

1 STERN, VAN VLECK & McCARRON, LLP  
2 Dale A. Stern, State Bar No. 131108  
3 John C. McCarron, State Bar No. 225217  
4 925 L Street, Suite 850  
5 Sacramento, California 95814  
6 Telephone: (916) 442-1298  
7 Fax No.: (916) 341-0849

8 Attorneys for Plaintiff  
9 CITIZEN'S ASSOCIATION OF SUNSET BEACH

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

DEC 14 2010

ALAN CARLSON, Clerk of the Court

*J. Tran*  
BY J. TRAN

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF ORANGE

12 CITIZEN'S ASSOCIATION OF SUNSET )  
13 BEACH, )

14 Petitioner/Plaintiff, )

15 vs. )

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

22 Respondents/Defendants. )

CASE NO. 30-2010-00431832

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
APPLICATION FOR PRELIMINARY  
INJUNCTION

Date: January 7, 2011  
Time: 11:00 a.m.  
Judge: Steven L. Perk  
Dept.: C32

Action Filed: December 9, 2010  
Trial Date: TBD

23 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
24 APPLICATION FOR PRELIMINARY INJUNCTION

Table of Contents

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**I. INTRODUCTION** ..... 1

**II. ANNEXATION PROCESS**..... 2

**III. STATEMENT OF RELEVANT FACTS**..... 4

**A. Proposition 218 Affords Sunset Beach Residents A Vote On Whether To Approve Imposition of Additional Huntington Beach Taxes**..... 5

**B. CASB Has Asked The OC LAFCO To Acknowledge Sunset Beach Residents' Proposition 218 Rights By Imposing Conditions On The Annexation** ..... 5

**C. The City Recently Announced That It Is Going To Impose All Of Its Taxes On Sunset Beach Residents Without Giving Them A Vote**..... 6

**D. The OC LAFCO Approved The Sunset Beach Island Annexation Without The Conditions Requested by CASB** ..... 7

**IV. ARGUMENT**..... 7

**A. The Standard for Preliminary Injunctive Relief** ..... 7

**B. Petitioner/Plaintiff CASB is Likely to Prevail on the Merits of This Case Because the City's Island Annexation Proposal Violates the Constitutional Rights of the Residents of Sunset Beach.** ..... 8

**C. CASB Members Will Suffer Harm If The Court Fails To Issue a Preliminary Injunction Order, Whereas Respondents/Defendants Will Suffer No Harm By Such An Order**..... 10

**V. CONCLUSION** ..... 11

**Table of Authorities**

1 Cases

2

3 *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277..... 7

4 *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432..... 7

5 *Howard Jarvis Taxpayers Assn. v. City of Roseville*, 106 Cal.App.4<sup>th</sup> 1178 ..... 10

6 *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63 ..... 7

7 *Robbins v. Superior Court* (1985) 38 Cal.3d 199..... 8

8 Statutes

9 Gov. Code § 56001.)..... 2

10 Gov. Code § 56017..... 2

11 Gov. Code § 56021..... 2

12 Gov. Code § 56100..... 2

13 Gov. Code § 56375(a) ..... 2

14 Gov. Code § 56375.3 ..... 3, 8

15 Gov. Code § 56375.3(a)(1)..... 3

16 Gov. Code § 56650..... 2

17 Gov. Code § 56665..... 2

18 Gov. Code § 56880..... 2

19 Gov. Code § 56886(b) and (s) ..... 2

20 Gov. Code § 56895(a) ..... 1, 3

21 Gov. Code § 56895(g) ..... 3

22 Gov. Code § 57000..... 3

23 Gov. Code § 57052..... 3

24 Gov. Code § 57075(a)(1)..... 3

25 Gov. Code § 57202(c) ..... 3

26 Gov. Code § 57330..... 3

27 Gov. Code §§ 56375(a); 56886(b) and (s)..... 10

28 Government Code § 56000..... 2

Other Authorities :

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

99 Ops. Cal. Atty. Gen. 602 (1999).....9



1 finalizing the annexation. CASB is not aware of any pending requests for reconsideration, and  
2 unless a request for reconsideration is filed on or before January 7, 2010, a Notice of Completion  
3 finalizing the annexation of Sunset Beach could be recorded as early as January 10, 2010. CASB  
4 therefore requests that a preliminary injunction be issued on or before January 7, 2010, enjoining  
5 the OC LAFCO from any further action on the City's annexation request.

## 6 II. ANNEXATION PROCESS

7 The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government  
8 Code § 56000, et seq.) ("the Act") establishes in each of California's counties an agency known as  
9 a Local Agency Formation Commission, or "LAFCO." The purpose of each LAFCO is to  
10 encourage the orderly and efficient growth and extension of services within each county, and to  
11 discourage urban sprawl. (Gov. Code § 56001.) Each LAFCO has exclusive authority for the  
12 initiation, conduct, and completion of changes of organization and reorganizations for cities and  
13 districts. (Gov. Code § 56100.) An annexation is a change of organization. (Gov. Code § 56021.)  
14 An annexation is the inclusion, attachment, or addition of territory to a city or district. (Gov. Code  
15 § 56017.)

16 An annexation may be initiated either by a proposal by a LAFCO, a petition of property  
17 owners, or a resolution by a city or district. (Gov. Code § 56650.)

18 After an annexation application is properly filed with a LAFCO, the LAFCO's Executive  
19 Officer schedules the matter for hearing and prepares a report with his or her recommendations  
20 regarding the application. (Gov. Code § 56665.) Within 35 days after the hearing, the LAFCO  
21 must adopt a resolution that approves or disapproves the proposal, with or without conditions.  
22 (Gov. Code § 56880.)

23 A LAFCO has broad discretionary power to "approve or disapprove, with or without  
24 amendment, wholly, partially, or conditionally" an annexation request. (Gov. Code § 56375(a).)  
25 Among the many conditions that a LAFCO may impose on its approval of an annexation  
26 application are the levying or fixing and the collection of general and special taxes, and the  
27 approval by the voters of those taxes. (Gov. Code § 56886(b) and (s).)

28 ///

1 Any territory annexed to a city shall be subject to the levying, fixing, and collection of any  
2 previously authorized taxes and assessments of the city. (Gov. Code § 57330.)

3 In most cases, the Act allows the residents and landowners in an area that is the subject of  
4 an annexation to challenge the annexation through protest proceedings. (Gov. Code § 57000 et  
5 seq.) The Executive Officer schedules a protest hearing, and at the conclusion of that hearing, the  
6 LAFCO counts the number of written protests. (Gov. Code § 57052.) The annexation is terminated  
7 if fifty percent of the registered voters in the territory to be annexed file written protests. (Gov.  
8 Code § 57075(a)(1).) If more than twenty-five percent but less than fifty percent of the registered  
9 voters residing in the subject territory file written protests, the annexation must be confirmed by a  
10 vote. (Gov. Code § 57075(a)(1).)

11 Not all annexations involve protest proceedings. The Act sets out a process for the  
12 annexation of so-called unincorporated islands to the cities that surround them. (Gov. Code §  
13 56375.3.) If a City-initiated annexation proposal meets the required criteria for an "island"  
14 annexation, the Act provides that "in addition to those powers enumerated in Section 56375," a  
15 LAFCO shall approve the annexation proposal and waive protest proceedings. (Gov. Code §  
16 56375.3(a)(1).) Thus, in an "island" annexation, the residents/landowners in the area to be  
17 annexed do not get to file written protests and do not get to vote on whether the territory will be  
18 annexed.

19 After a LAFCO adopts a resolution making a determination on any annexation application,  
20 any person or affected agency may file a request for reconsideration based on new evidence. (Gov.  
21 Code § 56895(a).) After a hearing on a reconsideration request, a LAFCO may approve or deny  
22 the request for reconsideration. If it approves the request, a LAFCO is required to adopt a  
23 resolution making determinations that shall supersede the resolution that it previously issued.  
24 (Gov. Code § 56895(g).) At the conclusion of the reconsideration proceedings, if any, the LAFCO  
25 executive officer prepares a notice of completion. Unless otherwise specified, the effective date of  
26 an annexation is the date the notice of completion is recorded with the county recorder. (Gov.  
27 Code § 57202(c).)

III. STATEMENT OF RELEVANT FACTS

Sunset Beach is an unincorporated beachfront community in Orange County, California. Sunset Beach was established as a town in 1904, and is comprised of approximately 134 acres with about 1200 permanent residents. It is generally surrounded by the City of Seal Beach to the north, the Pacific Ocean to the west, and the City of Huntington Beach to the north, east, and south. OC LAFCO Executive Officer Joyce Crosthwaite notes in her December 9, 2010 report to the OC LAFCO that, "despite being surrounded by newer residential and commercial development, the community has retained its own unique identity for over the past one hundred years." [Crosthwaite Report, p. 2, attached hereto as Exhibit A.]

In July of 2009, the OC LAFCO placed Sunset Beach under the sphere of influence of Huntington Beach. [Crosthwaite Report, p. 1.]

In July of 2010, through an organization called the Sunset Beach Community Association ("SBCA"), residents of Sunset Beach submitted an application to the OC LAFCO to incorporate Sunset Beach as a city. [Id.] That incorporation effort stalled a few months later when the SBCA treasurer inexplicably refused to send a check for \$100,000.00 to the OC LAFCO to complete the incorporation application process. [Declaration of Jack Markovitz, ¶ 4, attached hereto as Exhibit B.] The SBCA Board later voted to return the \$100,000.00 to the individuals who contributed that money. [Markovitz Declaration, ¶ 5.] Other than some mutual members, there is no relationship between SBCA and Plaintiff/Petitioner CASB. [Markovitz Declaration, ¶ 6.]

In applying to annex Sunset Beach, rather than utilize general annexation provisions that would allow the residents of Sunset Beach an opportunity to challenge the annexation through protest proceedings, the City chose to apply to annex Sunset Beach under the forced "island" annexation provisions in Government Code section 56375.3 that apply to unincorporated islands that do not exceed 150 acres. In an island annexation, the residents do not get the opportunity to protest or vote on whether to be annexed.

///

///

///

1       **A.     Proposition 218 Affords Sunset Beach Residents A Vote On Whether To Approve**  
2       **Imposition of Additional Huntington Beach Taxes**

3             The City imposes certain special taxes on its residents, most notably a utility users' tax and  
4     a pension-related property tax override. [See Huntington Beach Municipal Code, Chapter 3.36 and  
5     Huntington Beach City Council Resolution No. 2010-50, attached hereto as Exhibits C and D.]  
6     Sunset Beach residents do not currently pay these taxes. [Markovitz Declaration, ¶ 7.] Until  
7     November of 2010, the Huntington Beach City Council attempted to assuage the concerns of  
8     Sunset Beach residents by assuring them that post-annexation the City would not impose its utility  
9     tax and property tax override on Sunset Beach residents. [Markovitz Declaration, ¶ 8.]

10            On April 27, 2010, Ralph Anderson & Associates issued a report entitled Final Report  
11     Sunset Beach Annexation Study for the City of Huntington Beach, a copy of which is publicly  
12     available on the OC LAFCO website at [www.oclafco.org](http://www.oclafco.org). That report notes on page 10 that:

13                    It should be noted, however, that in the view of LAFCO legal staff, the  
14                    Utility Users Tax could be imposed only if the annexation were processed  
15                    as a normal inhabited unincorporated area requiring a vote of the Sunset  
16                    Beach electorate. Since it is being pursued as an "island" annexation, not  
17                    involving a vote of those being annexed, Proposition 218 would bar the  
18                    imposition of this tax to this area according to LAFCO.

19            [Final Report Sunset Beach Annexation Study for the City of Huntington Beach, p. 10, attached  
20     hereto as Exhibit E.]

21       **B.     CASB Has Asked The OC LAFCO To Acknowledge Sunset Beach Residents'**  
22       **Proposition 218 Rights By Imposing Conditions On The Annexation**

23             In July of 2010, residents of Sunset Beach formed a nonprofit mutual benefit corporation –  
24     Petitioner/Plaintiff Citizen's Association of Sunset Beach ("CASB") – to, among other things,  
25     represent the interest of its members by supporting the incorporation of Sunset Beach. [Markovitz  
26     Declaration, ¶ 3.]

27             On July 15, 2010, counsel for CASB sent a letter to the OC LAFCO advising the OC  
28     LAFCO that CASB believed that the City was misleading Sunset Beach residents by stating that if  
   the annexation occurs, the City would not impose its utility tax on Sunset Beach residents. [Letter  
   from John C. McCarron, dated July 15, 2010, attached hereto as Exhibit F.] CASB believed that  
   the City would ultimately conclude that the law compels the City to impose all of its taxes on

1 Sunset Beach residents and that the City would not give Sunset Beach residents a vote on whether  
2 to approve those taxes. CASB requested that the OC LAFCO require the City to obtain a favorable  
3 Proposition 218 vote by Sunset Beach residents regarding the utility tax as a condition of the  
4 annexation. CASB sent another such request to the OC LAFCO on September 30, 2010. [Letter  
5 from John C. McCarron, dated September 30, 2010, attached hereto as Exhibit G.] The OC  
6 LAFCO did not respond to either of these requests. [Markovitz Declaration, ¶¶ 9-11.]

7 **C. The City Recently Announced That It Is Going To Impose All Of Its Taxes On Sunset**  
8 **Beach Residents Without Giving Them A Vote**

9 Despite repeated assurances from the Huntington Beach City Council to the contrary, and  
10 as predicted by CASB, on November 9, 2010, about one month before the OC LAFCO hearing on  
11 the City's annexation proposal, the Huntington Beach City Attorney reversed course and notified  
12 Sunset Beach residents for the first time that the City would impose all of its taxes on Sunset  
13 Beach residents post-annexation. In her November 9, 2010, letter to the SBCA, City Attorney  
14 Jennifer McGrath stated that:

15 This letter is to advise you that all taxes currently charged to residents of  
16 Huntington Beach will be charged to the residents of Sunset Beach post-  
17 annexation. These taxes include utility user tax, business license tax,  
18 property tax override, and the library tax, among other various taxes and  
19 property-related fees. The tax will be levied using the same methodology  
20 as currently in place for the residents of Huntington Beach.

21 [Letter from Jennifer McGrath, dated November 9, 2010, attached hereto as Exhibit H.] This  
22 abrupt change in the City's position on the imposition of Huntington Beach's taxes post-  
23 annexation was considered by many Sunset Beach residents as a classic bait and switch.

24 [Markovitz Declaration, ¶ 12.]

25 On November 16, 2010, counsel for CASB wrote to the OC LAFCO, advising the OC  
26 LAFCO of the City's decision to apply all of its taxes on Sunset Beach residents post-annexation,  
27 and again requested that the OC LAFCO impose a condition on the annexation that the City first  
28 obtain a favorable vote by Sunset Beach residents approving imposition of the Huntington Beach  
special taxes. [Letter from John C. McCarron, dated November 16, 2010, attached hereto as  
Exhibit I.] The OC LAFCO did not respond to this letter. [Markovitz Declaration, ¶ 13.]

1 **D. The OC LAFCO Approved The Sunset Beach Island Annexation Without The**  
2 **Conditions Requested by CASB**

3 On December 6, 2010, the Huntington Beach City Council adopted Council Resolution  
4 No. 2010-100 ("the City's Resolution of Application"), authorizing the City's application to annex  
5 Sunset Beach. [Huntington Beach City Council Resolution No. 2010-100, attached hereto as  
6 Exhibit J.] The City's Resolution of Application completed its application to the OC LAFCO to  
annex Sunset Beach.

7 On December 8, 2010, the OC LAFCO held a hearing on the City's annexation proposal  
8 and, despite objections from numerous residents of Sunset Beach and from CASB's attorney, the  
9 OC LAFCO voted to approve Resolution No. IA 10-05, which approved the Sunset Beach  
10 annexation to the City. [Markovitz Declaration, ¶ 13.] In so doing, the OC LAFCO found that the  
11 City's proposal met the criteria for an "island" annexation under Government Code section  
12 56375.3. The OC LAFCO's Resolution imposes some conditions on the City's annexation of  
13 Sunset Beach. However, the OC LAFCO Resolution does not impose a condition that the City first  
14 obtain a favorable vote by the Sunset Beach residents under Proposition 218 regarding imposition  
15 of the City's special taxes, including but not limited to the City's utility users' tax and its property  
16 tax override. [OC LAFCO Resolution No. IA 10-05, attached hereto as Exhibit K.]

17 **IV. ARGUMENT**

18 **A. The Standard for Preliminary Injunctive Relief**

19 As stated by the California Supreme Court, and repeated in many cases:

20 [T]rial courts should evaluate two interrelated factors when deciding whether or not  
21 to issue a preliminary injunction. The first is the likelihood that the plaintiff will  
22 prevail on the merits at trial. The second is the interim harm that the plaintiff is  
23 likely to sustain if the injunction were denied as compared to the harm that the  
defendant is likely to suffer if the preliminary injunction were issued. *Cohen v.*  
*Board of Supervisors* (1985) 40 Cal.3d 277, 286; quoting *IT Corp. v. County of*  
*Imperial* (1983) 35 Cal.3d 63, 69-70.

24 Each of these interrelated factors may be afforded greater weight depending on the strength  
25 of petitioner's showing on the other factor. Thus, "[I]f the party seeking the injunction can make a  
26 sufficiently strong showing of likelihood of success on the merits, the trial court has discretion to  
27 issue the injunction notwithstanding that party's inability to show that the balance of harm tips in  
28 his favor." *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 447. Conversely, the

1 Court "must exercise its discretion in favor of the party most likely to be injured. If the denial of  
2 an injunction would result in great harm to the plaintiff, and the defendants would suffer little  
3 harm if it were granted, then it is an abuse of discretion to fail to grant the preliminary injunction."

4 *Robbins v. Superior Court* (1985) 38 Cal.3d 199, 205.

5 With these factors in mind we turn to the present application.

6 **B. Petitioner/Plaintiff CASB is Likely to Prevail on the Merits of This Case Because the**  
7 **City's Island Annexation Proposal Violates the Constitutional Rights of the Residents**  
8 **of Sunset Beach.**

9 The City seeks to annex Sunset Beach under the "island" annexation provisions set forth in  
10 Government Code section 56375.3. Unlike in a general annexation, an "island" annexation does  
11 not afford the residents of the territory being annexed an opportunity to protest or vote on whether  
12 their territory will be annexed. (Gov. Code § 56375.3(a)(1).) Thus, under the "island" annexation  
13 procedures selected by the City, the residents of Sunset Beach do not get to vote on whether their  
14 community will be annexed by the City.

15 When a territory is annexed, it becomes subject to all taxes imposed by the annexing city.  
16 Government Code section 57330 provides that:

17 Any territory annexed to a city or district shall be subject to the levying or fixing  
18 and collection of any previously authorized taxes, benefit assessments, fees or  
19 charges of the city or district.

20 Consequently, as a result of the annexation, the City must impose all of its taxes, fees, and  
21 assessments on the residents of Sunset Beach. Huntington Beach City Attorney Jennifer McGrath  
22 recently clarified the City's position for the residents of Sunset Beach, stating that:

23 This letter is to advise you that all taxes currently charged to residents of  
24 Huntington Beach will be charged to the residents of Sunset Beach post-  
25 annexation. These taxes include utility users' tax, business license tax, property tax  
26 override, and the library tax, among other various taxes and property-related fees.  
27 The tax will be levied using the same methodology as current in place for the  
28 residents of Huntington Beach.

[McGrath letter, attached hereto as Exhibit H.]

29 The residents of Sunset Beach do not currently pay a utility users tax or property tax  
30 override. [Markovitz Declaration, ¶ 7.] Assuming that the City's annexation proposal meets the  
31 criteria set forth in Government Code section 56375.3 for an "island" annexation, post-annexation,

1 the residents of Sunset Beach will become part of Huntington Beach and will be subjected to  
2 Huntington Beach taxes without first being given a chance to either vote to approve of the  
3 annexation or to approve of the imposition of the Huntington Beach taxes that they did not have to  
4 pay prior to the annexation. This imposition of new taxes without a vote violates the Sunset Beach  
5 residents' rights under Proposition 218.

6 Proposition 218, officially titled the "Right to Vote on Taxes Act," was approved by  
7 California voters on November 5, 1996. Proposition 218 amended the California Constitution by  
8 adding articles XIII C and XIII D that bar local governments from imposing, extending, or  
9 increasing general and special taxes without first giving the electorate a vote on whether to  
10 approve such taxes. Huntington Beach has expressly indicated that post-annexation, it will impose  
11 all of its taxes on the residents of Sunset Beach without first giving them a vote. Without a vote,  
12 imposing these taxes on the residents of Sunset Beach, while compelled by Government Code  
13 section 57330, is a violation of Proposition 218.

14 The California Attorney General has concluded that the protest/voting rights that are  
15 afforded to the residents of a territory that is the subject of a general annexation satisfy the voting  
16 requirements of Proposition 218. (99 Ops.Cal.Atty.Gen. 602 (1999).) The Attorney General  
17 reasoned that by voting whether to approve the annexation, knowing that such a vote may involve  
18 the imposition of additional taxes, the Proposition 218 rights of residents of a territory subject to  
19 annexation are sufficiently protected, and no separate Proposition 218 vote needs to be held.  
20 However, because the City in this case is seeking to annex Sunset Beach under the "island"  
21 annexation procedures that do not afford the residents of Sunset Beach an opportunity to  
22 protest/vote on whether to be annexed, the Proposition 218 rights of the Sunset Beach residents  
23 are not protected.

24 There is an unmistakable conflict between Government Code section 57330 (requiring the  
25 imposition of all taxes on any area being annexed), Government Code section 56375.3 (allowing  
26 island annexations without any protest or vote), and Proposition 218 (barring any local government  
27 from imposing taxes without a vote by the electorate). The City and the OC LAFCO are well  
28 aware of this conflict in the law, but they have both chosen to ignore the constitutional rights of

1 the residents of Sunset Beach in their zeal to move forward with this "island" annexation. This is  
2 not a legally defensible position for either the OC LAFCO or the City. It is fundamental that a  
3 constitutional provision prevails over an inconsistent statutory provision. (*Howard Jarvis*  
4 *Taxpayers Assn. v. City of Roseville*, 106 Cal.App.4<sup>th</sup> 1178, 1188 (2003).)

5 Under the circumstances, in order for the City to move forward with this island annexation,  
6 the City must, as a condition of the annexation, first obtain a favorable vote pursuant to  
7 Proposition 218 by the Sunset Beach electorate regarding imposition of the additional Huntington  
8 Beach taxes. Alternatively, the City could amend its annexation proposal to seek a general  
9 annexation that would allow the residents of Sunset Beach to protest/vote on whether to be  
10 annexed. The OC LAFCO has the authority and duty to impose these conditions on the City (Gov.  
11 Code §§ 56375(a); 56886(b) and (s).), but it has refused to do so.

12 This case involves the blatant violation of the constitutional rights of the residents of  
13 Sunset Beach, and CASB is very likely to prevail on the merits. This is unquestionably an  
14 appropriate case for the issuance of a preliminary injunction.

