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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ORANGE**

11
12 **CITIZEN'S ASSOCIATION OF SUNSET**
13 **BEACH,**

14 **Petitioner and Plaintiff,**

15 **v.**

16 **ORANGE COUNTY LOCAL AGENCY**
17 **FORMATION COMMISSION, a governmental**
18 **entity; the CITY OF HUNTINGTON BEACH, a**
19 **municipal corporation; and DOES 1 through 50,**
20 **inclusive,**

21 **Respondents and Defendants.**

CASE NO.: 30-2010-431832

[Unlimited Jurisdiction]

RESPONDENT CITY OF HUNTINGTON
BEACH'S MEMORANDUM OF POINTS
AND AUTHORITIES IN OPPOSITION TO
APPLICATION FOR PRELIMINARY
INJUNCTION

Date: Jan. 19, 2010
Time: 1:30 p.m.
Dept.: C31

Complaint Filed: December 9, 2010
Trial Date: TBD

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION**

4 In its application for preliminary injunction, Plaintiff Citizen’s Association of Sunset
5 Beach’s (“CASB”) erroneously conflates two issues: (1) Respondent Orange County Local Agency
6 Formation Commission’s (“OC LAFCO”) approval of Respondent City of Huntington Beach’s
7 (“City”) application to annex the 1200-resident community of Sunset Beach; and (2) whether,
8 following annexation, the City may impose previously authorized taxes and assessments on the
9 newly annexed territory and its residents absent an election. The propriety of the annexation and
10 the potential future taxation issue are distinct issues. CASB’s attempt to merge the two is
11 misleading to the Court, ignores applicable law and, most critically, fatal to its request for
12 injunctive relief.

13 CASB fails to establish either a likelihood of success on the merits or that the balance of
14 hardships compels preliminary relief. CASB does not argue that the City failed to follow the
15 procedural requirements for the annexation of a small, unincorporated “island” under the Cortese-
16 Knox-Hertzberg Local Government Reorganization Act of 2000 (Gov. Code § 56000 *et seq.*)
17 (“CKH”). Nor does it argue OC LAFCO committed procedural errors in processing the annexation
18 application. Rather, CASB argues Proposition 218 prohibits the City from imposing City taxes on
19 Sunset Beach residents without their approval, and based on this, the Court should order OC
20 LAFCO to either rescind its approval of the annexation or impose an election condition on that
21 approval—a condition entrusted to OC LAFCO’s legislative discretion that it specifically declined
22 to impose and one which is not required by CKH.

23 As set forth below, the principles of comity and separation of powers prevent a court from
24 compelling the exercise of legislative discretion as CASB asks. Moreover, annexation is separate
25 from taxation, and the former may proceed without the latter. OC LAFCO recognized this and
26 intentionally left to the City the issue of whether or how to impose taxes upon annexation.

27 CASB’s Motion is a thinly disguised effort to obtain relief that the California Constitution
28 plainly prohibits. A long-established principle rooted in the California Constitution and in the

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1 importance of fiscal predictability for efficient municipal planning, Courts are prohibited from
2 enjoining the collection of taxes. (Cal. Const. arti. XIII, § 32.¹) In addition, CASB must abide by
3 the “pay first, litigate later rule” that requires taxpayers to “pay the disputed tax first, and then sue
4 for a refund, rather than being permitted to delay payment while the validity of the tax assessment is
5 litigated.” (*Flying Dutchman Park, Inc. v. City & County of San Francisco* (2001) 93 Cal.App.4th
6 1129, 1132.) Further, monetary damages are wholly adequate to compensate Sunset Beach
7 residents (the City could simply fully refund taxes collected from Sunset Beach residents) should
8 the City elect to impose taxes without an election and an election is later determined to be required.

9 In short, CASB fails to establish either of the elements necessary for a preliminary
10 injunction and, accordingly, its request should be denied.

11
12 **II. STATEMENT OF FACTS**

13 CKH establishes in each county a state entity, a LAFCO, empowered to exercise legislative
14 discretion to approve, conditionally approve, or disapprove reorganizations for cities and special
15 districts, including the annexation here in dispute. Pursuant to CKH, OC LAFCO has broad,
16 discretionary authority to approve proposals for annexation to the 34 cities in Orange County. *See*,
17 Gov. Code § 56375.

