



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Consider Adopting 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.

**MEETING DATE:** June 17, 2009

**PREPARED BY** City Attorney's Office

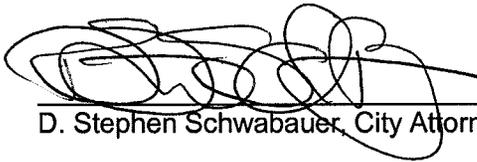
**RECOMMENDED ACTION:** Adopt a resolution authorizing the City Attorney to cooperate with the League of California Cities, other cities and counties in litigation challenging the constitutionality of any seizure by State government of the City's street maintenance funds.

**BACKGROUND INFORMATION:** Gas tax is now in the State Legislature's sights. The Street Fund is made up of three principle revenue sources: General Fund, Measure K and gas tax (officially Highway Users Taxes). Gas tax is a series of taxes adopted over time contained in the Streets and Highways Code. For Fiscal Year 2009110 we project \$1,062,000 in gas tax revenue (this is not Proposition 42). The State may contend taking gas tax is not a loan, unlike borrowing property tax, and would not directly affect local governments' public safety budgets. The effect on street maintenance, however, would be drastic.

In 2006, it was estimated that \$13 billion was needed for urgent local street and road repairs. This is what convinced voters to approve infrastructure improvements in the form of Propositions 1B, 1C, and 1D.

Attached is a League of California Cities recommended resolution authorizing the City to cooperate with the League in challenging the transfer. In the event the City were actually to file a challenge in its own name, staff would return for further council authorization.

**FISCAL IMPACT:** Up to \$1,062,000 in lost gas tax revenue.

  
D. Stephen Schwabauer, City Attorney

APPROVED:   
Blair King, City Manager

RESOLUTION NO. 2009-77

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING  
THE CITY ATTORNEY TO COOPERATE WITH THE LEAGUE  
OF CALIFORNIA CITIES AND 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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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 fiscal year 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; 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; 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 Lodi hereby directs the City Attorney to take all necessary steps to cooperate with the League of California Cities and 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 City 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 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 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.

Dated: June 17, 2009

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I hereby certify that Resolution No. 2009-77 was passed and adopted by the City Council of the City of Lodi in a special meeting held June 17, 2009, by the following vote:

AYES:	COUNCIL MEMBERS –	HANSEN, JOHNSON, MOUNCE
NOES:	COUNCIL MEMBERS –	NONE
ABSENT:	COUNCIL MEMBERS –	HITCHCOCK, KATZAKIAN
ABSTAIN:	COUNCIL MEMBERS –	NONE

  
RANDI JOHL  
City Clerk

2009-77

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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.

CITY COUNCIL

LARRY HANSEN, Mayor  
PHIL KATZAKIAN,  
Mayor Pro Tempore  
SUSAN HITCHCOCK  
BOB JOHNSON  
JOANNE MOUNCE

# CITY OF LODI

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BLAIR KING, City Manager  
RANDI JOHL, City Clerk  
D. STEPHEN SCHWABAUER  
City Attorney

June 18, 2009

Governor Arnold Schwarzenegger  
State Capitol Building  
Sacramento, California 95814

SUBJECT: HIGHWAY USERS TAX ACCOUNT (HUTA) – “GAS TAX”

Dear Governor Schwarzenegger:

Enclosed please find a copy of Resolution No. 2009-77, “*A Resolution of the Lodi City Council Authorizing the City Attorney to Cooperate with the League of California Cities and Other Cities and Counties In Litigation Challenging the Constitutionality of Any Seizure by State Government of the City’s Street Maintenance Funds,*” adopted by the City Council of the City of Lodi on June 17, 2009.

Please note by way of this resolution, the City of Lodi is clearly and adamantly opposing 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.

Please feel free to contact me should you have any questions or comments regarding the above.

Sincerely,



Phil Katzakian  
Mayor Pro Tempore

C: Senator Dave Cogdill  
Assembly Member Bill Berryhill  
Assembly Member Alyson Huber  
League of California Cities  
File