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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 Districts¹ (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 fees² 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.

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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 for 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

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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.

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By

Kenneth So
Deputy City Attorney

KMS:mm
Attachment
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