15 **C. CASB Members Will Suffer Harm If The Court Fails To Issue a Preliminary**  
16 **Injunction Order, Whereas Respondents/Defendants Will Suffer No Harm By Such**  
17 **An Order**

18 Many of CASB's members reside in and own property in Sunset Beach. For example,  
19 CASB President Jack Markovitz has owned a home in Sunset Beach for 23 years. [Markovitz  
20 Declaration, ¶ 2.] If the Court does not issue a preliminary injunction order prohibiting the OC  
21 LAFCO from taking any further action on the City's annexation proposal, including the recording  
22 of a notice of completion, then the CASB members who live in and own property in Sunset Beach  
23 will lose their 106 year-old community and will begin to incur Huntington Beach taxes in  
24 violation of their constitutional rights. Sunset Beach residents should not have to incur the loss of  
25 their community, their tax dollars, and their constitutional rights until the legal issues in this case  
26 are resolved.

27 Moreover, if the annexation becomes effective before these important legal issues are  
28 resolved, Sunset Beach will have new service providers for such essential services as police and

1 fire protection and the complexities involved in such changes should not be incurred until this case  
2 is resolved and it is certain whether those changes in services are even necessary.

3 Respondents and Defendants will suffer no harm whatsoever from a modest delay in the  
4 annexation process while the legal issues raised in CASB's Petition and Complaint are resolved.  
5 These issues are purely legal in nature and can be briefed and resolved by the Court in a few  
6 months, and this delay will be of no consequence to the Respondents and Defendants. In fact, it is  
7 in the best interest of Huntington Beach to have these issues resolved before it takes on the task of  
8 providing services to Sunset Beach.

9 The balance of harm clearly favors granting of a preliminary injunction order.

10 **V. CONCLUSION**

11 For all the foregoing reasons, as well as those expressed in the papers filed herewith, the  
12 Court's file, and such other materials and arguments which may be presented prior to or at the  
13 hearing hereon, CASB respectfully requests that the Court issue an order enjoining OC LAFCO  
14 from taking any further action on the City's annexation application, including the recording of a  
15 notice of completion, until the legal issues raised in the Petition and Complaint are resolved.  
16

17 Dated: December 14, 2010

18 Respectfully submitted,  
19 STERN, VAN VLECK & McCARRON, LLP

20   
21 John C. McCarron  
22 Attorney for CITIZEN'S ASSOCIATION OF SUNSET  
23 BEACH  
24  
25  
26  
27  
28

# EXHIBIT

A



8a

December 8, 2010

CHAIR  
**PETER HERZOG**  
Councilmember  
City of Lake Forest

VICE CHAIR  
**JOHN MOORLACH**  
Supervisor  
2<sup>nd</sup> District

**CHERYL BROTHERS**  
Councilmember  
City of Fountain Valley

**BILL CAMPBELL**  
Supervisor  
3<sup>rd</sup> District

**ARLENE SCHAFFER**  
Director  
Costa Mesa  
Sanitary District

**JOHN WITHERS**  
Director  
Irvine Ranch Water District

**SUSAN WILSON**  
Representative of  
General Public

ALTERNATE  
**PAT BATES**  
Supervisor  
5<sup>th</sup> District

ALTERNATE  
**PATSY MARSHALL**  
Councilmember  
City of Buena Park

ALTERNATE  
**DEREK J. MCGREGOR**  
Representative of  
General Public

ALTERNATE  
**CHARLEY WILSON**  
Director  
Santa Margarita  
Water District

**JOYCE CROSTHWAITE**  
Executive Officer

**TO:** Local Agency Formation Commission

**FROM:** Joyce Crosthwaite, Executive Officer  
Carolyn Emery, Assistant Executive Officer  
Benjamin Legbandt, Policy Analyst II

**SUBJECT:** Proposed "Sunset Beach Island Annexation to the City of Huntington Beach" (IA 10-05)

### APPLICANT

City of Huntington Beach.

### PROPOSAL

The City of Huntington Beach has filed for annexation of the community of Sunset Beach under the streamlined provisions of Government Code Section 56375.3. The community is one of the 26 remaining small islands in Orange County. The purpose of the proposal is to permit the City of Huntington Beach to provide municipal services to the area, allowing for more efficient delivery of services, and to eliminate a small unincorporated County island.

In placing the community within the City's sphere of influence in 2009, the Commission determined the City to be the logical provider of services to the community of Sunset Beach. In accordance with Section 56375.3, the Commission has the discretion to approve, but not deny, the application. Additionally, under the small islands provision the Commission must approve annexation without protest or election proceedings.

### Competing Applications

In addition to the subject annexation proposal, a competing application for the incorporation of Sunset Beach was filed by residents of Sunset Beach. Both of the applications were accompanied by fiscal analyses of the proposals (*Attachments 2 & 3*).

The fiscal studies were submitted for peer review to Economic & Planning Systems (EPS), a consulting firm with experience in fiscal analysis of LAFCO proposals. The results of the peer review analysis were made available to the applicants for their consideration (*Attachments 4 & 5*). On August 2, 2010, the Huntington Beach City Council took formal action to file for annexation of Sunset Beach under the small island streamlined provisions. There has been no activity regarding the Sunset Beach incorporation for the past four months.

### LOCATION

Sunset Beach is approximately 134 acres and is substantially surrounded by the City of Huntington Beach to the north, east, and south. The area is bordered to the west by the Pacific Ocean and a portion of the Surfside residential community, part of the City of Seal Beach, to the north. Sunset Beach is generally located along Warner Avenue to the southeast, Anderson Street to the northwest, and Pacific Coast Highway to the northeast. A map of the proposed annexation territory is included as *Exhibit A*.

### HISTORY

The community of Sunset Beach dates back to the construction of the Pacific Electric Railway extension into Huntington Beach and the construction of the Huntington Pier Depot in the summer of 1904. The tracks for the railway ran on the beach and residential housing tracts were developed on the inland side of the train tracks, between the tracks and marsh land. For the first 50 years, Sunset Beach was an isolated County island primarily used for vacation homes. In 1960, the marshland to the northeast was dredged and converted into the Huntington Harbor. Despite being surrounded by newer residential and commercial development, the community has retained its own unique identity over the past one hundred years.

### LAND USE

Land uses for the Sunset Beach community are designated in the County's General Plan as the following: urban residential, open space, and community commercial. The City is required to pre-zone as part of the LAFCO application. A public hearing was held by the Huntington Beach Planning Commission on September 28, 2010, and by the City Council on October 18, 2010, to amend the Land Use Element of the General Plan and Zoning Code for reclassification of land use and zoning designations.

The City also adopted the Sunset Beach Specific Plan as part of the LAFCO pre-zoning requirement (*See Table 1 below*). The preparation of the City's Specific Plan was an open process with resident participation. Aside from minor additions requested by the community and language to make the document consistent with City land use documents, the Specific Plan adopted by Huntington Beach adheres to the policies in the County's original specific plan for the community.

Sunset Beach is comprised primarily of public uses including streets, parking, a linear park and the beach. Only 31 acres of the community are developed with private residential and commercial uses. The majority of the residential uses are located seaward of Pacific Coast Highway. Almost twice as much area is beach, the single largest land use comprising 43% of the total area. The linear park contains a tot lot, walking path, and public restrooms. The inland portion of the area includes a small residential pocket and the Sunset Channel, which is connected with the Huntington Harbor channel system.

Table 1: Land Use Designations – Sunset Beach Specific Plan

Land Use Designation	Acres
Residential High Density	22.32
Commercial Visitor-Mixed Use Overlay	9.16
Public	13.00
Open Space – Shoreline	57.74
Open Space – Water Recreation	3.40
Right of Way	28.26
Total	133.88

### ANALYSIS

LAFCO is required to consider several factors when reviewing annexations. The factors for your Commission to consider are found in Government Code Section 56668 and Section 56375.3 and are included in *Attachment 1*. The discussion below focuses on four issues: (1) how we got here, (2) annexation challenges, (3) the collaborative efforts, and (4) provision of municipal services.

#### **(1) How did we get here?**

On March 9, 2005 the Commission received the Municipal Service Review (MSR) for the Seal Beach, Los Alamitos, Rossmoor, and Sunset Beach area. The prototype MSR explored long-term municipal service and governance options for these cities and the adjacent unincorporated communities (Rossmoor and Sunset Beach). As an outgrowth to the MSR process, and subsequent sphere of influence studies, both unincorporated communities and cities in this area began to explore alternative long-term governance structures. These efforts resulted in two incorporation proposals involving Rossmoor and Sunset Beach and the annexation application for Sunset Beach.

On July 8, 2009, this Commission reviewed the sphere of influence (SOI) for the City of Huntington Beach, determined that the City was the most logical service provider to the community of Sunset Beach, and placed the community within the City's SOI. The City's sphere of influence was originally adopted in 1973 and includes approximately 19,359 acres of incorporated territory and the unincorporated Bolsa Chica Ecological Reserve. A map of the current sphere of influence is included as *Exhibit B* to this

report. In response to the Commission's action, two competing applications, one for annexation and one for incorporation, were filed with LAFCO in July of this year.

### **(2) Annexation Challenges**

The potential for annexation raised several concerns within the Sunset Beach community. As requested by the City, the annexation is being processed under the small islands provisions of the Government Code (§56375.3). This section of the Government Code, which was enacted in 2000, allows annexation of islands less than 150 acres without resident protest and prohibits LAFCO from denying the annexation.

One specific concern of the residents was the potential extension of existing City taxes, including the User Utility Tax (UUT). LAFCO and its general counsel determined that if processed under the small islands provision, which eliminates the right of protest, LAFCO will not, as a condition of the annexation, extend taxes/fees to Sunset Beach. The City's fiscal study and LAFCO's peer review were conducted with this assumption. The draft Resolution and terms and conditions have the effect of leaving to the City the decision about whether and how taxes and fees might be extended to the annexation area.

On November 9, 2010, the Huntington Beach City Attorney distributed a letter to the City Council and the Sunset Beach Community Association stating the City's intent to extend the UUT to Sunset Beach post annexation. The letter is attached for the Commission's review (*Attachment 6*).

### **(3) Collaborative Efforts**

Staff received comment letters from the County of Orange, Orange County Fire Authority (OCFA), and the Orange County Sanitation District (OCSD). The County's comments related to the transfer of assets and their comments were incorporated into the Pre-Annexation agreement and the LAFCO terms and conditions. The OCFA comments related to reserve Fire Station #3 and continued service to Bolsa Chica. The OCSD submitted comments regarding the potential impact various annexation scenarios could have on the District's governance structure. Each of the comments was analyzed by staff and, where appropriate, was addressed through the terms and conditions within the draft resolution. For the Commission's consideration the comment letters are included as *Attachment 7* to this report.

On August 31, 2010, the Sunset Beach Transition Committee presented LAFCO, the County, and the City with a list of 20 issues to be addressed as part of the potential annexation. While LAFCO facilitated many discussions, the County, the City and the SBCA maintained open lines of communication throughout the annexation process. The original list is included as *Attachment 8* to this report. The annotated list (*Attachment 9*) describes how each of the items is addressed through (1) the LAFCO resolution, (2) the City's Sunset Beach Specific Plan, (3) the City/County Annexation

agreement, and/or (4) the Memorandum of Understanding (MOU) between the City and the Sunset Beach Community Association.

Terms and Conditions (LAFCO)

The LAFCO terms and conditions are constrained to issues within LAFCO jurisdiction and relative the annexation proceedings. These are briefly discussed below and included in their entirety in the attached draft resolution (*Attachment 12*). In addition to standard terms and conditions the draft resolution includes preservation of Sunset Beach's identity through signage, preservation of the linear park, and the transfer of certain County assets to the City.

Sunset Beach Specific Plan

The Sunset Beach Specific Plan, adopted by the City as pre-zoning for the annexation, addresses a number of issues raised by Sunset Beach residents. The Specific Plan ensures the continuation of the LCP Advisory Board, the recognition of legal non-conforming structures and uses, the designation of the greenbelt as an open space feature consistent with the uses in effect at the time of annexation, and recognition of the current waterway and beach encroachments. Additionally, the Specific Plan includes provisions prohibiting the establishment of marijuana dispensary related businesses, methadone related businesses, and drug and alcohol rehabilitation related businesses in Sunset Beach.

Pre-annexation Agreement (County & Huntington Beach)

Similarly to the LAFCO terms and conditions, the Pre-annexation Agreement (*Exhibit A of Attachment 12*) includes a number of conditions relating to the preservation of the community's identity. The agreement also covers the responsibility of various services for an interim period, such as land use authority, which will continue to be provided by the County until approval of the City's Local Coastal Program by the Coastal Commission. Public works projects, such as repairs to the Broadway Bridge and resurfacing of specified streets upon completion of the Edison Rule 20A utility undergrounding project, are also included.

Another project referenced in the Pre-annexation Agreement involves the potential establishment of an Underground Assessment District for the remaining portions of the community. The County has agreed to provide upfront funding for this project, to cover the cost of the engineering report which will be reimbursed by Underground Assessment District if district formation is approved by vote of the community. Upon annexation, the City shall assume responsibility for the formation of the assessment district and completion of the project.

Additionally, the agreement clearly articulates the transfer of assets from the County to the City. These assets include the beach, the linear park, the Sunset Harbor, and all of the rights-of-way within Sunset Beach. The County will quitclaim the deeds over to the

City which will accept the deeds as part of the agreement. As part of the transfer of assets, the County will also transfer its existing contract with U.S. Ocean Safety for lifeguard services to the City. The Pre-annexation Agreement requires the County of Orange to pay for lifeguard services for a period of two years.

Memorandum of Understanding (Huntington Beach and SBCA)

The MOU between the City and SBCA describes responsibilities of each party post-annexation. The MOU is a comprehensive agreement addressing most of the issues requested the community to be addressed as part of the annexation. These issues include but are not limited to: Sunset Beach identity, the Local Coastal Plan, public works and utility projects, and beach hours and programs (See Exhibit B of Attachment 12).

**(4) Municipal Services**

The City of Huntington Beach is a full-service municipality. Approval of the annexation would transfer local service provision for general government administration, police, fire, paramedic, parks and recreation, street maintenance, and planning from the County of Orange to the City of Huntington Beach (see Table 2 below).<sup>1</sup>

Table 2: Plan of Service – Sunset Beach

Service	Pre-annexation	Post-annexation
Water	City of Huntington Beach	City of Huntington Beach
Sanitary Services	Orange County Sanitation District & Sunset Beach Sanitary District	Orange County Sanitation District & Sunset Beach Sanitary District
Solid Waste	Sunset Beach Sanitary District	Sunset Beach Sanitary District
Police Protection & Traffic Enforcement	Orange County Sheriff's Department /California Highway Patrol / City of Huntington Beach	City of Huntington Beach
Fire & EMS Services	Orange County Fire Authority/City of Huntington Beach	City of Huntington Beach
Park & Recreation	OC Parks (CSA 26)	City of Huntington Beach
Public Works	County of Orange	City of Huntington Beach
Animal Control	OC Animal Care	OC Animal Care
Library	County of Orange	City of Huntington Beach

<sup>1</sup> Fire protection will transfer from the Orange County Fire Authority.

Water

The City of Huntington Beach provides retail water service to Sunset Beach and charges a non-resident surcharge of 10% on the residents within the unincorporated community. Upon annexation the non-resident surcharge will be removed and service from the City would continue unaffected.<sup>2</sup>

Sanitation, Sewerage, & Solid Waste

The area is currently served regional sewer collection and treatment by the Orange County Sanitation District. The Sunset Beach Sanitary District provides local sewer collection and trash collection. The community of Sunset Beach is outside of the boundaries of OCSD and is serviced through an existing out-of-area service agreement. Sewage conveyance from Sunset Beach to the regional trunk lines is provided by the City of Huntington Beach. There will be no change in sewer or solid waste services to Sunset Beach as part of the proposed annexation.

Police Protection & Traffic Enforcement

Police protection and traffic enforcement are currently provided by the Orange County Sheriff's Department and the California Highway Patrol (CHP). Through a countywide mutual aid agreement, the City of Huntington Beach Police Department also provides assistance as necessary. Annexation would not impact the role of CHP, but would result in the transition of responsibility from the County Sheriff's Department to the City's Police Department. The City's Police Department has indicated an ability to provide services to the Sunset Beach community without impacting current levels of service to its current residents.

Fire Protection & EMS Services

Sunset Beach is currently served by the Orange County Fire Authority (OCFA). The OCFA Fire Station in Sunset Beach is manned by reserve (volunteer) personnel. The City of Huntington Beach, which has a fire station located approximately 800 feet from Sunset Beach on Warner Avenue, is generally the first responder to calls in Sunset Beach requiring fire engine/paramedic assistance.

Since 2004, OCFA has contracted with the City for Advanced Life Support (paramedic) services. Upon annexation, the contract will expire and the City will continue to be responsible for all fire protection and emergency medical response services to Sunset Beach. OCFA has indicated that Fire Station #3 is surplus and is preparing to sell the property. OCFA has had discussions with the residents regarding potential purchase of the property. Additionally, 100% of the structural fire fund revenues will be transferred to the City as a result of the annexation.

---

<sup>2</sup> The City's Annexation Study placed this at \$23,151 (page 13)

Park & Recreation

Park and recreation services and amenities are currently provided by County Service Area No. 26 – OC Parks. Upon annexation, maintenance of the beach and linear park will transfer from the OC Parks to the City of Huntington Beach. The City has agreed to include the linear park within the City's inventory of parks and open space. One concern of the residents was the continuation of the greenbelt as a public space for the community of Sunset Beach.

The draft resolution approving the annexation (*Attachment 12*) references conditions for the City to retain the linear park as a community park and open space. Additionally, the City's Measure M will apply to the park once it becomes part of the City. To further ease the residents' concerns regarding the greenbelt, the ordinance generally requires two-thirds vote of the electorate to convert any existing parklands or open space to other uses.

Public Works

Orange County Department of Public Works provides a number of services within Sunset Beach. The department provides beach and road maintenance, planning and building services, and is currently working with the community on two utility undergrounding projects. As described in the Pre-annexation Agreement, the County will continue some of the projects while others will be transferred to the City.

Animal Control

OC Animal Care is the current provider of animal control to Sunset Beach. The City of Huntington Beach is one of 19 cities currently receiving service from OC Animal Care. There will be no impact in animal control services to the community of Sunset Beach as a result of the annexation.

Library

Sunset Beach currently falls within the Orange County Public Library system. The closest public library is the Mary Wilson Library in the City of Seal Beach. The library is approximately 3.1 miles from the center of Sunset Beach. If annexed, library services for Sunset Beach will transfer to the City of Huntington Beach. The closest Huntington Beach library is the Helen Murphy Branch Library which is approximately 3.4 miles from the center of Sunset Beach. As discussed below, the portion of the property taxes currently dedicated to the Orange County Library System will transfer in their entirety to the City of Huntington Beach.

### **ENVIRONMENTAL REVIEW**

Pursuant to the California Environmental Quality Act (CEQA; Public Resources Code §2100 *et seq.*), the City adopted a negative declaration for the pre-zoning and annexation of Sunset Beach. On October 18, 2010, the City Council approved the following documents as part of the LAFCO pre-zoning requirement: (1) Negative Declaration No. 10-005, (2) General Plan Amendment No. 10-002, (3) Zoning Text Amendment No. 10-002 (Sunset Beach Specific Plan), (4) Zoning Map Amendment No. 10-001, and (5) Local Coastal Program Amendment No. 10-001. The Negative Declaration is attached (*Attachment 10*), the Specific Plan and other environmental documentation are in the project folder and available for review. The Commission, as a responsible agency, may utilize this documentation in its consideration of the proposed annexation.

### **PROPERTY TAX**

On November 15, 2010, the City and on November 23, 2010, the County adopted the property tax resolutions agreeing to split the County's current share of the 1% base levy rate. According to the resolutions adopted by both agencies, the City will receive 55.9671% of the County's share of the 1% basic levy of property tax and the County will retain 44.0383%. The property tax resolutions also include transfer of 100% of the structural fire fund and the library fund to the City.

### **COMMENT LETTERS**

Comment letters were received by LAFCO staff and are attached for the Commission's review (*Attachment 11*).

### **CONCLUSION**

The application for annexation has been processed as part of the LAFCO Unincorporated Small Island Incentive Program. The City of Huntington Beach has been determined by this Commission to be the logical long term service provider for the community of Sunset Beach. The Commission has little discretion with island annexation applications and can only approve the application. If approved, the annexation would not be subject to resident protest or election.

### **RECOMMENDATIONS**

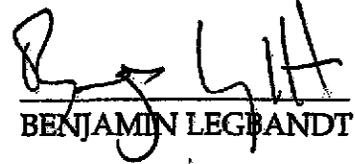
Staff recommends that the Commission:

1. Certify that the Commission has reviewed and considered the information contained within the Negative Declaration and Specific Plan prepared by the City of Huntington Beach
2. Approve the form of resolution for the "Sunset Beach Annexation to the City of Huntington Beach" (IA 10-05) subject to the following terms and conditions therein.

Respectfully Submitted,

  
JOYCE CROSTHWAITE

  
CAROLYN EMERY

  
BENJAMIN LEGBANDT

**Exhibits**

- A. Annexation Vicinity Map
- B. Sphere of Influence Map for Huntington Beach

**Attachments**

- 1. Factors Considered in Review of Proposal
- 2. City of Huntington Beach Annexation Study
- 3. Incorporation Feasibility Study
- 4. EPS Peer Review of Annexation Study
- 5. EPS Peer Review of Incorporation Study
- 6. November 9, 2010 Letter from Huntington Beach City Attorney
- 7. Comments from Affected Agencies
- 8. 20-Point List of Issues
- 9. Annotated 20-Point List of Issues
- 10. Negative Declaration
- 11. Public comment letters
- 12. Draft Resolution

EXHIBIT  
B

1 STERN, VAN VLECK & McCARRON, LLP  
2 Dale A. Stern, State Bar No. 131108  
3 John C. McCarron, State Bar No. 225217  
4 925 L Street, Suite 850  
5 Sacramento, California 95814  
6 Telephone: (916) 442-1298  
7 Fax No.: (916) 341-0849

8 Attorneys for Plaintiff  
9 CITIZEN'S ASSOCIATION OF SUNSET BEACH

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF ORANGE

12 CITIZEN'S ASSOCIATION OF SUNSET )  
13 BEACH, ) CASE NO. 30-2010-00431832  
14 )  
15 ) Petitioner/Plaintiff, ) **DECLARATION OF JACK MARKOVITZ**  
16 ) **IN SUPPORT OF APPLICATION FOR**  
17 ) **PRELIMINARY INJUNCTION**  
18 vs. )  
19 )  
20 ) ORANGE COUNTY LOCAL AGENCY ) Date: January 7, 2011  
21 ) FORMATION COMMISSION, a ) Time: 11:00 a.m.  
22 ) governmental entity; the CITY OF ) Judge: Steven L. Perk  
23 ) HUNTINGTON BEACH, a municipal ) Dept.: C32  
24 ) corporation; and DOES 1 through 50, )  
25 ) inclusive, ) Action Filed: December 9, 2010  
26 ) Trial Date: TBD  
27 )  
28 ) Respondents/Defendants. )

I, Jack Markovitz, hereby declare as follows:

1. I am over 21 years of age and I am in all respects competent to testify to the facts set forth in this Declaration. The facts set forth in this Declaration are based upon my personal knowledge, and if called as a witness, I would testify as set forth below.

2. I am a resident and property owner in Sunset Beach, California. I have lived in Sunset Beach for about 23 years. I have personally met with many residents of Sunset Beach who are greatly concerned and upset about Huntington Beach's efforts to annex Sunset Beach. Many of the residents were more interested in trying to incorporate Sunset Beach as a city than becoming part of Huntington Beach.

