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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ORANGE**

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LOS ANGELES, CA 90071-3137

11
12 CITIZEN'S ASSOCIATION OF SUNSET
BEACH,

CASE NO. 30-2010-00431832
Unlimited Jurisdiction

13 Petitioner/Plaintiff,

(Case assigned to Hon. Frederick P. Horn)

14 v.

**CITY OF HUNTINGTON BEACH'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
PETITION FOR WRIT OF MANDATE**

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

**(REQUEST FOR JUDICIAL NOTICE
FILED CONCURRENTLY HEREWITH)**

18 Respondents/Defendants.

Complaint Filed: December 9, 2010

Hearing Date: August 11, 2011
Time: 1:30 p.m.
Dept.: C31

Trial Date: August 11, 2011

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioner asks this Court to find a conflict between the Cortese-Knox-Hertzberg Act
4 (“CKH”) and Article XIII C¹ of our Constitution, adopted by Proposition 218 and amended by
5 Proposition 26 last November. The Attorney General has refused to do so based on the evident
6 intent of the electorate, and this Court should do so as well in light of the plain meaning of the
7 constitutional provisions in issue. Petitioner also asks this Court to compel Orange County Local
8 Agency Formation Commission (“LAFCO”) to exercise its legislative discretion in a particular
9 manner. This would violate the separation of powers fundamental to our Constitution. Finally,
10 Petitioner asks the Court to compel the City of Huntington Beach (“City”) to hold an unprecedented
11 election to allow a small portion of its electorate to “opt out” of taxes others must pay to enjoy the
12 very same City services that favored few would receive for free. The Court need not establish such a
13 privileged minority.

14 Petitioner’s misguided requests stem from a misreading of the text, purpose, and function of
15 constitutional provisions adopted by Proposition 218 and amended by Proposition 26.² Proposition
16 218 simply does not apply to annexations, a conclusion reached by the very Attorney General’s
17 opinion from which the opening brief selectively quotes. That opinion is supported by both a plain
18 reading of the Constitution and the intent of the voters who adopted Proposition 218, as evidenced
19 by the ballot materials regarding that measure. In short, the Petition attacks the CKH Act itself, as
20 well as valid pre-existing taxes, and must be denied for reasons of both law and equity.

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26 ¹ All references to “articles” in this brief are to articles of the California Constitution as amended to
date.

27 ² As the opening brief acknowledges, Proposition 26 amended Article XIII C. Petitioner’s brief
28 nonetheless references all of Article XIII C as Proposition 218. To avoid confusion, this brief
references the combined language of Propositions 218 and 26 as Article XIII C and to Proposition
218 alone by that label.

1 **II. STATEMENT OF FACTS**

2 **A. LAFCOs and CKH**

3 The Knox-Nisbet Act (former Gov. Code, §§ 54773-54863) established a local agency
4 formation commission, or LAFCO, in each county to control urban sprawl and to encourage orderly
5 growth and development by determining logical boundaries for local agency.

6 LAFCO was created by the Legislature for a special purpose, i.e., to discourage urban
7 sprawl and to encourage the orderly formation and development of local
8 governmental agencies. In short, LAFCO is the ‘watchdog’ the Legislature
9 established to guard against the wasteful duplication of services that results from
10 indiscriminate formation of new local agencies or haphazard annexation of territory
11 to existing local agencies. . . . (*City of Ceres v. City of Modesto* (1969) 274
12 Cal.App.2d 545, 553.)

13 Over the years since, the Legislature amended the act several times, combined it with the District
14 Reorganization Act of 1965 and the Municipal Organization Act of 1977, and retitled it the Cortese-
15 Knox-Hertzberg Local Government Reorganization Act of 2000 (Gov. Code § 56000 *et seq.*)³
16 (“CKH”). LAFCO’s purpose, however, remains unchanged:

17 The Legislature finds and declares that it is the policy of the state to encourage
18 orderly growth and development which are essential to the social, fiscal, and
19 economic well-being of the state.” (Gov’t Code § 56001.)

20 To address the particular problem of islands of unincorporated territory wedged between the
21 cities of urban counties like Orange and Los Angeles, and to allow efficient and rational delivery of
22 government services, CKH requires a streamlined procedure by which such islands can be annexed
23 to the cities which surround them. Specifically, if an island meets statutory criteria § 56375.3
24 **mandates** LAFCOs approve annexation of islands without the opportunity for protest by residents
25 and property owners available for other annexation proposals. Those criteria include, among others,
26 that the territory be (i) surrounded or substantially surrounded by the annexing city, (ii) 150 acres or
27 smaller, (iii) substantially developed or developing and (iv) not prime agricultural land. As

28 _____
³ All further statutory references are to the Government Code unless otherwise noted.

