

Visalia City Council Agenda - Addendum

For the regular meeting of: MONDAY, June 15, 2009

Location: City Hall Council Chambers, 707 W. Acequia, Visalia CA 93291

Mayor: Jesus J. Gamboa
Vice Mayor: Bob Link
Council Member: Greg Collins
Council Member: Donald K. Landers
Council Member: Amy Shuklian

All items listed under the Consent Calendar are considered to be routine and will be enacted by one motion. If anyone desires discussion on any item on the Consent Calendar, please contact the City Clerk who will then request that Council make the item part of the regular agenda.

REGULAR SESSION 7:00 P.M.

8. Adoption of Resolution 2009-27 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 Gas Tax funds. **(Resolution 2009-27 required).**

City of Visalia Agenda Item Transmittal

Meeting Date: June 15, 2009

Agenda Item Number (Assigned by City Clerk): 8
(Emergency Item)

Agenda Item Wording: Adopt 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 Gas Tax funds.
(Resolution 2009-27 required)

Deadline for Action: N/A

Submitting Department: Administration

Contact Name and Phone Number: Steve Salomon, 713-4317; Alex Peltzer, 636-0200, Michael Olmos, 713-4332, Nancy Loliva, 713-4535

Department Recommendation

It is recommended that the City Council vote to add this as an Emergency Item (Item 8), and then consider adopting Resolution 2009-26 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 Gas Tax funds.

Council action to add an Emergency item after the official posting of the agenda requires a two thirds (2/3s) vote of the members present. With a full Council in attendance, this would mean that 4 members of the Council must vote in the affirmative to place an emergency item on the agenda.

Department Discussion

After the agenda was posted on Friday, the League of California Cities called the City of Visalia and asked if the Council would consider adding this as an Emergency Item and then consider adopting a resolution regarding litigation challenging the constitutionality of any seizure of State Government of the City's street maintenance funds. Since such a move could mean a reduction in revenues to Visalia of another \$1.9 million in 2009-2010, and \$1.425 million in 2010-2011, the impact to the City would be severe. There will not be another Visalia City Council meeting until July 13; therefore staff is recommending that this be considered an emergency item so the Visalia City Attorney can work with other Attorneys in the state to challenge the constitutionality of such a seizure.

This recommendation was developed by the League after the Joint Budget Conference Committee voted on Thursday (June 11) to endorse a recommendation by the Governor to seizure almost \$1 billion in city and county revenues in the Highway Users Tax Account (HUTA)

For action by:

City Council
 Redev. Agency Bd.
 Cap. Impr. Corp.
 VPFA

For placement on which agenda:

Work Session
 Closed Session

Regular Session:

Consent Calendar
 Regular Item
 Public Hearing

Est. Time (Min.): _____

Review:

Dept. Head

Finance

City Atty

City Mgr

from the motor fuel tax (or gallonage gas tax) to fund past and future highway bond debt service payment out of the State's general fund. For Visalia, this would mean a reduction in revenues of about \$1.9 million in 2009-2010, and another \$1.425 million in 2010-2011. The Governor and the Committee are making this recommendation despite the fact that in both 1972 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.

Initial reviews by League legal counsel have indicated that such a seizure is unconstitutional, and the League is recommending that Cities throughout the state clearly indicate to the Governor and the Legislature that such a move will be challenged legally. Hopefully, such a message will ward off the seizure of the funds, thereby avoiding a disruption in funding, and a lengthy and costly legal challenge.

HUTA (commonly referred to as "Gas Tax") funds are used by our City to fund critically needed street maintenance activities including street overlays, traffic signal LED bulb replacements, striping, street sign replacements, street signal controllers and signal upgrade projects. In addition, Gas Tax funds are used for Capital Improvement Projects (CIP) such as School Street extension, Houston widening (Santa Fe to Ben Maddox), and McAuliff crossing at Mill Creek. If these funds are seized by the State, street maintenance work will be reduced significantly. Deferred maintenance will cause deterioration of local streets which will be more costly to repair in the future when funding again becomes available.

The City Attorney has reviewed the information provided by the League, and is generally in agreement that a constitutional challenge could be appropriate in the event the state enacts a budget that requires seizure and use of a portion of the HUTA gas tax funds. However, before affirmatively committing the City to undertake such litigation, the City Attorney recommends the Council explore all reasonable options, which the League of Cities has not yet had time to do. The City Attorney therefore recommends modifying the resolution to express an opinion that seizure of the HUTA gas tax funds is unconstitutional, and to direct the City Attorney to investigate options for litigation with the League of Cities and others.

Prior Council/Board Actions:

Committee/Commission Review and Actions:

Alternatives:

Attachments:

Recommended Motion (and Alternative Motions if expected):
<ol style="list-style-type: none">1. I move to add the consideration of Item 8 as an Emergency Item to the agenda.2. I move to approve the adoption of Resolution 2009-27 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

RESOLUTION 2009-27

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 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 VISALIA hereby directs the City Attorney to cooperate with the League of California Cities, other cities and counties in investigating opportunities for 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 of the City’s concern that diversion of funding from the HUTA will 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.

ADOPTED this _____ day of _____, 2009.

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.