3. I am the current Board Chairman of the Citizen's Association of Sunset Beach ("CASB"). Residents of Sunset Beach formed CASB as a non-profit mutual benefit corporation to

1 support the interests of the residents of Sunset Beach. CASB was formed in July of 2010, largely  
2 in response to the failed efforts of the Sunset Beach Community Association ("SBCA") to move  
3 forward with trying to incorporate Sunset Beach as a city.

4 4. Through the SBCA, residents of Sunset Beach obtained an independent financial  
5 study for incorporating Sunset Beach as a city, submitted an application to the OC LAFCO to  
6 incorporate Sunset Beach, and raised \$100,000.00 to submit to the OC LAFCO as was required to  
7 complete the incorporation application. The incorporation effort stalled a few months later when  
8 the SBCA treasurer inexplicably refused to send the check for \$100,000.00 to the OC LAFCO to  
9 complete the incorporation application process.

10 5. Soon thereafter, the SBCA Board voted to return the \$100,000.00 to the individuals  
11 who contributed that money.

12 6. Other than some mutual members, there is no relationship between SBCA and  
13 Plaintiff/Petitioner CASB.

14 7. Many Sunset Beach residents like me are also concerned about the prospect of  
15 having to pay increased taxes after the annexation by Huntington Beach. Sunset Beach residents  
16 do not currently pay a utility users tax or a property tax override (which is related to Huntington  
17 Beach pension obligations dating back many years).

18 8. For many months, until November of 2010, the Huntington Beach City Council  
19 repeatedly said publicly that post-annexation the City would not impose its utility user tax and  
20 property tax override on Sunset Beach residents.

21 9. On July 15, 2010, at my direction, counsel for CASB sent a letter to the OC  
22 LAFCO advising the OC LAFCO that CASB believed that the City was misleading Sunset Beach  
23 residents by stating that if the annexation occurs, the City would not impose its utility tax on  
24 Sunset Beach residents. CASB believed that the law compels the City to impose all of its taxes on  
25 Sunset Beach residents and that the City would ultimately impose those taxes without first giving  
26 Sunset Beach residents a vote on whether to approve those taxes. CASB requested that the OC  
27 LAFCO require the City to obtain a favorable Proposition 218 vote by Sunset Beach residents  
28 regarding the utility tax as a condition of the annexation.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

10. CASB's counsel sent another letter to the OC LAFCO on September 30, 2010, making a similar request.

11. The OC LAFCO did not respond to either of these letters by CASB's counsel.

12. On November 9, 2010, Huntington Beach City Attorney Jennifer McGrath sent a letter to the SBCA, indicating that Huntington Beach had now determined that it was going to impose all Huntington Beach taxes on Sunset Beach residents post-annexation. Many Sunset Beach residents, including myself, considered this to be a classic bait and switch tactic.

13. In light of this clear directive from Huntington Beach regarding taxes, on November 16, 2010, counsel for CASB again sent a letter at my direction to the OC LAFCO, requesting that it impose a condition on the annexation that Huntington Beach first obtain a favorable vote from Sunset Beach residents pursuant to Proposition 218 approving imposition of the new Huntington Beach taxes. The OC LAFCO did not respond to this letter.

14. On December 8, 2010, the OC LAFCO held a hearing on the City's annexation proposal. I attended that hearing, and despite objections from numerous residents of Sunset Beach and from CASB's attorney, the OC LAFCO voted to approve Resolution No. IA 10-05, which approved the Sunset Beach annexation to the City. I am appalled by the fact that the OC LAFCO and the City of Huntington Beach are moving forward with this annexation with total disregard for the constitutional rights of the residents of Sunset Beach under Proposition 218.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed this 13<sup>th</sup> day of December, 2010, in Sunset Beach, California.

Dated: December 13, 2010

  
\_\_\_\_\_  
Jack Markovitz

EXHIBIT  
C

**Chapter 3.36****UTILITIES TAX**

(1598-10/70, 2211-8/77, 2452-10/80, 2470-2/81, 2886-12/86, 2933-8/88, 3095-4/91, 3096-4/91,  
3118-7/91, 3162-9/92, 3390-5/98, 3610-8/03)

**Sections:**

- 3.36.010 Definitions
- 3.36.020 Telephone Tax
- 3.36.030 Electricity Tax
- 3.36.040 Gas Users
- 3.36.050 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity
- 3.36.060 Water Users Tax--Imposed
- 3.36.070 Video Users Tax
- 3.36.080 Effect of Commingling Non-Taxable with Taxable Items
- 3.36.090 Constitutional Exemptions
- 3.36.100 (Repealed Ord. No.3610-8/03)
- 3.36.110 Substantial Nexus / Minimum Contacts
- 3.36.120 (Repealed Ord. No.3610-8/03)
- 3.36.130 Filing Return and Payment
- 3.36.140 Collection Penalties – Service Suppliers or Self-Collectors
- 3.36.150 Deficiency Determination and Assessment – Tax Application Errors
- 3.36.160 Administrative remedy – Nonpaying Service Users
- 3.36.170 Actions to Collect
- 3.36.180 Additional Powers and Duties of Tax Administrator
- 3.36.190 Records
- 3.36.200 Refunds
- 3.36.210 Appeals
- 3.36.220 No injunction/Writ of Mandate
- 3.36.230 Remedies cumulative
- 3.36.240 Notice of Changes to Ordinance
- 3.36.245 Audit by City
- 3.36.250 Senior citizen Exemption
- 3.36.260 (Repealed Ord. No.3610-8/03)
- 3.36.265 (Repealed Ord. No.3610-8/03)
- 3.36.270 (Repealed Ord. No.3610-8/03)
- 3.36.280 (Repealed Ord. No.3610-8/03)
- 3.36.290 (Repealed Ord. No.3610-8/03)
- 3.36.300 (Repealed Ord. No.3610-8/03)
- 3.36.310 (Repealed Ord. No.3610-8/03)
- 3.36.320 (Repealed Ord. No.3610-8/03)
- 3.36.330 (Repealed Ord. No.3610-8/03)
- 3.36.340 (Repealed Ord. No.3610-8/03)

**3.36.010 Definitions.** Except where the context otherwise requires, the definitions given in this Section govern the construction of this Chapter:

- (a) "Billing Address" means the mailing address of the Service user where the Service supplier submits invoices or bills for payment by the customer.
- (b) "Charges for Mobile Telecommunications Services" has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Sections 116 and 124) and the regulations thereunder."
- (c) "City" means the City of Huntington Beach.

- (d) "City Administrator" means the City Administrator, or his or her authorized representative.
- (e) "Exempt Wholesale Generator" has the same meaning as set forth in the Federal Power Act (15 U.S.C. Section 79z-5a) and regulations thereunder.
- (f) "Gas" means natural or manufactured gas or any alternate hydrocarbon fuel, which may be substituted therefor.
- (g) "Mobile Telecommunications Service" has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder.
- (h) "Month" means a calendar month.
- (i) "Non-Utility Service Supplier" means:
- (1) a service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include, but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;
  - (2) an electric service provider ("ESP"), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; and
  - (3) a gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to Gas users within the City.
- (j) "Person" means, without limitation, any domestic, non-profit or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, limited liability company, joint venture, club, trust, Massachusetts business or common law trust, estate, society, cooperative, receiver, trustee, guardian or other representative appointed by order of any court, any natural individual, municipal district or municipal corporation (other than the City).
- (k) "Place of Primary Use" has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 116 et. seq.) and the regulations thereunder.
- (l) "Received" as that term is used in connection with receipt of taxes by the Treasurer means actual receipt by the Treasurer. A tax is not received when it has been postmarked and/or mailed.
- (m) "Service Address" means the residential street address or the business street address of the Service user, and in the case of mobile telecommunications service, the service user's place of primary use.
- (n) "Service Supplier" means any person, including the City, that provides telephone communication, electric, gas, water or video service to a user of such services within the City. The term shall include any Person required to collect, or self-collect under Section 3.36.050 of this Chapter, and remit a tax as imposed by this Chapter, including its billing agent in the case of electric, gas, water or video service suppliers.

- (o) "Service User" means a person required to pay a tax imposed by this Chapter.
- (p) "State" means the State of California.
- (q) "Tax Administrator" means the Finance Officer of the City, or his or her authorized representative.
- (r) "Telephone Communication Services" means "communications services" as defined in Sections 4251 and 4252 of the Internal Revenue Code, and the regulations thereunder, and shall include any service that is capable of transmitting telephonic quality communications (including the use of Internet Protocol (IP) or other similar means of digitization and/or packetization of telephonic quality communications for transmission over digital networks) by analog, digital, electronic, radio or similar means through "interconnected service" with the "public switched network" (as these terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission – see *47 U.S.C.A. Section 332(d)*), whether such transmission occurs by wire, cable, cable modem or digital subscriber line (DSL), internet, fiber-optic, light wave, laser, microwave, radio wave (including, but not limited to, mobile telecommunications service, cellular service, commercial mobile service, and commercial mobile radio service (see *47 U.S.C. Section 332(d)(1) and Part 20.3 of Title 47 of the Code of Federal Regulations*), personal communications service (PCS), specialized mobile radio (SMR), and other similar services regardless of radio spectrum used), or other similar facilities.
- (s) "Telephone Corporation, Electrical Corporation, and Water Corporation" have the same meanings as defined in Sections 234, 218, and 241 respectively, of the Public Utilities Code of the State of California, as said Sections existed on January 1, 1970. "Electrical Corporation" and "Water Corporation" includes any organization, municipality or agency engaged in the selling or supplying of electricity or water to a Service user; however, as specified by Public Utilities Code Section 218, does not include a corporation or person employing cogeneration technology or producing power from other than a conventional power source for the generation of electricity. (1598-10/70, 2933-8/88, 3610-8/03)
- (t) "Treasurer" means the City Treasurer of Huntington Beach or his or her authorized representative.
- (u) "Video Service Supplier" means any Person, company, or service which provides one or more channels of video programming, including any communications that are ancillary, necessary or common to the use or enjoyment of the video programming, to or from an address in the City, including to or from a business, home, condominium, or apartment, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A "video service supplier" includes, but is not limited to, multichannel video programming distributors (as defined in *47 U.S.C.A. Section 522(13)*), open video systems (OVS) suppliers, suppliers of cable television, master antenna television, satellite master antenna television, multichannel multipoint distribution services (MMDS), direct broadcast satellite (to the extent federal law permits taxation of its video services, now or in the future), and other suppliers of video programming or communications (including two-way communications), whatever their technology.
- (v) "Video Services" means any and all services related to the providing of video programming (including origination programming), including any communications that are ancillary, necessary or common to the use or enjoyment of the video programming, regardless of the content of such video programming or communications. "Video Services" does not include services for which a tax is paid under Section 3.36.020 of this Chapter.

(1598-10/70, 2933-8/88, 3610-8/03)

**3.36.020 Telephone Users Tax.**

- (a) There is hereby imposed a tax upon every person, other than a telephone corporation, using international, interstate, and intrastate telephone communication services. The tax imposed by this Section shall be at the rate of five percent (5%) of all charges made for such services, and shall be collected from the service user by the telephone communications services supplier or its billing agent. There is a rebuttable presumption that telephone communication services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this Chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. Charges for mobile telecommunications services are subject to taxation under this article if the customer's place of primary use is in the City, regardless of where the mobile telecommunications service may originate, terminate, or pass through.
- (b) As used in this Section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telephone communication services. As used in this Section, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones; provided that, where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due.
- (c) The Tax Administrator, from time to time, may issue and disseminate to service suppliers which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those telephone communication services that are subject to the tax of Section 3.36.020. This administrative ruling shall not impose a new tax, revise an existing tax methodology, or increase an existing tax. An administrative ruling shall not constitute a new tax, a revision of an existing tax methodology, or an increase in an existing tax if such administrative ruling is:
- (1) consistent with the existing ordinance language; and,
  - (2) merely reflects a change in, clarification to, or new rendition of:
    - (a) the definition, interpretation, or application of substantial nexus by a court of competent jurisdiction or by preemptive state or federal law, for purposes of taxation; or,
    - (b) the definition, interpretation, or application of the Federal excise tax rules, regulations, and laws pertaining to "communications services" (*Sections 4251, 4252 and 4253 of the Internal Revenue Code*) by the Internal Revenue Service, or by a state or local agency that assumes an interpretative role of those rules, regulations, and laws in the event that the Federal excise tax on telecommunications is repealed.
- (d) As used in this Section, the term "telephone communication services" shall not include "private mobile radio service" (as defined in *Part 20.3 of Title 47 of the Code of Federal Regulations*) or "private mobile service" (as defined in *47 U.S.C.A. Section 332 (d)(3)*) which is not interconnected to the public switched network. The tax imposed under subsection (a) above, shall not be imposed upon any person for using telephone communication services to the extent that, pursuant to *Sections 4252 and 4253 of the Internal Revenue Code*, the amounts paid for such communication services are not subject to or are exempt from the tax imposed under *Section 4251 of the Internal Revenue Code*. In the event that the Federal excise tax on "communication services" as provided in *Sections 4251, 4252 and 4253 of the Internal Revenue Code* is subsequently repealed, any reference in this Section and in Section 3.36.010(r) to such law, including any related federal regulations, private letter rulings,

case law, and other opinions interpreting these sections, shall refer to that body of law that existed immediately prior to the date of repeal, as well as to any judicial or administrative decision interpreting such Federal excise tax law which is published or rendered after the date of repeal.

- (e) To prevent actual multi-jurisdictional taxation of telephone communication services subject to tax under this section, any service user, upon proof to the Tax Administrator that the service user has previously paid the same tax in another state or city on such telephone communication services, shall be allowed a credit against the tax imposed to extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the City under this Section.
- (f) The tax on telephone communication services imposed by this Section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the Treasurer, and must be received by the Treasurer on or before the twentieth (20<sup>th</sup>) day of the following month.
- (1598-10/70, 3096-4/91, 3162-9/92, 3610-8/03)

### **3.36.030 Electricity Tax.**

- (a) There is hereby imposed a tax upon every person using electricity in the City. The tax imposed by this Section shall be at the rate of five percent (5%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the Service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.
- (b) As used in this Section, the term "charges" shall apply to all services, components and items that are: i) necessary or common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:
- (1) energy charges;
  - (2) distribution or transmission charges;
  - (3) metering charges;
  - (4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;
  - (5) customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and,
  - (6) charges, fees, or surcharges for electricity services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line items basis on the customer billing.

- (c) As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity.
- (d) The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use or enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of subsection (a) above
- (e) As used in this Section, the term "using electricity" shall not be construed to include electricity used in water pumping by water corporations; nor shall the term include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.
- (f) The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 3.36.050 of this Chapter. All other taxes on charges for electricity imposed by this Section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Treasurer, and must be received during normal business hours by the Treasurer on or before the twentieth (20<sup>th</sup>) day of the following month; or, at the option of the person required to collect and/or remit the tax, such Person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Treasurer on or before the twentieth (20<sup>th</sup>) day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.
- (1598-10/70, 2933-8/88, 3610-8/03)

### **3.36.040 Gas Users.**

- (a) There is hereby imposed a tax upon every person using gas in the City which is delivered through a pipeline distribution system. The tax imposed by this Section shall be at the rate of five percent (5%) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.
- (b) As used in this section, the term "charges" shall apply to all services, components and items for gas service that are: i) necessary for or common to the receipt, use and enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:
- (1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;

- (2) gas transportation charges (including interstate charges to the extent not included in commodity charges);
  - (3) storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;
  - (4) capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use and enjoyment of gas service; and,
  - (5) charges, fees, or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.
- (c) As used in this Section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.
- (d) The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use or enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of subsection (a) above.
- (e) There shall be excluded from the base on which the tax imposed in this Section is computed:
- (1) Charges made for gas which is to be resold and delivered through a pipeline distribution system;
  - (2) Charges made for gas to be used in the generation of electricity by an electrical corporation;
  - (3) Charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities; and
  - (4) Charges for gas used in water pumping by a water corporation.
- (f) The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 3.36.050 of this Chapter. All other taxes on charges for gas imposed by this Section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Treasurer, and must be received during normal business hours by the Treasurer, on or before the twentieth (20<sup>th</sup>) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous

month or upon the payment pattern of the service user, which must be received by the Treasurer on or before the twentieth (20<sup>th</sup>) day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

(1598-10/70, 3610-8/03)

**3.36.050 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity.**

(a) Any service user subject to the tax imposed by Section 3.36.030 or by Section 3.36.040 of this Chapter, which (i) produces gas or electricity for self-use, (ii) receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this Chapter, or (iii) for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity in the City, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Treasurer. All taxes owed pursuant to this subsection must be received during normal business hours by the Treasurer on or before the twentieth (20<sup>th</sup>) day of the month following the gas or electricity usage. In lieu of paying said actual tax, the service user may, at its option, remit to the Treasurer within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

(b) The Tax Administrator may require said service user to identify its non-utility service supplier and provide, subject to audit: invoices; books of account; or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental service, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. Rate schedules for this purpose shall be available from the City.

(3610-8/03)

**3.36.060 Water Users Tax—Imposed.**

(a) There is hereby imposed a tax upon every person using water in the City which is delivered through a pipeline distribution system. The tax imposed by this Section shall be at the rate of five percent (5%) of the charges made for such water and shall be collected from the service user by the service supplier, or its billing agent.

(b) As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary or common to the receipt, use and enjoyment of water service; or, ii) currently, or historically have been, included in a single or bundled rate for water service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

- (1) water commodity charges (potable and non-potable);
- (2) distribution or transmission charges;

- (3) metering charges;
  - (4) customer charges, late charges, service establishment or reestablishment charges, franchise fees, franchise surcharges, capital improvement surcharges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use and enjoyment of water service; and,
  - (5) charges, fees, or surcharges for water services or programs, which are mandated by a water district or a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.
- (c) As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the water services.
- (d) The Tax Administrator, from time to time, may survey the water service suppliers in the City to identify the various unbundled billing components of water retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by a water district or a state or federal agency as a condition of providing such water service. The Tax Administrator, thereafter, may issue and disseminate to such water service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use or enjoyment of water service; or, ii) currently, or historically have been, included in a single or bundled rate for water service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of subsection (a) above.
- (e) There shall be excluded from the base on which the tax imposed in this Section is computed charges made for water which is to be resold and delivered through a pipeline distribution system, and charges made by a municipal water department, public utility or a county or municipal water district for water used and consumed by such department, utility or district in the conduct of the business of such department, utility or district.
- (f) The tax on water service imposed by this Section shall be collected from the service user by the service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Treasurer, and must be received during normal business hours by the Treasurer on or before the twentieth (20<sup>th</sup>) day of the following month.

(1598-10/70, 3610-8/03)

### **3.36.070 Video Users Tax.**

- (a) There is hereby imposed a tax upon every person in the City using video services from a video service supplier. The tax imposed by this Section shall be at the rate of five percent (5%) of the charges made for such video services. The tax shall be collected from the service user by the video service supplier, or its billing agent.
- (b) As used in this Section, the term "charges" shall apply to all services, components and items that are: i) necessary or common to the receipt, use and enjoyment of video service; or, ii) currently, or historically have been, included in a single or bundled rate for video service by a local video service supplier to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:
- (1) franchise fees and access fees (PEG), whether designated on the customer's bill or not;
  - (2) initial installation of equipment necessary for provision and receipt of video services;

- (3) late fees, collection fees, bad debt recoveries, and return check fees;
  - (4) activation fees, reactivation fees, and reconnection fees;
  - (5) all programming services (e.g., basic services, premium services, audio services, videogames, pay-per-view services, and electronic program guide services);
  - (6) equipment leases (e.g., converters, remote devices);
  - (7) service calls, service protection plans, name changes, changes of services, and special services; and
  - (8) the leasing of channel access.
- (c) As used in this Section, the term "charges" shall include the value of any other services, credits, property or every kind or nature, or other consideration provided by the service user in exchange for the video services.
- (d) The Tax Administrator, from time to time, may survey the video service suppliers in the City to identify the various components of video service that are being offered to customers within the City, and the charges therefor. The Tax Administrator, thereafter, may issue and disseminate to such video service suppliers an administrative ruling identifying those components: i) that are necessary or common to the receipt, use or enjoyment of video service; or, ii) which currently are, or historically have been, included in a bundled rate for video service by a local distribution company. Charges for such components shall be subject to the tax of subsection (a) above.
- (e) The tax imposed by this Section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one (1) month shall be remitted to the Treasurer, and must be received during normal business hours by the Treasurer on or before the twentieth (20<sup>th</sup>) day of the following Month.

(3118-7/91, 3610-8/03)

**3.36.080 Effect of Commingling Non-Taxable with Taxable Items.** If one or more non-taxable items are bundled or billed together with one or more taxable items (as provided for by this Chapter) under a single charge on a service user's bill, the entire single charge shall be deemed taxable.

(3610-8/03)

### **3.36.090 Constitutional Exemptions**

- (a) Nothing in this Chapter shall be construed as imposing a tax upon:
- (1) any person or service if imposition of such tax upon that person or service would be in violation of a federal or California statute, the Constitution of the United States or the Constitution of the State of California; and,
  - (2) the City.
- (b) Any service user that is exempt from the tax imposed by this Chapter pursuant to subsection (a) shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or

subdivision with a commonly recognized name, or is a service user of telephone communications service that has received a federal excise tax exemption certificate for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in its service suppliers so that the Tax Administrator can properly notify the new service suppliers of the service user's tax exempt status. A service user that fails to comply with this Section shall not be entitled to a refund of the utility tax collected and remitted to the Tax Administrator from such Service user as a result of such non-compliance. Upon request of the Tax Administrator, a services supplier or non-utility service supplier, or its billing agent, shall provide a list of the names and addresses of those customers which, according to its billing records, are deemed exempt from the utilities tax. With respect to a service user of telephone communication services, a service supplier of such telephone communication services doing business in the City, upon request of the Tax Administrator, shall provide a copy of the federal exemption certificate for each exempt customer with the City that is served by such service supplier.

- (c) The decision of the Tax Administrator on a tax exemption application may be appealed pursuant to Section 3.36.210 of this Chapter. Filing an application with the Tax Administrator pursuant to this Section and an appeal to the City Administrator pursuant to Section 3.36.210 of this Chapter is a prerequisite to a suit thereon.

(1598-10/70, 3610-8/03)

**3.36.110 Substantial Nexus / Minimum Contacts.** For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Chapter, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment.

(3610-8/03)

**3.36.120 Duty to Collect and Remit – Procedures.**

The duty of service suppliers to collect and remit the taxes imposed by the provisions of this Chapter shall be performed as follows:

- (a) The tax shall be collected insofar as practicable at the same time as, and along with the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 3.36.160 of this Chapter shall apply.
- (b) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

(3610-8/03)

**3.36.130 Filing Return and Payment.** Each person required by this Chapter to remit a tax shall file a return with the Treasurer, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax owed shall be included with the return and remitted to the Treasurer, who will forward the return to the Tax Administrator. The Tax Administrator is authorized to require such further information as he or she deems necessary to properly determine if the tax herein imposed is being levied, collected and remitted in accordance with this Chapter. Returns and tax remittances are due immediately upon cessation of business for any reason. Pursuant to *Revenue and Tax Code Section 7284.6*, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information, and not subject to the Public Records Act.

