

Honorable Mayor and Members  
of the City Council  
City Hall  
Torrance, California

**Members of the Council:**

**SUBJECT: City Manager – Adopt RESOLUTION regarding litigation involving seizure by State government of the City’s Street Maintenance Funds**

**RECOMMENDATION**

Recommendation of the City Manager and City Attorney that City Council adopt a 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.

Funding

None

**BACKGROUND AND ANALYSIS**

The State of California continues to seek solutions to the current budget deficit of over \$25 billion by using local funds. With the defeat of measures on the May 19 statewide special election, the State is scrambling to resolve the climbing budget deficit. One of the alternatives is to borrow local city funds to address closing the State’s budget shortfall.

The League of California Cities has developed a variety of strategies to oppose the seizure and/or borrowing of City tax revenues. The City of Torrance is an active participant in these efforts to oppose borrowing of local funds. Some of these efforts include:

- Adoption of a Resolution on May 19, 2009 finding a hardship if City property funds are seized;
- Participation in a campaign to oppose the state raids of local funds; and
- Letter to Governor Schwarzenegger from cities and other organizations expressing strong opposition to any proposed borrowing or taking of local government revenues by the state.

In the final revised May Revision of the state budget, 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 vehicle or gas tax funds to help close the state’s budget. On June 11, 2009 the Joint Budget Conference Committee endorsed this recommendation on a party line vote. The City of Torrance receives approximately \$2.6 million annually from HUTA. The gas tax revenues are allocated as follows:

Capital Budget:	Street Projects	\$1,870,000
Operations Budget:	Street Maintenance	\$ 840,000 (\$453,600 for 5 staff positions and \$386,400 for materials and supplies)

The League released a legal opinion by a prominent Sacramento law firm that concludes the proposed seizure is unconstitutional. The opinion points out that in both 1974 and 1998 voters imposed restrictions on the state's ability to use gas taxes for debt service on bonds and to divert local gas taxes for the state general fund—precisely what has been proposed by state leaders. Loss of the gas tax funds will seriously compromise cities' ability to perform critical safety-related street maintenance, such as drastically curtailing street patching and resurfacing, street sweeping, street light and traffic signal maintenance, sidewalk and curb ramp maintenance and repair, and much more.

A Resolution has been developed by the League of California Cities for the 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, it is anticipated that 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. This action will send a strong message to the Governor that the City of Torrance will not tolerate the taking of local funds.

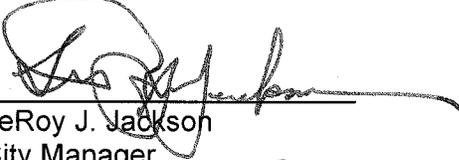
Respectfully submitted,

LeROY J. JACKSON  
CITY MANAGER

JOHN L. FELLOWS, III  
CITY ATTORNEY

By   
Eleanor Barthe-Jones  
Management Associate

CONCUR:

  
LeRoy J. Jackson  
City Manager

  
John L. Fellows, III  
City Attorney

Attachment: Resolution

## RESOLUTION NO. 2009-\_\_\_\_

**A 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, 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, street lighting/traffic signal maintenance, payment of electricity costs for street lights and signals, bridge maintenance and repair, 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 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 street lights 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.

**NOW, THEREFORE, BE IT RESOLVED** THAT THE CITY COUNCIL OF THE CITY OF TORRANCE 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 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 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 to create unsafe conditions on the streets of our City for pedestrians, bicyclists and motorists.

INTRODUCED, ADOPTED, AND ADOPTED this \_\_\_\_\_ day of June, 2009.

\_\_\_\_\_  
Mayor Frank Scotto

APPROVED AS TO FORM:  
JOHN FELLOWS III, City Attorney

ATTEST:

by \_\_\_\_\_  
Ronald T. Pohl, Assistant City Attorney

\_\_\_\_\_  
Sue Herbers, City Clerk

<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.