

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

**UNCONSTITUTIONAL DIVERSION OF LOCAL SHARE OF MOTOR FUEL (GAS) TAX
AND REDEVELOPMENT TAX INCREMENT**

SUMMARY STATEMENT

Recently the Legislative Budget Conference Committee has approved two unconstitutional seizures of local revenues to fund the state budget. The first is the Governor's proposal to take almost \$1 billion in city and county shares of revenues in the Highway Users Tax Account (HUTA) from the motor fuel tax (or gas tax) next year (\$700 million in the following year) to fund past and future highway bond debt service payments out of the general fund. The second, approved on June 16, 2009, is to seize \$350 million in redevelopment tax increment from local RDAs over the current and the next two fiscal years.

Apple Valley's projected 2009-10 motor vehicle fuel tax revenue loss is \$1,139,985. Under the Governor's proposal, approved by the Budget Conference Committee, Apple Valley would lose this entire amount. In the next year, the loss would be about 75% of this amount.

The League has developed a resolution for cities that wish to cooperate with the League, California Redevelopment Association, other cities, counties and redevelopment agencies in planning litigation challenging the constitutionality of the proposed theft of both the gas tax and the redevelopment tax increment. Neither commits the Town nor agency to filing litigation, but the resolution directs the Town Attorney (and Agency Counsel) to cooperate and work with the League and CRA and other local governments to advance the litigation.

Recommended Action:

Adopt Resolution No. 2009-03, A Resolution Of The Redevelopment Agency Authorizing The Town Attorney/Redevelopment Agency Counsel To Cooperate With The League Of California Cities, The California Redevelopment Association, Other Cities, Counties And Redevelopment Agencies In Litigation Challenging The Constitutionality Of Any Seizure By State Government Of The Town's Street Maintenance And Redevelopment Funds

Adopt Resolution No. 2009-26, A Resolution Of The Town Council Authorizing The Town Attorney/Redevelopment Agency Counsel To Cooperate With The League Of California Cities, The California Redevelopment Association, Other Cities, Counties And Redevelopment Agencies In Litigation Challenging The Constitutionality Of Any Seizure By State Government Of The Town's Street Maintenance And Redevelopment Funds

Proposed by: Frank W. Robinson, Town Manager

Item Number _____

T. M. Approval: _____

Budgeted Item Yes No N/A

RESOLUTION NO. 2009-26

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY AUTHORIZING THE TOWN ATTORNEY/REDEVELOPMENT AGENCY COUNSEL TO COOPERATE WITH THE LEAGUE OF CALIFORNIA CITIES, THE CALIFORNIA REDEVELOPMENT ASSOCIATION, OTHER CITIES, COUNTIES AND REDEVELOPMENT AGENCIES IN LITIGATION CHALLENGING THE CONSTITUTIONALITY OF ANY SEIZURE BY STATE GOVERNMENT OF THE TOWN'S STREET MAINTENANCE AND REDEVELOPMENT 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, since the early 1990s the state government of California has seized over **1.04 billion** of redevelopment tax increment statewide, and the Governor and Legislature are now considering seizing \$350 million each year for three years, beginning in the current fiscal year; and

WHEREAS, on April 30, 2009, in the case of *CRA v. Genest*, the Sacramento Superior Court found similar efforts by the State to seize redevelopment tax increment for the state general fund to be in direct violation of Article XVI, Section 16 of the State Constitution, added by the voters in 1952 as Proposition 18, which requires that tax increment be used exclusively for the benefit of redevelopment project areas; 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 Town to maintain the Town'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 Town's gas tax funds will seriously compromise the Town'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, cities and counties maintain 81% of the state road network while the state directly maintains just 8%, and according to a recent statewide needs assessment¹ on a scale of

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.

zero (failed) to 100 (excellent), the statewide average pavement condition index (PCI) is 68, or “at risk.”

WHEREAS, in both Proposition 5 in 1974 and Proposition 2 in 1998 the voters of our state overwhelmingly imposed restrictions on the state’s ability to do what the Governor has proposed and the Legislature is considering, and any effort to permanently divert the local share of the gas tax would violate the state constitution and the will of the voters.

NOW, THEREFORE, BE IT RESOLVED THAT THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY hereby directs the Town Attorney/Redevelopment Agency General Counsel to take all necessary steps to cooperate with the League of California Cities, California Redevelopment Association, other cities, counties and redevelopment agencies in supporting litigation against the State of California if the legislature enacts and the governor signs into law legislation that unconstitutionally diverts the redevelopment tax increment and the Town’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 Town Manager/Agency Executive Director or Town Clerk shall send this Resolution with an accompanying letter from the Mayor/Agency Chair to the Governor and each of the Town’s state legislators, informing them in the clearest of terms of the Town’s adamant resolve to oppose any effort to frustrate the will of the electorate as expressed in Proposition 18 (1952), Proposition 5 (1974) and Proposition 2 (1998) concerning the proper use and allocation of the redevelopment tax increment and the gas tax; and

RESOLVED FURTHER, that a copy of this Resolution shall be sent by the Town Manager/Agency Executive Director or Town Clerk to the League of California Cities, the California Redevelopment Association, the local chamber of commerce, and other community groups whose members are affected by this proposal to divert funds from vital local services and projects.

PASSED, APPROVED AND ADOPTED this 23rd day of June, 2009.

MAYOR

ATTEST:

TOWN CLERK

RESOLUTION NO. 2009-03

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE TOWN OF APPLE VALLEY, CALIFORNIA AUTHORIZING THE TOWN ATTORNEY/REDEVELOPMENT AGENCY COUNSEL TO COOPERATE WITH THE LEAGUE OF CALIFORNIA CITIES, THE CALIFORNIA REDEVELOPMENT ASSOCIATION, OTHER CITIES, COUNTIES AND REDEVELOPMENT AGENCIES IN LITIGATION CHALLENGING THE CONSTITUTIONALITY OF ANY SEIZURE BY STATE GOVERNMENT OF THE TOWN'S STREET MAINTENANCE AND REDEVELOPMENT FUNDS

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