Attachment 3

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."

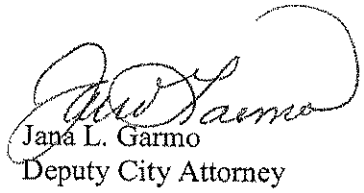
Consistent with these guidelines, the *Rider* court found the parking meter fee is only paid by a person who chooses to use a metered space, which is uncharacteristic of a special tax. The court also distinguished the fee from a special tax on grounds that the fees are not designed to recoup property 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.

JAN I. GOLDSMITH, City Attorney

By 
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JLG:cfq
cc: Mayor Jerry Sanders
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