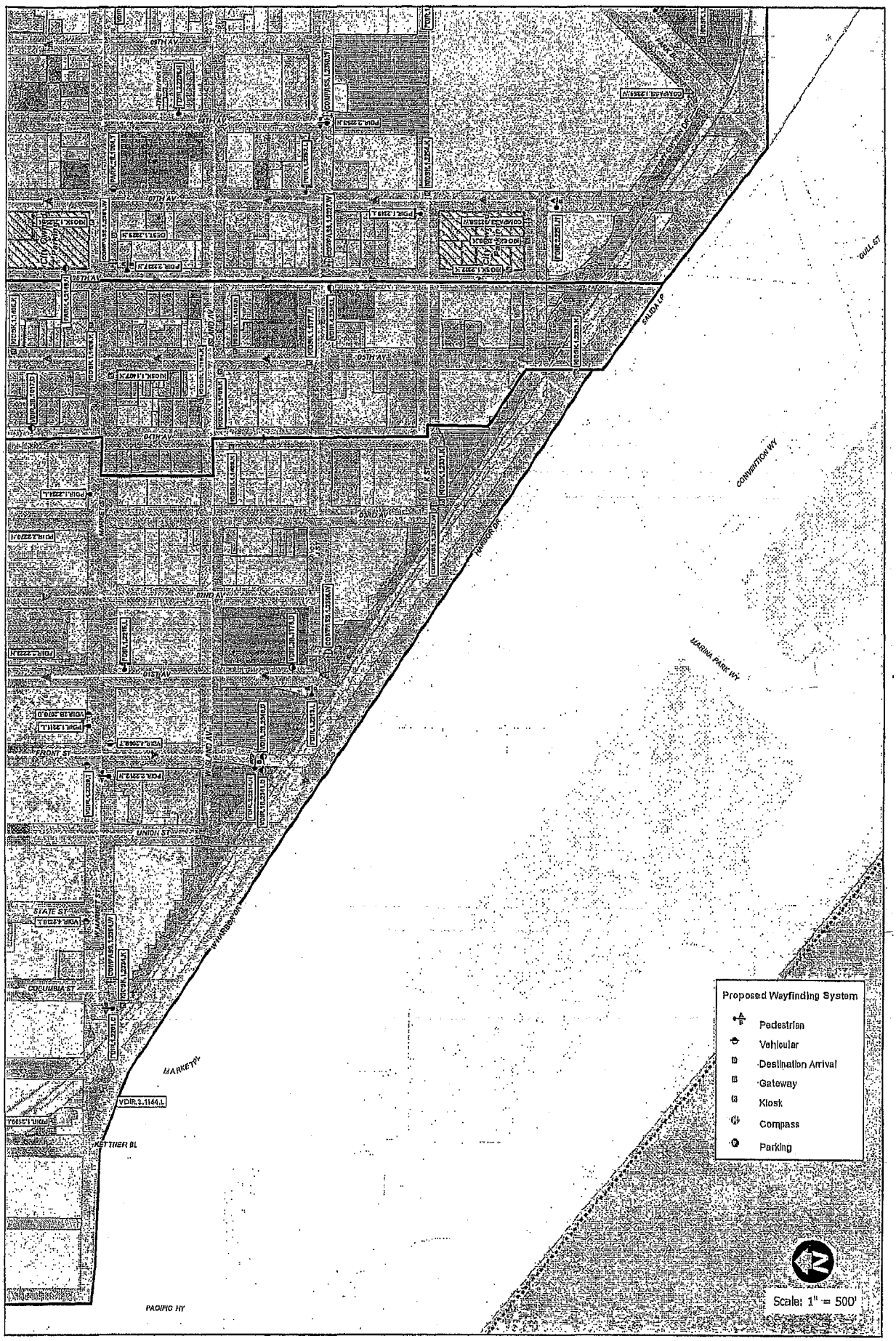
Downtown Wayfinding Signage Update

Proposed Sign Locations within PBID Districts

Sheet 2 of 4

RICK ENGINEERING COMPANY

EXHIBIT 2



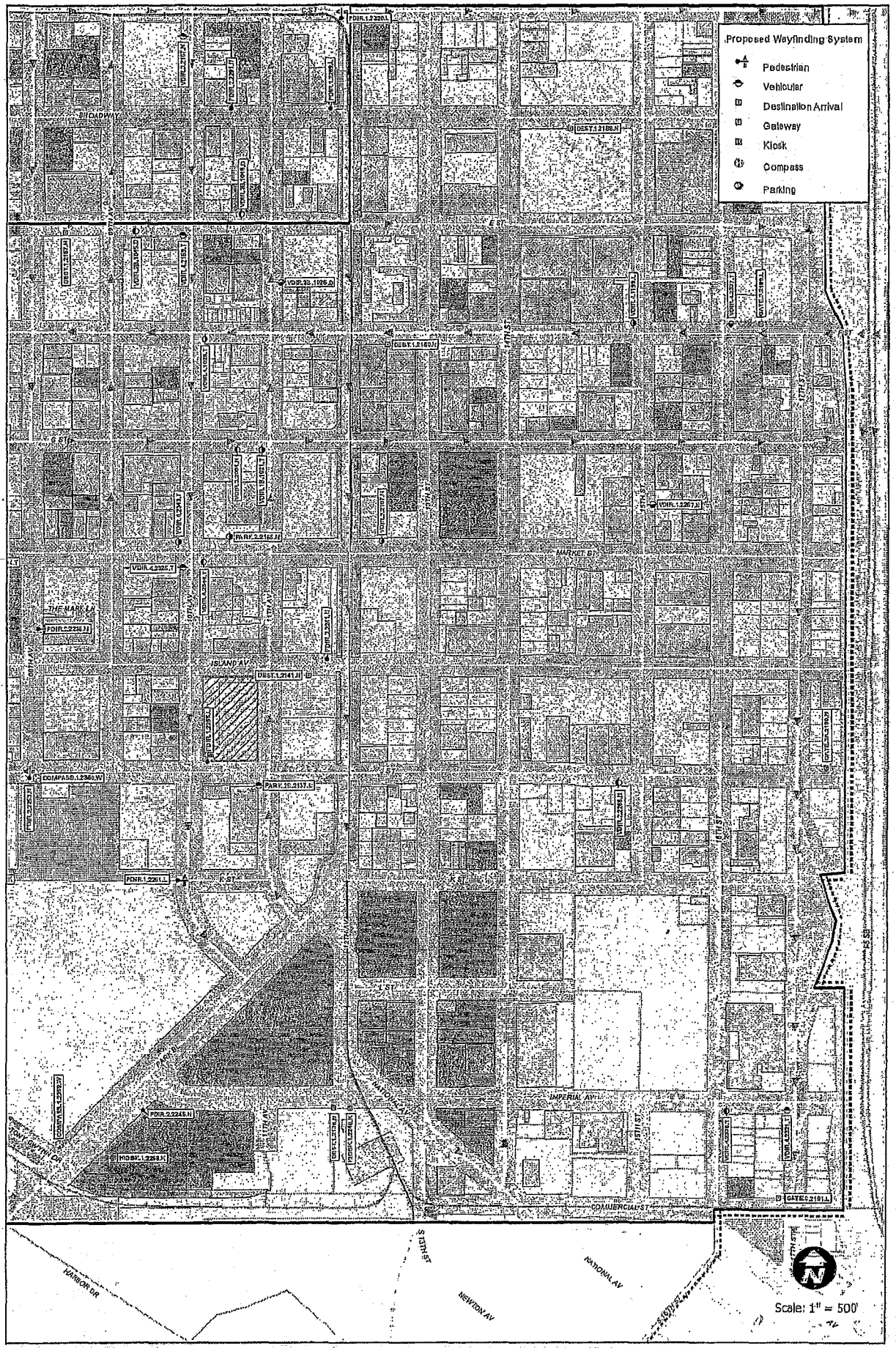
Downtown Wayfinding Signage Update

Proposed Sign Locations within PBID Districts

Sheet 3 of 4

RICK ENGINEERING COMPANY

EXHIBIT 2



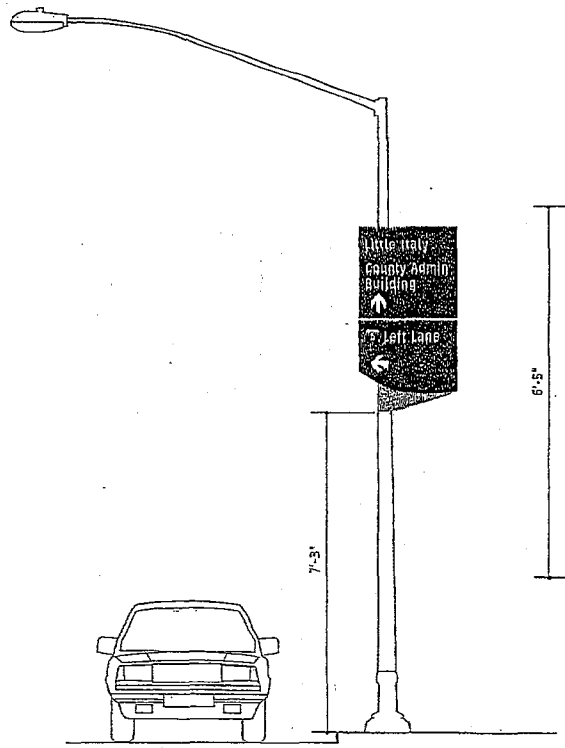
Downtown Wayfinding Signage Update

Proposed Sign Locations within PBID Districts

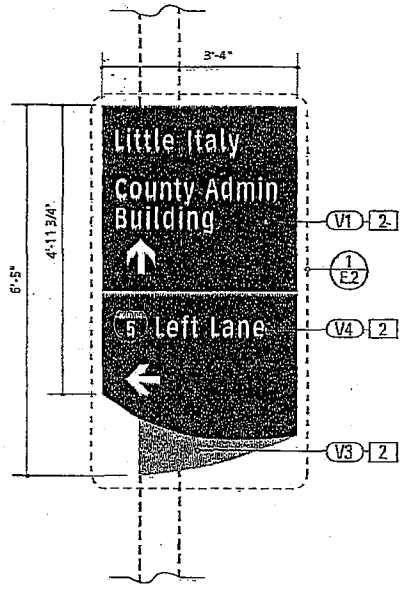
Sheet 4 of 4

RICK ENGINEERING COMPANY

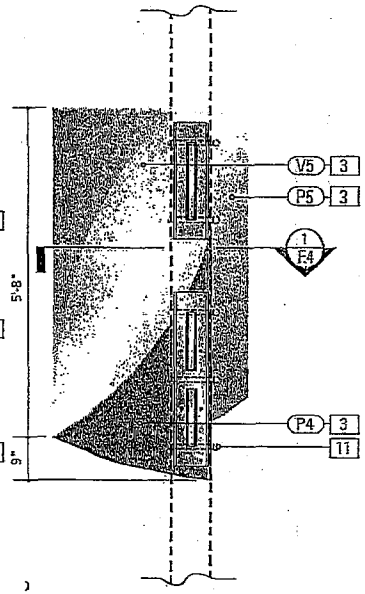
EXHIBIT 3



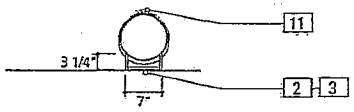
1 Application (Existing): VDIR.2B
SCALE: 1/4" = 1'-0"



2 Front Elevation: VDIR.2B
SCALE: 1/2" = 1'-0"



3 Back Elevation: VDIR.2B
SCALE: 1/2" = 1'-0"



4 Top View: VDIR.2B
SCALE: 1/2" = 1'-0"

SPECIFICATIONS **SIGN TYPE:** VDIR.2B **FUNCTION:** Vehicular Directional

2. **SIGN PANEL - REFLECTIVE VINYL**
MATERIAL: 1/4" thick Aluminum sheet
FABRICATION PROCESS: Router-cut
EDGES: Smooth
COLOR: Custom, as noted.
GRAPHIC BACKGROUND AND COPY PROCESS: 3M custom screened inks print direct to 3930 with 3M approved UV Graffiti vinyl over-laminates. (See Color Sheet A6 for all color and material specifications).
FASTENER: Mechanically fastened to shown/bracket.

3. **SIGN PANEL BACKS - PAINT and TRANSPARENT VINYL**
SURFACE PROCESS: Paint all exposed surfaces with PPG Duranar® XL Plus 3-coat systems coating.
GRAPHIC PAINT: Paint all exposed surfaces with PPG Duranar® XL Plus 3-coat systems coating.
GRAPHIC VINYL: Apply 3M Translucent Vinyl 7725SS-327 over painted surface.
FASTENER: Mechanically fastened to shown/bracket.

10. **PANEL BRACKET**
MATERIAL: 3/16" thick Aluminum sheet
FABRICATION PROCESS: Router-cut, brake-formed
COLOR: Custom, as noted
SURFACE PROCESS: Paint all exposed surfaces with PPG Duranar® XL Plus 3-coat systems coating.
FASTENER: Plug- and stich-weld to sign panel.
NOTE: Refer to shown: E2-3 for correct size and bracket application, bracket A or B configuration.

11. **POLE STRAP ATTACHMENT**
PRODUCT: Band-It Band, or approved equal.
