



# Special Meeting A G E N D A



## IMPERIAL BEACH CITY COUNCIL REDEVELOPMENT AGENCY PLANNING COMMISSION PUBLIC FINANCING AUTHORITY

**JUNE 17, 2009 – 6:00 P.M.**

**Council Chambers  
825 Imperial Beach Boulevard  
Imperial Beach, CA 91932**

**THE CITY COUNCIL ALSO SITS AS THE CITY OF IMPERIAL BEACH REDEVELOPMENT AGENCY, PLANNING COMMISSION, AND PUBLIC FINANCING AUTHORITY.**

The City of Imperial Beach is endeavoring to be in total compliance with the Americans with Disabilities Act (ADA). If you require assistance or auxiliary aids in order to participate at City Council meetings, please contact the City Clerk's Office at (619) 423-8301, as far in advance of the meeting as possible.

### **CALL TO ORDER BY MAYOR**

### **ROLL CALL BY CITY CLERK**

**PUBLIC COMMENT** - *Each person wishing to address the City Council regarding items not on the posted agenda may do so at this time. In accordance with State law, Council may not take action on an item not scheduled on the agenda. If appropriate, the item will be referred to the City Manager or placed on a future agenda.*

### **REPORTS**

- 1. RESOLUTION NO. 2009-6778 – SUPPORTING THE LEAGUE OF CALIFORNIA CITIES CHALLENGE TO THE CONSTITUTIONALITY OF ANY SEIZURE BY STATE GOVERNMENT OF THE CITY'S STREET MAINTENANCE FUNDS. (0140-10)**  
City Manager's Recommendation: Adopt resolution.

### **ADJOURNMENT**

Copies of this notice were provided on 06-16-09 to the San Diego Union-Tribune, I.B. Eagle & Times, I.B. Sun. AFFIDAVIT OF POSTING)  
STATE OF CALIFORNIA)  
CITY OF IMPERIAL BEACH)

I, Lisa Wolfson, Deputy City Clerk of the City of Imperial Beach, hereby certify that the Agenda for the Special Meeting as called by the Mayor of Imperial Beach was provided and posted on June 16, 2009. Said meeting to be held at 6:00 p.m., June 17, 2009, in the Council Chambers, 825 Imperial Beach Boulevard, Imperial Beach, California. Said notice was posted at the entrance to the City Council Chambers on June 16, 2009 at 3:15 p.m.

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Lisa Wolfson  
Deputy City Clerk

**Any writings or documents provided to a majority of the City Council/RDA/Planning Commission/Public Financing Authority regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.**



STAFF REPORT  
CITY OF IMPERIAL BEACH

TO: HONORABLE MAYOR AND CITY COUNCIL  
FROM: GARY BROWN, CITY MANAGER  
MEETING DATE: June 17, 2009  
ORIGINATING DEPT.: OFFICE OF THE CITY MANAGER  
SUBJECT: RESOLUTION OF SUPPORT OF THE LEAGUE OF CALIFORNIA CITIES CHALLENGE TO THE CONSTITUTIONALITY OF ANY SEIZURE BY STATE GOVERNMENT OF THE CITY'S STREET MAINTENANCE FUNDS

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**BACKGROUND:**

After 6:00 p.m. on Friday, June 12, 2009, the City received word of the State Budget proposal to take Highway Users Tax Account (HUTA) money to reimburse the State for past debt payments.

**ENVIRONMENTAL ANALYSIS:**

Not a project as defined by CEQA.

**FISCAL IMPACT:**

The Governor's proposal, approved by the Budget Conference Committee, would cost the City approximately \$470,000 for the first year and \$353,000 for the second year.

**DISCUSSION:**

This State Budget proposal would use HUTA funds to pay the state for debt payments for transportation purposes. Under Proposition 5 (1974) and Proposition 2 (1998), the Governor's proposal would violate constitutional protections of City funds. A memo, attached to this report, explains some of the implications of this proposal. If the attached resolution is approved, the City Manager would use the assistance of the City Attorney to facilitate participation in the League effort to halt this proposal.

Personally I regret that it's necessary to recommend resolutions such as the attached because they avoid meaningful dialogue with our legislators about solutions. (People tell me it's not our job to find solutions; that's the State's job.) The resolutions do not suggest how to balance the budget and imply, "Balance the budget, but not at my expense." The message is a simple response to a very complex problem. I wish we could enhance our communications, but I'm not creative enough to find a way during our state's current fiscal problems.

