



CITY OF OAKLAND
CITY COUNCIL

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OFFICE OF THE CITY CLERK
OAKLAND

09 JUL -2 PM 3:48

LEGISLATIVE ANALYST MEMORANDUM

To: Finance and Management Committee
From: Sabrina Landreth, Legislative Analyst
Date: July 14, 2009
Re: **Resolution Authorizing The City Attorney To Cooperate With The League Of California Cities, Other Cities, And Counties In Litigation Challenging The Constitutionality Of Any Seizure By State Government Of The City's Street Maintenance Funds**

SUMMARY

In his final revised May Revision, the Governor proposed the seizure of almost \$1 billion in city and county shares of revenues in the Highway Users Tax Account (HUTA) from the motor fuel tax ("gas tax") to fund past and future highway bond debt service payments out of the general fund. On June 12th, the Joint Budget Conference Committee endorsed this recommendation.

The seizure of these funds will immediately jeopardize the ability of the City to maintain the City's streets, sidewalks, crosswalks, traffic signs, traffic striping, and traffic safety facilities, for the use of the motoring and pedestrian public.

In both Proposition 5 in 1974 and Proposition 2 in 1998 the voters of imposed restrictions on the state's ability to permanently divert the local share of the gas tax. According to attorneys employed and retained by the League of Cities, the Governor's recommendation to seize these funds, if enacted into law, would be unconstitutional under Article XIX of the California Constitution.

The attached Resolution states that the City authorizes the City Attorney to take all necessary steps to cooperate with the League of California Cities, other cities and counties in supporting litigation against the state of California if the legislature enacts and the governor signs into law legislation that unconstitutionally diverts the City's share of funding from the HUTA gas tax funds.

CONCLUSION/ RECOMMENDATION

The League of California Cities recommends Oakland adopt the attached Resolution, authorizing the City Attorney to cooperate with the League of California Cities, other cities, and counties in litigation challenging the constitutionality of any seizure by state government of the City's street maintenance funds. It does not commit the City to filing litigation, but it directs the City Attorney to cooperate and work with the League and other local governments to advance the litigation.

DRAFT

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Approved as to Form and Legality

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ATTORNEY TO COOPERATE WITH THE LEAGUE OF CALIFORNIA CITIES, OTHER CITIES, AND COUNTIES IN LITIGATION CHALLENGING THE CONSTITUTIONALITY OF ANY SEIZURE BY STATE GOVERNMENT OF THE CITY'S STREET MAINTENANCE FUNDS

WHEREAS, the current economic crisis has placed cities under incredible financial pressure and caused them to make painful budget cuts, including layoffs and furloughs of city workers, decreasing maintenance and operations of public facilities, and reductions in direct services to keep spending in line with declining revenues; and

WHEREAS, since the early 1990s the state government of California has seized over \$10 billion of city property tax revenues statewide, now amounting to over \$900 million each year, to fund the state budget even after deducting public safety program payments to cities by the state; and

WHEREAS, in his proposed FY 2009-10 budget the Governor has proposed transferring \$1 billion of local gas taxes and weight fees to the state general fund to balance the state budget, and over \$700 million in local gas taxes permanently in future years, immediately jeopardizing the ability of the City to maintain the City's streets, sidewalks, crosswalks, traffic signs, traffic striping, and traffic safety facilities, for the use of the motoring and pedestrian public; and

WHEREAS, the loss of almost all of the City's gas tax funds will seriously compromise the City's ability to perform critical street and traffic safety related maintenance, including, but not limited to, drastically curtailing patching, resurfacing, regulatory and warning signage, pavement markings, sidewalk and curb ramp maintenance and repair, and more; and

WHEREAS, some cities report to the League of California Cities that they will be forced to eliminate part or all of their street maintenance operations while others will be forced to cut back in other areas (including public safety staffing levels) to use city general funds for basic street repair and maintenance. Furthermore, cities expect that liability damage awards will mount as basic maintenance is ignored and traffic accidents, injuries and deaths increase; and

WHEREAS, in both Proposition 5 in 1974 and Proposition 2 in 1998 the voters of our state overwhelmingly imposed restriction on the state's ability to do what the Governor

has proposed, and any effort to permanently divert the local share of the gas tax would violate the state constitution and the will of the voters; and

WHEREAS, cities and counties maintain 81% of the state road network while the state directly maintains just 8%; and

WHEREAS, ongoing street and traffic maintenance is a significant public safety concern. A city's failure to maintain its street pavement (potholes filling, sealing, overlays, etc.), traffic signs, and sidewalks has a direct correlation to traffic accidents, trip and falls, injuries and deaths; and

WHEREAS, according to a recent statewide needs assessment¹ on a scale of zero (failed) to 100 (excellent), the statewide average pavement condition index (PCI) is 68, or "at risk". Local streets and roads will fall to "poor" condition (Score of 48) by 2033 based on existing funding levels available to cities and counties.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Oakland hereby directs the City Attorney to take all necessary steps to cooperate with the League of California Cities, other cities and counties in supporting litigation against the state of California if the legislature enacts and the governor signs into law legislation that unconstitutionally diverts the City's share of funding from the Highway Users Tax Account (HUTA), also known as the "gas tax", to fund the state general fund; and

RESOLVED FURTHER, that the city clerk shall send this resolution to the Governor and each legislator, informing them in the clearest of terms of the City's adamant resolve to oppose any effort to frustrate the will of the electorate as expressed in Proposition 5 (1974) and Proposition 8 (1998) concerning the proper use and allocation of the gas tax; and

RESOLVED FURTHER, that a copy of this Resolution shall be sent by the city clerk to the League of California Cities, the local chamber of commerce, and other community groups whose members are affected by this proposal to create unsafe conditions on the streets of our City for pedestrians, bicyclists and motorists.

¹ *California Statewide Local Streets and Roads Needs Assessment*, Nichols Consulting Engineers, Chtd. (2008), sponsored by the League of California Cities, California State Association of Counties and County Engineers Association of California.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIHGAN, NADEL, QUAN, REID and PRESIDENT
BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California