



**Circulate San Diego**  
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October 20, 2022

Mayor Todd Gloria  
202 C Street, 11th Floor  
San Diego, CA 92101

**RE: Allow Parking District Funds to be Spent on Green Transportation Amenities**

Dear Mayor Gloria:

On behalf of Circulate San Diego, whose mission is to create excellent mobility choices and vibrant, healthy neighborhoods, I write to voice our support for allowing parking district funds to be spent on a broader variety of activities. Current rules from the City of San Diego are overly restrictive. I also write to inform you of a recent California Supreme Court Case that confirms that parking revenues are not restricted as “fees” or “taxes.”

Circulate San Diego and the Downtown San Diego Partnership sent a [letter and memorandum](#) on April 2, 2021, which articulated the problem and solution.<sup>1</sup> Recent caselaw, and the adoption by California voters of Proposition 26 in 2010, clarify that parking revenues are not governed by rules that limit the uses of either fees or taxes.

San Diego's rules can and should be expanded to allow for these funds to contribute to transportation amenities that do not impact parking demands, including for safer streets, crosswalks, bus shelters, and clean-and safe programs. This would be a win-win solution that allows parking districts more flexibility in their spending, while creating amenities for pedestrians, transit riders, bicyclists, and shared mobility device users.

On August 11, 2022, the California Supreme Court reaffirmed its interpretation of the law regarding fees and taxes under Proposition 26.<sup>2</sup> Proposition 26 defines a “tax,” and creates certain exceptions.<sup>3</sup> Among those exceptions is “a charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.”<sup>4</sup> Charges that fall within this exception are not subject to the restrictions placed on a “tax” or a “fee.”

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<sup>1</sup> Colin Parent and Betsy Brennan, Letter: “Permissible Expenditures by Community Parking Districts,” Circulate San Diego and Downtown San Diego Partnership (April 2, 2021); Jesse O’Sullivan and Colin Parent, Memorandum, “The City of San Diego Has the Authority to Expand Permissible Expenditures by Community Parking Districts,” Circulate San Diego (March 29, 2021), available at [https://www.circulatesd.org/memorandum\\_permmissible\\_expenditures\\_by\\_community\\_parking\\_districts](https://www.circulatesd.org/memorandum_permmissible_expenditures_by_community_parking_districts).

<sup>2</sup> *Zolly v. City of Oakland*, S262634, Slip Opinion (Sup. Ct. Cal., August 11, 2022), available at <https://law.justia.com/cases/california/supreme-court/2022/s262634.html>.

<sup>3</sup> CAL. CONST. Art. XIII C, § 1, subd. (e).

<sup>4</sup> CAL. CONST. Art. XIII C, § 1, subd. (e)(4).

The Supreme Court reaffirmed that “local government property” means “physical objects under the control of a local government, such as its streets and rights-of-way.”<sup>5</sup> These changes are not subject to the restrictions of taxes and fees.

Revenue generated by parking meters is a charge imposed by a local government for the temporary use of the street. It is therefore not subject to the restrictions placed on a “tax” or a “fee.”

The City therefore has the legal authority to expand the use of parking district funds to other amenities that will make San Diego a safer and more pleasant place to walk, ride a bicycle, or take transit. The City should do so.

Sincerely,



Jesse O'Sullivan  
Policy Counsel  
Circulate San Diego

CC:  
San Diego City Council

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<sup>5</sup> *Zolly v. City of Oakland*, S262634 at 15, Slip Opinion (Sup. Ct. Cal., August 11, 2022), available at <https://law.justia.com/cases/california/supreme-court/2022/s262634.html>.