(1598-10/70, 2211-8/77, 3390-5/98, 3610-8/03)

**3.36.140 Collection Penalties – Service Suppliers or Self-Collectors.**

- (a) Taxes collected from a service user, or self-collected by a service user subject to Section 3.36.050 of this Chapter, are delinquent if not received by the Treasurer on or before the due date during normal business hours. Should the due date occur on a weekend or legal holiday, the return must be received by the Treasurer during normal business hours on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this Section shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day.
- (b) If a service supplier, or a service user subject to Section 3.36.050 of this Chapter, fails to remit any tax collected, on or before the due date, said person shall pay a penalty for such delinquencies at the rate of ten percent (10%) of the total tax that is delinquent in the remittance.
- (c) If payment is not received by the Treasurer within thirty (30) days following the date on which the remittance first became delinquent, the service supplier or service user, shall pay a second delinquency penalty of ten percent (10%) of the amount of tax in addition to the amount of the tax and the penalty first imposed. (3390-5/98)
- (d) The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and/or remit taxes pursuant to the provisions of this Chapter for fraud or gross negligence in reporting or remitting at the rate of twenty-five percent (25%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the Treasurer.
- (e) In addition to any other penalties imposed by this Chapter, any service supplier required to collect and/or remit any tax imposed by the provisions of this Chapter who fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the service user's billing) or fails to remit the tax collected on or before the due date, or, in the case of a service user that fails to properly self-collect and remit the tax under Section 3.36.050 of this Chapter on or before the due date, shall pay interest at the rate of one and one-half percent (1-1/2%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.
- (f) For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.  
(3390-5/98, 3610-8/03)

**3.36.150 Deficiency Determination and Assessment – Tax Application Errors.**

- (a) The Tax Administrator shall make a deficiency determination if he or she determines that any person required to collect or self-collect taxes pursuant to the provisions of this Chapter has failed to collect and remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges.
- (b) The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of one and one-half percent (1-1/2%) per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the person may request in writing to the Tax Administrator for a hearing on the matter. If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City.
- (c) If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing not later than fourteen (14) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.
- (d) At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.36.210 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Administrator pursuant to Section 3.36.210 of this Chapter is a prerequisite to a suit thereon.
- (e) Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30<sup>th</sup>) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be that set forth at Section 3.36.140. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Section 3.36.160 shall commence from the date of delinquency as provided in this subsection (e).
- (f) All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

(3610-8/03)

**3.36.160 Administrative remedy – Nonpaying Service Users.**

- (a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this chapter

from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Chapter.

- (b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of ten percent (10%) of the total tax that is owed, and shall pay interest at the rate of one and one-half percent (1-1/2%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.
- (c) The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.
- (d) If the service user fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of ten percent (10%) of the amount of the total tax that is owed.

(3610-8/03)

### **3.36.170 Actions to Collect.**

- (a) Any tax required to be paid by a service user under the provisions of this Chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Treasurer shall be deemed a debt owed to the City by the persons required to collect and pay and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this Chapter, along with any collection costs incurred by the City as a result of the person's noncompliance with this Chapter, including, but not limited to, reasonable attorneys fees.
- (b) The Treasurer may compromise a collection action and any penalty or interest imposed pursuant to Section 2.16.030(e) of the Municipal Code.

(1598-10/70, 2211-8/77, 3390-5/98, 3610-8/03)

### **3.36.180 Additional Powers and Duties of Tax Administrator.**

- (a) The Tax Administrator shall have the power and duty, and is hereby directed to enforce each and all of the provisions of this Chapter.
- (b) The Tax Administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this Chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such rules and regulations shall be on file in the Tax Administrator's Office.
- (c) Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary the strict requirements of this Chapter and thereby: i) conform to the billing procedures of a particular Service supplier (or Service user subject to Section 3.36.050 of this Chapter) so long as said agreements result in collection of

the tax in conformance with the general purpose and scope of this Chapter; or, ii) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's Office and are voidable by the Tax Administrator or the City at any time.

- (d) The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Chapter, of any person required to collect and/or remit a tax pursuant to this Chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3.36.150 of this Chapter for all taxes, penalties and interest owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.
- (e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of one and one-half percent (1-1/2%) per month, prorated for any portion thereof.
- (f) The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this Chapter.

(3610-8/03)

### **3.36.190 Records.**

- (a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and remittance to the Treasurer, which records the Tax Administrator shall have the right to inspect at a reasonable time.
- (b) The City may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this Chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the Person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the city to conduct the inspection.
- (c) The Tax Administrator, or the Tax Administrator's designated representative, is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to *California Revenue and Tax Code Sections 7284.6 and 7284.7*. The Tax Administrator, may request from a person providing

transportation or distribution services of gas or electricity to service users within the City, a list of the names, billing address and service addresses, quantities of gas or electricity delivered, and other pertinent information, of its transportation customers within the City pursuant to *Section 6354(e) of the California Public Utilities Code*.

- (d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.
- (e) If any person subject to record-keeping under this Section unreasonably denies the Tax Administrator, or the Tax Administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the Tax Administrator or the Tax Administrator's designated representative may impose a penalty of five hundred dollars (\$500) on such Person for each day following: i) the initial date that the person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter.  
(1598-10/70, 3390-5/98, 3610-8/03)

### **3.36.200 Refunds.**

- (a) Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Treasurer under this Chapter, it may be refunded as provided in this Section. (1598-10/70, 3390-5/98)
- (b) The Tax Administrator may refund any tax that has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter, provided that no refund shall be paid under the provisions of this Section unless the claimant or his or her guardian, conservator, executor or administrator has submitted a written claim, under penalty of perjury, to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a refund claim on behalf of a class or group of taxpayers. Where the amount of any individual refund claim is in excess of five thousand dollars (\$5,000), City Council approval shall be required.
- (c) It is the intent of the City that the one year written claim requirement of this Section be given retroactive effect; provided, however, that any claims which arose prior to the enactment of the one year claims period of this Section, and which are not otherwise barred by a then-applicable statute of limitations or claims procedure, must be filed with the Tax Administrator as provided in this subsection within ninety (90) days following the effective date of this Ordinance.
- (d) The Tax Administrator, or the City Council where the claim is in excess of five thousand dollars (\$5,000) and the Tax Administrator has approved the claim, shall act upon the refund claim within forty-five (45) days of the initial receipt of the refund claim. Said decision shall be final. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the forty-five (45) day period, the claim shall be deemed to have been rejected by the

Tax Administrator/City Council on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in *Government Code Section 913*.

- (e) The filing of a written claim is a prerequisite to any suit thereon. Any action brought against the City pursuant to this Section shall be subject to the provisions of *Government Code Sections 945.6 and 946*.
- (f) Notwithstanding other provisions of this Section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this Chapter on the amount of such refunded charges shall also be refunded to such service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. (3390-5/98)
- (g) Notwithstanding subsections (b) and (c) above, a service supplier shall be entitled to take any overpayment as a credit against an underpayment whenever such overpayment has been received by the City within the three (3) years next preceding a notice of tax deficiency or assessment by the Tax Administrator, or during any year for which the service supplier, at the request of the Tax Administrator, has executed a waiver of the defense of the statute of limitations with regard to any claim the City may have for a utilities tax. A service supplier shall not be entitled to said credit unless it clearly establishes the right to the credit by written record showing entitlement thereto. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a service supplier for a refund to which it would not otherwise be entitled under the one-year written claim requirement of this section.

(1598-10/70, 3390-5/98, 3610-8/03)

### **3.36.210 Appeals.**

- (a) The provisions of this Section apply to any assessment, decision or administrative ruling of the Tax Administrator, other than a decision relating to a refund pursuant to Section 3.36.200 of this Chapter. Any person aggrieved by any assessment, decision or administrative ruling of the Tax Administrator (other than a decision relating to a refund pursuant to Section 3.36.200 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this Section. Compliance with this Section shall be a prerequisite to a suit thereon. (*See Government Code Section 935(b).*) Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.
- (b) If any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.36.200 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, he or she may appeal to the City Administrator by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier. The City Administrator may appoint a hearing officer to hear the appeal.
- (c) The matter shall be set for hearing no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing maybe continued from time to time upon mutual consent. At the time of the hearing, the

appealing party, the Tax Administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

- (d) Based upon the submission of such evidence and the review of the City's files, the City Administrator shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within (30) days after the conclusion of the hearing and shall state the reasons for the decision. If the City Administrator fails or refuses to act on a refund claim within the fourteen (14) day period, the claim shall be deemed to have been rejected by the City Administrator on the fourteenth (14<sup>th</sup>) day.
- (e) An appeal from a decision by the City Administrator may be filed with the City Clerk no later than fourteen (14) calendar days after the date of the decision. The notice of appeal shall be accompanied by the fee fixed by resolution of the City Council. The City Clerk shall set the matter for hearing before the City Council at the next regularly scheduled City Council meeting and shall give notice of the hearing to the appellant. The City Council shall issue a written notice and order upholding, modifying or reversing the City Administrator's determination. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with *Code of Civil Procedure Section 1094.6*.
- (f) All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

(3610-8/03)

### **3.36.220 No Injunction/Write of Mandate.**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected and/or remitted.

(3610-8/03)

### **3.36.230 Remedies cumulative.**

All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (*Government Code Section 12650 et seq.*) and the California Unfair Practices Act (*Business and Professions Code Section 17070 et seq.*) are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

(3610-8/03)

### **3.36.240 Notice of Changes to Ordinance.**

If a tax under this Chapter is added, repealed, increased, reduced, changes the tax base or makes any other charges or interpretation to the tax that would effect the collection or remittance of the tax, (such as administrative rulings from the Tax Administrator), the Tax Administrator shall follow the notice requirements of *Public Utilities Code Section 799*. Prior to the effective date of the ordinance change, the service supplier shall provide the Tax Administrator with a copy of any written procedures describing the information that the service supplier needs to implement the ordinance change. If the service supplier fails to provide such written instructions,

the Tax Administrator, or its agent, shall send, by first class mail, a copy of the ordinance change to all collectors and remitters of the City's utilities taxes according to the latest payment records of the Tax Administrator.

(1598-10/70, 3610-8/03)

**3.36.250 Senior citizen's Exemption.**

- (a) The tax imposed by this Chapter shall not apply to any individual service user sixty-two (62) years of age or older who uses telephone, electric, water or gas services, in or upon any premises occupied by such individual, provided the combined adjusted gross income as used for federal income tax reporting purposes of all members of the household in which such service user resides does not exceed the "HUD Income Guidelines - Very Low Income Category" currently on file at the City's Office of the Housing Rehabilitation Administrator, for the calendar year prior to the fiscal year (July 1 through June 30) for which the exemption provided by this chapter is applied.
- (b) Any service user, meeting the requirements for the senior citizen's exemption, may file a verified application with the Tax Administrator on a form furnished by him or her. The Tax Administrator shall review all applications and certify those service users as exempt who meet the requirements for the exemption provided by this Chapter.
- (c) The Tax Administrator shall compile a list of all service users entitled to the senior citizen's exemption, together with the addresses, account numbers, if any, of such service users, and such other information as may be necessary for service suppliers to remove exempt service users from their tax billings.
- (d) No service supplier shall be required to bill any exempt senior citizen for any tax imposed by this Chapter after receipt of notice from the Tax Administrator that such service user has met the requirements for exempt status established by the provisions of this Chapter.
- (e) The senior citizen's exemption provided for in this Chapter shall continue and be renewed automatically from year to year except as hereinafter provided. An exempt service user shall notify the Tax Administrator within ten (10) days of a change of address, or of any other fact or circumstance which might disqualify him or otherwise affect his exempt status. All exempt service users shall file with the Tax Administrator new verified applications in order to receive exempt service at a new address or location.
- (f) All service suppliers shall remove exempt service users from their tax billings for the first regular full billings dated on or before October 15, 1980, and thereafter within sixty (60) days after notice from the Tax Administrator to do so.
- (g) It is unlawful and a misdemeanor for any person knowingly to receive, the exemption provided by this Chapter when such person has not met the requirements on which such exemption is based, or when such person can no longer meet the requirements on which such exemption is based, and upon conviction thereof shall be subject to a fine of five hundred dollars (\$500) or imprisonment in the county jail for a period not to exceed six (6) months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day or portion thereof during which a violation is committed or continued."

(2452-10/80, 2470-2/81, 2886-12/86, 3095-4/91, 3610-8/03)



EXHIBIT  
D

RESOLUTION NO 2010-50

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH  
LEVYING A RETIREMENT PROPERTY TAX FOR FISCAL YEAR 2010/2011 TO PAY  
FOR PRE-1978 EMPLOYEE RETIREMENT BENEFITS

WHEREAS, since 1948 the City has provided for employee pensions through a contract with the California Public Employees Retirement System (CalPERS), pursuant to the 1966 and 1978 Charter, the voters of the City authorized the City Council to pay for the cost of employee pensions through a separate retirement property tax Section 607(b)(2) of the 1978 Charter provides that the City may impose a retirement tax "sufficient to meet all obligations of the City for the retirement system in which the City participates" and

Proposition 13 was added to the California Constitution in 1978 It limits the local property tax to 1% of assessed value, except that the City may levy an override tax in excess of 1% to pay "any indebtedness approved by the voters prior to July 1, 1978, and

In the case entitled *Carman v Alvord*, 31 Cal 3d 318 (1982), the California Supreme Court determined that under Proposition 13, an override property tax in excess of 1% of assessed value may be levied to pay for employee pension benefits the voters approved prior to 1978 Consequently, after Proposition 13, the City Council continued to levy an override tax to pay<sup>f</sup> for employee pensions Since 1983-84, Revenue and Taxation Code Section 96 31(a)(4) has limited the City to levying a maximum override tax of \$0 04930 per \$100 of assessed value to pay for its retirement system, and

In 2001, Proposition 13, as applied to the City Charter, was interpreted in *Howard Jarvis Taxpayers Association et al v County of Orange and City of Huntington Beach as Real Party in Interest* Orange County Superior Court Case No 81-87-80 The Court held that the override tax may only be levied to pay for retirement benefits the City contracted for before July 1, 1978 and may not encompass the benefits the City added after the passage of Proposition 13 This interpretation was upheld in *Howard Jarvis Taxpayers Ass'n v County of Orange* (2003) 110 Cal App 4th 1375, 2 Cal Rptr 3d 514, Court of Appeal Case No G029292 and

Prior to July 1, 1978, the City entered into collective bargaining agreements with employee associations representing its safety employees providing that, effective July 1, 1978 they would be entitled to a CalPERS retirement benefit known as "2% @ 50" Subsequently on June 30, 1999, pursuant to collective bargaining agreements the City had entered into with its safety employees the City provided its safety employees with the CalPERS retirement benefit known as 3% @ 50 Consequently, it is necessary to allocate the employer contribution to CalPERS for safety retirement between 2% @ 50 and 3% @ 50, because only the employer contribution for 2% @ 50 may be paid through the override property tax, and

The City has received a report from John Bartel of Bartel Associates, a professional actuary experienced in pension calculations, entitled, "City of Huntington Beach CalPERS Actuarial Issues—Cost of 3% @ 50," dated August 10, 2004 The Report identified the additional cost of 3% @ 50 as what CalPERS refers to as the "normal cost" of the benefit, which represents the present value of future benefits employees earned during the current year Under this

approach the incremental cost of 3% @ 50 is 4.6% of safety payroll and the remainder of the employer contribution represents the cost of 2% @ 50 and

In April 2004, Assemblyman Harman formally asked the Attorney General regarding the correct method of allocating the employer contribution to CalPERS between its pre-1978 and post-1978 components. In his February 7, 2005, Opinion (Opinion No. 04 413) the Attorney General opined that any reasonable accounting method may be used for purposes of determining which costs are not subject to the 1% property tax limitation of the Constitution, and

The City Council has determined that the allocation approach presented in the Bartel Report is a reasonable accounting method for determining which costs are not subject to the 1% property tax limitation of the Constitution, and

In 2003/2004, CalPERS required the City to contribute 9% of safety employee payroll as the City's employer's contribution. In order to set the tax override, the City subtracted the 4.6% normal cost of 3% @ 50 from the 9% to set the override tax at the equivalent of 4.4% of safety employee payroll. The cost to the City of 4.4% of safety employee payroll for 2003/2004 was \$1,279,113, and consequently, the City set the override tax for 2003/2004 at \$0.00696 per \$100 of assessed value, which amount was designed to yield \$1,279,000, and

For 2010/2011, CalPERS is requiring the City to contribute 29.203% of safety employee payroll as the City's employer's contribution. In order to set the tax override, the City may subtract the 4.6% normal cost of 3% @ 50 from the 29.203% to set the override tax at the equivalent of 24.603% of safety employee payroll. The cost to the City of 24.603% of safety employee payroll for 2010/2011 will be \$9,598,357 and consequently, the City may set the override tax for 2010/2011 at \$0.03777 per \$100 of assessed value, and

Notwithstanding this authority the City Council chooses to set the override tax rate for 2010/2011 at \$0.01500 per \$100 of assessed value, which will yield approximately \$4,425,000 in revenue. This amounts to an override tax of approximately \$15.00 per \$100,000 of assessed value.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntington Beach that a retirement property tax levy of Zero and 0.01500/100th Dollars (\$0.01500) per \$100 of assessed value shall be levied for employee retirement costs for Fiscal Year 2010/2011,

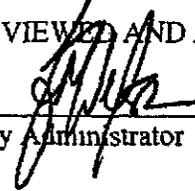
BE IT FURTHER RESOLVED that the remainder of the Zero and 0.03777/100th Dollars (\$0.03777) per \$100 of assessed value levy authorized under Revenue & Taxation Code Section 96.31(a)(4) is suspended for Fiscal Year 2010/2011.

BE IT FURTHER RESOLVED that the City Council declares that although it is suspending a portion of the retirement property tax for Fiscal Year 2010/2011, it retains the authority to levy the tax in future years up to the rate of \$0.0493 per \$100 of assessed value.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the 2nd day of August 2010

  
Mayor

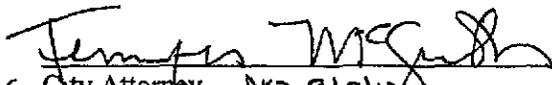
REVIEWED AND APPROVED

  
City Administrator

INITIATED AND APPROVED

  
Finance Director

APPROVED AS TO FORM

  
City Attorney JKS 8/9/10

# EXHIBIT

E

*Final Report  
Sunset Beach  
Annexation Study*  
for the

City of Huntington Beach

April 27, 2010

*Project Staff:*  
John Goss

Ralph Andersen & Associates

[www.ralphandersen.com](http://www.ralphandersen.com)

# Table of Contents

	<u>Page</u>
<b>Executive Summary</b> .....	<b>1</b>
Fiscal Analysis .....	1
Revenues .....	1
Expenditures .....	1
Operation Impacts.....	2
Public Service Impacts.....	2
Infrastructure Impacts .....	3
Other Issues.....	3
Annexation Process .....	4
<b>Sunset Beach Annexation Study – Fiscal/Operational Analysis</b> .....	<b>5</b>
Purpose.....	5
Background.....	5
Why Change the Status Quo? .....	6
Methodology .....	7
Fiscal Analysis .....	7
Revenues.....	8
General Fund Revenues .....	8
Property Taxes.....	8
Property Transfer Tax .....	9
Sales Tax .....	9
Property Tax In Lieu of Sales Tax.....	9
Motor Vehicle License Fees (MVLf).....	9
Property Tax In Lieu of Motor Vehicle License Fees .....	9
Transient Occupancy Tax .....	9
Transient Occupancy Tax (Business Improvement District) .....	10
Franchise Fees .....	10
Utility Users Tax.....	10
Business License Tax .....	10
Animal License/Shelter Fees .....	11
Permit and Regulatory Fees .....	11

Planning and Zoning Fees .....	11
Building Permit Fees .....	11
Code Enforcement Fees .....	11
Fines/Forfeitures .....	12
Total General Fund Revenues .....	12
Table I – Project Annual General Fund Revenue, Sunset Beach Annexation, 2009 – 10 .....	12
Other Municipal Revenues.....	13
Structural Fire Fund Property Tax.....	13
FireMed .....	13
Special Assessments .....	13
Water/Wastewater Fees.....	13
Library Property Tax.....	13
Recreation Programs .....	14
Parking Fees.....	14
Total Other Municipal Revenues.....	14
Table II – Projected Annual Other Municipal Revenues, Sunset Beach Annexation, 2009 – 10 .....	14
Restricted Road Revenues .....	15
Gas Tax Funds.....	15
Measure M .....	15
Total Restricted Road Revenues .....	15
Table III – Projected Restricted Road Revenues.....	15
Revenue Summary .....	15
Table IV – Projected General Fund, Other Municipal and Restricted Road Revenues, Sunset Beach, 2009 – 10.....	16
Expenditures.....	16
Per Capita Projection of General Fund Expenditures .....	16
Table V – Per Capita General Fund Expenditures with Sunset Beach Population.....	16
General Fund Expenditure Projections (Actual).....	18
Fire.....	18
Police .....	18
Table VI – Sunset Beach Part I Crime Statistics – 2007 & 2008 .....	19
Animal Control.....	19
City Clerk.....	19
Community Services .....	19
Beach Maintenance .....	19

Marine Safety .....	20
FireMed .....	20
Public Works .....	21
Park Maintenance .....	21
Projected Actual Operating Expense Summary .....	21
Table VII – Annual Actual Operating Expense Project Summary, Sunset Beach, 2009 – 10.....	21
One Time Capital/Other Expenses .....	21
Table VIII – Potential One-Time Planning Costs .....	23
Restricted Road Fund Expenditures .....	23
Summary of Fiscal Impact .....	23
Table IX – Summary of Annual Revenues/Expenditures, Sunset Beach Annexation, 2009 – 10 .....	24
Future Financial Impacts.....	24
<b>Public Service and Infrastructure Impacts .....</b>	<b>25</b>
Public Service Impacts.....	25
Administration, City Attorney, City Treasurer, City Clerk, Economic Development Finance, Human Resources, Information Services .....	25
Building & Safety and Planning.....	25
Community Services .....	26
Library .....	26
Public Safety .....	26
Public Works .....	27
Water/Wastewater.....	27
Summary.....	27
Infrastructure Impacts .....	28
Broadway Bridge.....	28
Drainage.....	28
Fire Station.....	28
Park Facilities.....	28
Streets and Roads .....	28
Underground Utilities.....	29
Water.....	29
Wastewater .....	29
Summary.....	29
Other Issues.....	29

**Annexation Process ..... 32**  
**Steps Toward Annexation..... 32**

## Executive Summary

The focus of this report is to present fiscal, operational and procedural information to the City of Huntington Beach to assist its City Council in deciding whether or not to initiate the annexation of the unincorporated community of Sunset Beach. Physically, this is a linear community consisting of 84 acres and an estimated 1,227 residents. It is an unincorporated island mostly surrounded by Huntington Beach and the Pacific Ocean. It was recently placed into the Huntington Beach Sphere of Influence by the Orange County Local Agency Formation Commission (LAFCO). This means that this area can only be annexed into Huntington Beach, if annexation occurs at all. This report addresses the fiscal and operational impacts of this potential annexation in accordance with Objective LU 3.1 of the City's General Plan.