18 The City initiated its application to annex Sunset Beach on August 2, 2010. (See LAFCO
19 Staff Report, Exh. A to Plaintiff’s Motion, p. 2.) Given the small size of Sunset Beach, its
20 population of just 1,200 and the fact that it is surrounded by Huntington Beach on almost three
21 sides and the Pacific Ocean on the fourth, the City pursued, and OC LAFCO processed, the
22 application under the “island annexation” provisions of CKH. (Gov. Code § 56375.3; see also
23 LAFCO Staff Report, Exh. A to Plaintiff’s Motion, p. 1.) That procedure mandates LAFCO
24 approve annexations of territory that satisfy criteria including that they do not exceed 150 acres, are
25 substantially surrounded by the annexing City and the Pacific Ocean, and re “substantially
26 developed or developing.” (Gov. Code § 56375.3(b).) LAFCO determined Sunset Beach to

27
28 ¹ This section is quoted in full at page 7 of this Memorandum below.

1 constitute such an unincorporated island and CASB does not dispute that determination. (Petition ¶
2 29.) LAFCO must approve the annexation of an area it finds to constitute an unincorporated island
3 without the protest proceedings that would otherwise apply. (Gov. Code § 56375.3(a)(1))

4 In an effort to address resident concerns regarding the annexation, the City worked
5 throughout the application process with the Sunset Beach Community Association (“SBCA”) and to
6 negotiate a memorandum of understanding (“MOU”). (See LAFCO Staff Report, Exh. A to
7 Plaintiff’s Motion, pp. 4 and 6.) The MOU was intended to maintain Sunset Beach’s community
8 character by continuing to use “Sunset Beach” on signage for entry points into the community,
9 enforcing pre-annexation beach access hours and not permitting junior lifeguard programs or beach
10 camps to take place within the Sunset Beach community. (Exh. 1 to Flynn Decl.) The City
11 executed the MOU on November 15, 2010. (*Id.*)

12 On December 6, 2010, the City Council adopted Resolution No. 2010-100, to formally
13 initiate proceedings to annex Sunset Beach. (Exh. 2 to Flynn Decl.) On December 8, 2010, OC
14 LAFCO approved the City’s annexation of Sunset Beach with conditions, including a requirement
15 that the City execute the MOU described above. (Exh. 1 to RJN.) Notwithstanding the two days
16 between the City Council’s action and OC LAFCO’s approval, the matter had been under
17 discussion and review for approximately five months, and the City’s resolution reflected the
18 outcome of those discussions rather than their inception.

19
20 **III. CASB IS NOT ENTITLED TO A PRELIMINARY INJUNCTION**

21 “Past California decisions . . . establish that, as a general matter, the question whether a
22 preliminary injunction should be granted involves two interrelated factors: (1) the likelihood that
23 the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result
24 from the granting or denial of interim injunctive relief.” (*White v. Davis* (2003) 30 Cal.4th 528,
25 554.) To obtain preliminary injunctive relief, CASB must establish that the balance of hardships
26 tips in its favor, *id.*, and that monetary relief would be inadequate to redress any harm it might
27 subsequently be able to prove. (See, *Pac. Decision Sci. Corp. v. Superior Court*, (2004) 121
28 Cal.App.4th 1100, 1110.) CASB fails to persuade on either point.

1 **A. CASB Fails to Establish a Reasonable Likelihood That It Will Prevail on the**
2 **Merits**

3 **1. Separation of Powers Prevents the Court From Granting the**
4 **Relief CASB Seeks**

5 The principle of separation of powers prohibits a court from restraining a legislative act or
6 compelling the exercise of legislative power. The City lawfully exercised its legislative discretion
7 to invoke “island” annexation proceedings under the Government Code § 56375.3 and OC LAFCO
8 lawfully exercised its legislative discretion to approve the proposal. Indeed, in its Motion, CASB
9 does not argue that the City or OC LAFCO failed to meet any of the procedural requirements for an
10 island annexation.