MATERIAL: Type 201 SS
SIZE: 3/4 inch
FINISH: Stainless steel, with Color-Fast polyster blue coating.
FASTENER: Universal Channel Clamp SignFix SX0073.

NOTE: Sign Contractor to coordinate the removal or movement of interfering existing signs on poles, with the city.

REGISTERED PROFESSIONAL ENGINEER
DUANE JOSEPH
No. C 58476
Exp. 12/31/2012
CIVIL
STATE OF CALIFORNIA

NOTES
1. Fabricator shall verify the mounting conditions and provide a detail drawing for each mounting situation, prior to fabrication. Fabricator shall obtain approval from the Designer or Client for placement prior to fabrication.
2. Welds: All welds shall be ground smooth, paint all seams.
3. Hardware: All fasteners shall be concealed. If exposed, hardware shall be tamper proof fasteners, corrosion resistant, and color matching adjacent surfaces.
4. All painted sign surfaces to receive UV/Anti-Graffiti spray coating. All sign surfaces with reflective graphics to recieve 3M approved UV/Anti-Graffiti overlaminate.

ENVIRONMENTS & EXPERIENCES

merje

120 North Church Street
Suite 208
West Chester, PA 19380
T 484.266.0648
www.merjedesign.com

CLIENT / PROJECT
Downtown San Diego Wayfinding & Signage Program

PROJECT NO.

SUBCONSULTANT

SHEET TITLE
VDIR.2B
Vehicular Directional
Utility Pole-mount

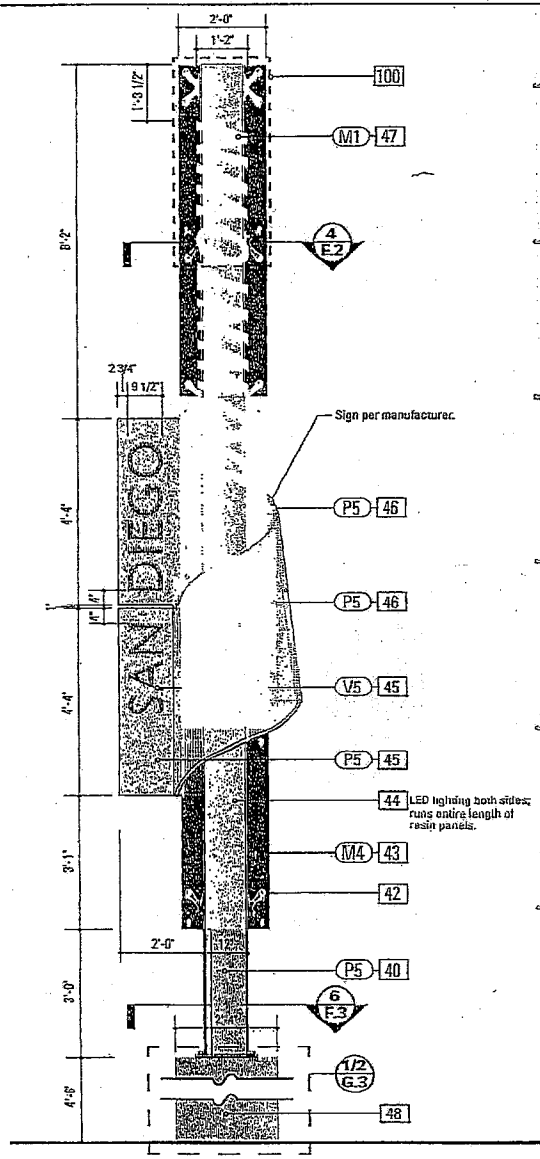
DATE	02/25/2011	DRAWN BY:	JC, PR
		REVISIONS	04/07/2011
			06/06/2011
			09/23/2011

These drawings are issued for DESIGN INTENT ONLY and are not for construction. Contractor shall verify and be responsible for all dimensions and conditions of the job. Contractor shall be familiar with the site and conditions it presents. This office must be notified of any variations from the dimensions and conditions shown on this drawing. Shop drawings and details must be submitted to this office for approval prior to proceeding with fabrication. All copy must be proofread by client and legal requirements checked by legal department.

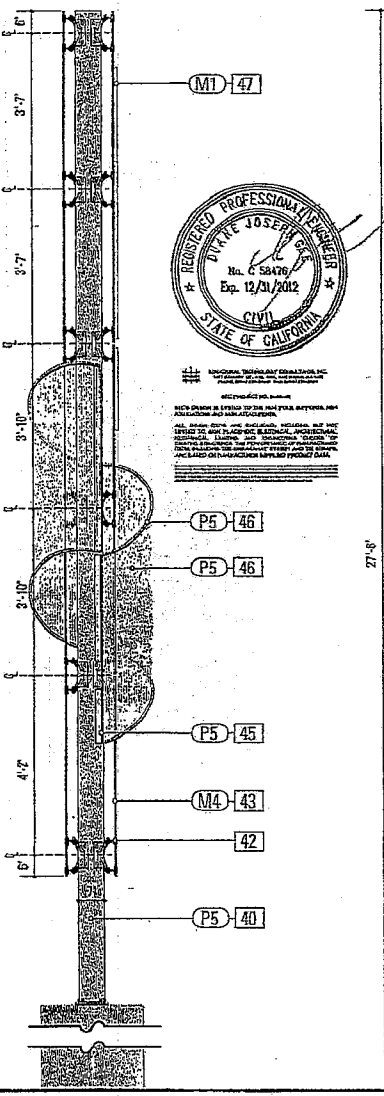
SHEET NO.
D.4

EXHIBIT 4

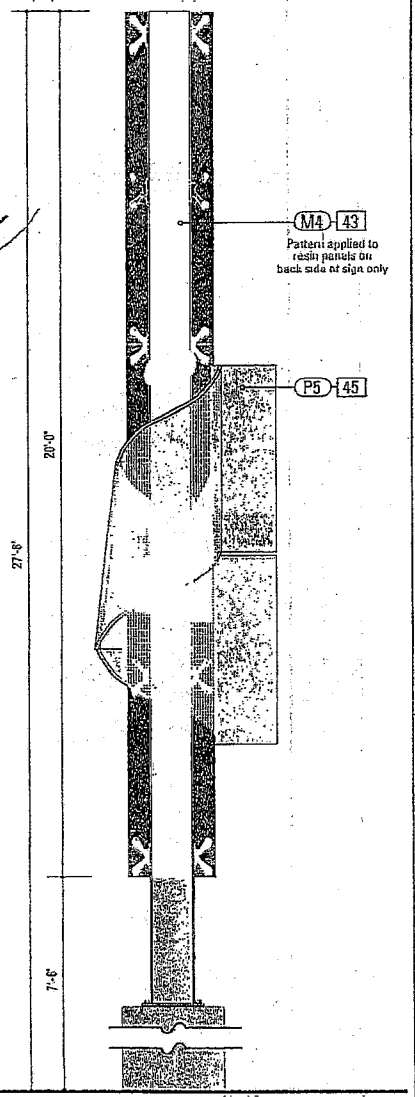
Note: See Sheet G.3 for footing details.