1 Petitioner admits, and as established in LAFCO’s hearing, Sunset Beach satisfies these criteria.
2 Indeed, this 1,200-resident coastal enclave is precisely the kind of pocket of unincorporated territory
3 requiring expensive duplication of services which with the Legislature was concerned.

4 **B. The Sunset Beach Annexation**

5 Since its 1994 bankruptcy, Orange County has been unable to subsidize services to small,
6 unincorporated communities like Sunset Beach, and has made a concerted effort to transfer
7 responsibility to serve those areas to its 33 cities. (Administrative Record (“AR”) Vol. 1, Tab 1. AR
8 Vol. 1, Tab 4, p. 44-45; AR Vol. 1, Tab 5.) In 2005, LAFCO recognized that Sunset Beach needed
9 new governance to provide municipal services more efficiently. (AR Vol. 2, Tab 8, pp. 450-452.)

10 Seal Beach, Sunset Beach’s neighbor to the north, declined to annex it. (AR, Vol. 4, Tab 31.)
11 Although some Sunset Beach residents initiated an incorporation effort in 2010, they abandoned the
12 effort – recognizing, perhaps, that the tiny community lacked a sufficient tax base to fund
13 independent services. (AR Vol. 5, Tab 45, p. 1074.) Finally Huntington Beach, which surrounds
14 Sunset Beach on all but a short length of its northerly border, agreed in August 2010 to seek to annex
15 Sunset Beach pursuant to the island annexation procedures of CKH. (AR Vol. 4, Tab 29, pp. 766-
16 767.)

17 Well before it formally applied to LAFCO to initiate the annexation, the City held public
18 meetings and heard comments from residents of Sunset Beach and of the City’s existing territory.
19 (AR Vol. 6, Tab 51.) To address Sunset Beach residents’ legitimate concerns about maintaining the
20 enclave’s distinct identity, the City agreed to a memorandum of understanding (“MOU”) with Sunset
21 Beach residents. (AR Vol. 13, Tab 87, pp. 3087-3094; AR Vol. 13, Tab 88, pp. 3160-3161.)
22 Huntington Beach City Attorney Jennifer McGrath informed the public a month before the LAFCO
23 hearing that residents of the annexed territory would pay the same taxes as all others in Huntington
24 Beach, as required by law. (AR Vol. 13, Tab 85, p. 3070.)

25 In July and September 2010, Petitioner requested LAFCO to condition its approval of the
26 annexation such that an election first be held on whether Huntington Beach’s existing taxes should
27 be paid by Sunset Beach residents when that coastal enclave became a part of the City and received
28 its services. (AR Vol. 4, Tab 28, p. 749; AR, Vol. 4, Tab 35, pp. 799-800.) However, the CKH Act

1 does not authorize LAFCO to impose such conditions on an island annexation, which it must
2 approve if statutory criteria are met. (Gov. Code § 56375.3.)

3 On December 6, 2010, the City Council adopted Resolution No. 2010-100 to formally initiate
4 the annexation. (AR Vol. 13, Tab 94, pp. 3203-3211.) On December 8, 2010, after a hearing and
5 public comment, LAFCO found Sunset Beach to be an island subject to annexation under § 56375.3
6 and approved the City's annexation of Sunset Beach with conditions, including a requirement that
7 the City execute the MOU described above to protect the character and identity of Sunset Beach.
8 (AR Vol. 5, Tab 47.) Petitioner now wishes to avoid either the annexation or the payment of validly
9 enacted municipal taxes, seeking to exempt this small coastal enclave from the Legislature's
10 direction that inefficient islands be merged into surrounding cities.

11 **III. ARGUMENT**

12 **A. Petitioner is Not Entitled to A Writ of Mandate to Require LAFCO to**
13 **Condition the Annexation to Require a Tax Election**

14 A writ cannot issue here because LAFCO had no discretion to impose the condition
15 Petitioner seeks given the constraints of § 56375.3. Furthermore, even if LAFCO had such
16 discretion, a writ cannot compel LAFCO to exercise its discretion in a particular way unless a
17 decision not to impose the condition would be "so palpably unreasonable and arbitrary as to indicate
18 an abuse of discretion as a matter of law." (*Tailfeather v. Board of Supervisors* (1996) 48
19 Cal.App.4th 1223, 1244, citing *Monarch Cablevision, Inc. v. City Council* (1966) 239 Cal.App.2d
20 206, 211, 48 Cal.Rptr. 550; and *Los Angeles City and County Employees Union v. Los Angeles City*
21 *Bd. of Education* (1974) 12 Cal.3d 851, 856.) Such is not the case here.