11 Yet CASB asks this Court to void this legislative approval and compel OC LAFCO to add a
12 condition OC LAFCO considered and declined to impose. Specifically, the Petition asks the Court
13 either to: (1) “impose as a condition of the City’s ‘island’ annexation application that the City first
14 obtain a favorable vote by the residents of Sunset Beach in an election pursuant to Proposition 218
15 regarding imposition of . . . the City’s special taxes . . . “ or (2) “direct[] the City to either revise its
16 annexation application to seek an annexation that is subject to protest proceedings or to obtain a
17 favorable vote by the residents of Sunset Beach in an election pursuant to Proposition 218 regarding
18 imposition of . . . the City’s special taxes as a condition of pursuing an ‘island’ annexation.” The
19 requested relief thus seeks to compel a legislative act by OC LAFCO or the City’s City Council and
20 accordingly must fail.

21 A court cannot compel the exercise of legislative discretion in this manner. As to the City:

22 Municipal corporations are the instrumentalities of the state for the
23 more convenient administration of local affairs, and for that
24 purpose are invested with certain legislative power. In the exercise
25 of that power upon the subjects submitted to their jurisdiction they
26 are as much beyond judicial interference as the Legislature of the
27 state. **The courts cannot in the one case forbid the passage of a**
28 **law, nor in the other the passage of a resolution, order, or**

1 **ordinance.** If by either body, the Legislature or the board of
2 supervisors, an unconstitutional act be passed, its enforcement may
3 be arrested. The parties seeking to execute the invalid act can be
4 reached by the courts, **while the legislative body of the state or of**
5 **the municipality, in the exercise of its legislative discretion, is**
6 **beyond their jurisdiction.** The fact that in either case the
7 legislative act threatened may be in disregard of constitutional
8 restraints . . . does not affect the question. **It is legislative**
9 **discretion which is exercised, and that discretion, whether**
10 **rightfully or wrongfully exercised, is not subject to interference**
11 **by the judiciary.**

12 (*City Council of City of Santa Barbara v. Superior Court* (1960) 179 Cal.App.2d 389, 397 [internal
13 quotation omitted; emphasis added].)

14 Similarly, the California Supreme Court has declared courts may not “assume the
15 obligations which the Legislature has entrusted to LAFCO.” (*Bozung v. Ventura County LAFCO*
16 (1975) 13 Cal.3d 263, 288.) Simply put, this Court may not substitute its judgment for that of an
17 administrative or legislative agency such as LAFCO. (E.g., *Pitts v. Perluss* (1962) 58 Cal.2d 824,
18 834 [In determining whether abuse of discretion occurred, court may not substitute its judgment for
19 administrative board’s].)

20 Thus, OC LAFCO’s decision to grant the application without requiring a prior Prop. 218
21 election is within its legislative discretion and this Court may not substitute its judgment otherwise.
22 Nor may the Court direct the City to file any particular form of annexation application. Thus, the
23 relief CASB seeks, both via writ and injunctive and declaratory relief, is out of reach. Accordingly,
24 CASB cannot establish it will likely prevail on the merits of any of its causes of action, which
25 dooms its request for preliminary injunction.

1 3. **The California Constitution Bars the Injunctive Relief CASB**
2 **Seeks**

3 Finally, even if the City had imposed its municipal taxes on residents within the annexed
4 territory without election, CASB would be unentitled to injunctive relief, preliminary or permanent,
5 because the California Constitution explicitly bars it. Article XIII, § 32 of the California
6 Constitution states:

7 No legal or equitable process shall issue in any proceeding in any
8 court against this State or any officer thereof to prevent or enjoin
9 the collection of any tax. After payment of a tax claimed to be
10 illegal, an action may be maintained to recover the tax paid, with
11 interest, in such manner as may be provided by the Legislature.