### Fiscal Analysis

#### Revenues

The study projected the identifiable "General Fund revenues" associated with this annexation including income from the property tax, property transfer tax, sales tax, property tax in lieu of sales tax, motor vehicle license fees, property tax in lieu of motor vehicle license fees, transient occupancy tax, franchise fees, business license fees, animal license/shelter fees, and fines and forfeitures. Since this annexation would occur without a vote of the Sunset Beach electorate, the City's Utility Users Tax would not be levied in this community.

Also "other municipal revenues" were identified related to the structural fire fund property tax, FireMed, special assessments, water and wastewater fees, library property tax, and recreation program income. There are also "restricted road revenues" related to gas tax and Measure M income. General Fund estimated revenue is \$795,510. By adding projected "other municipal revenue" of \$439,855 there will be \$1,235,365 available for various City operating expenses. By adding "restricted road revenues" of \$176,555, total revenue from this potential annexation is estimated at \$1,411,920.

#### Expenditures

Two approaches were taken to project the estimated additional expenditures that would occur if Huntington Beach annexed Sunset Beach. One methodology is to project the City's General Fund expenditures on a per capita basis. A per capita expense is determined by dividing each department's budget by the City's estimated population, and projecting the increase in that department's budget by the increase in the population (1,227) that would be served. Using this methodology, the City's added expense is projected to be \$1,092,871.

The other approach is to project the actual expected additional expense for each department. This recognizes that many city operations will not require additional staffing or budget increases including, for example, police, fire, library, and administrative and staff support offices. In fact, this result emphasizes the efficiency of changing the way public services could be provided to the Sunset Beach community because of the economy of scale provided by the City.

The functions which will require additional funding in order to provide service to Sunset Beach include Animal Control, City Clerk, Community Services, FireMed, and Park Maintenance. Using this methodology, the City's added expense is projected to be \$664,140.

Estimated street and road maintenance and improvement expense needed to maintain 3.98 centerline miles of streets in this community, including street sweeping and 102 street lights, is \$123,521. It is assumed that the five traffic signals along Pacific Coast Highway will be maintained in a cost sharing arrangement between Caltrans and the City.

There are also one-time, likely discretionary, capital and equipment expenses which may be required in Sunset Beach. One is a projected \$800,000 in repairs to the Broadway Bridge, with a \$96,000 local match, which can come from gas tax funds. There is also an estimated \$1,500,000 worth of drainage improvements being initiated by County Parks, a portion of which would be the responsibility of the City. It is unknown what the additional cost would be to Huntington Beach with or without the annexation, but there would be an additional expense to the City in either case. Finally, to address beach maintenance the City will need to purchase a tractor (\$148,000) and a rake (\$32,000).

Other possible unknown one-time expenses associated with this potential annexation include providing engineering support to a property owner initiated underground utility project along with a Rule 20A undergrounding project being pursued by Southern California Edison. Also, planning studies related to this potential annexation, such as a General Plan Amendment, Zoning Text Amendment, Local Coastal Plan review, and environmental review that are not performed by City staff could entail a one-time consultant cost estimated at \$96,894.

Based on the projected all-fund revenues and expenditures presented in more detail on Table IX on page 23, it shows that the estimated fiscal impact of the Sunset Beach annexation on the City of Huntington Beach could range from an annual surplus of \$195,528 to \$624,259. It should be noted that these figures are only estimates based on the methodologies described in this study and do not guarantee the exact future numbers in case the annexation occurs. It should also be noted that the comparison of "actual" projected revenues and expenditures underscores the efficiency and cost effectiveness of the City serving this unincorporated area since the City would be able to extend many of its services to this area without increasing the operating budgets for these services.

Regarding restricted road revenue, there would be an estimated surplus of gas tax and Measure M income accruing to the City for day-to-day street maintenance expense. This may be necessary, however, since there may be one-time capital expenses that would be required from this source.

## **Operation Impacts**

This portion of the report evaluates the public service and infrastructure impacts of this potential annexation on the City of Huntington Beach.

### **Public Service Impacts**

In terms of public service impacts there would only be slight workload increases for administrative and support services such as Administration, City Attorney, City Clerk, Economic Development, Finance, Human Services and Information Services. Also, there would be some, but not significant, workload increases in regulatory services such as Building and Safety, and Plan-

ning. While there will be some minor increase in the Police Department workload, there should be none in Fire since they are already serving this area through automatic aid and through a paramedic contract with the Orange County Fire Authority. Also, additional workload is not expected in the Library Department.

The City's Water and Wastewater operations are not expected to be impacted. Water is already provided by the City to this area, and the Sunset Beach Sanitary District will retain its independence and continue to provide wastewater service to this community.

There will be workload increases in the Community Services Department to provide lifeguard and beach maintenance services to this area, plus administering a Junior Lifeguard Program which County Parks plans to extend for two-years. It is assumed that the Sheriff's Harbor Patrol would remain in place in Huntington Harbour and that County Parks would retain oversight of the Sunset Aquatic Park.

Parks Maintenance would pick up increased workload by assuming maintenance responsibilities for a 13 acre linear park, which includes a tot lot and five recently renovated restrooms.

### **Infrastructure Impacts**

There does not appear to be any major infrastructure problems or issues with this potential annexation. The only potential projects with one-time cost impacts are the repairing the Broadway Bridge (\$96,000 local match), and assisting in funding a County-initiated drainage project (City share unknown).

There will be a need to discuss with the OCFA the future of Fire Station #3 since it is rarely used now, and this community will be easily served by the Huntington Beach Fire Department. (In fact, it already serves this area.) The linear park would be added to the City's parks inventory and appears to be in satisfactory condition. The same could be said of the streets that the City would be inheriting. The City's Water and Wastewater infrastructure would not be impacted by this potential annexation.

### **Other Issues**

The Sunset Beach Community Association has developed a 13-point list of issues to discuss with Huntington Beach in the event the annexation materializes. This does not mean that the Association supports the annexation since they would prefer to remain independent.

Some of the Association's issues have been addressed such as maintaining Sunset Beach Sanitary as an independent District (LAFCO has already approved this) and obtaining assurance that the Rule 20A underground project will be continued. The City taking over maintenance of the beach and linear park is a given.

Other issues evolve around the community's desire to keep its identity, recognition of the Association as liaison with the City Council, land use issues, discuss the future of Fire Station No. 3, impose a business license fee to limit undesirable commercial uses, and obtain contract details of the County's Junior Lifeguard Program. It would appear that most of these issues can be discussed with the Association's representatives and are capable of being resolved.

## Annexation Process

After review with LAFCO staff, this report outlines in detail the steps to be taken if the City Council decides to proceed with this annexation. State law, Orange County and LAFCO encourage the elimination of unincorporated “islands” like Sunset Beach with the result that this area was recently placed into Huntington Beach’s Sphere of Influence by LAFCO.

Now with this community in Huntington Beach’s Sphere, it can now be annexed by the City. This means that if the area is annexed, it can only be annexed by the City.

Since Sunset Beach has less than 150 acres, it is an unincorporated “island.” This means that under the provisions of Government Code Section 56375.3, LAFCO must approve the annexation if initiated by the City without resident protest. The only discretionary action that can be taken by LAFCO is to apply “terms and conditions” or to “make modifications with terms and conditions” to the annexation.

Part of the application process requires the City to “prezone” the area prior to consideration of the annexation. This would mean that the City would need to initiate and complete a Zoning Map Amendment to include Sunset Beach in its General Plan. At some point the City would need to also process a General Plan Amendment and a Local Coastal Program Amendment thru the Coastal Commission. Other related planning documents would need to be prepared including a Zoning Text Amendment and an environmental review.

There are certain application fees normally associated with an annexation application. However, LAFCO may waive these fees. Minor fees related to certification and recordation fees will need to be paid before an annexation is finalized.

# Sunset Beach Annexation Study

## Fiscal/Operational Analysis

### Purpose

The purpose of this report is to present fiscal, operational, and procedural issues related to the possible annexation to the City of Huntington Beach of the unincorporated community of Sunset Beach. This is in concert with the City's General Plan, and Objective LU 3.1, which states:

*"Ensure that any proposed annexation is consistent with the overall objectives and does not adversely impact fiscal or environmental resources, and public services and infrastructure of the City of Huntington Beach."*

This report, then, will assess the fiscal impact of the possible annexation of Sunset Beach as well as operational issues regarding public services and infrastructure of the City. The goal of this study is to provide the necessary data, information and analysis to assist the Huntington Beach City Council in determining if the Council desires to take action to annex Sunset Beach. The procedural steps to be followed if the City Council decides to pursue annexation will also be presented.

### Background

Sunset Beach is a small, unincorporated beachfront community, adjacent to and northwest of the City of Huntington Beach. Fronting 48-acres of white sand beach, Sunset Beach has an estimated 1,227 residents and 685 dwelling units. Containing 85 acres it is surrounded by Huntington Beach on the south and east, the City of Seal Beach on the north and the Pacific Ocean on the west.

The community is long (a little over one mile) and narrow, with a combination of residential, commercial and public land uses. Besides the beautiful white sand beach, a predominant feature of this community is a long greenbelt, or linear park which once served as the Pacific Electric Red Car right-of-way. This 13-acre park appears to front most of the homes in this community, provides free parking for beach users, contains five remodeled restrooms and a tot lot.

This older beachfront community has maintained its old time charm, with a quaint post office, a volunteer fire station (Orange County Fire Authority Station No. 3), and a women's club. They have a number of community events, including a Mile Long Garage Sale, sponsored by the Sunset Beach Community Association. This Association is active, meeting monthly, and maintaining its own website at [sunsetbeachca.org](http://sunsetbeachca.org).

Sunset Beach is also served by the Sunset Beach Sanitary District which was formed in 1930 to provide sewage and trash collection to the Sunset Beach/Surfside Colony communities. This District has an elected Board of Directors representing the local electorate.

## Why Change the Status Quo?

Why change the status quo? Or put another way: how did the City of Huntington Beach get to the point of considering the annexation of the Sunset Beach community?

The process of cities annexing small unincorporated "islands" like Sunset Beach started several years ago with a change in state annexation law. Recently, several local government actions, particularly by the Orange County Local Agency Formation Commission (LAFCO) have raised this specific annexation issue. These actions are described in this section.

The Sunset Beach community is considered a small unincorporated "island." For some time the State of California has recognized the inefficiency of large counties providing municipal services to these small "islands." State law was changed to permit small unincorporated "islands" of 150 acres or less to be located in a City's sphere of influence allowing these areas to be annexed without resident protest (Government Code Section 56375.3). Sunset Beach falls into this category since it is an area of 85 acres and is substantially surrounded by the City of Huntington Beach and the Pacific Ocean, with only its short northern boundary bordering the City of Seal Beach.

In addition to this change in state law, according to LAFCO, about 15 years ago the County started to focus more on the provision of regional, countywide services, and pulling back from the provision of municipal-type services. With the more recent and ongoing fiscal problems faced by governments at all levels, it is clear that it is inefficient for counties to provide services to such relatively small "islands," unconnected to other unincorporated areas.

An example cited by LAFCO staff of one such inefficiency is in the area of fire and emergency medical service. OCFA Engine #3 (volunteer) located at the Sunset Beach fire station and staffed by Reserve Fire Fighters, received 51 calls in 2008, but was only able to respond with qualified reserves in two of those cases. The bulk of the fire and emergency medical responses to this area come under an automatic aid agreement with OCFA from the City's Warner Avenue Fire Station which is located only 800 feet from the City's boundary with this community. Also, on July 1, 2004, the OCFA began contracting with the City to provide paramedic emergency medical services to this area since, according to the contract, "...such emergency services can more promptly and more efficiently be provided to the SERVICE AREA (Sunset Beach) by the CITY." Further, OCFA almost closed the Sunset Beach fire station, but kept it open in response to community support of this station. So, while Sunset Beach is formally served by the OCFA, it is more promptly and efficiently served by the City of Huntington Beach Fire Department.

A Sphere of Influence (SOI) according to state law (Government Code Section 56425) must be established by LAFCO for all cities and special districts. This is a state mandated planning tool designed to identify logical municipal service providers for unincorporated areas throughout the County.

Huntington Beach's Sphere of Influence was adopted in 1973, and updated in 1989 and 2006. During the 2006 update, while LAFCO staff urged that Sunset Beach be included in the City's SOI, that recommended action was not taken by the LAFCO Commission. However, over three years later during a subsequent SOI review on July 8, 2009, the Commission placed Sunset Beach in the City's Sphere. This does not mean that Sunset Beach would automatically be annexed by Huntington Beach, but if it were annexed, it could only be annexed by the City.

On July 31, 2009, the Huntington Beach City Council conducted a special meeting to review and update the strategic goals of the City. At this meeting the possible Sunset Beach annexation was discussed by residents of Sunset Beach addressing the Council under "public comments." No formal action by the City Council, however, was taken or reported.

On August 10, 2009, the Seal Beach City Council reviewed a staff report and heard from Sunset Beach residents regarding possible annexation by that City of this unincorporated community. While those from Sunset Beach speaking at the meeting urged the Council to pursue annexation of their community, no action was taken by the City Council to pursue such an annexation.

It is clear that state law, Orange County and LAFCO are encouraging the elimination of unincorporated islands, that the City of Seal Beach is not interested in annexing Sunset Beach, and that this community has been placed into Huntington Beach's Sphere of Influence. The question now is whether or not the City is interested in annexing Sunset Beach and whether the City should take steps to initiate this annexation. If the City does pursue this annexation as an unincorporated "island," and assuming proper procedural steps are taken by the City including those related to rezoning and environmental review, the LAFCO Commission must approve the annexation. This approval would be subject to terms and conditions or with modifications subject to terms and conditions which would be determined by the Commission. This report will review fiscal, operational and procedural issues to assist the City in answering the question of whether or not the annexation of the Sunset Beach community should be pursued.

## Methodology

The methodology of this study included reviewing documents and data supplied by City and LAFCO staff. This included financial, operational, and procedural information. Review of documents prepared by the Seal Beach staff as well as material written by the Sunset Beach Community Association was completed. Pertinent sections of state law along with an Attorney General's Opinion were also read. Also, interviews and email inquiries were conducted with the staff of the City, LAFCO, and the Orange County Parks Department.

The estimated revenues and expenditures in this report are just that: estimates. They are calculated based on information supplied by either City staff or from the LAFCO Sphere of Influence report prepared last summer. These are not precise figures that guarantee actual revenues or expenditures which will be received or expended should the potential annexation occur.

It should be noted that in very limited portions of this report some general conclusions are offered regarding the reading of the City Charter, the General Plan and state law. These conclusions are based solely on the "plain reading" of these documents, and should not be considered a legal interpretation of this material. Any legal opinions of these documents are the province of the City Attorney, and should be referred to that office for further comment, if needed.

## Fiscal Analysis

This fiscal analysis presents the projected revenues that would accrue to the City of Huntington Beach if the Sunset Beach community were annexed to the City as well as the estimated City expenditures for serving this area. The projected revenues are categorized in three categories:

- Income that would accrue to the City's General Fund;

- Other municipal revenue; and
- Restricted street and road revenue.

These revenues not only include the reallocation of property taxes per the Master Property Tax Agreement between the City and Orange County, a shift of sales tax revenue to the City, but City fees and taxes that would be applied to this area as well.

It should be noted that there are certain revenues that are not currently collected in Sunset Beach by the County. Taxes that are collected in the City, but not in the County, such as the Utility Users Tax cannot be collected in Sunset Beach without a vote of that community's electorate. This report provides estimated General Fund revenue projections for the Utility Users Tax for information purposes only.

This report contains two different approaches in projecting expenditures. One is an estimate using a per capita cost projection, assuming that there will be an incremental increase in expense as the City population increases, both through annexation and normal population growth. The other is a projection of the actual expenditures expected to be spent to provide services to this community. In terms of methodology, the first estimate is based on per capita cost projections and the second is based on current actual estimated expenditures. The latter estimate assumes that per capita cost increases projected for certain City functions will not occur as will be explained in more detail in the "expenditure" section, and that actual expenditures will more accurately describe the "real" fiscal impact the proposed annexation will have on the City.

## Revenues

This section presents revenues which will be received by the City as a result of the possible annexation of Sunset Beach. As mentioned previously, these revenues are presented in the following categories:

- General Fund Revenues, which is income which can be used for any municipal purpose;
- Other Municipal Revenues, which is income that normally can be used for general city operations, but limited to a specific city function such as the Structural Fire Fund Property Tax which can only be used to support fire services; and
- Restricted Road Revenues which can only be used for road maintenance and street projects.

## General Fund Revenues

### Property Taxes

The Master Property Tax Agreement governing the sharing of property tax revenue between the City and Orange County was approved by the City on October 28, 1980. While adopted a number of years ago this resolution is current and provides by its terms that the tax split specified in the Agreement "shall...be used for all annexations...without regard to the year they take place." The Agreement provides that the general tax levy will be allocated as follows: 56 percent (rounded) to the City and 44 percent (rounded) to the County. This division is net of the

County's contribution to the Educational Revenue Augmentation Fund. Also, this revenue is separate from the Structural Fire Fund Property Tax (OCFA) which is discussed later under the "Other Municipal Revenues" section.

The estimated property tax revenue for municipal services and redevelopment is estimated at **\$145,306**.

### **Property Transfer Tax**

When new property is sold or more likely in Sunset Beach when an existing property is resold, a property transfer tax of \$1.10 per \$1,000 of transferred value is levied on the sale of real property. The resulting revenue is then split between the City and Orange County, with each obtaining \$.55 of the transferred value. While neither the County nor LAFCO could provide actual last fiscal year transfer tax revenue for this area, and no revenue estimate was provided in the LAFCO Sphere of Influence report prepared last summer, it is estimated for the purposes of this report that **\$4,268** would be produced based on the property transfer tax income realized in Huntington Beach. This estimate is calculated using the proportion of dwelling units in Sunset Beach compared to the City ( $685 \text{ DUs} / 77,962 \text{ DUs} = .88\% \times \$485,000 = \$4,268$ ).

### **Sales Tax**

While Sunset Beach is mostly residential, it has commercial development along Pacific Coast Highway. Using actual sales tax from the accounts within the unincorporated island, sales tax revenue that would accrue to Huntington Beach is estimated at **\$186,857** (Source: HDL companies).

### **Property Tax In Lieu of Sales Tax**

It is estimated by LAFCO, based on the accounts within Sunset Beach, that property tax in lieu of sales tax revenue amounts to **\$19,738** annually.

### **Motor Vehicle License Fees (MVLFF)**

If the annexation occurs, the City will receive MVLFF subvention revenue in accordance with the AB 1602 formula. It is estimated that Huntington Beach would receive **\$61,350** from this revenue source ( $1,227 \times \$50$ ).

### **Property Tax In Lieu of Motor Vehicle License Fees**

It is estimated by LAFCO that the property tax in lieu of motor vehicle license fees accruing to Huntington Beach would be **\$184,521**.

### **Transient Occupancy Tax**

The County charges a 10 percent Transient Occupancy Tax (bed tax), the same as the City of Huntington Beach. Last year, the County rate produced \$151,356 in revenue. There may be a potential land use and/or business license issue with weekly rentals occurring in Sunset Beach, which are not permitted by Huntington Beach. However, they apparently are not subject to the

County bed tax. Based on the County charging the same rate as the City, it is projected that the City would receive **\$151,356** annually from the Transient Occupancy Tax.

### **Transient Occupancy Tax (Business Improvement District)**

The City also has a Business Improvement District which is supported by an additional one percent Transient Occupancy Tax. Since this one percent TOT is 10 percent of the regular tax rate, the estimated revenue from this income source is **\$15,136** ( $\$151,356 \times 10\%$ )<sup>1</sup>.

### **Franchise Fees**

It is estimated, based on the amount received countywide in the unincorporated areas, applying the amount per capita from the Sunset Beach population, that the franchise fees for electricity, natural gas, and broadband/cable television/telecommunications would produce \$10,660. These are franchise fees applied to each of these services and are separate from the Utility Users Tax. This would provide total franchise fee revenue of **\$10,660**.

### **Utility Users Tax**

The Utility Users Tax is a five (5) percent tax imposed on the users of certain utilities in the City including water, telephone, gas, electric, and cable television services. Projecting an increase in these revenues based the proportionate increase in dwelling units projected by this potential annexation, it is estimated that Utility Users Tax revenue would increase by **\$191,119** ( $685/77,962 = .88\% \times \$21,726,000$ ).

It should be noted, however, that in the view of LAFCO legal staff the Utility Users Tax could be imposed only if the annexation were processed as a normal inhabited unincorporated area requiring a vote of the Sunset Beach electorate. Since it is being pursued as an "island" annexation, not involving a vote of those being annexed, Proposition 218 would bar the imposition of this tax to this area according to LAFCO. As a result, this estimate is provided for information only and is not included in the overall General Fund revenue projection.

### **Business License Tax**

In the City's license and permits revenue category, the largest revenue source is the business license fee. LAFCO in preparing its revenue estimates as part of the SOI study did not include any income from this source since apparently the County does not have a business license fee. Therefore, there was no available data from which to produce a revenue estimate. There obviously are businesses located in Sunset Beach, and with a minimum business license fee of \$75 per business, some revenue should be produced from this source. Since there was not an available count of the number of businesses in Sunset Beach, a per capita revenue projection for Huntington Beach was developed ( $\$2,200,000/202,480 = \$10.87$ ) and applied to this unincorporated island. Using that formula, projected business license revenue is **\$13,337** ( $1,227 \times \$10.87$ ).

---

<sup>1</sup> Technically, this is not a General Fund revenue and normally would be placed in the "Other Municipal Revenue" category. However, it is presented here since it is normally associated with the Transient Occupancy Tax described above.

As a further note, feedback has been received that some in Sunset Beach would look forward to implementing a business license tax in their community. Some view this as a way to discourage undesirable businesses locating there. Whether or not the tax charged for a business license would have this effect is debatable. The business license should not be considered by Sunset Beach residents as a regulatory tool.

### **Animal License/Shelter Fees**

Based on actual fees collected from this unincorporated island, the LAFCO study indicated estimated revenue from this source at **\$1,745**.

### **Permit and Regulatory Fees**

#### ***Planning and Zoning Fees***

Based on the per capita revenue received in Huntington Beach for planning and zoning fees as applied to Sunset Beach, it is estimated that the City will receive revenue in the amount of **\$8,503** ( $\$1,403,000/202,480 = \$6.93 \times 1,227$ ). This estimate is provided for information purposes and not included in the total General Fund revenue projections since these are fees which basically cover staff expenses required to provide planning and zoning services to the Sunset Beach community.

#### ***Building Permit Fees***

While Sunset Beach is basically "built out," remodeling often occurs requiring building, plumbing, electrical, mechanical and/or other permits. Using a per capita projection, it is estimated that the City will receive **\$13,387** from this revenue source ( $\$2,210,000/202,480 = \$10.91 \times 1,227$ ). Similar to the planning and zoning fees, this estimate is provided for information purposes and is not included in the overall General Fund revenue projections.

#### ***Code Enforcement Fees***

Again, the LAFCO SOI study attributed zero revenue from Code Enforcement fees. This is because no such fees were collected by the County. However, last July when City staff conducted an informal windshield survey of the Sunset Beach area, 129 violations were identified. While 40% of the violations were related to trash, debris and landscaping, the remaining were structural such as faulty weather protection, signs, garage conversions, and dilapidated roofs and garages. This number of violations as a percentage of total housing units is 18.8 percent, compared to 13.0 percent in the rest of the City. Using a per capita projection along with determining the proportionate increase in violations (18.8% vs. 13.0%) compared to the remainder of the City ( $1,227/202,480 = .61\% \times \$29,100 \times 1.45$ ), the revenue from this source is estimated to be **\$257**. Similar to the planning, zoning and building permit fees, this estimate is provided for information purposes only.