1 Front Elevation: GATE.1
SCALE: 3/8" = 1'-0"



2 Side Elevation: GATE.1
SCALE: 3/8" = 1'-0"



3 Back Elevation: GATE.1
SCALE: 3/8" = 1'-0"

REGISTERED PROFESSIONAL ENGINEER
DUANE JOSEPH GAY
No. C 58476
Exp. 12/31/2012
CIVIL
STATE OF CALIFORNIA

SPECIFICATIONS **SIGN TYPE:** GATE.1 **FUNCTION:** Primary Gateway

40. **ALUMINUM I-BEAM (6061-T6)- 12 X 11.7**
SIZE: Depth=12", Flange width=7", Flange t=0.470", Web t=0.290
MATERIAL: Aluminum 6061-T6
FABRICATION PROCESS: Extruded
EDGES: Smooth
COLOR: Custom, as noted.
SURFACE PROCESS: Paint all exposed surfaces with PPG Duranar® XL Plus 3-coat systems coating.

42. **SPIDER MOUNT HARDWARE**
PRODUCT: SADEK® Classic Spiders S3100 MONTI® 2-Arm, or approved equal.
MATERIAL: Cast Stainless Steel AISI 316
FINISH: Satin polished
FASTENERS TO I-BEAM: Recommended M12 or M16 bolt.
FASTENERS TO RESIN PANELS: FKV 2003 stainless steel fixed fitting bolt system.

43. **TRANSLUCENT RESIN PANELS**
PRODUCT: 3FORM Kodo XT 3G resin panels, or approved equal.
MATERIAL: Resin panels
FABRICATION PROCESS: Combine up to 3 layers; Crystal Clear plus choice of other colors to create custom combination (final color to be determined).
FRONT PANEL: KODA XT SURF
FRONT STUCCO- BACK PATENT
HIGH RES: Digital Print or 3FORM Cetoli Interlayer
GAUGE 12"
Color Match: PMS 2755C BLUE
NOTE: Area Behind Lettering in Drop Out Transparent SURF
Back Panel: KODA XT SURF x2
FRONT STUCCO - BACK PATENT
HIGH RES: Digital Print GAUGE 1/2"
Color Match: PMS 2755C BLUE 100%,85%,75%
FASTENER: Pre-drilled holes by 3FORM, mechanically fasten with FKV 2003 SS hardware.

44. **LIGHTING – LED FLEXIBLE LIGHT STRIPS**
PRODUCT: Superbright.com, weatherproof (WFLS), with wide beam angle (±140°), or approved equal.
TYPE: Linear, flexible light strips, 12V, encased in flexible waterproof silicone with silicone endcaps.
COLOR: White.
MOUNTING: Utilizing products mounting brackets, mechanically fasten to I-beam with SS hardware.
ELECTRICAL: 20.414 Lumens/Draw 6 Amps at 120 Volts

45. **MESSAGE PANEL – PAINTED**
MATERIAL: 1/4" thick Aluminum sheet
FABRICATION PROCESS: Router Cut
EDGES: Smooth
COLOR: Custom, as noted.
SURFACE PROCESS: Paint all exposed surfaces with PPG Duranar® XL Plus 3-coat systems coating.
FASTENER: Mechanically fasten to steel I-beam with custom aluminum angle, and SS fasteners.

46. **PERFORATED PANEL – Stainless Steel**
MATERIAL: 1/4" thick Aluminum sheet, round hole.
FABRICATION PROCESS: Router Cut
EDGES: Smooth
COLOR: Custom, as noted.
SURFACE PROCESS: Clearcoat protectant
FASTENER: Mechanically fasten to message panels with SS fasteners.

47. **DIMENSIONAL LETTERS – DOWNTOWN**
MATERIAL: 1" thick Acrylite® Crystal Ice white acrylic.
FABRICATION PROCESS: Router Cut
EDGES: Smooth
COLOR: Natural
FASTENER: Minimal pin-mounts to 3Form resin panels, with marine-grade epoxy.

48. **CONCRETE FORM BASE**
MATERIAL: Concrete, light aggregate
FABRICATION PROCESS: Poured into form.
SIDES: Smooth finish
TOP SURFACE: Minimal tapered for water run-off.
GRADE ATTACHMENT: Below grade, either sidewalk is flush to base, or landscape is restored flush.
TOP ATTACHMENT: Plate assembly for custom steel I-beam attachment.
NOTE: Allow for electrical conduit installation (internal through concrete base) for LED lighting.

50. **LIGHTING – DIFFUSER COVER**
MATERIAL: 1/8" thick Acrylite® Satin Ice (WD00 DF) White acrylic sheet.
FABRICATION PROCESS: Router Cut
EDGES: Smooth
COLOR: Natural
FASTENER: Mechanically fasten to steel I-beam with custom aluminum angle all 4 sides, and SS fasteners.

BREAKAWAY SUPPORT – MODEL B650, BRACKET NO.2
PRODUCT: TRANSPO Breakaway Model B650, Bracket No.2 support system
NOTE: If positioned within Caltrans R.O.W. ref. G.3 for cover detail and shall be breakaway as per Caltrans breakaway specifications.

100. **MOCK-UP SAMPLE**
Contractor to provide a working double-sided sample of gateway section. Mock up area outlined at left.
Sample must include:
- Spider Mount Hardware
- LED lighting
- Graphic pattern on back
- Dimensional letter(s)

NOTE: Client approval of sample required before purchasing materials for final fabrication.

NOTES
1. Fabricator shall verify the mounting conditions and provide a detail drawing for each mounting situation, prior to fabrication. Fabricator shall obtain approval from the Designer or Client for placement prior to fabrication
2. Welds: All welds shall be ground smooth, paint all seams.
3. Hardware: All fasteners shall be concealed. If exposed, hardware shall be tamper proof fasteners, corrosion resistant, and color matching adjacent surfaces.
4. Provide protective coating for all steel to be in contact with earth

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CLIENT / PROJECT
Downtown San Diego Wayfinding & Signage Program

PROJECT NO.

SUBCONSULTANT

DATE	DRAWN BY:	JC, PR
02/25/2011	REVISIONS	04/07/2011
		06/06/2011
		09/23/2011

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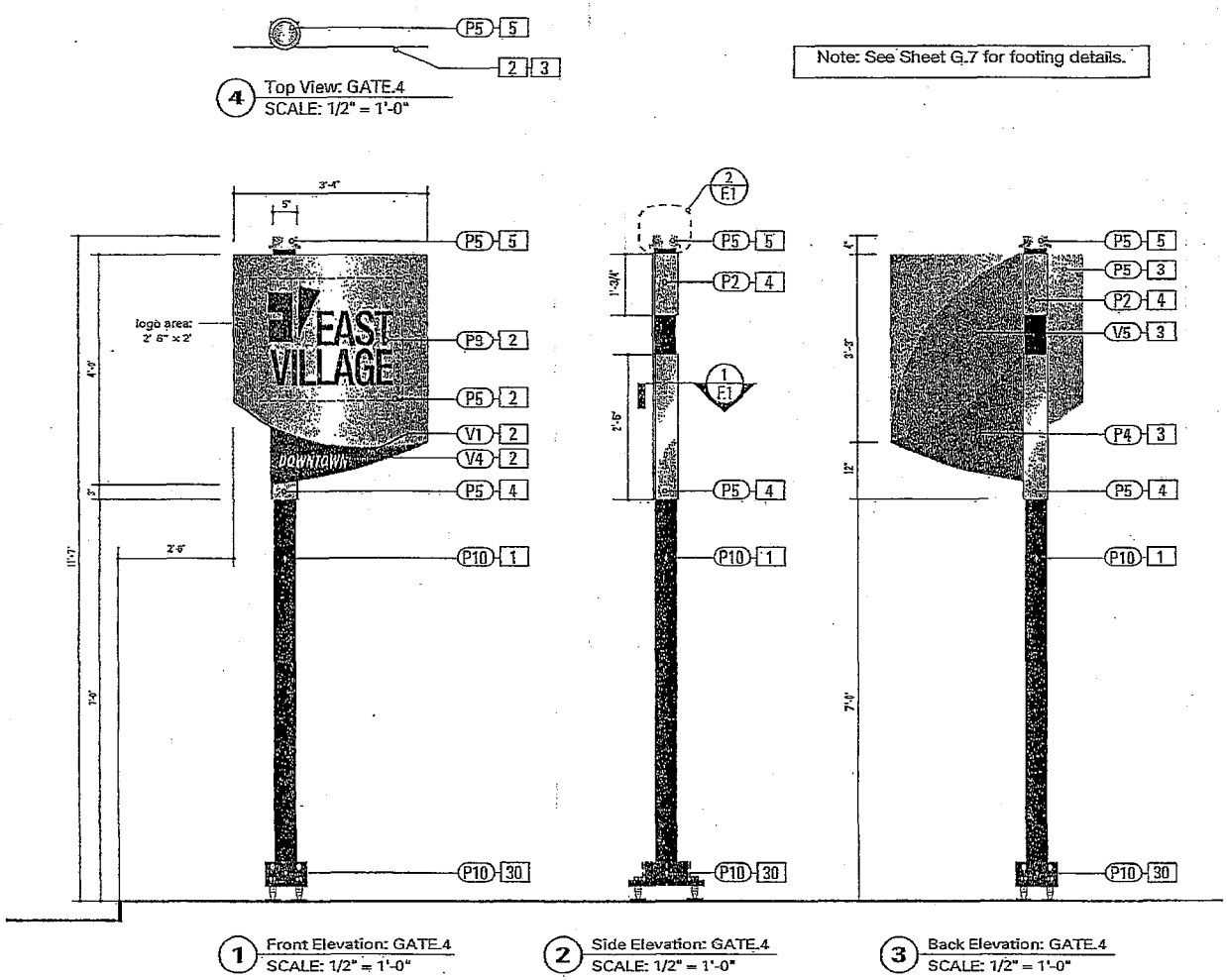
SHEET TITLE
GATE.1
Primary Gateway
LED-Illuminated