22 **1. LAFCO lacks discretion to impose the condition Petitioner seeks**

23 Under § 56375.3, LAFCO must approve annexation of unincorporated islands that meet the
24 specified criteria, without allowing resident and property owner protests or the election such protests
25 might trigger.⁴ The predecessor to the current language of § 56375.3 gave LAFCO **discretion** to
26

27 ⁴ The protest procedures for non-island annexations provide that if 50 % of voters within the area to
28 be annexed file valid written protests, the annexation must be terminated. (§ 57075, subd. (a)(1).) If
more than 25 % but fewer than 50 % of voters file valid protests, the annexation is subjected to an
election. (*Id.*, subd. (a)(2).) If fewer than 25 % of the registered voters residing in the subject
territory filed valid protests, the annexation may be approved without an election. (*Id.*, subd. (a)(3).)

1 approve island annexations without protest proceedings. (See *Beck v. County of San Mateo* (1984)
2 154 Cal.App.3d 374, 380-381; *Scuri v. Board of Supervisors of Ventura County* (1982) 134
3 Cal.App.3d 400, 404-406.) However, the Legislature has since amended the CKH Act to eliminate
4 that discretion and to **require** LAFCO to approve island annexations without protests or the
5 elections protests might trigger. (2002 Cal. Legis. Serv. Ch. 548, Item 7 (A.B. 2227); RJN Exhibit
6 A, p. _____.)

7 Existing law allows a commission to approve an annexation to a city of island
8 territory without an election or waive a protest hearing, as specified. This bill would,
9 subject to specified conditions, require the commission to approve the annexation and
10 waive the protest proceedings as to annexations initiated on or after January 1, 2000,
11 and before January 1, 2007, and approve these annexations initiated on or after
12 January 1, 2007. (RJN Exh. A, p. _____.)

13 In 2006, the Legislature extended a sunset on these island annexation provisions to 2014. (2006
14 Cal. Legis. Serv. Ch. 351 (A.B. 2223).) Accordingly, LAFCO has no discretion to impose the
15 condition Petitioner seeks, and this Court cannot compel LAFCO to do what the Legislature forbids.

16 Petitioner's argument that LAFCO can impose such a condition under § 56886, which
17 generally authorizes conditional approval of annexations, ignores basic principles of statutory
18 construction: "Where a general statute conflicts with a specific statute the specific statute controls
19 the general one." (*McLaughlin v. State Bd. of Educ.* (1999) 75 Cal.App.4th 196, 224; see also *People*
20 *v. Weatherill* (1989) 215 Cal.App.3d 1569, 1577-1578; *Los Angeles Police Protective League v.*
21 *City of Los Angeles* (1994) 27 Cal.App.4th 168, 178-179; *Yoffie v. Marin Hospital Dist.* (1987) 193
22 Cal.App.3d 743, 748; *Conservatorship of Ivey* (1986) 186 Cal.App.3d 1559, 1565.) Section 56886
23 applies to annexations generally. By contrast, § 56375.3 is specific to "island annexations," and
24 explicitly excludes protest elections to achieve the general purpose of the CKH Act, to encourage
25 "orderly growth and development of communities within the state, [and] logical formation and
26 determination of city boundaries." (*Beck, supra*, 154 Cal.App.3d at p. 380 [eliminating protest
27

28 As explained above, however, those provisions do not apply to an island annexation pursuant to
§ 56375.3, subd. (a)(1).

1 elections reasonably related to goals of CKH Act].) Petitioner’s contrary interpretation reads
2 § 56375.3 out of the statutes and must therefore fail.

3 Though LAFCO may have discretion to conditions island annexations in some respects,
4 under the plain terms of § 56375.3, LAFCO had no discretion to require a tax election before
5 Huntington Beach might annex Sunset Beach. Moreover, because § 57330 commands that the City
6 impose its previously enacted taxes on newly annexed residents, a tax election amounts to an
7 election on the annexation itself. Indeed it is the very purpose of this proceeding to impede an
8 annexation the Legislature, the County of Orange, LAFCO and the Huntington Beach City Council
9 have all found to be in the public interest. The requested writ would undermine the stated legislative
10 purpose of the island annexation provisions of the CKH Act and should therefore be denied.