**CITY MANAGER'S RECOMMENDATION:**

To approve Resolution No. 2009-6778 – 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.

  
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Gary Brown, City Manager

**Attachments:**

1. Memo from Chris McKenzie, Executive Director, League of California Cities, re: HUTA Diversion
2. Resolution No. 2009-6778



1400 K Street, Suite 400 • Sacramento, California 95814  
Phone: 916.658.8200 Fax: 916.658.8240  
www.cacities.org

**TO:** City Officials  
**FROM:** Chris McKenzie, Executive Director  
**RE:** Sample Resolution RE: Litigation Over Unconstitutional Diversion of  
Local Share of Motor Fuel (Gas) Tax  
**DATE:** Friday, June 12, 2009

**Background.** 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 (or gallonage gas tax) to fund past and future highway bond debt service payments out of the general fund. Yesterday the Joint Budget Conference Committee endorsed this recommendation on a party line vote. It is clear to attorneys employed and retained by the League that this recommendation, if enacted into law, would be unconstitutional. In fact, in both 1974 and 1998 voters enacted limitations on the power of the legislature to seize and use HUTA gas tax funds, allowing only loans to the general fund on a limited basis. The attached legal opinion from the Sacramento law firm of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, sets forth the legal analysis and conclusion that the Governor's proposal would violate Article XIX of the California Constitution.

**Resolution.** The League has developed the attached sample resolution for cities that wish to direct their city attorney to cooperate with the League, other cities and counties in planning litigation challenging the constitutionality of the proposed theft of city and county 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. If litigation proves necessary in the next month or so, we anticipate there will be some lead cities and counties, along with the League. It may eventually prove desirable to have every interested city named in the litigation. As a result, asking your city attorney to get engaged and cooperate in the planning of this possible next step is appropriate and to send the message you will not take this lying down.

**Your City's Gas Tax Loss.** For your city's projected 2009-10 motor vehicle fuel tax revenue loss see <http://www.californiacityfinance.com/HUTAprjFY10.pdf> The total amount of loss for each city is in the far right column. Under the Governor's proposal, approved by the Budget Conference committee, your city would lose this entire amount. In the next year, the loss would be about 75% of this amount.

**Where to Send Copies.** The draft resolution directs the city clerk to send copies to your legislators, the Governor, the League, and various community groups that care about traffic safety in your city. We would appreciate you faxing copies to both your League Regional Public Affairs Manager and the League's Sacramento Office (Fax 916-658-8240).

**Questions.** If you have any questions or need any information please contact your League Regional Public Affairs Manager. City attorneys should contact Patrick Whitnell, League General Counsel, at [pwhitnell@cacities.org](mailto:pwhitnell@cacities.org).

**RESOLUTION NO. 2009-6778****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, 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 HIGHWAY USERS TAX ACCOUNT FUNDING**

**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, bridges, traffic signals, streetlights, sidewalks and related traffic safety facilities for the use of the motoring 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 traffic safety related street maintenance, including, but not limited to, drastically curtailing patching, resurfacing, 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, and injuries; 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 maintenance is a significant public safety concern. A city's failure to maintain its street pavement (potholes filling, sealing, overlays, etc.), traffic signals, signs, and streetlights has a direct correlation to traffic accidents, injuries and deaths; and

**WHEREAS**, according to a recent statewide needs assessment<sup>1</sup> 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.

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<sup>1</sup> *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.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Imperial Beach as follows: 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 Manager or Clerk shall send this resolution with an accompanying letter from the Mayor to the Governor and our legislators, informing them of the City's resolve to oppose any effort to frustrate the will of the electorate as expressed in Proposition 5 (1974) and Proposition 2 (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 Manager or Clerk to the League of California Cities, the local Chamber of Commerce, and other community groups whose members are affected by this proposal that will create unsafe conditions on the streets of our City for pedestrians, bicyclists and motorists.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Imperial Beach at its meeting held on the 17<sup>th</sup> day of June 2009, by the following roll call vote:

**AYES: COUNCILMEMBERS:**  
**NOES: COUNCILMEMBERS:**  
**ABSENT: COUNCILMEMBERS:**

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**JAMES C. JANNEY, MAYOR**

**ATTEST:**

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**JACQUELINE M. HALD, CMC**  
**CITY CLERK**