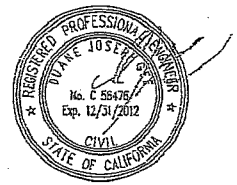
SHEET NO.
D.19

EXHIBIT 5



SPECIFICATIONS **SIGN TYPE:** GATE.4 **FUNCTION:** Tertiary Gateway

1. **POLE – 4.5 DIAMETER**
   POLE: Aluminum SCH 40 – HOM 4.5 OD 4 ID 1=0.250
   MATERIAL: Aluminum Pipe
   FABRICATION PROCESS: Extruded
   EDGES: Smooth
   COLOR: Custom, as noted.
   SURFACE PROCESS: Paint all exposed surfaces with PPG Duranar® XL Plus 3-coat systems coating.
2. **SIGN PANEL – REFLECTIVE VINYL**
   MATERIAL: 1/4" thick Aluminum sheet
   FABRICATION PROCESS: Router-cut
   EDGES: Smooth
   COLOR: Custom, as noted.
   GRAPHIC BACKGROUND AND COPY PROCESS: 3M custom screened inks print direct to 3930 with 3M approved UV Graffiti vinyl over-laminates. (See Color Sheet A6 for all color and material specifications).
   FASTENER: Mechanically fastened to sleeve/bracket.
3. **SIGN PANEL BACKS – PAINT and TRANSPARENT VINYL**
   SURFACE PROCESS: Paint all exposed surfaces with PPG Duranar® XL Plus 3-coat systems coating.
   GRAPHIC PAINT: Paint all exposed surfaces with PPG Duranar® XL Plus 3-coat systems coating.
   GRAPHIC VINYL: Apply 3M Translucent Vinyl 7725SE-327 over painted surface.
   FASTENER: Mechanically fastened to sleeve/bracket.
4. **SLEEVE**
   MATERIAL: 1/4" thick Aluminum U-channel
   FABRICATION PROCESS: Extruded
   EDGES: Square
   COLOR: custom, as noted.
   SURFACE PROCESS: Paint all exposed surfaces with PPG Duranar® XL Plus 3-coat systems coating.
   FASTENER: Mechanically fastened to pole.
5. **TOP CAP**
   MATERIAL: Cast Aluminum Post Top Finial
   FABRICATION PROCESS: Cast Aluminum
   EDGES: Smooth
   COLOR: Custom, as noted.
   SURFACE PROCESS: Paint all exposed surfaces with PPG Duranar® XL Plus 3-coat systems coating.
   FASTENER: Mechanically fastened to pole.
10. **BREAKAWAY SUPPORT – MODEL AP4.5**
    Product: TRANSPO® Breakaway Model AP4.5 sign support system, or Caltrans approved equal.
    NOTE: All signs are positioned within Caltrans R.O.W. and shall be breakaway as per Caltrans breakaway specifications.



NOTES

1. Fabricator shall verify the mounting conditions and provide a detail drawing for each mounting situation, prior to fabrication. Fabricator shall obtain approval from the Designer or Client for placement prior to fabrication.
2. Welds: All welds shall be ground smooth, paint all seams.
3. Hardware: All fasteners shall be concealed. If exposed, hardware shall be tamper proof fasteners, corrosion resistant, and color matching adjacent surfaces.
4. All painted sign surfaces to receive UV/Anti-Graffiti spray coating. All sign surfaces with reflective graphics to receive 3M approved UV/Anti-Graffiti over-laminate.

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SUBCONSULTANT

SHEET TITLE
GATE.4
Tertiary Gateway

DATE	DRAWN BY:	JC, PR
02/25/2011	REVISIONS	04/07/2011
		06/06/2011
		09/23/2011

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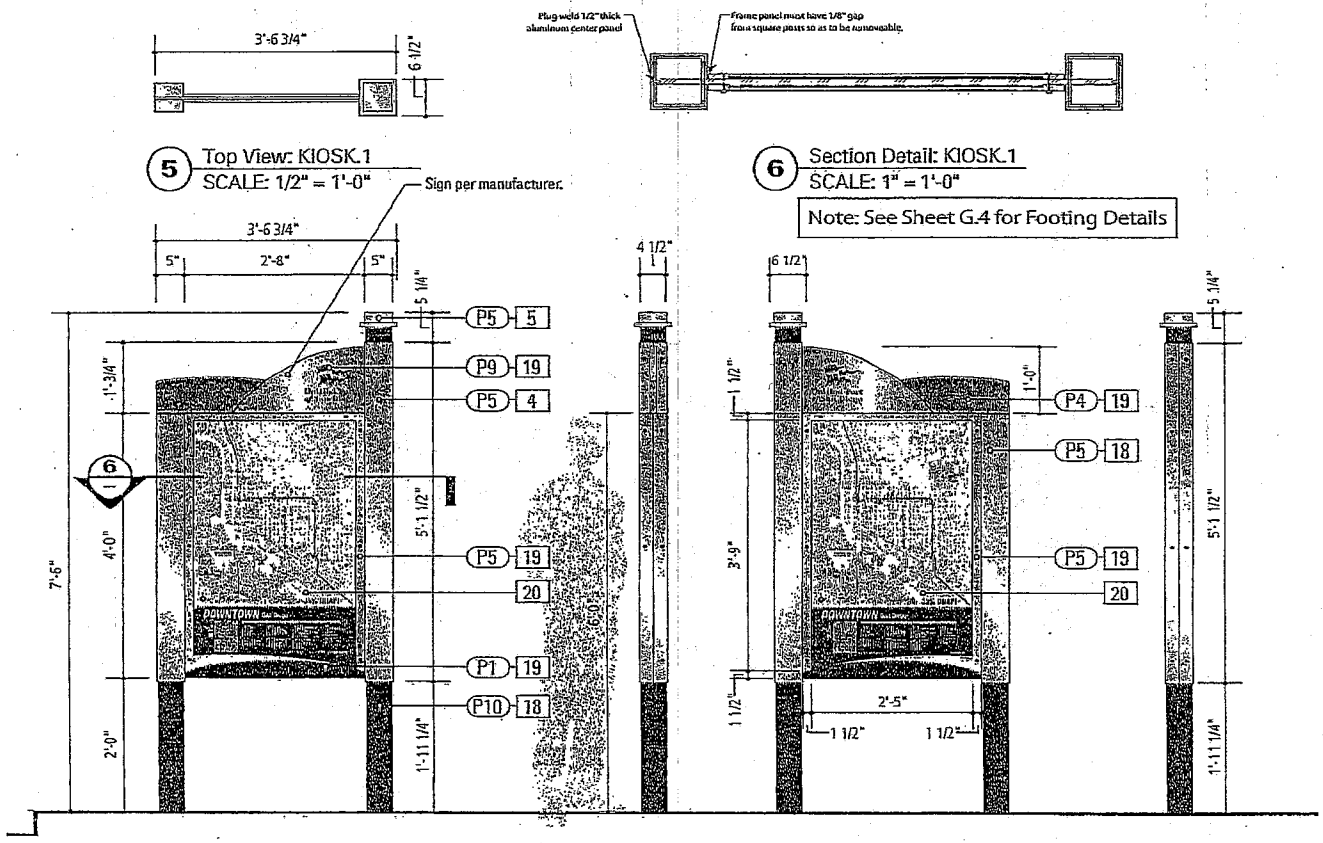
SHEET NO.
D.25

EXHIBIT 6



SPECIFICATIONS **SIGN TYPE:** KIOSK.1 **FUNCTION:** Pedestrain Kiosk

4. **SLEEVE**
   MATERIAL: 1/4" thick Aluminum U-channel
   FABRICATION PROCESS: Extruded
   EDGES: Square
   COLOR: custom, as noted.
   SURFACE PROCESS: Paint all exposed surfaces with PPG Duranar® XL. Plus 3-coat systems coating.
   FASTENER: Mechanically fastened to pole.