11 **2. Issuance of the writ would violate separation of powers**

12 Even assuming, *arguendo*, that LAFCO could require a tax election, the separation of powers
13 doctrine precludes a writ of mandate to compel LAFCO to do so. (*City Council of City of Santa*
14 *Barbara v. Superior Court* (1960) 179 Cal.App.2d 389, 397.) Although a court may order a local
15 legislative body to perform a nondiscretionary ministerial act, it may not control the exercise of a
16 local board’s discretion. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 445;
17 *Glendale City Employees’ Assn., Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 344.) Thus, even if
18 the Court concludes (as it ought not) that LAFCO has discretion to require a tax election, it cannot
19 order LAFCO to exercise that discretion one way or the other.

20 **B. Petitioner is Not Entitled to a Writ of Mandate to Compel the City to Hold**
21 **an Election Before Applying Existing Taxes to New Residents**

22 Petitioner’s argument has a central flaw: Article XIII C does not apply to annexations. The
23 annexation of Sunset Beach to Huntington Beach does not involve the adoption, extension or
24 increase of a tax within the meaning of Article XIII C, § 2. The very Attorney General opinion
25 Petitioner cites (82 Ops.Cal.Atty.Gen. 180 (1999))⁵ reached this conclusion after thorough
26 examination of the text of Article XIII C, and the election materials which constitute its legislative
27

28 ⁵ Petitioner cites this opinion as 99 Ops.Cal.Atty.Gen. 602. This citation is incorrect, and appears to reflect the opinion number (99-602) rather than its citation.

1 history. The Attorney General notes that applying our Constitution’s requirement of voter approval
2 of new or increased taxes to bar annexations, or to require multiple tax regimes in a city depending
3 on the date various neighborhoods were annexed, would lead to absurd results. Ultimately,
4 Petitioner’s argument amounts to a claim that Proposition 218 impliedly repealed § 56375.3, an
5 interpretation that is both incorrect and unnecessary.

6 **1. Proposition 218 does not apply to existing taxes applied to**
7 **residents upon their annexation to a city**

8 Although no published opinion directly addresses whether Article XIII C applies to
9 annexations under the CKH Act, the Court of Appeal has rejected similar arguments under almost
10 identical circumstances with respect to Article XIII A, adopted by Proposition 13. In *Metropolitan*
11 *Water District v. Dorff*, the issue was whether Proposition 13 repealed by implication a section of the
12 Metropolitan Water District Act that required property annexed to Metropolitan to pay the taxes
13 previously approved by its voters. (*Metropolitan Water District v. Dorff* (1979) 98 Cal.App.3d 109,
14 112-113.)

15 Article XIII A, § 1, subd. (a) of Proposition 13 prohibits the imposition of ad valorem
16 property taxes in excess of 1% of assessed value of property. Section 1, subd. (b), however,
17 provides an exception for “ad valorem property taxes or assessments to pay the interest and
18 redemption charges on any indebtedness approved by the voters prior to [the effective date of the
19 Proposition 13.]” (Cal. Const. Art. XIII A, § 1, subd. (b).) The *Dorff* petitioners argued Metropolitan
20 could not impose taxes on annexed residents to pay for bond indebtedness those annexees had not
21 approved, and therefore Metropolitan’s Act conflicted with Article XIII A, § 1. (*Dorff, supra*, 98
22 Cal.App.3d at p. 114.) The court noted that the Water Code and the Constitution did not conflict
23 because Article XIII A’s exception for taxes to pay for preexisting debt “specifies only the
24 indebtedness to which the exception is applicable; it is silent regarding the property included within
25 the exception.” (*Id.* at pp. 114-115.) Metropolitan’s Act required owners of annexed territory to
26 bear their fair share of Metropolitan’s tax burden and therefore complements rather than contradicts
27 Proposition 13, Article XIII A. (*Id.* at p. 115.) The Court of Appeal concluded:

28

1 [S]ection one of article XIII A of the California Constitution does not prohibit the
2 levy of an ad valorem tax in excess of one percent on property annexed to
3 Metropolitan after July 1, 1978, for the payment of indebtedness of Metropolitan
4 approved by the voters prior to that date. (*Dorff, supra*, 98 Cal.App.3d at pp. 115-
5 116.)