It should be noted that since code enforcement will assume an additional service area, there will be an impact on the City in providing these services to the Sunset Beach area. This impact is reflected in whatever time is spent away from existing areas of responsibility by staff.

In summary, it appears that the Permit and Regulatory Fees from Planning and Zoning, Building Permit, and Code Enforcement will generate **\$22,147** in revenue which will offset the expenses

in processing permits and enforcing the City's codes. Because of this offset, neither the revenues nor expenditures for these functions are included in the revenue and expenditure projections of this report.

**Fines/Forfeitures**

Fines and forfeitures reflect income generated by Motor Vehicle and Municipal Code fines and other miscellaneous fines and forfeitures. Based on the LAFCO SOI study, using a projection based on the unincorporated county area per capita revenue as applied to Sunset Beach, the estimated fines and forfeiture revenue which would accrue to Huntington Beach is **\$1,236**.

**Total General Fund Revenues**

Based on the individual revenues identified in the preceding paragraphs, the total General Fund revenue that this potential annexation could produce for the City of Huntington Beach, excluding the Utility Users' Tax is **\$795,510**. This General Fund revenue data is summarized in Table I, entitled, "Projected Annual General Fund Revenue, Sunset Beach Annexation, 2009 – 10."

<b>Table I</b> <b>Projected Annual General Fund Revenue</b> <b>Sunset Beach Annexation, 2009 – 10</b>	
Revenue	Est. Amount <sup>(1)</sup>
Property Tax	\$145,306
Property Transfer Tax	4,268
Sales Tax	186,857
Property Tax in lieu of Sales Tax	19,738
Motor Vehicle License Fee	61,350
Motor Vehicle in lieu of Vehicle License Fee	184,521
Transient Occupancy Tax	151,356
Transient Occupancy Tax, Bus. Improvement Dist.	15,136
Franchise Fees	10,660
Business License Fee	13,337
Animal License/Shelter Fees	1,745
Fines and Forfeitures	1,236
<b>TOTAL GENERAL FUND REVENUE</b>	<b>\$795,510</b>
<sup>(1)</sup> Planning, building and code enforcement fees estimated at \$22,147 are excluded from this estimate since these are basically revenues which are offset by expenditures therefore producing a "wash" in projecting the budget needed to serve the Sunset Beach community.	

## Other Municipal Revenues

### Structural Fire Fund Property Tax

Currently, fire service is provided to Sunset Beach by the Orange County Fire Authority. To support that service, OCFA benefits from a Structural Fire Fund Property Tax. In the case of this unincorporated "island," this tax produces \$350,731 which would shift to Huntington Beach upon annexation of this area.

It should be noted, however, that currently OCFA contracts with the City for Advanced Life Support (Paramedic) service from the City Fire Department to the Sunset Beach community. It is presumed, upon annexation, that the contract in the amount of \$8,000 would discontinue. The net revenue to the City fire service would be **\$342,731** (\$350,731 - \$8,000).

### FireMed

FireMed is a voluntary membership program allowing residents to receive City paramedic and ambulance services for no additional out-of-pocket expenses. The cost to join the programs is \$60 per year, per household. With an estimated 33% participation rate per household based on the city-wide membership average, there would be an estimated participation of 405 households from Sunset Beach that would join this program. The estimated revenue from this membership is **\$24,300** (405 x \$60).

### Special Assessments

According to the LAFCO SOI report, there are special assessments totaling **\$3,946** which would be passed on to Huntington Beach if this annexation occurred.

### Water/Wastewater Fees

Based on actual revenues, LAFCO estimates that there is \$322,364 in water and wastewater fees produced in Sunset Beach. However, this does not mean that this is additional revenue that would accrue to Huntington Beach if this area were annexed. First, at the July 8, 2009, LAFCO meeting, the Commission decided that the Sunset Beach Sanitary District would maintain its independent status with its own sphere of influence. Second, the City already receives payment for water service from this community. Further, there is a 10 percent surcharge on the water bill that would evaporate upon annexation. So, instead of \$322,364 accruing to the Huntington Beach, there would be a loss to the water fund of **\$23,151**.

### Library Property Tax

Currently, there is property tax revenue supporting the County Library System that would shift to Huntington Beach upon annexation. The LAFCO estimated revenue for City library service which would shift to the City upon the annexation of Sunset Beach is estimated at **\$52,029**.

### Recreation Programs

There has been a Junior Lifeguard Program conducted in Sunset Beach, generating approximately \$40,000 in revenue to the County. The current contract ended with the summer 2009 session. However, the County Parks Department intends to extend the contract through 2011. It is expected that this contract extension would occur before Sunset Beach could be annexed into Huntington Beach. At some time in the future, if the annexation occurs, the City may want to consider folding this program into their Junior Lifeguard program. In the meantime, the revenue produced from this program is estimated at **\$40,000**.

### Parking Fees

While Sunset Beach does not have any parking meters, they apparently developed some form of parking permit system. The consultant was informed that since residents were being ticketed along with visitors for parking in front of garages, this system involved permits which allowed residents to park in these spaces. Neither the County nor LAFCO had any information on this permitting system, the fee structure, or the revenue that was produced. The amount of revenue likely would be minimal in any event. As a result, no additional revenue from parking fees is projected in this report.

### Total Other Municipal Revenues

It is estimated that if Sunset Beach were annexed into Huntington Beach, there would be Other Municipal Revenues available to support City fire, library and miscellaneous services in the amount of **\$439,853**. This data is summarized in Table II, entitled, "Projected Annual Other Municipal Revenues, Sunset Beach Annexation, 2009 – 10."

Revenue	Amount
Structural Fire Fund Property Tax	\$350,731
Loss of Emergency Medical Contract Revenue	(8,000)
FireMed	24,300
<b>Total Fire Department Revenue</b>	<b>\$367,031</b>
Special Assessments	3,946
Loss of Water Surcharge	(23,151)
Library Property Tax	52,029
Recreation Program (Jr. Lifeguard contract)	40,000
<b>TOTAL OTHER MUNICIPAL REVENUE</b>	<b>\$439,855</b>

## Restricted Road Revenues

### Gas Tax Funds

If Sunset Beach were annexed by the City, state gas tax funds now collected by the County for this area would shift to the City. According to the LAFCO SOI financial report, and in applying the countywide per capita factor for this "island" an additional \$190,480 would be produced for street maintenance and other road projects. However, this estimate included \$127,462 in Section 2104 gas tax funds which only accrues to the County, and did not include an estimate of Section 2107 gas tax funds which would be allocated only to the City. By making these adjustments, it is estimated that the state gas tax funds that would be received by the City (from Sections 2105, 2106, 2107, and 2107.5 gas tax funds) if this annexation occurred is an estimated **\$148,381**. These revenues, as well as those received through Measure M, are restricted only to the use of street maintenance and improvements.

### Measure M

Measure M is an initiative passed by the voters in Orange County to finance transportation improvements using revenue produced from a countywide sales tax. Based on the actual sales tax revenue produced in Sunset Beach, it is estimated that Huntington Beach would receive **\$28,174** from this source if they annexed this "island."

### Total Restricted Road Revenues

The estimated amount of restricted road revenues which would switch from the County to the City if Sunset Beach were annexed is an estimated **\$176,555**. This data is summarized in Table III, entitled, "Projected Restricted Road Revenues."

<b>Table III Projected Restricted Road Revenues</b>	
Revenue	Est. Amount
Gas Tax	\$148,381
Measure M	28,174
<b>Total Restricted Road Revenues</b>	<b>\$176,555</b>

### Revenue Summary

The total General Fund, other municipal revenues and restricted road revenues are summarized in Table IV, entitled, "Projected General Fund, Other Municipal and Restricted Road Revenues."

Revenue	Est. Amount
General Fund	\$795,510
Other Municipal	439,855
<b>Total Available for City Operations</b>	<b>\$1,235,365</b>
Restricted Road Revenue	176,555
<b>Total Revenue Produced from Sunset Beach</b>	<b>\$1,411,920</b>

## Expenditures

### Per Capita Projection of General Fund Expenditures

As mentioned earlier, there are two expenditure projections provided in this report. One is based upon a methodology of projecting the City's General Fund expenditures on a per capita basis. A per capita expense for each department is determined by dividing each department's budget by the City's estimated population (202,480), and then projecting a number to reflect the additional population that would be served (1,227) if Sunset Beach were annexed. As presented in Table V entitled, "Per Capita General Fund Expenditures with Sunset Beach Population," this projection developed by City staff would mean an increase in City operating expenditures of \$1,092,871. Compared to the General Fund revenue projections presented in Table I, this would mean a deficit of \$291,361 (\$795,510 - \$1,092,871). However, by adding the General Fund and Other Municipal Revenues together, there would be a surplus of \$142,494 (\$795,510 + \$439,855 = \$1,235,365 - \$1,092,871).

Department	Proposed FY09/10 Budget (1)	Current		Sunset Beach Cost Using Per Capita Basis		
		Population (2)	Budget Per Capita	Budget Per Capita	Population	Budget Per Capita
City Administrator	\$1,773,821	202,480	\$9	\$9	1,227	\$10,749
City Treasurer	\$1,492,949	202,480	\$7	\$7	1,227	\$9,047
City Council	\$307,910	202,480	\$2	\$2	1,227	\$1,866
City Attorney	\$2,635,911	202,480	\$13	\$13	1,227	\$15,973
City Clerk	\$956,065	202,480	\$5	\$5	1,227	\$5,794
Building & Safety	\$3,696,183	202,480	\$18	\$18	1,227	\$22,398
Community Services	\$13,408,349	202,480	\$66	\$66	1,227	\$81,253
Economic Development	\$1,583,820	202,480	\$8	\$8	1,227	\$9,598
Human Resources	\$6,469,696	202,480	\$32	\$32	1,227	\$39,205

**Table V**  
**Per Capita General Fund Expenditures with Sunset Beach Population**

Department	Proposed FY09/10 Budget (1)	Current		Sunset Beach Cost Using Per Capita Basis		
		Population (2)	Budget Per Capita	Budget Per Capita	Population	Budget Per Capita
Finance	\$10,857,094	202,480	\$54	\$54	1,227	\$65,792
Fire	\$32,240,905	202,480	\$159	\$159	1,227	\$195,375
Information Services	\$7,028,601	202,480	\$35	\$35	1,227	\$42,592
Library Services	\$4,650,003	202,480	\$23	\$23	1,227	\$28,178
Planning	\$3,334,001	202,480	\$16	\$16	1,227	\$20,204
Police	\$60,015,155	202,480	\$296	\$296	1,227	\$363,683
Public Works	\$19,362,379	202,480	\$96	\$96	1,227	\$117,333
Non-Departmental	\$10,533,100	202,480	\$52	\$52	1,227	\$63,829
<b>Total General Fund Expenditures</b>	<b>\$180,345,942</b>		<b>\$891</b>	<b>\$891</b>		<b>\$1,092,871</b>

(1) Does not include capital expenses.

(2) Population based on 2009 estimate provided by Economic Development.

The problem with this analysis is that for many departments there likely would be no additional budget costs. For example, there might be additional, but likely minimal additional work generated by this annexation in City Administration. There probably would not be enough additional workload to generate an increase in this Department's budget. This extra work would be absorbed and prioritized within Administration's normal workload.

Even a direct service Department such as Fire will not have nor need a budget increase of \$195,375 shown in Table V now or over the next several years. This is because Fire already serves this community through an automatic aid agreement and provides paramedic service through an ALS contract with OCFA. It not only has the nearest "career" fire station, but Sunset Beach falls within the normal 1 ½ mile radius of the Warner Avenue Fire Station which is the desired response distance for a suburban fire station.

It can be argued that with incremental growth such as this annexation, increase in average family size, or new development, over time there could be an eventual increase in city expense when a certain "critical mass" of additional population to be served has been obtained. However, over time with the possibility of an aging population, average family size may actually decline. The only major additional costs are likely to be in the areas of lifeguard services, beach and park maintenance, road, traffic signal and street light maintenance. Even a slight increase in calls for law enforcement service likely will be absorbed within existing police staffing. Also City staff indicates that the "potential impact on current code enforcement operations is believed to be minor" even though, as described earlier, a July windshield survey indicated approximately 129 code violations. A large portion of those code violations, however, were for property maintenance issues.

There probably will be some additional permit and entitlement processing in Building, Public Works and Planning, but this work should be offset by fees and absorbed by existing staff given the overall decline in building and development activity in Southern California. As explained

above, additional potential income from planning and building fees from this potential annexation were not included in the projected revenues because of the expenditure offset.

The next section provides an estimate of the “real” or expected “actual” additional expenses expected if Sunset Beach were annexed into Huntington Beach.

### **General Fund Expenditure Projections (Actual)**

This section presents the estimated potential real recurring cost impacts that would occur with the possible annexation of Sunset Beach to Huntington Beach. These costs are estimates, and have been prepared in conjunction with City staff. The cost estimates are for operating expenses for those Departments likely to have an increase in their budget in order to serve this unincorporated “island.” Included in this discussion will be some one-time costs and unknown future capital obligations that would be assumed by the City if this annexation occurred. Also, even though no additional expenses are expected in some major City departments such as Police and Fire, they are briefly discussed in this section since they are a major part of the City’s budget.

#### **Fire**

As indicated earlier no additional Fire Department expense is expected if Sunset Beach is annexed since the Department is already serving this area. With the Structural Fire Fund Property Tax, less the elimination of the ALS contract with the OCFA, there will be a net revenue/expenditure benefit to the City of \$342,731. The Fire service is mentioned in this section since it is a major cost center of the City, and there is a significant revenue offset for this service in the annexation scenario.

#### **Police**

The LAFCO Sphere study estimated \$1,237,023 in total County General Fund expenditures to serve Sunset Beach. Of that amount, \$1,198,524 was allocated for Sheriff services. This estimate was based on calls for service as a ratio to the total calls in the County’s unincorporated territory compared to Sunset Beach. The Sheriff’s Department reports that there are six deputies assigned to this unincorporated area, working three shifts, providing 24 hours per day coverage.

In the power point presentation to the Seal Beach City Council that City’s staff concluded that this level of expenditure “is overstated, and not an accurate reflection of costs for the currently provided level of services to the Sunset Beach Community.” The consultant would agree with that conclusion.

In its analysis of required service, the Huntington Beach Police Department looked at the Part I Crime Statistics for Sunset Beach. While they found it was difficult to obtain exact numbers for this area, crime data was obtained from the Sheriff’s Records Management System for 2007 and 2008. As shown in “Table VI – Sunset Beach Part I Crime Statistics – 2007 & 2008,” there were 39 Part I, or major, crimes in 2007 and 44 in 2008. In addition, there were 59 traffic collisions in 2007 and 53 in 2008.

Crime	2007	2008
Homicides	0	0
Rape	0	1
Robbery	4	2
Felony Assault	5	5
Burglary	13	15
Larceny	12	15
Motor Vehicle Theft	5	6
<b>Total Part I Crimes</b>	<b>39</b>	<b>44</b>

After reviewing this data, police staff concluded, "it appears the Police Department could provide law enforcement services to Sunset Beach while maintaining current staffing levels." As a result, no additional expenditures are added to this Department's budget in evaluating the fiscal impact of the potential Sunset Beach annexation.

### **Animal Control**

Using a two year average for 2007 and 2008, there appears to be 309 annual calls for service. This average may be inflated since there were a reported 37 calls for service in 2007, but 545 in 2008. Since Orange County Animal Care charges approximately \$100 per call, using the 309 figure, there would be added cost to the City for this annexation in the estimated amount of **\$31,000**. While this figure may be inflated, it is used in this analysis due to the lack any other available data.

### **City Clerk**

Sunset Beach has two precincts with 797 registered voters. In November 2008, these two precincts were consolidated into one polling place with five election workers. It is generously estimated that the City Clerk's Office would experience additional election costs in the amount of \$2,500 every two years. Averaging this expense on an annual basis it is estimated that there would be additional expense in this office of **\$1,250**.

### **Community Services**

#### ***Beach Maintenance***

To maintain the same level of service in maintaining 48-acres of beach as currently being provided would cost an estimated **\$61,880**. This includes, according to the Community Services Department:

*"...periodic hand picking of litter, contractually provided trash removal daily, graffiti removal, ice plant trimming, the raking and sanitizing of the sand four times per month, and the construction and removal of street end sand berms as needed seasonally."*

However, there will be an estimated additional expense for supervision and travel time. This is because this stretch of beach is not contiguous with other City beaches, and because there will be a need to operate a day-time beach cleaning crew since Sunset Beach is adjacent to a residential area. Currently, the City does not provide day-time crews. It is estimated that \$80,000 will be needed in the beach maintenance budget to cover the extra expense of supervision and travel time to this beach. This will mean an estimated beach maintenance budget of \$141,880.

Another issue with an undetermined cost is where to store maintenance equipment and the need to obtain an additional tractor and rake. Currently, the County's equipment is used at several locations. Their equipment is either stored at the Talbert Nature Preserve or the Upper Newport Beach Nature Preserve. The exception is a large sand sifter, or sanitizer, which is devoted exclusively to Sunset Beach and is stored at Sunset Marina. If Huntington Beach could obtain the sanitizer from the County, it would need to determine if it could continue to be stored at the Marina. There could be a rental expense associated with this storage. Also, there likely would be the cost of purchasing a tractor.

In addition, Sunset Beach through the County participates with other beach cities in a **Sand Replenishment Program**. There are 12 stages of the program, each stage four or five years apart, with payment based on the linear feet of coast line. In 2001 the County's share for this section of the beach was \$46,356, and in 2008 it was \$5,600. There is no explanation for this difference in amounts. Staff speculates that there may be an error in how the data was distributed among the agencies. In comparing the dollars charged Huntington Beach in 2001 and 2008, and given its much longer shoreline, it would appear that the \$5,600 is probably the more accurate cost for this work along Sunset Beach. Therefore, it is estimated the next stage of this Federal Erosion Control program would cost the City about **\$6,000**, possibly as soon as 2013. In order to annualize the cost of this work in order to assess the impact of this potential annexation, it is recommended that **\$1,250** be included in the expenditure estimates (\$6,000/5).

## Marine Safety

Staff indicates that the County currently contracts for Marine Safety Services (Lifeguard) in the amount of \$333,000. They recommend that, if this annexation occurs, this contract be maintained. Also, the City would need to negotiate the retention of the lifeguard towers and equipment that currently serve beach activities. The estimated cost of assuming marine safety for Sunset Beach is **\$333,000**.

A question was raised regarding the City being responsible for ultimately replacing the lifeguard towers which serve Sunset Beach. However, these lifeguard towers are owned by US Ocean Safety which provides marine safety to the beach. If the contract for this service is maintained as proposed by staff, then lifeguard tower replacement should not be an issue for the City. As a result, this report does not project any expense for lifeguard tower replacement in the immediate future.

It should be noted that there are no special events planned for this section of beach. Therefore, no funds are projected to be added for this purpose.

## FireMed

This voluntary program allows members to receive paramedic and ambulance services without out-of-pocket expense. By applying the City's percentage participation in the program to Sunset Beach, it is estimated that people from 405 residences would belong (1,227 x 33%). With a

yearly expense to the City of \$51.26 per household, it is estimated that this program would cost **\$20,760** (405 x \$51.26) to administer.

**Public Works**

***Park Maintenance***

There is a 13-acre linear park or greenbelt maintained by a combination of contractual services and County staff. The janitorial contract costs \$21,000, the landscape contract totals \$76,000, and it is projected that City staff can complete the work performed by County personnel at a cost of \$38,000. This would mean an annual additional cost to this Department for park maintenance service of an estimated **\$135,000** if this annexation occurred.

**Projected Actual Operating Expense Summary**

In reviewing the projected actual operating expense that would be incurred by Huntington Beach if they annexed the Sunset Beach community, it is estimated that this additional cost would be \$664,140. This estimate is summarized in Table VII, entitled, "Annual Actual Operating Expense Projection Summary, Sunset Beach, 2009 – 10."

<b>Table VII</b> <b>Annual Actual Operating Expense Project Summary</b> <b>Sunset Beach, 2009 – 10</b>		
Expense	Amount	
Animal Control		\$31,000
City Clerk		1,250
Community Services		
Beach Maintenance	\$141,880	
Sand Replenishment	1,250	
Marine Safety	333,000	
		476,130
FireMed		20,760
Public Works – Park Maintenance		135,000
<b>Total Estimated Operating Expense</b>		<b>\$664,140</b>

Based on this analysis, comparing the estimated General Fund revenue projections to the estimated "actual" expenditures, the City would obtain an annual revenue surplus of \$131,370 (\$795,510 - \$664,140) if Sunset Beach were annexed by Huntington Beach. This surplus would grow to \$571,225 (\$1,235,365 - \$664,140) in comparing both General Fund and Other Municipal Revenues to the total estimated "actual" operating expense.

**One Time Capital/Other Expenses**

These projected revenue surpluses for the potential annexation of the Sunset Beach community may be needed since there are several one-time capital expenses on the horizon for Sunset

Beach. In terms of **bridge maintenance**, the Broadway Bridge would be part of the annexation. Public Works has reviewed a Caltrans bridge report indicating that the cost for bridge repair is an estimated \$800,000. If grant funding from the Bridge Preventative Maintenance Program can be obtained, and the annexation occurred, the City's one-time matching funds would be an estimated **\$96,000**. The source of these funds would either be from City gas tax funds or Measure M.

The Orange County Parks Department has allocated \$150,000 in 2009-10 to initiate planning for **Sunset Harbor dredging**. Since this annexation would not likely be completed this fiscal year, even if initiated by the City, the Department will proceed with the initial planning for this project. The overall dredging work includes areas outside of Sunset Beach and will be paid for under a cost sharing arrangement with all impacted agencies including the City of Huntington Beach. The City, by the way, would be a participant in this project with or without the annexation. Huntington Beach would have a larger financial responsibility for their share of the project, however, if the annexation occurred.

The total estimated cost of this shared-cost dredging work is \$1,500,000. The City's share of this cost, with or without the annexation, is not known at this time.

While there is the prospect of the City inheriting the County Parks beach sanitizing machine, it is expected that the City would need to purchase two pieces of equipment for beach maintenance. One is a tractor (\$148,000) and the other is rake (\$32,000). This will be a one-time expense with this equipment being folded into the City's equipment replacement program.

According to the Public Works Department, there are **two undergrounding projects** proposed in the Sunset Beach area. One is a Rule 20A project initiated by Southern California Edison for which funding is available and permits are being issued. Staff indicates that this project will begin and subsequently completed regardless of any annexation issues.

The other project is homeowner initiated and may or may not proceed depending upon whether the proper percentage of property owner signatures representing property owners is obtained. If this project proceeds, the County has agreed to provide an assessment engineer and provide support for any coordination issues. This commitment would probably become the responsibility of the City should annexation be successful. The estimated cost of this commitment could not be determined.