5. **TOP CAP**
   MATERIAL: Cast Aluminum Post Top Finial
   FABRICATION PROCESS: Cast Aluminum
   EDGES: Smooth
   COLOR: Custom, as noted.
   SURFACE PROCESS: Paint all exposed surfaces with PPG Duranar® XL. Plus 3-coat systems coating.
   FASTENER: Mechanically fastened to pole.

18. **POST - 4.5 SQUARE**
   POLE: Aluminum tube - 4.5" square, wall 0.250"
   MATERIAL: Aluminum square tube, square corners.
   FABRICATION PROCESS: Extruded
   EDGES: Smooth
   COLOR: Custom, as noted.
   SURFACE PROCESS: Paint all exposed surfaces with PPG Duranar® XL. Plus 3-coat systems coating.

19. **CENTER PANEL & FRAME**
   CENTER MATERIAL: 1/2" thick Aluminum sheet
   FRAME MATERIAL: 3/8" thick Aluminum sheet
   FABRICATION PROCESS: Router-cut
   EDGES: Smooth
   COLOR: Custom, as noted.
   SURFACE PROCESS: Paint all exposed surfaces with PPG Duranar® XL. Plus 3-coat systems coating.
   FRAME PANELS: Interior of panels must have material router-cut to accept I-Zone artwork panels.
   CENTER PANEL FASTENER: Panel tabs are plug-welded into posts, ground smooth.
   FRAME FASTENERS: Mechanically fastened to center panel.

20. **GRAPHIC PANEL**
   PRODUCT NAME: Icono, 2526 Charter Oak Drive, Suite 100, Temple, Texas 76502. (888)-464-8663, www.iconolaminating.com, email: info@iconolaminating.com, or approved equal.
   PRODUCT: Digital high pressure phenolic laminate
   GRADE: Exterior
   GRAPHIC APPROVAL PROCESS: Submit 8 x 15 inch phenolic sample of section of typical project panel for image and color quality approval, prior to complete panel production.
   WARRANTY PERIOD: Ten years from product ship date.
   THICKNESS: 1/4 inch.
   FINISH: UV fabricating top layer and compatible spray coating.
   FASTENER: None, sets into frame panel.

   NOTE: See footer detail drawings in Section G.

REGISTERED PROFESSIONAL ENGINEER
DUANE JOSEPH
No. C 58476
Exp. 12/31/2012
CIVIL
STATE OF CALIFORNIA

NOTES
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2. Welds: All welds shall be ground smooth, paint all seams.
3. Hardware: All fasteners shall be concealed, if exposed, hardware shall be tamper proof fasteners, corrosion resistant, and color matching adjacent surfaces.
4. Provide protective coating for all steel to be in contact with earth.

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PROJECT NO.

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SHEET TITLE
KIOSK.1
Pedestrian Kiosk

DATE	DRAWN BY:
02/25/2011	JC, PR
REVISIONS	04/07/2011
	06/06/2011
	09/23/2011

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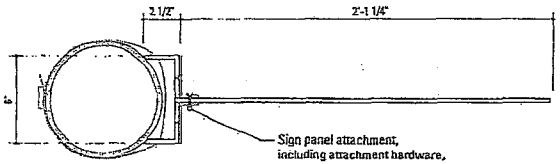
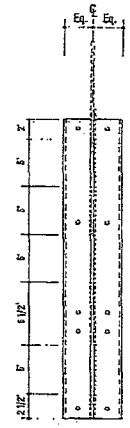
SHEET NO.
D.17

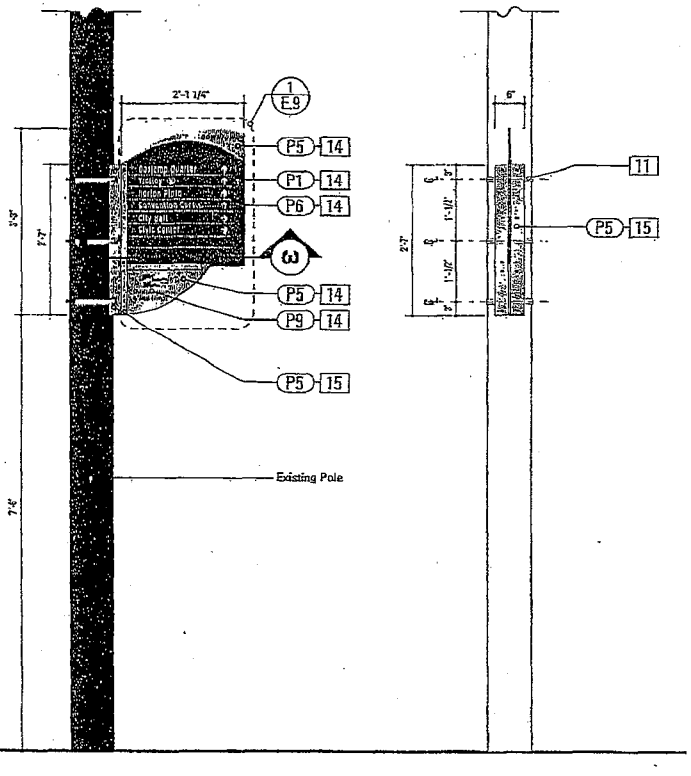
EXHIBIT 7



3 Section Detail: PDIR.1
SCALE: 1 1/2" = 1'-0"

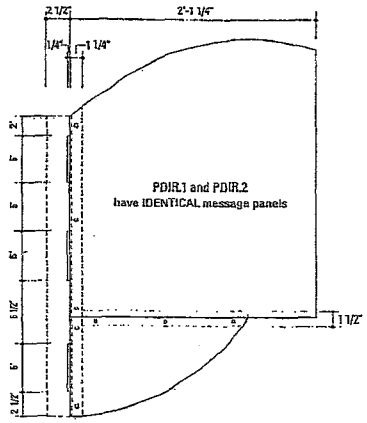


4 Channel/Tab Detail: PDIR.1
SCALE: 1" = 1'-0"



1 Front Elevation: PDIR.1
SCALE: 1/2" = 1'-0"

2 Side Elevation: PDIR.1
SCALE: 1/2" = 1'-0"



5 Tab/Panel Detail: PDIR.1
SCALE: 1/2" = 1'-0"

SPECIFICATIONS **SIGN TYPE:** PDIR.1 **FUNCTION:** Pedestrian Directional

14. SIGN PANEL – PAINTED
MATERIAL: 1/4" thick Aluminum sheet
FABRICATION PROCESS: Router Cut
EDGES: Smooth
COLOR: Custom, as noted.
SURFACE PROCESS: Paint all exposed surfaces with PPG Duranar® XL Plus 3-coat systems coating.
GRAPHICS (MESSAGES, ARROWS & LINES): Screen print all graphics with PPG Duranar® XL Plus 3-coat systems coating.
FASTENER: Mechanically fasten to channel (bracket) with custom aluminum angle.

NOTE: Sign panels are separate, and changeable.

11. POLE STRAP ATTACHMENT
PRODUCT: Band-It Band, or approved equal.
MATERIAL: Type 201 SS
SIZE: 3/4 inch
FINISH: Stainless steel, with Color-Fast polyster blue coating.
FASTENER: Universal Channel Clamp SignFix SX0073.
NOTE: Sign Contractor to coordinate the removal or movement of interfering existing signs on poles, with the city.

15. CHANNEL (BRACKET)
MATERIAL: 1/4" thick Aluminum sheet
FABRICATION PROCESS: Brake-form aluminum sheet
EDGES: Smooth
COLOR: Custom, as noted
SURFACE PROCESS: Paint all exposed surfaces with PPG Duranar® XL Plus 3-coat systems coating.
FASTENER: Mechanically fasten to sign panel with custom aluminum angle.

REGISTERED PROFESSIONAL ENGINEER
DUANE JOSEPH JC
No. C 56476
Exp. 12/31/2012
CIVIL
STATE OF CALIFORNIA

NOTES
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2. Welds: All welds shall be ground smooth, paint all seams.
3. Hardware: All fasteners shall be concealed. If exposed, hardware shall be tamper proof fasteners, corrosion resistant, and color matching adjacent surfaces.
4. Provide protective coating for all steel to be in contact with earth.