6 The Attorney General relied on *Dorff* in a recent opinion concluding that Proposition 13 does
7 not bar increasing property taxes to pay pre-existing debt following a school district merger. (93
8 Ops.Cal.Atty.Gen. 117 (2010).) The Education Code requires that the pre-merger bonded
9 indebtedness of consolidated districts be totaled and applied to all land in the merged district at a
10 uniform rate reducing taxes for residents of pre-merger districts with relatively higher bonded debt
11 and increasing taxes for others (so-called “bond-leveling”). (Educ. Code § 35571.) That provision
12 functions just as does the provision of the Metropolitan’s Act at issue in *Dorff*, and § 57330 here:
13 some residents of the newly-formed district pay higher taxes than before, but not as a result of the
14 new adoption of a tax. The Attorney General stated that *Dorff* controlled and dictated that
15 Proposition 13 does not apply to the increase in property taxes paid by some residents due to bond
16 leveling following a school district merger.

17 *Dorff*’s reasoning applies here. Article XIII C prohibits certain newly enacted taxes absent
18 voter approval, and provides an exception for taxes already in existence prior to January 1, 1995.
19 (Cal. Const. Art. XIII C, § 2, subd. (c).) The exception “specifies only the [taxes] to which the
20 exception is applicable; it is silent regarding the property included within the exception.” (See
21 *Dorff, supra*, 98 Cal.App.3d at pp. 114-115.) Section 57330 provides that residents of annexed
22 territory must pay their fair share of the taxes previously approved by the voters of Huntington
23 Beach upon annexation to that City and receipt of its tax-funded services. *Dorff* requires that this
24 Court reject Petitioner’s claim of conflict between the Government Code and the Constitution.

25 The conclusion that *Dorff* is controlling in this case is strengthened by the fact that
26 Proposition 218 sites Proposition 13 and was intended to build on that earlier constitutional
27 initiative.⁶ In framing Proposition 218, its proponents could have disavowed *Dorff*’s conclusion that

28 _____
⁶ The uncodified § 2 of Proposition 218 reads: “FINDINGS AND DECLARATIONS. The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective

1 Proposition 13 allows application of preexisting taxes to an annexed area without voter approval, but
2 they did not. Those proponents are presumed to be aware of existing law and to adopt what they do
3 not amend. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016,
4 1048 [voters are presumed to have been aware of existing laws at the time the initiative was
5 enacted]; See also *Williams v. County of San Joaquin* (1990) 225 Cal.App.3d 1326, 1332 [failure to
6 amend existing law presumed intentional].)

7 Proposition 218, like Proposition 13 before it, is concerned with the adoption of new taxes,
8 but does halt the annexation of inefficient unincorporated islands into the cities which surround
9 them. Indeed, it was the goal of these measures to make government less costly, not more
10 inefficient. Propositions 13 and 218 were both intended to benefit all taxpayers and not to require
11 the many to subsidize the few, as Petitioner seeks here.

12 **2. Article XIII C's plain language demonstrates it does not apply to**
13 **pre-existing taxes**

14 The aim of constitutional interpretation, of course, is to determine and effectuate the intent of
15 the voters who enacted the provision at issue. (*Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara*
16 *County Open Space Authority* (2008) 44 Cal.4th 431, 444 (construing Proposition 218).) "The
17 principles of constitutional interpretation are similar to those governing statutory construction."
18 (*Thompson v. Department of Corrections* (2001) 25 Cal.4th 117, 122.)

19 If the language is clear and unambiguous, the plain meaning governs. ([Citation].)

20 But if the language is ambiguous, we consider extrinsic evidence in determining voter
21 intent, including the Legislative Analyst's analysis and ballot arguments for and
22 against the initiative. ([Citations].) (*Silicon Valley, supra*, 44 Cal.4th at pp. 444-45
23 (construing Proposition 218.)

24
25
26 tax relief and to require voter approval of tax increases. However, local governments have subjected
27 taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes
28 of voter approval for tax increases, but also threaten the economic security of all Californians and
the California economy itself. This measure protects taxpayers by limiting the methods by which
local governments exact revenue from taxpayers without their consent." (1996 Cal. Legis. Serv.
Prop. 218, § 2.)

1 Article XIII C, § 2, subd. (b) provides, in relevant part, that “[n]o local government may
2 impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and
3 approved by a majority vote.” Subdivision (c) of that section states that only taxes adopted after
4 January 1, 1995 must comply with voter approval requirements. Therefore, only taxes that are either
5 newly imposed, extended or increased after that date (which predates the adoption of Proposition
6 218 by 11 months), are subject to voter approval.⁷

7 As to the “adoption” of the disputed taxes, Petitioner admits that § 57330 requires Sunset
8 Beach residents to pay Huntington Beach’s “previously authorized” taxes (Pet. Brief, p. 9.) and does
9 not argue that any tax currently in effect in Huntington Beach is unlawful. Rather, Petitioner argues
10 that the taxes will be “new” as to Sunset Beach residents by virtue of the annexation.