Other one-time costs would be the preparation of planning and related studies which may be necessary to complete this annexation. There will be a need for a Zoning Map Amendment, General Plan Amendment and Local Coastal Plan Amendment to include the Sunset Beach area into the City's Zoning Map, General Plan and Local Coastal Plan. In addition there will eventually be a need for a Zoning Text Amendment to formally adopt the existing 1990 Sunset Beach Specific Plan. The Coastal Commission staff may also request an update of this Specific Plan because it is almost twenty years old. Finally, there will be a need for an environmental assessment for this annexation. If they are conducted by a consultant, rather than "in-house", staff estimates that there will be a one-time expense of approximately \$96,894.

The estimated costs of these planning studies are contained in Table VIII entitled, "Potential One-Time Planning Costs." To the extent there is a need for community meetings as part of this process, this estimate could be higher.

Planning Document To Be Prepared	Est. Expense
General Plan Amendment	\$37,299
Feasibility Study (RAA)	14,950
LCP Amendment	11,212
Zoning Map Amendment	9,733
Environmental Assessment	8,522
Zoning Text Amendment	15,178
<b>Total</b>	<b>\$96,894</b>
<i>Note: These estimated costs assume use of a consultant rather than staff.</i>	

## Restricted Road Fund Expenditures

As mentioned earlier, between gas tax funds and Measure M revenues, the City of Huntington Beach would receive \$176,555 which is restricted for street maintenance and other transportation improvements. This will be the funding source for maintaining 3.98 centerline road miles and 102 street lights. It is expected that the streetlights will likely be funded by the County, even the ones on Pacific Coast Highway. Regarding the five traffic signals, four of the traffic signals would require the City to pay 25% of the annual maintenance cost and the remaining traffic signal would require a 50/50 split with Caltrans.

Using the countywide per capita projections to Sunset Beach population, it is estimated that the County spends \$118,501 on general right-of-way and street light maintenance for this community. It is assumed that City street maintenance expense will be similar to that spent by the County with the exception of a small additional expense for street sweeping which is performed twice a month throughout the City. With 3.98 centerline miles (7.96 curb miles) the additional cost for this service is estimated at \$5,020 ( $7.96 \times \$26.28 \times 24$ ). This will increase street maintenance expense to \$123,521. This means that there would be an approximate surplus restricted road revenue of \$53,034 ( $\$176,555 - \$123,521$ ) which can be used for other street maintenance functions that might be provided to this area, for one time capital road and bridge expenses for this area, or for other street maintenance costs throughout the City.

## Summary of Fiscal Impact

It would appear that the annexation of the Sunset Beach community into Huntington Beach would have a generally beneficial financial impact on the City in terms of day-to-day operations. Except for a projected deficit in comparing only General Fund revenue to the estimated operating expenditures based upon per capita projections, all other comparisons demonstrate an estimated surplus of revenues over expenses. This may be necessary since there are unknown capital and one-time study expense that may be associated with this potential annexation.

A summary of this information from the tables presented earlier in this section is summarized in Table IX, entitled, "Summary of Annual Revenues/Expenditures, Sunset Beach Annexation, 2009 – 10."

**Table IX**  
**Summary of Annual Revenues/Expenditures**  
**Sunset Beach Annexation, 2009 – 10**

Methodology	Revenues	Expenditures	Surplus (Deficit)
General Fund Rev. minus Per Capita Exp.	\$795,510	\$1,092,871	(\$297,361)
Gen.Fd. + Other Rev minus Per Capita Exp.	1,235,365	1,092,871	142,494
General Fund Rev minus Actual Expense	795,510	664,140	131,370
Gen.Fd. + Other Rev minus Actual Expense	1,235,365	664,140	571,225
Gen.Fd., + Other Rev., + Road Rev minus Per Capita Exp and Street Maint. Exp.	1,411,920	1,216,392	195,528
Gen.Fd., + Other Rev. + Road Rev. minus Actual Expense and Street Main. Exp.	1,411,920	787,661	624,259

## Future Financial Impacts

Normally in this type of report, revenue and expenditure projections over a five, seven or ten year period would be provided. This would assist the policy-makers in determining the mid-term fiscal impact of the potential Sunset Beach annexation.

In the annexation study for the Bolsa Chica Lowlands, for example, an annual inflation rate for franchise and utility user fees of 3.1 percent was used. It was also assumed that the assessed value upon which the property tax is based would increase the minimum of two percent per year. Given the current and near term economic climate, it would be difficult to apply these standard inflationary factors to this study. When reviewing the Property Transfer Tax revenue, for instance, the projected income from that source declined several hundred thousand dollars from one year to the next. As a result, this report presents to the City a "snapshot" of the Sunset Beach fiscal impact, not a mid- or long-term forecast.

# Public Service and Infrastructure Impacts

To further meet the requirements of General Plan objective LU 3.1, this section addresses the potential public service and infrastructure impacts the annexation of Sunset Beach may have on the City of Huntington Beach. First will be a discussion of the public service implications of this potential annexation followed by its infrastructure impacts.

## Public Service Impacts

As implied in much of the fiscal analysis, the impact of this potential annexation on the City's ability to provide public services to Sunset Beach as well as the City as a whole appears very limited. In terms of major direct service departments, and administrative management and support offices, the proposed annexation should have little impact on the ability of these departments and offices to provide adequate service to this small community while maintaining existing service levels to the remainder of the City. These impacts are discussed in the following paragraphs.

### **Administration, City Attorney, City Treasurer, City Clerk, Economic Development, Finance, Human Resources, Information Services**

While there may be a slight increase in workload for each of these offices due to this potential annexation, these increases should be able to be absorbed in each office and not cause a need for any staff or budget increases. The only minor exception is the City Clerk's office where an additional polling place will be required every other year at an estimated average annual cost of \$1,250 annually.

### **Building & Safety and Planning**

The ongoing operating expense for Building & Safety and Planning should be minimal, with any increases in workload covered by the fees charged by these departments. For example, it is expected that building permit applications for building modifications from the 685 dwelling units, businesses and other structures in this built-out community would pay for staff time spent reviewing and inspecting these applications. Many of the Code Enforcement violations were property maintenance issues based on a windshield survey conducted by staff in July. Staff felt that the "potential impact on current code enforcement operations is believed to be minor."

Planning and zoning permits also should require a minor amount of staff time, with that time covered by processing fees. There will be, however, one-time expenses involved in bringing Sunset Beach into the City in terms of studies required to update the City's General Plan, Local Coastal Program, amend the City's Zoning Map for the existing County Specific Plan, conduct an environmental assessment of the annexation, and prepare a Zoning Text Amendment. Based on staff input, the cost of these one-time studies and projects, if prepared by a consultant and not staff, is estimated at \$96,894.

## **Community Services**

More of an impact on the provision of services will be on the Community Services Department. Among City Departments, it will experience the largest cost increase. This Department will be responsible for maintaining and providing marine services to 48 acres of beach. City staff suggests that the \$333,000 contract for marine safety service be continued as well as the contract for the junior lifeguard program which County Parks plans to continue for another two years before any annexation process can be completed. It is estimated that each maintenance will require daytime operations and will cost an estimated \$141,880.

Staff assumes that the Orange County Sheriff's Harbor Patrol would remain in place in Huntington Harbour, and that County Parks would retain control and oversight of the Sunset Aquatic Park.

It is pointed out by staff that Sunset Beach participates with Huntington Beach and other beach cities in a sand replenishment program. There are 12 stages of the program, four or five years apart, with the County paying the Sunset Beach share. If annexation occurs, the City would assume this cost, which is estimated at \$1,250 annually as presented in the fiscal section of this report.

## **Library**

Currently, Sunset Beach is served by the County Library System the revenue for which (\$52,029) would transfer to the City upon annexation of this community. It is doubtful that the library habits of Sunset Beach residents would change upon annexation. Their library use patterns would probably remain the same, such as using the County system, the City's libraries or other public libraries in the region. Thus, the service level impact on the City Library should be minimal.

## **Public Safety**

Neither the Police nor Fire Departments expect that an increase in staffing will be required as a result of this potential annexation. It appears that the number of additional Part I Crimes which would be added to the Police Department's workload are minor compared to its overall workload. The Department's patrol beats can be adjusted to patrol this area. The Department will, however, need to conduct traffic accident investigations along Pacific Coast Highway, a function currently being performed by the California Highway Patrol.

There will be some additional animal care and control activity generated by this annexation. Since this service is already provided under contract with the County, there will not be any additional workload on City staff, only an additional expense.

The Fire Department already serves this area, either through automatic aid for fire and non-medical emergency calls, or under contract with the Orange County Fire Authority for medical emergency response (paramedics). This service is provided primarily from the Warner Avenue Fire Station, which is within 800 feet of the boundary with Sunset Beach. All of Sunset Beach is within the desired 1 ½ mile response radius of that station.

## Public Works

There will be some impacts on services provided by the Public Works Department. A 13-acre linear park will become the responsibility of the Department. The maintenance of this park would be addressed by retaining existing contracts for landscape and janitorial maintenance, plus additional staff cost of \$38,000 annually. Apparently, County Parks has just completed the rehabilitation of five public restrooms in the park. As an aside, this community will exceed the City's General Plan's parks standard of five acres per 1,000 population. Sunset Beach has 10.6 parks acres per 1,000 population (13 acres / 1,227).

There is 3.98 centerline road miles for which the Department would assume maintenance responsibility along with 102 street lights. The cost of maintaining the five traffic signals along Pacific Coast Highway will be shared between Caltrans and the City on either a 75/25% or a 50/50% split. The additional annual maintenance expense should be covered by the additional gas tax and Measure M funds which will be received by the City.

There are other responsibilities which would be absorbed by the Department that will be discussed in the following infrastructure section. These responsibilities involve a multi-agency dredging project initiated by the County Parks Department which involves Sunset Beach and surrounding areas including the City of Huntington Beach. Other infrastructure projections include repair of the Broadway Bridge, a Rule 20A undergrounding of utilities project, and a property owner initiated undergrounding project requiring an assessment engineer. This latter project likely will require the City to assume a commitment made by the County to pay for the engineer's expense. The amount of this one-time cost is unknown.

## Water/Wastewater

The City already provides water service to Sunset Beach, and currently applies a ten percent surcharge to the users in this community. If the area is annexed, then the water surcharge would evaporate. This would amount to a reduction in revenue to the Water Department of \$23,151.

At the July LAFCO meeting, the Commission decided that the Sunset Beach Sanitary District would continue to have its own Sphere of Influence, and would not be included in the City's Sphere. As a result direct wastewater service would still be provided by the District and not become an obligation of the City.

## Summary

Except for one-time studies by Planning, additional marine services provided by the Community Services Department and maintenance services provided by that Department and Public Works, it would appear that there would be very little impact on services provided by the City's other departments and offices. In fact, this conclusion points to the efficiency that would be created by this potential annexation. Service can be extended to this small community without adding staff to major service components of the City, particularly Police and Fire. This result is aided by the fact that Sunset Beach is immediately adjacent to Huntington Beach and can easily be served by the City's two public safety departments.

## **Infrastructure Impacts**

This section describes the impacts on infrastructure of the City, or infrastructure that the City would assume if Huntington Beach annexed Sunset Beach. Generally, there do not appear to be any immediate major infrastructure problems or issues. However, there are certain potential future unknown costs in replacing or repairing these facilities. These infrastructure facilities are discussed below.

### **Broadway Bridge**

Caltrans prepared a report, reviewed by Public Works, indicating that it would cost \$800,000 to repair the Broadway Bridge in Sunset Beach. It is intended that the bulk of this repair cost would be through a grant from the State Bridge Preventative Maintenance Program (BPMP) with a required local government match of \$96,000. If the annexation occurred, this match would shift from the County to the City. The source of funds for the City's match would either be from Gas Tax or Measure M funds.

### **Drainage**

The Orange County Parks Department has budgeted \$150,000 in 2009-10 to plan a dredging project for the Sunset Harbor. The dredging work includes not only the Sunset Beach area but adjoining areas as well. County Parks is taking the lead in this project that is initially estimated to cost \$1,500,000. It will be funded through a cost-sharing arrangement among the affected jurisdictions. There will be an expense on the part of the City either with or without this annexation. The amount of the City's share, however, could not be determined because the project is only approaching the initial planning stages.

### **Fire Station**

Located in Sunset Beach, Orange County Fire Station #3 is a volunteer station owned by the Orange County Fire Authority. Staffed by Reserve Fire Fighters, Engine #3 received 51 calls in 2008, but only responded with qualified reserves twice during that year. At one point OCFA almost closed the station.

It has been suggested by the Community Association that the Fire Station be used either as a police substation or for lifeguards. However, since the station is owned by OCFA, discussions with that agency as well as an assessment of its potential best use would be necessary to gauge its future potential.

### **Park Facilities**

The 13-acre linear park has one tot-lot and five restrooms. The tot-lot appears to be in suitable repair and the restrooms have just been restored by the County Parks Department.

### **Streets and Roads**

There are 3.98 centerline miles of roads in Sunset Beach. Most of the traffic is on PCH which is the maintenance responsibility of Caltrans. The remainder of the Sunset Beach road system is

residential, and appears to be in satisfactory condition. It does not appear that the City would be inheriting any major street reconstruction projects if this annexation occurred.

## **Underground Utilities**

A Rule 20A underground utility project along PCH is being pursued by Southern California Edison. This project is funded and permits are being issued. City staff expects that this project will begin and will be finished regardless of any annexation issues.

There is also a property owner initiated undergrounding project along Park Avenue and Bayview which is in the process of collecting signatures so that the preliminary design phase can begin. As mentioned previously, the County made a commitment to provide an assessment engineer and staff support for the coordination of this project. The City would undoubtedly assume this responsibility if the annexation occurs.

## **Water**

There is no known infrastructure issues related to the continued provision of water to this community, or to the surrounding areas of the City if annexation were to occur.

## **Wastewater**

Wastewater service will continue to be provided by Sunset Beach Sanitary District.

## **Summary**

It appears that the annexation of Sunset Beach would have little impact on the City's basic infrastructure such as water, wastewater, and streets. In many respects the City already provides services to the area (water, fire, library).

## **Other Issues**

With the advent of the LAFCO Sphere of Influence study and LAFCO's subsequent action placing the community into Huntington Beach's Sphere, the Sunset Beach Community Association developed a 13 point program, initially for discussion with the City of Seal Beach for the possible annexation by that City. These 13 points have now become talking points with the City of Huntington Beach. This does not mean that the Association supports this annexation. To the contrary, the Association seems to prefer retaining its unincorporated status, or incorporating as a city, rather than annexing to Huntington Beach. In any event, the Association has retained a law firm to make sure they "would be treated fairly" according to a letter sent to those living in Sunset Beach, dated November 1, 2009. The Association also has raised money to study the fiscal impact of incorporation.

Nonetheless, if annexation took place, the Association would likely ask the City to support their "list of 13 key transfer items" which is viewed as a way to help Sunset Beach continue as a semi-independent beach community. A summary of these 13 key items include:

1. Maintain Sunset Beach's separate identity, including signage;

2. Recognize the Sunset Beach Community Association as liaison with the City Council;
3. (a) Keep the Sunset Beach LCP with revisions to reflect the change from the County to the City, and (b) Submit new pertinent plans and information to the Sunset Beach local advisory board for review and comment;
4. Keep parking permits at the same price;
5. (a) Continue all encroachment programs for beach and waterways permitted by the LCP and (b) Transfer current files, permits and computer records from the County to the City;
6. Support use of the Fire Station by local police;
7. Maintain the Sunset Beach Sanitary District as an independent district;
8. Support the current Sunset Beach postal delivery system;
9. Have the City take over ownership and maintenance of the beach and greenbelt from the County;
10. Create a business license fee plan that would serve to limit the opening of future undesirable businesses such as medical marijuana dispensaries, tattoo parlors, etc.
11. Confirm the County contract details for the contract Junior Lifeguard Program (including class size limits);
12. Gain assurance that the Rule 20A undergrounding project will be continued and completed in a timely manner; and
13. Obtain funds from the County to repave the numbered streets between North and South Pacific, and to finish the five restrooms in the greenbelt.

These items were discussed with the Mayor and City Manager at the September Association meeting. Obviously, there are some of these issues like another public use of the OCFA fire station that would require additional homework to determine the possible best use of this facility. The perspective of the OCFA regarding this property would need to be obtained. Whether or not a business license fee would limit “undesirable” firms desiring to open in Sunset Beach may be more appropriately a land use issue than a business license fee issue.

Some of the items on the list have already been completed such as the park restroom renovation and what appears to be the funding and permitting of the Rule 20A underground utility project along PCH. The Sunset Beach Sanitary District will remain as an independent district based on last summer’s LAFCO action.

Nevertheless, unofficial discussions with the Association by the Mayor and executive staff have indicated an interest in recognizing the Association as a liaison with the City Council. Also, there was a willingness expressed to create a MOU with the Association to memorialize their 13 points or issues.

There may be a concern by the Association about losing community identity by becoming part of the City.. However, if this identity can be retained through an MOU, there are many benefits

Huntington Beach can bring to the community. These include well established municipal services, such as police, fire, public works, and community services, with the government offices providing service located nearby. The City may be able to provide what would be perceived by the community as a more desirable regulatory environment when it comes to controlling undesirable uses. There would be some cost savings to the community as well since the ten percent water surcharge would be eliminated if Sunset Beach annexed to the City.

In any event, the Association in their November 1st letter expressed the hope that the City would “wait until we complete our citizen-funded incorporation feasibility study before taking an annexation vote.” Actually, if the Association is able to promptly engage a firm to examine the numbers in this report and in the LAFCO SOI financial analysis, they should be able to assess the prospects of incorporation in roughly the same time frame as the City’s consideration of annexing Sunset Beach.

## Annexation Process

The third feature of this report is to outline the procedures related to the possible annexation of Sunset Beach to Huntington Beach. Annexations, detachments, consolidations and other forms of governmental reorganization are overseen by the Local Agency Formation Commission (LAFCO) of each county. Established in 1963, LAFCOs have the authority to approve annexations per Sections 560000 et. seq. of the California Government Code.

As mentioned at the beginning of this report, state law, Orange County and the local LAFCO encourage the elimination of unincorporated "islands" due to the inefficiency and cost of large counties providing municipal services to these small areas. Additionally, pursuant to Government Code Section 56425, LAFCO is required, as a planning tool to identify logical municipal service providers for areas throughout the County and to establish Spheres of Influence for all cities and special districts. As part of this mandate, the LAFCO Commission recently included the Sunset Beach community into Huntington Beach's Sphere of Influence (SOI). Because of the size of the Sunset Beach community (under 150 acres), the area may be annexed into the City of Huntington Beach under the streamlined process provided for small island annexations. Further, because Sunset Beach is within the Huntington Beach SOI, it may only be annexed to the City of Huntington Beach, not to any other city. Alternative options for the area include incorporation or remaining incorporated, although the feasibility of these options would need to be explored further.

Since Sunset Beach is an unincorporated "island" (less than 150 acres), its annexation can occur under the provisions of Government Code Section 56375.3. This means that LAFCO shall approve the annexation if initiated by the City without resident protest.

Within this context, this section outlines the steps required for this annexation to occur, along with possible land use planning actions that the City may want to pursue.

### Steps Toward Annexation

If the City of Huntington Beach determines that it would be advantageous to annex Sunset Beach, the steps summarized in the following paragraphs would need to be followed.

1. The City of Huntington Beach would submit an application to the Orange County LAFCO which should contain the following information and related materials:
  - LAFCO processing fees (may be waived for island annexations);
  - Justification of Proposal Questionnaire;
  - A Plan for Services;
  - CEQA documents (this may involve a Negative Declaration or less);

- Resolutions by the affected agencies agreeing to a transfer/split of the ad valorem property tax revenues generated in the subject territory<sup>2</sup>;
  - Rezoning<sup>3</sup>; and
  - Indemnification agreement signed by the applicant.
2. Within 30 days of the application LAFCO sends a status letter notifying the City that the application is either complete or incomplete.
  3. Approximately 30 days after the submission of the application:
    - LAFCO notices the County Assessor of the proposal;
    - The Assessor determines which Tax Rate Areas (TRA) are involved and calculates the total assessed valuation (AV) of the affected territory;
    - The Assessor issues a report of the TRAs and AV to the County Auditor;
    - The Auditor determines the total property tax revenues for the area proposed for annexation and issues a report to the City and the County of the total revenues involved<sup>4</sup>; and
    - The City and County are notified that they have 60 days to reach an agreement on the transfer of property tax revenue from the County to the City, although the Master Property Tax Agreement can be used for this purpose.
  4. Upon determination by the LAFCO Executive Officer that the application is complete, the Executive Officer issues a Certificate of Filing and sets a hearing date for the proposal.
  5. LAFCO notices and holds a public hearing on the proposed annexation and its Commission takes one of the following actions:
    - Approves the application subject to terms and conditions; or

---

<sup>2</sup> This is already addressed in the Master Property Tax Agreement between the City and the County, although both agencies could negotiate a different property tax exchange for this area if this were their intent.

<sup>3</sup> A resolution is required that specifies the planned land use for this area prior to a hearing on this annexation by the LAFCO Commission. While the existing zoning and Specific Plan could be used for this requirement, the City would need to first modify its Zoning Map as part of this Rezoning requirement.

<sup>4</sup> These revenues have already been estimated as part of the LAFCO Sphere of Influence report and are used in this fiscal analysis. The Auditor-Controller, however, will still complete the precise and official final amount as part of the formal annexation process.

- Approves the application with modifications and subject to terms and conditions<sup>5</sup>.
6. Within 35 days of the hearing, LAFCO adopts a resolution making determinations and approving the application and sends a copy of the resolution to the applicant.
  7. Normally, at this point, if the application is approved, LAFCO sets a protest hearing for the annexation. However, for small island annexations state law requires that the LAFCO Commission approve the annexation and waive the protest proceedings.
  8. If the annexation is ordered, LAFCO sends a Certificate of Completion to the County Recorder's Office, following a 30-day reconsideration period, and upon satisfaction of all terms and conditions in the resolution ordering the annexation.
  9. Upon recordation, LAFCO sends documents and fees, which are paid by the applicant, to the State Board of Equalization for the purpose of alternating their TRAs to reflect the change of organization.

One requirement of the initial LAFCO application is to "prezone" the area prior to consideration of the annexation application by the LAFCO Commission. Probably the most expeditious method to accomplish a rezoning is to use the existing County zoning. Possibly useful to this process is an already adopted County Specific Plan for Sunset Beach. Still, the City Zoning Map would need to be revised to be extended to the Sunset Beach community as part of the rezoning process before this possible annexation could be considered by the LAFCO Commission. It should be noted that state law requires that zoning designated during the rezoning process remain in place for two years.

The area also has a Local Coastal Plan (LCP), albeit one that was adopted some years ago. While the annexation is proceeding and subsequently after the annexation is accomplished, various studies can be completed to accomplish, if needed, a more conforming zoning pattern for the area.

From the City's perspective, the only requirement for this annexation prior to any action by the City Council is an annexation feasibility study required by the City's General Plan, including a fiscal and operational analysis. This requirement of the General Plan is met by this study and report.

Although not required prior to annexation, there are other planning entitlements that should be considered. These include:

1. General Plan Amendment to establish land use.
2. A Local Coastal Program Amendment which was adopted in 1990. The City would need to amend its LCP to include this new area which will then become the City's zoning for Sunset Beach. Also a Zoning Text Amendment to formally adopt the Specific Plan would be required.

---

<sup>5</sup> The LAFCO Commission does not have the discretion to deny an application for an island annexation initiated by the City.