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DATE	02/25/2011	DRAWN BY:	JC, PR
		REVISIONS	04/07/2011
			06/06/2011
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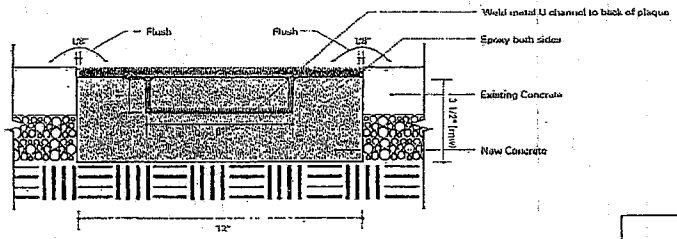
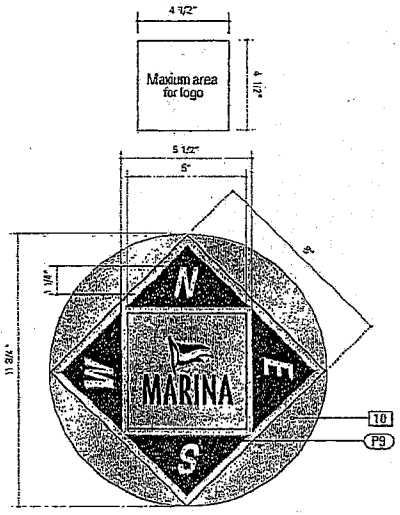
SHEET TITLE
PDIR.1
Pedestrian Directional Utility Pole-mount

SHEET NO.
D.14

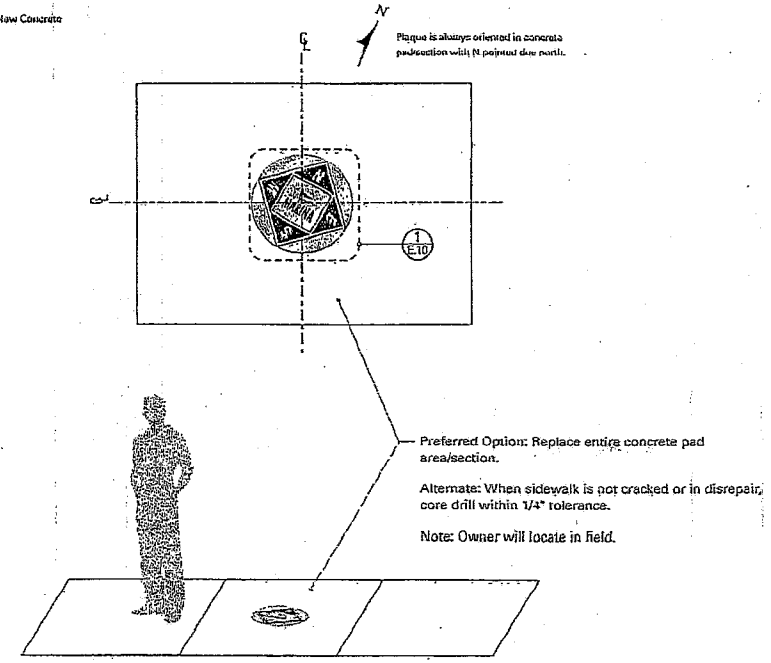
EXHIBIT 8



1 Section: PLAQUE.1
SCALE: 3" = 1'-0"



2 Front Elevation: PLAQUE.1
SCALE: 3" = 1'-0"



3 Elevation: PLAQUE.1
SCALE: NTS

SPECIFICATIONS **SIGN TYPE:** PLAQUE.1 **FUNCTION:** Compass Plaque

16. COMPASS PLAQUE
MATERIAL: 3/8" thick cast bronze
FABRICATION PROCESS: Cast bronze
COLOR: Natural.
SURFACE PROCESS: None. NO clear coat.
EDGES: Square and smooth.
MOUNTING: Stud mount into existing concrete sidewalk. Top surface of plaque MUST BE flush with existing concrete surface.

OPTIONAL DESIGN: Logo plaque is separate cast bronze plaque, and sets into separate compass base plaque. Potential cost savings without compromising design aesthetics.

REGISTERED PROFESSIONAL ENGINEER
DUANE JOSEPH
No. C 56476
Exp. 12/31/2012
CIVIL
STATE OF CALIFORNIA

NOTES
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2. Welds: All welds shall be ground smooth, paint all seams.
3. Hardware: All fasteners shall be concealed. If exposed, hardware shall be tamper proof fasteners, corrosion resistant, and color matching adjacent surfaces.
4. All painted sign surfaces to receive UV/Anti-Graffiti spray coating. All sign surfaces with reflective graphics to recieve 3M approved UV/Anti-Graffiti overlaminate.

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DATE	DRAWN BY:
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REVISIONS	04/07/2011
	06/06/2011
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SHEET TITLE
PLAQUE.1
Compass Plaque

SHEET NO.
D.16

Office of
The City Attorney
City of San Diego

MEMORANDUM

DATE: April 27, 2012

TO: Beth Murray, Deputy Director, Economic Development Division

FROM: City Attorney

SUBJECT: Supplemental Guideline for the Use of Parking Meter Funds for Sidewalk-Related Repairs

---

INTRODUCTION

The Office of the City Attorney issued a Memorandum of Law titled Guidelines for Use of Parking Meter Funds for Parking and Traffic-Related Purposes on September 30, 2010 (MOL). The MOL addressed the question of whether parking meter funds may be used to repair a street, among other questions. This Office has been made aware of further inquiry regarding the use of parking meter funds as it relates to sidewalk-related repairs. This memorandum is intended to supplement the MOL, which addressed many of the numerous inquiries that this Office and your Division routinely receive with regard to the appropriate uses of parking meter revenue. The MOL is attached for your reference as Attachment A.

QUESTION PRESENTED

To what extent can parking meter revenue be used for sidewalk-related repairs?

SHORT ANSWER

Parking meter revenue may only be used for sidewalk-related repairs that impact traffic or the parking of vehicles within parking meter zones.

ANALYSIS

In general, parking meter revenue may be used to repair sidewalks located within a parking meter zone or within close proximity to a parking meter zone if such repairs affect parking or the control of traffic within a parking meter zone. As with street repairs, caution and restraint must be exercised to avoid the use of parking meter funds as a wholesale replacement for general funds. *See* Cal. Gov't Code § 50076. For example, the expenditure of parking meter revenue for general sidewalk repairs on a city-wide basis would violate state law by exceeding the regulatory purpose for which the parking meter fees were collected.

San Diego Municipal Code section 82.09 authorizes the expenditure of parking meter funds "to meet the costs and expenditures involved in the inspection, repair . . .and use of the parking spaces . . . and control of the parking of vehicles and the control of traffic, which may affect or be affected by the parking of vehicles and the control of traffic . . ." SDMC § 82.09 This section contains a list of examples constituting legitimate expenditures of parking meter funds. *See* SDMC § 82.09(b). The only reference in this section to anything associated with sidewalks relates to the cost of painting curbs and repairing curb signs; sidewalk repairs are not listed. *Id.* Nevertheless, as it relates to the control of parking and traffic, sidewalk-related repairs may be a legitimate expenditure of parking meter revenue because the list of enumerated traffic and parking control measures in San Diego Municipal Code section 82.09 is not exhaustive. Where a particular proposed expenditure is not specifically enumerated in the San Diego Municipal Code as a parking or traffic control measure, an analysis will need to be conducted in order to determine if that expenditure actually affects the control of parking or traffic.

For example, the repair of a sidewalk curb adjacent to a parking metered space or on the same street and block of parking meters could be a parking or traffic control measure. A sidewalk curb that protrudes into the street could cause a parking concern by prohibiting or otherwise deterring drivers from parking in such spaces due to safety concerns. Furthermore, such a curb protrusion may affect the flow of traffic by making one less parking space readily available, causing more traffic congestion by requiring drivers to drive around longer to find parking.

On the other hand, the expenditure of parking meter funds to repair sidewalk surfaces, as opposed to curbs, presents a more difficult situation to justify. While parking meter funds may be used to provide "pedestrian comfort and convenience" as well as "aesthetics" pursuant to Council Policy 100-18, those funds can only be expended for these purposes "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." Council Policy 100-18 C.2.h. In order to properly expend parking meter funds to repair sidewalk surfaces, the sidewalk surface would likely have to be damaged to such an extent that it affects the ability of drivers to park their vehicles within a parking meter zone. Such a situation could arise, for example, if the sidewalk was so damaged

that a reasonable driver would likely opt to find another parking space in order to reach his or her final destination.

CONCLUSION

Regarding sidewalk-related repairs within or in close proximity to parking meter zones, parking meter funds may only be expended for those repairs that impact traffic or the parking of vehicles within parking meter zones. As with all analyses involving the use of parking meter funds, the proposed use of parking meter revenue for any sidewalk-related repair would have to be analyzed on its own set of specific facts to properly determine if it is an appropriate expenditure of such funds.

JAN I. GOLDSMITH, City Attorney

By */s/ Kenneth So*
Kenneth So
Deputy City Attorney

KRS:mm
Attachment
MS-2012-18

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MEMORANDUM OF LAW

DATE: September 30, 2010

TO: Beth Murray, Deputy Director, City Planning and Community Investment

FROM: City Attorney

SUBJECT: Guidelines for the Use of Parking Meter Funds for Parking and Traffic-Related Purposes

INTRODUCTION

This Memorandum of Law (MOL) addresses the numerous inquiries that the Office of the City Attorney and your department routinely receive with regard to the appropriate uses of parking meter revenue. This MOL expands on the memorandum to the Budget and Finance Committee dated April 29, 2009, issued by this Office regarding the use of parking meter funds for traffic-related purposes (April Memo) and provides practical guidelines and considerations on the use of such funds. The April Memo is enclosed for your reference as Attachment A.

QUESTION PRESENTED

To what extent can parking meter revenue be used for parking and traffic-related purposes?

SHORT ANSWER

Parking meter revenue may only be used for parking and traffic-related purposes that impact the parking of vehicles within parking meter zones.

BACKGROUND

Within the City of San Diego, there are currently six Community Parking Districts[1] (Districts). As set forth in Council Policy 100-18, the purpose of these Districts is "to provide a mechanism whereby communities unable to meet existing parking demands may devise and

[1] 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.

implement parking management solutions to meet their specific needs and resolve undesirable parking impacts."

In accordance with this Council Policy, each District is managed by a Community Parking District Advisory Board (Advisory Board). The Council Policy also sets forth that "[a] percentage of the total parking meter revenues generated within each Community Parking District shall be allocated to that Community Parking District on an annual basis. The percentage shall be forty-five (45%) each fiscal year." The City receives the remaining fifty-five (55) percent of parking meter revenue.

ANALYSIS

As set forth in the April Memo, in order for parking meter revenue to be a properly enacted fee rather than a special tax, it must comply with state law which sets forth that such funds 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. Gov't Code § 50076. The April Memo stated 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."