11 By its own terms, however, § 57330 only applies to pre-existing taxes, not to “new” taxes. A
12 tax is not “new” merely because a taxpayer has only recently become a resident of the city (or a
13 purchaser of goods or services subject to tax there). Taxes are either objectively pre-existing or they
14 are not. The question is answered by reference to the City’s Municipal Code. Here, the taxes are
15 currently in effect, and have been validly enacted. They do not become “new” once more merely
16 because the City increases its population or expands its territory. Were the rule otherwise every
17 person who relocates to the City could challenge the taxes on arrival!⁸

18 Just as the taxes in issue are not “new,” neither are they “increased” or “extended.” Article
19 XIII C, § 2, subds. (b) and (d) both state that a tax “shall not be deemed to have been increased if it
20 is imposed at a rate not higher than the maximum rate so approved.” The Legislature defined the
21 terms “extend” and “increase” in the Proposition 218 Omnibus Implementation Act of 1997
22 (“Omnibus Act”). That Act was adopted without a dissenting vote in either house of the Legislature
23 and signed by then Governor Pete Wilson to clarify the meaning of the new initiative. (RJN, Exh. C,

24 _____
25 ⁷ This portion of the Constitution was not amended by Proposition 26, adopted November 2, 2011 to
change other aspects of Article XIII C.

26 ⁸ Although the Proposition 218 Omnibus Implementation Act of 1997 does not define “adopt”
27 (Gov’t Code § 53750 defines other terms, but not this one), the intent of the voters can be discerned
from the plain meaning of the word, which refers to the initial authoritative establishment of
something – as by an ordinance imposing a tax for the first time: “adopt ... to accept formally and
28 put into effect < adopt a constitutional amendment>” adopt. (n.d.). Merriam-Webster’s Dictionary of
Law. Retrieved June 21, 2011, from Dictionary.com website:
<http://dictionary.reference.com/browse/adopt> (last viewed 6/21/11).

1 D.) Indeed, the Howard Jarvis Taxpayers Ass'n – proponent of Proposition 218 – supported the
2 Omnibus Act. Still further, the California Supreme Court recently recognized the Omnibus Act as
3 good authority for the construction of Proposition 218. (*Greene v. Marin County Flood Control &*
4 *Water Conservation District*, (2010) 49 Cal.4th 277, 286.) The Omnibus Act defines a tax
5 “increase” so as to require renewed voter approval:

6 A tax, assessment, fee or charge is not deemed to be “increased” in the case in which
7 the actual payments from a person or property are higher than would have resulted
8 when the agency approved the tax, assessment, or fee or charge, if those higher
9 payments are attributable to **events other than an increased rate or revised**
10 **methodology**, such as a change in the density, intensity, or nature of the use of land.
11 (Gov't Code § 53750 (h)(3) (emphasis added.)

12 Here, Huntington Beach's current taxes will not “increase” by virtue of application to Sunset
13 Beach. Residents, businesses and visitors to that coastal enclave will ultimately pay some levies that
14 may be higher than those the County imposes on its unincorporated territory, but those differences
15 are attributable to a municipal reorganization under the CKH Act – *i.e.*, due to an “event[] other
16 than an increased rate or revised methodology.” This is sensible public policy. Were the rule
17 otherwise, an election would be required every time a person's income increased, because his or her
18 tax payments would rise. Petitioner's parochial focus on the perspective of Sunset Beach residents
19 ignores the community-wide perspective required by law and logic.

20 Nor is the application of Huntington Beach's taxes to Sunset Beach an “extension” within the
21 meaning of Proposition 218, as the Omnibus Act defines that term to mean only the repeal of a
22 sunset provision, which has plainly not occurred here. Gov't Code § 53750 (e).⁹

23 Finally, Proposition 218 requires approval of an “electorate,” which can only mean the
24 entirety of the voting population of the City subject to the tax. (See *Neilson v. City of California*
25 *City* (2005) 133 Cal.App.4th 1296, 1312-13 [City's resident voters are the relevant electorate for
26 purposes of art. XIII C, § 2.]) Petitioner's proposed election would include only a tiny fraction of

27 _____
28 ⁹ Gov't Code § 53750(e) states: “(e) ‘Extended,’ when applied to an existing tax or fee or charge,
means a decision by an agency to extend the stated effective period for the tax or fee or charge,
including, but not limited to, amendment or removal of a sunset provision or expiration date.”