12 This section combines two principles – the anti-tax injunction requirement and the “pay first,
13 litigate later,” that are firmly established in California and apply equally to local governments as to
14 State taxing agencies. (See, e.g. *Writers Guild of Am., West, Inc. v. City of Los Angeles* (2000) 77
15 Cal.App.4th 475, 483 [local business license tax]; *Batt v. City and County of San Francisco* (2007)
16 155 Cal.App.4th 65, 71-72 [local hotel bed tax].) The rule is based in the separation of powers and
17 rests on “the importance of restraining courts from unduly interfering with the flow of tax dollars
18 that fund government operations, thereby preventing the disruption of essential public services.”
19 (*Flying Dutchman Park, Inc. v. City & County of San Francisco* (2002) 93 Cal.App.4th 1129, 1135,
20 citing *National Private Truck Council, Inc v. Oklahoma Tax Commission* (1995) 515 U.S. 582) (“It
21 is upon taxation that the several States chiefly rely to obtain the means to carry on their respective
22 governments, and it is of the utmost importance to all of them that the modes adopted to enforce the
23 taxes levied should be interfered with as little as possible.” . . .” [Citation]).

24 The California Supreme Court has clarified the sweep of this Constitutional prohibition,
25 writing that it “has been construed broadly to bar not only injunctions but also a variety of
26 prepayment judicial declarations or findings which would impede the prompt collection of a tax.”
27 (*State Bd. of Equalization v. Superior Court* (1985) 39 Cal.3d 633, 639.) “[A]rtful pleading has not
28

1 been allowed to carve out exceptions” to the “pay first, litigate later” rule. (*Batt, supra*, 155
2 Cal.App.4th at 79.)

3 Here, CASB’s request for injunctive relief is yet another attempt to artfully plead around
4 this Constitutional prohibition. As explained above, such efforts have repeatedly failed, and the
5 same result is warranted here. CASB simply cannot establish the likelihood of success required to
6 obtain a preliminary injunction, and this Court should decline CASB’s invitation to grant relief
7 specifically barred by the Constitution.

8 **B. The Balance of Hardships Favors Respondents**

9
10 **1. CASB’s Legal Remedies are Entirely Adequate**

11 Injunctions are rarely granted where a suit for damages provides a clear remedy. (*Thayer*
12 *Plymouth Center, Inc. v. Chrysler Motors* (1967) 255 Cal.App.2d 300, 307.) An injunction should
13 therefore not issue where money is involved. The rationale for the rule is plain; no threat of
14 irreparable harm exists because monetary losses are compensable in damages. (*See, Dokya v.*
15 *Superior Court (Lord)* (1991) 233 Cal.App.3d 1134, 1137.)

16 The rule has applied in the tax context for more than a century: “Any remedy that allows a
17 taxpayer to challenge a tax already collected, and to press any constitutional claims he or she may
18 have, has been found to constitute a plain, speedy and efficient remedy barring equitable relief.”
19 *Rickley v. County of Los Angeles* (2004) 114 Cal.App.4th 1002, 1013 (quotation marks omitted).
20 “Our Supreme Court has explicitly held that ‘the sole legal avenue for resolving tax disputes is a
21 post payment refund action. Even if a tax is illegal, which is not the case here, an injunction should
22 not be issued “unless it appears that the injunction is necessary to protect the rights of the property
23 owner, and that he has no adequate remedy at law.” *Crocker v. Scott* (1906) 149 Cal. 575, 594.

24 Here, CASB has an efficient and complete remedy at law. The complaint and application
25 for preliminary relief are about money (taxes), and CASB cannot credibly claim otherwise. If
26 (1) the City enforces its taxes in Sunset Beach without election (and the Petition does not claim it
27 has yet done so); and (2) a court were to rule that Proposition 218 requires an election before the
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1 City imposes them (neither of which contingency has occurred here), the City could simply refund
2 the taxes it collected from Sunset Beach residents. It is hard to imagine a more “plain, speedy and
3 efficient remedy” for CASB. (*Rickley*, 114 Cal.App.4th at 1013.) As a court cannot enjoin the
4 collection of taxes under our Constitution, and as monetary damages would provide complete relief,
5 CASB has failed to establish any hardship, and this Court should deny the Motion.