In order to install parking meters and set rates for parking meters, 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. Pursuant to enactment by ordinance, the City has established these parking meter zones and set parking meter rates. SDMC §§ 86.11 and 86.13.

Regulatory fees such as parking meter fees[2] cannot be spent on unrelated revenue purposes. *See Collier v. City and County of San Francisco*, 151 Cal. App. 4th 1326, 1339 (2007). 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. *See* Cal. Gov't Code § 50076. Otherwise, the concern is that parking meter revenue is being collected and expended on unrelated purposes contrary to state law. *Id.; see*

[2] 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." *California Assn. of Professional Scientists v. Department 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. San Diego Municipal Code §§ 82.08 and 82.09.

also Isaac v. City of Los Angeles, 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 Associates v. City of Los Angeles*, 216 Cal. App. 3d 1208, 1219-1220 (1989).

In compliance with state law, the San Diego Municipal Code sets forth parameters on the use of parking meter revenue. San Diego Municipal Code section 82.09 entitled "Parking Meters – Collections – Accounting for Money" provides:

> The City Manager is hereby authorized, and it shall be his duty, to designate some person or persons to make regular collections of the money deposited in said parking meters. It shall be the duty of such person or persons so designated to collect and deliver to the Treasurer of The City of San Diego all money deposited in the parking meters; the Treasurer shall keep accurate account of all the parking meter money so delivered to him. Money so deposited in the parking meters may be expended to meet the costs and expenditures involved in the inspection, repair, regulation, installation, operation, control and use of the parking spaces and parking meters described herein, and the costs involved in the regulation and control of the parking of vehicles and the control of traffic which may affect or be affected by the parking of vehicles in the parking meter zones created hereby, including the purchase, replacement, installation, repair, servicing and operation of mechanical or electrical traffic signals for the direction of said traffic or said parking, and the cost of painting streets, curbs and sidewalks with appropriate markings, lines and signs, and the purchase, construction, erection, repair and replacement of street and curb signs for the direction of said traffic or said parking, and for the cost of patrolling said parking motor zones and enforcing therein all traffic laws and regulations concerning the parking of vehicles and the movement of traffic which may affect or be affected by such parking of vehicles, or for any of said purposes.

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 San Diego 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).

This MOL provides practical applications of this rule of law by addressing several different scenarios involving the proposed expenditure of parking meter revenue on parking and traffic-related issues. Given that the City bears the burden of demonstrating that such expenditures are appropriate in the event of any legal challenge, the most prudent approach is to interpret the use of parking meter revenue in a judiciously conservative manner. *See Beaumont Investors v. Beaumont-Cherry Valley Water District*, 165 Cal. App. 3d 227, 235 (1985); *see also Collier*, 151 Cal. App. 4th at 1339.

There may be additional legal and policy issues that require consideration prior to the implementation of any project involving the use of parking meter revenue, but that is beyond the scope of this MOL. The following examples are intended only as a guideline in setting the parameters on the appropriate use of parking meter revenue. The analysis of a particular project is highly fact-specific requiring a detailed understanding of numerous factors including 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.

I. May Parking Meter Revenue Be Used to Re-Paint Colored Curbs?

Yes, so long as the curbs are within a parking meter zone or address concerns regarding the parking of vehicles in a parking meter zone. San Diego Municipal Code section 82.09 specifically states that parking meter revenue may be used for painting curbs in such a manner.

Notwithstanding the foregoing, the proposed use of parking meter revenue to re-paint colored curbs would have to be analyzed on its own set of specific facts to properly determine if it is an appropriate expenditure of such funds.

II. May Parking Meter Revenue Be Used to Re-Stripe Streets to Provide Angular Rather than Perpendicular Parking?

Yes, so long as it affects the parking of vehicles in a parking meter zone. San Diego Municipal Code section 82.09 states that parking meter revenue "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 control of traffic which may affect or be affected by the parking of vehicles in the parking meter zones created hereby . . ."

If the street re-striping were to impact parking at a nearby parking meter zone by creating additional parking spaces, an expenditure of parking meter revenue in this instance could be

justified as a means to control the flow of traffic by allowing drivers to find parking spaces more easily and relieve congestion at nearby parking meter spaces. Even if no additional parking spaces were added, the act of making the spaces angular at a location in proximity to a parking meter zone could further traffic control by making it easier to enter and exit these spaces, thereby allowing traffic to flow more freely within an affected parking meter zone.

As with any project, the proposed use of parking meter revenue to re-stripe streets would have to be analyzed on its own set of specific facts to properly determine if it is an appropriate expenditure of such funds.

III. May Parking Meter Funds Be Used to Repair a Street?

Yes, so long as the street repairs are within a parking meter zone or within close proximity to a parking meter zone such that the repairs affect the control of traffic within a parking meter zone. Caution and restraint must be exercised to avoid the use of parking meter funds as a wholesale replacement for general funds. *See* Cal. Gov't Code § 50076. For example, the expenditure of parking meter revenue for general street repairs on a city-wide basis would violate state law by exceeding the regulatory purpose for which the parking meter fees were collected.

Although the repair of traffic signals, street signs, and curb signs are specifically enumerated as legitimate traffic control expenditures in the San Diego Municipal Code, street repairs are not. *See* SDMC § 82.09. Nevertheless, as it relates to the control of traffic, street repairs may be a legitimate expenditure of parking meter revenue because the list of enumerated traffic control measures under SDMC section 82.09 is not exhaustive. Where a particular proposed expenditure is not specifically enumerated in the San Diego Municipal Code as a traffic control measure, an analysis will need to be conducted in order to determine if it actually affects the control of traffic.

For example, the repair of a pothole adjacent to a parking metered space or on the same street and block of parking meters could be a traffic control measure. A pothole on a street could cause adverse traffic impacts by requiring cars to slow down such that it affects the flow of traffic. However, the further away the pothole is from a parking meter, the more attenuated the relationship to controlling traffic at a parking meter zone. Consequently, the less likely that it would be a legitimate use of parking meter revenue.

Again, the proposed use of parking meter revenue for any street repair would have to be analyzed on its own set of specific facts to properly determine if it is an appropriate expenditure of such funds.

IV. May Parking Meter Revenue Be Used to Install Signs?

Depending on the type of sign, it may be an appropriate expenditure of parking meter revenue so long as the installation of the particular sign addresses a parking concern at nearby parking meters. In addition, the installation of any signs visible from the public right-of-way would have to comply with the City's Sign Ordinance (SDMC §§ 142.1201-142.1292).

Signs which simply advertise specific businesses are most likely an inappropriate use of parking meter revenue as the installation of such signs do not relate to parking or traffic control. In addition, the expenditure of parking meter revenue to advertise private businesses raises a concern involving a gift of public funds. *See* San Diego Charter § 93. In order to avoid a Charter violation, a reasonable public purpose in which the City benefits from the expenditure would also need to be identified. *See White v. State of California*, 88 Cal. App. 4th 298, 313 (2001). It is highly unlikely that any justifiable public purpose could be found for such an expenditure of parking meter funds.

Parking meter revenue may be used to install signs sometimes known as "way-finding signs", which provide directional information to drivers where such signs provide information on available public parking locations in proximity to parking meter zones. 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 or parking.

Way-finding signs which point to publicly owned facilities such as a sign showing the direction to a public library would likely be an appropriate expenditure of parking meter revenue so long as it was within sufficient proximity to a parking meter zone to affect the flow of traffic therein. To further increase the likelihood that such an expenditure would be deemed an appropriate use of parking meter funds, the signs should identify public parking locations associated with the library rather than just the library itself.

On the other hand, the use of parking meter revenue for directional signs for parking lots of private businesses raises a concern that such an expenditure would constitute a gift of public funds. *See White*, 88 Cal. App. 4th at 313. In order to satisfy the requirement of a public purpose, an analysis would need to be done on the benefit inuring to the City from such an expenditure of parking meter revenue. *Id.* As a threshold matter, the traffic concerns would need to be substantial in order to legally justify any expenditure of parking meter revenue as being in furtherance of a public purpose. The more significant the traffic concerns caused by a commercial enterprise to parking at parking meters, the more likely it is that the public purpose requirement could be satisfied. For example, it is likely that the installation of signs denoting directions to parking for non-City owned tourist destinations such as Sea World or the San Diego Zoo would satisfy the public purpose requirement both because of the magnitude of the traffic impacts they create and because of the public interest in getting tourists to these locations.

However, in order to justify the expenditure of parking meter funds, such signs would still need to be installed in proximity to parking meter zones.

Traffic signs such as stop and yield signs are traffic control measures that constitute an appropriate use of parking meter revenue so long as the signs are within or in proximity to a parking meter zone. SDMC section 82.09 specifically allows for the erection, repair and replacement of street signs for the direction of traffic.

The replacement of street blade signs located at each intersection which convey street name information to drivers would likely not be an appropriate use of parking meter revenue unless such signs were so worn and illegible as to cause adverse traffic impacts by requiring drivers to constantly slow down in order to determine which street they had just passed. As previously stated, SDMC section 82.09 requires that if parking meter revenue is to be expended on traffic-related purposes, it must affect the parking of vehicles within parking meter zones. The 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.

Of course, any project involving the installation of signs with the proposed use of parking meter revenue would have to be analyzed on its own set of specific facts to properly determine if such an expenditure of funds was appropriate.

V. May Parking Meter Funds Be Used to Hire a Professional Traffic Engineering Firm to Investigate the Feasibility of Installing a Speed Bump to Ensure Pedestrian Safety?