1 the electorate, an event not even remotely endorsed by the Constitution's language.

2 Courts are no more at liberty to add provisions to what is declared (in the
3 Constitution) in definite language, than they are to disregard existing express
4 provisions (of the Constitution). (*Ross v. City of Long Beach* (1944) 24 Cal.2d 258,
5 260; *Dorff*, supra, 98 Cal.App.3d at p. 115.)

6 Petitioner reads much into Article XIII C, and seeks a remedy the text of that Article cannot support.

7 **3. The voters did not intend Proposition 218 to require voter**
8 **approval of annexations**

9 Petitioner concedes that no published authority identifies any conflict between Proposition
10 218 and the CKH Act's annexation rules. (Pet. Brief at p. 10.) Petitioner also admits that the most
11 thorough analysis of the issue is provided by Attorney General Opinion number 99-602.¹⁰ (Pet.
12 Brief at p. 11.) However, Petitioner neglects to mention that this very opinion concludes the voters
13 who approved Proposition 218 did not intend to affect annexations:

14 We have examined in detail the voters' pamphlet with respect to Proposition 218, the
15 initiative measure approved by the voters in 1996 that added articles XIII C and XIII
16 D. (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen.
17 Elec. (Nov. 5, 1996) pp. 72-77.) Nothing therein suggests that the proposed voter
18 approval requirements were to be added to the voter approval requirements of the [the
19 CKH Act]. The ballot materials regarding Proposition 218 simply do not support an
20 intent by the electorate to subject LAFCO proceedings to the requirements of articles
21 XIII C and XIII D. (82 Ops.Cal.Atty.Gen. 180 (1999).)

22 Section 57330 predates Proposition 218 by a mere three years. If the drafters of Proposition
23 218 had wanted to change the pre-existing practice of applying pre-existing taxes to annexed
24 territory with an election, they could easily have done so. That this was not their intent can be

25
26 ¹⁰ The question posed to the AG was: "If a local agency formation commission conditions approval
27 of a change of organization or reorganization upon a requirement that the subject agency levy or fix
28 and collect a previously established and collected tax, benefit assessment, or property-related fee or
charge on parcels being annexed to the agency, do the voter and landowner approval requirements
set forth in the Constitution relating to taxes, assessments, fees, and charges apply?" 82
Ops.Cal.Atty.Gen. 180 (1999).

1 inferred from the language of the Omnibus Act cited above, which Proposition 218's framers
2 supported and which excludes from the definition of the tax "increases" which require voter
3 approval those due to "events other than an increased rate or revised methodology." (Gov't Code §
4 53750 (h)(3).)

5 **4. Petitioner's interpretation of Article XIII C would lead to absurd**
6 **results**

7 As noted by the Attorney General, to require a new vote on the entirety of a City's tax
8 structure upon each annexation would confound the CKH Act's purpose to encourage efficient
9 delivery of government services:

10 [I]t would be virtually impossible to comply with the varying and complex
11 requirements of articles XIII C and XIII D with respect to changes of organization or
12 reorganization under the Act. Not only the timing of the elections but the differing
13 constituencies who would be voting on different measures with differing voter
14 approval requirements (see art. XIII C, § 2, subd. (b); art. XIII D, § 4, subd. (e), § 6,
15 subd. (c)) would present an administrative imbroglio. (82 Ops.Cal.Atty.Gen. 180
16 (1999).)

17 Petitioner's interpretation of the Constitution would also lead to other absurdities. If this
18 annexation were complete and the residents of Sunset Beach vote against Huntington Beach's taxes,
19 they would enjoy free access to municipal benefits paid for by the City's remaining residents, or
20 those services (such as police and fire services) would stop at the Sunset Beach border. That would
21 perpetuate the same inefficient fragmentation of service responsibilities the island annexation rule –
22 and the CKH Act itself – were adopted to address. It is "common justice" that all citizens of the City
23 pay their proportionate share of taxes. (*Dorff, supra*, 98 Cal.App.3d at pp. 113-114.)

24 **C. Proposition 218 Did Not Impliedly Repeal §§ 56375.3 and 57330**

25 The implied repeal of a statute by a later constitutional provision is disfavored, especially
26 where a prior statute has been generally understood and acted upon. (*Dorff, supra*, 98 Cal.App.3d
27 109, 114; *Penziner v. West American Finance Co.* (1937) 10 Cal.2d 160, 176.)
28

1 To overcome the presumption the two acts must be irreconcilable, clearly repugnant,
2 and so inconsistent that the two cannot have concurrent operation. The courts are
3 bound, if possible, to maintain the integrity of both (the statute and the constitutional
4 provision) if the two may stand together.” (*Penziner, supra*, 10 Cal.2d at p. 176.)