6 **2. LAFCO’s Resolution Includes Conditions to Protect the**
7 **Character of Sunset Beach**

8 CASB attempts to broaden its appeal beyond money and argues that absent an injunction,
9 Sunset Beach residents will “incur the loss of their community.” (Motion, 10:23-24.) This
10 argument ignores execution of the MOU that OC LAFCO included in its conditions of approval.
11 (Exh. 1 to RJN.) That MOU specifically requires the City, for example, to:

- 12 • Maintain the identity of Sunset Beach “by using the name ‘Sunset Beach’ on
13 prominently positioned signage at the Sunset Beach entryways, mapping, [and]
14 public documents. . . .” (Exh. 1 to RJN, MOU § I.A.1);
- 15 • Maintain existing community signage “substantially as it is at the time of
16 Annexation. . . .” (Exh. 1 to RJN, MOU § I.A.1);
- 17 • Adopt Sunset Beach’s 1990 Local Coastal Program Specific Plan (Exh. 1 to RJN,
18 MOU § I.A.4), thus limiting the City’s land use powers significantly;
- 19 • Amend the City’s municipal code to retain Sunset Beach’s LCP advisory board
20 (Exh. 1 to RJN, MOU § I.A.5.a);
- 21 • Amend the City’s municipal code to adopt a parking permit policy for Sunset Beach
22 “in substantially the same form and content as the existing” regulations (Exh. 1 to
23 RJN, MOU § I.A.5.d); and,
- 24 • Agree to maintain existing beach hours (Exh. 1 to RJN, MOU § I.A.5.g).

25
26 Thus, contrary to CASB’s claims, the character of the Sunset Beach community for which it
27 claims to speak will not suffer if annexation is not immediately enjoined. Accordingly, a
28

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1 preliminary injunction is not warranted.

2 **3. Enjoining Annexation will Prolong Uncertainty for Sunset Beach**
3 **Residents**

4 As established above, Sunset Beach residents are protected by an adequate legal remedy, the
5 MOU, and OC LAFCO's condition of approval. However, those residents are not well served by
6 prolonged uncertainty about who will provide their municipal services. The Petition itself admits
7 that efforts to incorporate this 1200-resident enclave as a City have failed. (Petition, ¶ 18.)
8 Efficiencies in providing municipal services – the urgent need for which was made apparent by
9 Orange County's bankruptcy and exacerbated by the current economic environment – will suffer
10 with continuing uncertainty over the annexation. The result could be higher costs or a risk of
11 greatly reduced public services for Sunset Beach residents. By contrast, the legislative bodies with
12 relevant jurisdiction have concluded that prompt completion of the annexation is needed to ensure
13 orderly and efficient provision of municipal services, such as police, fire, emergency medical
14 services, streets and other public works, and parks and recreation services. Again, the annexation of
15 Sunset Beach, which should be allowed to be completed, is a separate issue from whether taxes can
16 be imposed without an election and there is no need to prolong uncertainty for this community by
17 confusing one issue with the other.

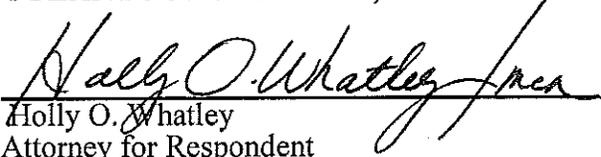
18
19 **IV. CONCLUSION**

20 For the foregoing reasons, Defendant City of Huntington Beach respectfully requests that
21 the Court deny CASB's Motion for Preliminary Injunction.

22
23 DATED: January 5, 2011

Respectfully submitted,

24 **COLANTUONO & LEVIN, PC**

25 
26 Holly O. Whatley
27 Attorney for Respondent
28 CITY OF HUNTINGTON BEACH

PROOF OF SERVICE

I, Martha C. Rodriguez, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 300 S. Grand Avenue, Suite 2700, Los Angeles, California 90071. On January 5, 2011, I served the document(s) described as **RESPONDENT CITY OF HUNTINGTON BEACH'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO APPLICATION FOR PRELIMINARY INJUNCTION** on the interested parties in this action as follows:

By placing a true copy thereof enclosed in a sealed envelope addressed as follows:

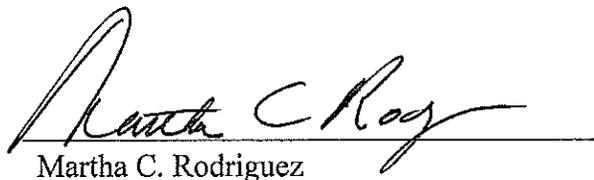
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 5, 2011, at Los Angeles, California.


Martha C. Rodriguez