Yes, but only if such an evaluation is necessary to further an otherwise acceptable purpose for which parking meter revenue may be spent. Neither the hiring of a professional traffic engineering firm nor the actual installation of a speed bump are an expressly enumerated permissible use of parking meter funds under SDMC section 82.09. Consequently, the facts concerning a particular project would need to be analyzed to establish such a use as a legitimate traffic control measure affecting the parking of vehicles within a parking meter zone. Such an analysis would be analogous to that of using parking meter revenue for street repair, addressed in the response to that of using Question No. 3 above. For example, if cars were traveling too fast making it difficult for vehicles to park within a certain parking meter zone, parking meter funds could be used to pay for speed bumps. On the other hand, if speed bumps were being installed for pedestrian safety purposes in an area that was not in proximity to a parking meter zone, such an expenditure of parking meter funds would be inappropriate.

Without a legitimate underlying purpose for which parking meter revenue can be lawfully expended, any study or evaluation in preparation for such purpose would be deemed an inappropriate use of parking meter funds. However, even if the underlying purpose (such as the

installation of speed bumps) were deemed to be an acceptable expenditure of parking meter revenue, any preliminary preparation work done would need to be evaluated in light of whether such work was necessary for accomplishing this purpose.

As with any project involving the proposed use of parking meter revenue, the use of such funds to hire a professional traffic engineer would have to be analyzed on its own set of specific facts to properly determine if it is an appropriate expenditure.

VI. May Parking Meter Funds Be Used to Fund Signs and Markers for the Formation of Quiet Zones?

No. Quiet zones are areas established so that trains do not have to blow their whistles to alert pedestrian and vehicular traffic of the trains' proximity. These quiet zones are usually established through Council action authorizing the creation of geographical boundaries and the erection of appropriate signs and markers. The purpose of a quiet zone is to provide peace and quiet to community residents. Therefore, the use of parking meter funds for this purpose would not be appropriate.

Of course, the proposed use of parking meter revenue for a specific project involving the formation of a quiet zone would have to be analyzed on its own set of detailed facts to properly determine if it is an appropriate expenditure of such funds.

VII. May Parking Meter Funds Be Used to Enhance Bus and Trolley Stops?

Perhaps, depending on the facts. Although Council Policy 100-18 sets forth an acceptable use of parking meter revenue to include "[p]romoting alternative forms of transportation to reduce parking demand (e.g., community shuttles, public transit, bicycling, and walking)", it also states that such a purpose must nevertheless be in accordance with SDMC sections 82.08 and 82.09. In order to justify the use of parking meter funds for enhancements to bus and trolley stops, the proposed enhancements must satisfy the requirement of controlling the use of parking spaces at parking meters or being a traffic control measure addressing the parking of vehicles in a parking meter zone.

It could be argued that one of the primary functions of bus and trolley stops is to promote public transit, thereby reducing vehicular traffic on public streets and reducing the demand for public parking including parking meters. However, enhancements of a purely aesthetic nature to bus and trolley stops would serve little or no practical purpose as it relates to traffic control and/or the parking of vehicles. Regardless of whether or not a bus or trolley stop looks appealing, it still serves its function of being a location for commuters to gather to access the bus or trolley. Of course, it is possible that a beautification program could potentially attract an incremental increase in public transit ridership. However, such a relationship to traffic control and parking seems tenuous, at best, without factual support.

The analysis of the use of parking meter revenue for bus and trolley stops should consider whether the enhancement is necessary for the bus or trolley stop to serve its function of providing access to public transit. Whether any enhancement is necessary would likely require an objective study to analyze the impediments for ridership, whether aesthetic enhancements at a particular bus or trolley stop is required to address those concerns, and whether the enhancement would affect the parking of vehicles within a parking meter zone. For example, the installation of lighting at a bus or trolley stop for the safety of public transit riders may be an appropriate use of parking meter funds so long as the bus or trolley stop is in sufficient proximity to a parking meter zone such that it would affect the parking of vehicles by relieving parking congestion at that location. In order to justify such an expenditure of parking meter funds, a factual determination must be made that the lighting is necessary to allow access to public transit. Important factual considerations may include whether the bus or trolley is operated in the evenings, whether there are actual safety concerns due to the darkness and/or location of the stop, and whether the stop relieved parking concerns at a nearby parking meter zone.

As with any project involving the proposed use of parking meter revenue, the use of such funds for bus and trolley stop enhancements would need to be analyzed on its own set of specific facts to properly determine if it is an appropriate expenditure of such funds.

VIII. May Parking Meter Revenue Be Used to Partially Fund a Private Development Project?

No. Typically, development projects have a component that includes a certain number of required parking spaces. *See* SDMC §§142.0501 – 142.0560. Funding used to support parking spaces that are mandated as part of a private development project is tantamount to supporting the construction of the development itself.

Neither the San Diego Municipal Code nor Council Policy 100-18 set forth any intent for the authorization of parking meter revenue to fund general construction projects. *See* SDMC §§ 82.08 and 82.09. To the contrary, Council Policy 100-18 speaks of the potential use of parking meter revenue for "public parking facilities", not private parking as part of a private development project. If parking meter revenue was expended towards the required parking of a private development, there would be virtually no limitation on the type of construction projects that parking meter revenue could be used to fund. Such a limitless expansion of the use of parking meter funds would cause concerns that such funds are being used for unrelated and general revenue purposes in violation of state law. *Bixel Associates*, 216 Cal. App. 3d at 1219-1220; Cal. Gov't Code § 50076.

Notwithstanding the foregoing, the proposed use of parking meter revenue to partially fund a construction project would have to be analyzed on its own set of specific facts to properly determine if it is an appropriate expenditure of such funds.

IX. May Parking Meter Revenue Be Used to Fund an Artist to Create a Mural on a Pedestrian Walkway?

It is unlikely that an art mural created on a pedestrian tunnel would be upheld by a court as an appropriate expenditure of parking meter revenue. Proponents of the mural would likely argue that the mural would encourage use of the pedestrian walkway because it would make the surroundings more beautiful and pleasant for taking a walk or stroll. Although this question does not address the funding of a pedestrian walkway with parking meter revenue, the analysis must start with whether the pedestrian walkway is a legitimate use of such funds given that the art mural is intended to encourage its use. If parking meter revenue cannot be used to fund the pedestrian walkway itself, an art mural created to encourage the use of such a pedestrian walkway would certainly not constitute a justifiable expenditure of parking meter revenue. The pedestrian walkway would need to be situated close to or within a parking meter zone and be configured in such a way as to promote walking toward some destination(s) that one might otherwise travel by car to reach. In this manner, it would presumably affect the parking of vehicles by making it more conducive to walk to those destination(s), rather than drive and have to park within a parking meter zone to do so. Even such a relationship to traffic control would appear tenuous at best. An objective study would be necessary to establish such a finding.

However, assuming that the pedestrian walkway was deemed to be a legitimate traffic control measure within proximity to a parking meter zone, the analysis with regard to the creation of the art mural itself is analogous to that of the enhancement of bus and trolley stops in Question No. 7. Given that the purpose of an art mural is for purely aesthetic purposes, it appears rather doubtful that it could reasonably be necessary for the use of the pedestrian walkway as a traffic control measure.

Of course, any project for the creation of an art mural involving the proposed use of parking meter revenue would have to be analyzed on its own set of specific facts to properly determine if it is an appropriate expenditure of such funds.

X. May Parking Meter Revenue Be Used to Pay for the Installation of Landscaping and Maintenance of That Landscaping?

In most instances, the answer is no. But under certain, very specific factual circumstances, it may be appropriate to use parking meter revenue to pay or the installation of landscaping and the maintenance of that landscaping. Routine landscaping and maintenance of City property is categorized as part of the "general operations of the City" in which general fund revenue would typically be utilized. *See* San Diego Charter § 71. Consequently, any use of parking meter revenue towards such a purpose would carry the risk of characterizing parking meter fees as special taxes. *See* Cal. Gov't Code § 50076.

However, Council Policy 100-18 allows the use of parking meter revenue for "[p]roviding for extraordinary maintenance and landscaping activities associated with or required by any of the activities listed above."

The term "extraordinary" is not specifically defined, but needs to be understood in its proper context taking into account its common usage and Council Policy 100-18. The American Heritage Dictionary defines "extraordinary" as "beyond what is ordinary or usual." With this in mind and interpreted within the context of Council Policy 100-18, the term "extraordinary" describes expenditures for maintenance and landscaping that are beyond the general landscaping and maintenance that the City performs on its properties. In particular, the landscaping and maintenance must be tied to the use of parking or traffic control measures that address parking concerns within parking meter zones. In addition, the Council Policy's reference to "activities listed above" is an attempt to identify appropriate expenditures of parking meter revenue that presumably address parking concerns within parking meter zones. Among other things, these include the erection of public parking facilities and lots. Consequently, 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.

Clearly, the proposed use of parking meter revenue for landscaping would have to be analyzed on its own set of specific facts to properly determine if it is an appropriate expenditure of such funds.

CONCLUSION

Parking meter revenue may only be expended for parking and traffic-related purposes that impact parking at parking meter zones. 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. Consequently, City staff must conduct a factually specific detailed 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 state and local law as well as established City policies.

JAN I. GOLDSMITH, City Attorney

By

Kenneth So
Deputy City Attorney

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Attachment
ML-2010-20
PL#2010-1983

ATTACHMENT 'A'

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: April 29, 2009

TO: Budget and Finance Committee

FROM: City Attorney

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

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

QUESTION PRESENTED

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

SHORT ANSWER

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

BACKGROUND

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

ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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