5 As noted above, § 57330 requires the City to impose pre-existing taxes on annexed residents,
6 including those annexed without protest proceedings under the island rule of § 56375.3 and predates
7 Proposition 218 by three years. Yet, Petitioner argues Proposition 218 impliedly repealed §§ 57330
8 and 56375.3 and characterizes the Constitution and the Government Code as in irreconcilable
9 conflict. Not so.

10 First, the ballot materials which constitute the legislative history of Proposition 218 provide
11 no support for Petitioner’s argument the measure amended or repealed the CKH Act. (RJN, Exh. B.)
12 Second, the law requires this Court to avoid implied repeal if there is any way to harmonize the two
13 authorities. As noted above, it would require an intellectual leap to interpret Article XIII C to apply
14 to LAFCO proceedings. No “new” “extended” or “increased” taxes are in issue. Thus, this Court
15 need not, and therefore should not, take the leap Petitioner invites. Rather, as did the Attorney
16 General, this Court may conclude that Proposition 218, like Proposition 13 before it, does not apply
17 to annexations.

18 **D. Petitioner is Not Entitled to Equitable Relief Because an Adequate**
19 **Remedy at Law Exists.**

20 A permanent injunction may issue only “[w]here pecuniary compensation would not afford
21 adequate relief.” (Civ. Code, § 3422; see also *Art Movers, Inc. v. Ni West, Inc.* (1992) 3 Cal.App.4th
22 640, 646.) Similarly, a writ of mandate can only issue “where there is not a plain, speedy, and
23 adequate remedy, in the ordinary course of law.” (Code Civ. Proc., § 1086.) Any remedy that
24 allows a taxpayer to challenge a tax already collected, and to press any constitutional claims he or
25 she may have, has been found to constitute “a plain, speedy and efficient remedy” barring equitable
26 relief. (See, e.g., *Rickley v. County of Los Angeles* (2004) 114 Cal.App.4th 1002, 1013; *Rosewell v.*
27 *LaSalle National Bank* (1981) 450 U.S. 503, 514; *County of Sacramento v. Assessment Appeals Bd.*
28 *No. 2* (1973) 32 Cal.App.3d 654, 672 [procedure “allowing the taxpayer to pay the disputed tax

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1 under protest and sue for refund” is an adequate legal remedy barring equitable relief]; *Flying*
2 *Dutchman Park, Inc. v. City and County of San Francisco* (2001) 93 Cal.App.4th 1129, 1138.)

3 Petitioner does not claim the annexation is unlawful, or that LAFCO has abused its discretion
4 in making the findings necessary for annexation. Petitioner claims only that Huntington Beach
5 cannot impose its pre-existing taxes on new residents without a vote of those residents. This
6 amounts to a claim that the taxes are illegal as to Sunset Beach, and therefore cannot be collected
7 there. Yet Petitioner fails to explain why a suit for a refund of these allegedly illegal taxes is not an
8 adequate remedy, or that any other harm resulting from the annexation is anticipated. The Court
9 should therefore deny equitable relief because Petitioner has an adequate remedy at law.

10 While the City denies, for the reasons stated here, that its taxes may not be applied to fund
11 services to Sunset Beach, residents who view it otherwise plainly may test that question in a tax
12 refund action and do not need the protection of this Court’s equitable powers, especially where use
13 of those powers would infringe upon the separation of powers.

14 **IV. Conclusion**

15 For the reasons set forth above, Respondent respectfully requests that this Court deny the
16 petition and dismiss the complaint in all respects.

17
18 DATED: July 1, 2011

COLANTUONO & LEVIN, PC

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HOLLY O. WHATLEY
Attorneys for Respondent
CITY OF HUNTINGTON BEACH
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PROOF OF SERVICE

Citizen's Assn. of Sunset Beach v. Orange County Local Agency Formation Comm., et al.
Case No. OCSC Case No. 30-2010-431832

I, Kimberly Nielsen, 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 July 1, 2011, I served the document described as **CITY OF HUNTINGTON BEACH'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR WRIT OF MANDATE** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

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BY OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by with delivery fees fully provided for or delivered the envelope to a courier or driver of authorized to receive documents at 300 S. Grand Avenue, Suite 2700, Los Angeles, California 90071 with delivery fees fully provided for.

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

Executed on July 1, 2011, at Los Angeles, California.

Kimberly Nielsen