Coastal staff informed the City that, other than normal coastal resource issues, “one recurring issue (in Sunset Beach) ...has been ...requests from property owners to convert visitor serving commercial sites to residential,” according to City staff notes. Apparently neither Coastal nor County staff have supported these requests.

One of the concerns of the Sunset Beach Community Association is what they view as undesirable land uses such as medical marijuana dispensaries, tattoo parlors, etc. While their concerns have been expressed in the context of desiring regulation through the business license tax, such uses can be controlled through land use regulations. Addressing these and other land use issues, plus the apparent desire of the Association to otherwise maintain their LCP and Specific Plans is an important dialogue that should occur with residents of the Sunset Beach community. This would suggest conducting community meetings, possibly with a facilitator, in reviewing the community’s plans and planning for the future of the City if the annexation is pursued.

# EXHIBIT

F



**STERN, VAN VLECK & MCCARRON LLP**  
ATTORNEYS AT LAW

925 L Street, Suite 850  
Sacramento, CA 95814

916-442-1298 (Office)  
916-341-0849 (Fax)

LAWPOLICY.COM

July 15, 2010

Via E-mail: [chair@oclafco.org](mailto:chair@oclafco.org)

Peter Herzog, Chairman  
Orange County LAFCO  
12 Civic Center Plaza, Rm. 235  
Santa Ana, CA 92701

RE: Proposed Annexation of Sunset Beach by Huntington Beach

Dear Chairman Herzog:

This firm represents the Citizen's Association of Sunset Beach (CASB), a non-profit citizen group that is opposed to the annexation of Sunset Beach by Huntington Beach. CASB supports the incorporation of Sunset Beach as a city, and urges the Orange County LAFCO to allow Sunset Beach an opportunity to incorporate rather than allow Huntington Beach to pursue a forced "island" annexation. However, if the Huntington Beach annexation request comes before the LAFCO, at a minimum, CASB urges the LAFCO to condition annexation on the requirement that the residents of Sunset Beach first be allowed to vote, as mandated by Proposition 218, on whether to accept the imposition of the Huntington Beach 5% utility tax. California law compels the imposition of previously authorized taxes on the residents of any area being annexed. In certain circumstances, Proposition 218 requires that those residents first be allowed to vote on whether to accept the tax. Sunset Beach residents must be allowed to vote on whether to accept previously authorized Huntington Beach taxes that will be imposed on them as a result of this proposed "island" annexation.

CASB is concerned about the accuracy of claims by proponents of the annexation that, if the annexation occurs, Sunset Beach residents will not be subject to the 5% utility tax that is currently imposed on Huntington Beach residents. This claim lacks adequate legal support and any such exemption from the 5% utility tax for Sunset Beach residents could be challenged by Huntington Beach residents who believe this exemption is illegal and unfair. Once the annexation is completed, if that occurs, Sunset Beach residents could end up having to litigate to defend their right to vote on whether to accept the Huntington Beach utility tax after they have been forced to become Huntington Beach residents. It is misleading for the proponents of the annexation to promise that Sunset Beach residents will be exempt from this tax in light of statutes that provide otherwise.

The April 27, 2010 report prepared by Ralph Andersen & Associates entitled Final Report Sunset Beach Annexation Study for the City of Huntington Beach, notes on page 10 that:

It should be noted, however, that in the view of LAFCO legal staff, the Utility Users Tax could be imposed only if the annexation were processed as a normal inhabited unincorporated area requiring a vote of the Sunset Beach electorate. Since it is being pursued as an "island" annexation, not involving a vote of those being annexed, Proposition 218 would bar the imposition of this tax to this area according to LAFCO.

We have not seen the legal analysis by the LAFCO counsel that reaches this conclusion, but assuming that the Andersen & Associates report accurately reflects the LAFCO's position, we believe that current law on this issue is more complicated than is reflected by this conclusion. Annexation proponents are using the LAFCO's position on the applicability of the 5% utility tax to Sunset Beach residents to stifle opposition to the annexation among Sunset Beach residents. Huntington Beach residents may not be swayed by this conclusion, and may insist that the 5% utility tax apply to all Huntington Beach residents, including those who live in what is now Sunset Beach. This position would have merit on a number of grounds, including Government Code section 57330 and the Equal Protection clauses of the California and United States Constitutions.

Government Code section 57330 provides that:

Any territory annexed to a city or district shall be subject to the levying or fixing and collection of any previously authorized taxes, benefit assessments, fees, or charges of the city or district. [Emphasis added.]

In the event of an annexation of Sunset Beach by Huntington Beach, this statute requires Huntington Beach to impose its existing 5% utility tax on the newly annexed Sunset Beach residents. Constitutional doctrines of equal protection may compel a similar result. Consequently, CASB believes that the LAFCO must condition approval of annexation on the imposition of the Huntington Beach 5% utility tax on the newly annexed Sunset Beach residents. But, the LAFCO must also recognize Sunset Beach residents' voting rights under Proposition 218.

The Attorney General has issued an Opinion stating that a LAFCO may condition approval of an annexation upon the requirement that the annexing entity collect the previously established uncollected tax from the area to be annexed without triggering a Proposition 218 vote. In that Opinion, the Attorney General concluded that the voter and land owner approval requirements in Proposition 218 do not apply to previously authorized taxes if imposed in preexisting amounts. (82 Ops. Cal. Atty. Gen. 180 (1999).) The Attorney General based that conclusion on the requirement in the Cortese-Knox Act that any area to be annexed by a city shall be subject to any previously authorized taxes, assessments, and fees or charges imposed by that city (Gov. Code § 57330.), and by the voter approval process in the Act that allows registered voters in a given area to reject an annexation. (Gov. Code §§ 50775-50780.) In the case being evaluated by the Attorney General, because the residents of the area to be annexed were allowed to vote on whether to be annexed, the Attorney General found that a Proposition 218 vote was unnecessary. Because Huntington Beach is pursuing an "island" annexation, where Sunset Beach residents do not get to vote, a Proposition 218 vote is required before subjecting the Sunset Beach residents to the Huntington Beach utility tax.

We therefore concur with the opinion of the LAFCO's counsel that, because Huntington Beach is pursuing an "island" annexation which does not involve a vote of those being annexed,

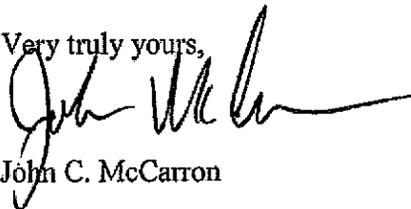
Peter Herzog, Chairman  
Orange County LAFCO  
July 15, 2010

Page 3

Proposition 218 requires voter approval by the Sunset Beach residents in order for Huntington Beach to impose the utility tax on them. If the residents of Sunset Beach do not vote to approve imposition the utility tax, then the statutorily required condition of annexation would fail and the LAFCO could not approve the annexation. Conversely, if the residents of Sunset Beach vote to accept imposition of the Huntington Beach utility tax, then the condition would be met and the LAFCO could approve the annexation.

Requiring a favorable Proposition 218 vote by Sunset Beach residents regarding imposition of the Huntington Beach utility tax as a condition of annexation harmonizes the competing statutory and constitutional requirements and is fair to the residents of Sunset Beach. This procedure at least gives Sunset Beach residents a vote on whether to accept the imposition of additional taxes before a forced "island" annexation occurs, and it is mandated by Government Code section 57330 and Proposition 218.

Very truly yours,



John C. McCarron

JCM/mr

cc: Clark Alsop

EXHIBIT  
G



**STERN, VAN VLECK & MCCARRON LLP**  
ATTORNEYS AT LAW

925 L Street, Suite 850  
Sacramento, CA 95814

916-442-1298 (Office)  
916-341-0849 (Fax)

LAWPOLICY.COM

September 30, 2010

Via E-mail: [icrosthwaite@oclafco.org](mailto:icrosthwaite@oclafco.org)

Joyce Crosthwaite, Executive Director  
Orange County LAFCO  
12 Civic Center Plaza, Rm. 235  
Santa Ana, CA 92701

**RECEIVED**  
OCT 04 2010

LOCAL AGENCY FORMATION COMMISSION

RE: Proposed Annexation of Sunset Beach by Huntington Beach

Dear Ms. Crosthwaite:

As you know, this firm represents the Citizen's Association of Sunset Beach (CASB), a non-profit citizen group that is opposed to the forced "island" annexation of Sunset Beach by Huntington Beach. I am writing to follow-up on my letter to you of July 15, 2010, regarding CASB's concerns about the terms that the LAFCO may place on this annexation.

Since my last letter, the Huntington Beach City Council has voted to move forward with the annexation. It is my understanding that on October 18, 2010, the annexation issue will again come before the Huntington Beach City Council, at which time the Council is likely to vote to complete their application for the annexation and to send it to the LAFCO. Because this is an "island" annexation, the LAFCO will have to approve it. However, the LAFCO can impose certain terms and conditions on the annexation. A few weeks ago, the LAFCO circulated a draft of the terms and conditions that it intends to impose on the annexation. We believe that those terms and conditions are inadequate to protect the residents of Sunset Beach and to assure a smooth transition. We urge you to include additional terms and conditions on this annexation.

CASB is particularly concerned about whether Sunset Beach residents will be required to pay the Huntington Beach utility tax without having a right to vote on that tax. As you know, Government Code section 57330 expressly requires Huntington Beach to impose the utility tax on the residents of Sunset Beach. The Huntington Beach City Council has indicated that it may not require Sunset Beach residents to pay the utility tax. My client has learned that if the Council does so, there is a group of Huntington Beach residents who will sue Huntington Beach and the LAFCO to either invalidate the annexation or to force the LAFCO to make it a condition of the annexation that Sunset Beach residents be subject to all Huntington Beach taxes, including the utility tax. As noted in my prior letter, and as I believe LAFCO's counsel would agree, Sunset Beach residents have the right under Proposition 218 to vote on whether to accept new special taxes like the Huntington Beach utility tax. If necessary, my client will take legal action to make sure that Sunset Beach residents are afforded their right to vote under Proposition 218.

Knowing that this dispute over imposition of the Huntington Beach utility tax will arise as part of the annexation, it is inappropriate for the LAFCO to ignore this dispute in its terms and

Joyce Crosthwaite, Executive Director  
Orange County LAFCO  
September 30, 2010

Page 2

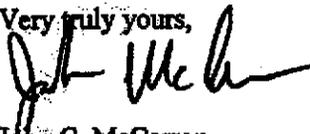
conditions of annexation. Doing so would invite litigation and put the status of the annexation in doubt until that litigation is resolved.

There are apparent conflicts between the "island" annexation statutes, Government Code section 57330, and Proposition 218 as those provisions apply to this particular annexation. However, the law can be harmonized in a way that is fair to all parties and that is consistent with the intent of the legislature. The LAFCO can and should require as a condition of annexation that Huntington Beach obtain a favorable Proposition 218 vote by Sunset Beach residents regarding the imposition of the Huntington Beach utility tax. This condition harmonizes the competing statutory and constitutional requirements and is fair to the residents of both Sunset Beach and Huntington Beach. While the citizens of Sunset Beach may not be entitled to a vote on whether to accept this "island annexation" they are entitled to a vote on whether to accept a special tax like the Huntington Beach utility tax.

As I'm sure you are aware, the Fresno County LAFCO recently imposed a very similar condition on a proposed island annexation by the city of Fresno. Although the city of Fresno sued to Fresno County LAFCO and successfully convinced a Superior Court judge to require that LAFCO to remove the condition regarding obtaining a favorable Proposition 218 vote by the residents who were to be annexed, the reasoning of that Superior Court decision is decidedly unconvincing. I'm not aware of whether the Fresno County LAFCO intends to appeal that ruling, but I believe that if they did so they would prevail. Obviously, the Orange County LAFCO does not fully accept the reasoning of the Superior Court judge in the Fresno case because the Orange County LAFCO is imposing some terms and conditions on Huntington Beach's proposed island annexation of Sunset Beach. The Orange County LAFCO should add to its list of conditions for the Huntington Beach island annexation that Huntington Beach first obtain a favorable Proposition 218 vote by the citizens of Sunset Beach or discontinue in its entirety the utility tax (and other similar special taxes) so as to eliminate any potential violation of the Proposition 218 rights of the residents of Sunset Beach. If necessary, my client is prepared to initiate litigation to require the LAFCO to impose this condition. Although my client would prefer to avoid the cost of such litigation, unless an alternative resolution can be reached, this issue is going to be the subject of litigation.

My client has been very up front about the fact that it represents individuals who are opposed to the annexation. However, if the residents of Sunset Beach vote to accept the Huntington Beach utility tax (along with the purported benefits of the annexation), than at least my client and its members will have been afforded the full measure of their rights under Proposition 218. Again, my client would prefer to resolve this issue prior to the filing of any litigation, and we would be happy to meet with representatives from the LAFCO to discuss this issue.

Very truly yours,



John C. McCarron

JCM/mr

cc: Clark Alsop  
Jennifer McGrath, City Attorney  
Client

# EXHIBIT

11



**Jennifer McGrath**  
City Attorney

OFFICE OF  
**CITY ATTORNEY**

P.O. Box 190  
2000 Main Street  
Huntington Beach, California 92648

Telephone: (714) 536-5555  
Facsimile: (714) 374-1590

Paul D'Alessandro, Assistant City Attorney  
Scott Field, Assistant City Attorney  
Neal Moore, Sr. Deputy City Attorney  
John Fujii, Deputy City Attorney  
Daniel K. Ohl, Deputy City Attorney  
Mike Vigliotta, Deputy City Attorney

November 9, 2010

SBCA  
P.O. Box 215  
Sunset Beach, CA 90742

Sent via email: [contactus@sunsetbeachca.org](mailto:contactus@sunsetbeachca.org)

Dear Members of the SBCA,

I am contacting you to resolve the outstanding issue of taxation of the Sunset Beach residents post-annexation into the City of Huntington Beach. Some confusion was caused earlier in the process regarding what taxes would apply. That confusion has now been resolved between LAFCO and the City of Huntington Beach.

This letter is to advise you that all taxes currently charged to residents of Huntington Beach will be charged to the residents of Sunset Beach post-annexation. These taxes include utility users tax, business license tax, property tax override, and the library tax, among other various taxes and property-related fees. The tax will be levied using the same methodology as currently in place for the residents of Huntington Beach.

Feel free to contact me should you have any questions.

Jennifer McGrath  
City Attorney  
City of Huntington Beach

cc: Honorable Mayor and City Council Members  
Fred Wilson, City Administrator  
Paul Emery, Deputy City Administrator  
Bob Wingenroth, Finance Director  
Scott Hess, Planning and Building Director

JM/s

# EXHIBIT

I



**STERN, VAN VLECK & MCCARRON LLP**

ATTORNEYS AT LAW

925 L Street, Suite 850  
Sacramento, CA 95814

916-442-1298 (Office)  
916-341-0849 (Fax)

LAWPOLICY.COM

November 16, 2010

Via E-mail: [jcrosthwaite@oclafco.org](mailto:jcrosthwaite@oclafco.org)

Joyce Crosthwaite, Executive Director  
Orange County LAFCO  
12 Civic Center Plaza, Rm. 235  
Santa Ana, CA 92701

RE: Proposed Annexation of Sunset Beach by Huntington Beach – Public Records Request

Dear Ms. Crosthwaite:

As you know, this firm represents the Citizen's Association of Sunset Beach (CASB), a non-profit citizen group formed to improve the quality of life in Sunset Beach. CASB is opposed to the forced "island" annexation of Sunset Beach by the City of Huntington Beach. CASB recognizes that the "island" annexation statutes do not allow the LAFCO to reject the annexation. However, the LAFCO has statutory authority to impose terms and conditions on the annexation, and it appears that the LAFCO has imposed certain conditions on this annexation as reflected in its Pre-Annexation Agreement with Huntington Beach. The terms and conditions reflected in the Pre-Annexation Agreement do not address the City of Huntington Beach's authority to impose certain taxes on the residents of Sunset Beach post-annexation nor does it impose a condition of annexation requiring a vote of the residents of Sunset Beach before the City's taxes may be levied on the annexed citizens.

We are informed that the LAFCO has had discussions with the City of Huntington Beach regarding imposition of these taxes and pursuant to California's Public Records Act (Cal. Gov't Code section 6250 et seq.) we request copies of any and all letters and or memoranda which are, or which refer to communications between the City of Huntington Beach and the LAFCO regarding tax issues.

CASB has obtained a copy of a letter from Huntington Beach City Attorney, Jennifer McGrath, dated November 9, 2010, stating that post-annexation, the City of Huntington Beach intends to impose Huntington Beach's utility tax on the residents of Sunset Beach without first giving the Sunset Beach residents an opportunity to vote on whether to accept imposition of that tax. We believe that is illegal, and we understand that the LAFCO attorneys agree with us. In the final report of the Sunset Beach Annexation Study for the City of Huntington Beach, dated April 27, 2010, prepared by Ralph Anderson & Associates, the drafter of that report states on page 10:

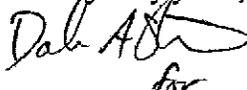
It should be noted, however, that in the view of LAFCO legal staff the Utility Users Tax could be imposed only if the annexation were processed as a normal inhabited unincorporated area requiring a vote of the Sunset Beach electorate. Since it is being pursued as an "island" annexation, not involving a vote of those being annexed, Proposition

218 would bar the imposition of this tax to this area according to LAFCO. As a result, this estimate is provided for information only and is not included in the overall General Fund revenue projection.

We also request copies of all written communications between the LAFCO and Ralph Anderson & Associates regarding the authority of Huntington Beach to impose its utility tax on the residents of Sunset Beach.

We concur with the statement attributed to LAFCO's counsel set forth above, but obviously the City of Huntington Beach is taking a contrary view. Unless this matter can be resolved by other means, CASB is prepared to sue to enjoin the annexation and the illegal imposition of the utility tax on the residents of Sunset Beach. CASB would prefer to resolve this matter through a condition of annexation imposed by the LAFCO that prohibits the City of Huntington Beach from imposing the utility tax on the residents of Sunset Beach absent a vote by these residents to accept the tax. We invite the LAFCO to explore that option with the City of Huntington Beach.

Very truly yours,



for  
John C. McCarron

JCM/mr

cc: Clark Alsop  
Client

# EXHIBIT

J

RESOLUTION No. 2010-100

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH, MAKING APPLICATION TO AND REQUESTING THE LOCAL AGENCY FORMATION COMMISSION OF ORANGE COUNTY TO TAKE PROCEEDINGS PURSUANT TO THE CORTESE-KNOX-HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT OF 2000 FOR THE CITY OF HUNTINGTON BEACH TO ANNEX APPROXIMATELY 134 ACRES OF PROPERTY WITHIN ITS SPHERE OF INFLUENCE, AND FILE ANNEXATION NO.IA 10-05 (SUNSET BEACH ANNEXATION TO THE CITY OF HUNTINGTON BEACH)

The City of Huntington Beach ("City") desires to initiate proceedings pursuant to the Cortese-Knox-Hertzberg Local Reorganization Act of 2000, Division 3, commencing with Section 56000 of the Government Code, for the annexation of unincorporated territory to the City; and

The City will file an application with the Local Agency Formation Commission to annex an unincorporated territory referred to as Sunset Beach as set forth in Exhibit 1, attached hereto and by this reference incorporated herein; and

The proposed annexation area is within the City's Sphere of Influence and is included in the City's General Plan as Residential High Density, Visitor Serving Commercial, Public, Open Space-Water Recreation, and Opens Space-Shoreline; and

The proposed annexation is subject to the following terms and conditions: the annexation shall be consistent with Government Code Sections 56668 and 56375.3 and other applicable laws existing as of the date of the filing of this Resolution; and

The reasons for this proposed annexation are as follows: to increase the economy and efficiency of government services as well as coordination of urban planning efforts and enhancement of community identity; and

The Sunset Beach Community Association ("SBCA") has met and developed a Memorandum of Understanding to clarify the future respective obligations of the City and SBCA during and following the annexation process; and

A Public Hearing was held by the Planning Commission on September 28, 2010, and by the City Council on October 18, 2010, to amend the Land Use Element of the General Plan for reclassification of zone designations. Notices were mailed to all property owners within a radius of 300 feet from the boundaries within the proposed annexation areas;

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Huntington Beach, does hereby approve the Resolution of Application for Annexation

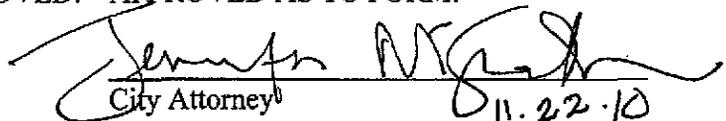
No. IA 10-05 (Sunset Beach Annexation to the City of Huntington Beach), and requests the Local Agency Formation Commission of Orange County take proceedings for the annexation of territory to the City, as shown in Exhibit 1, attached hereto and incorporated herein by this reference, according to the terms and conditions stated above and in the manner provided by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor

INITIATED, REVIEWED, AND APPROVED: APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Administrator

  
\_\_\_\_\_  
City Attorney

11.22.10

EXHIBIT  
K

IA 10-05

**RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF  
ORANGE COUNTY, CALIFORNIA**

**MAKING DETERMINATIONS AND APPROVING THE  
SUNSET BEACH ANNEXATION TO THE CITY OF HUNTINGTON BEACH**

**December 8, 2010**

On motion of \_\_\_\_\_, duly seconded and carried, the following resolution was adopted:

WHEREAS, the proposed annexation to the City of Huntington Beach, designated as "Sunset Beach Annexation to the City of Huntington Beach" (IA 10-05), was heretofore filed with and accepted for filing on December 7, 2010, by the Executive Officer of this Local Agency Formation Commission pursuant to Title 5, Division 3, commencing with Section 56000 et seq. of the Government Code; and

WHEREAS, the Executive Officer, pursuant to Government Code Section 56664 set December 8, 2010, as the hearing date of this proposal; and

WHEREAS, the Executive Officer, pursuant to Government Code Section 56665 has reviewed this proposal and prepared a report including her recommendation thereon, and has furnished a copy of this report to each person entitled to a copy; and

WHEREAS, this Commission on December 8, 2010, considered the proposal and the report of the Executive Officer, and considered the factors determined by the Commission to be relevant to this proposal, including, but not limited to, factors specified in Government Code Section 56668 and 56375.3; and

WHEREAS, this Commission called for and held a public hearing on the proposal on December 8, 2010, and at the hearing, this Commission heard and received all oral and written protests, objections and evidence which were made, presented or filed, and all persons present were given an opportunity to hear and be heard with respect to this proposal and the report of the Executive Officer; and

## **Attachment 12**

WHEREAS, this Commission has fulfilled its obligations as the responsible agency as defined by the California Environmental Quality Act and has reviewed and considered the Negative Declaration for the rezoning and annexation of the subject territory adopted by the City of Huntington Beach, as the lead agency on October 18, 2010.

NOW, THEREFORE, the Local Agency Formation Commission of the County of Orange DOES HEREBY RESOLVE, DETERMINE and ORDER as follows:

Section 1. Pursuant to the California Environmental Quality Act, the Commission has reviewed and considered the Negative Declaration for the rezoning and annexation of the subject territory adopted by the City of Huntington Beach on October 18, 2010.

Section 2. The proposal is approved subject to the following terms and conditions:

- a) Payment of Recorder and State Board of Equalization fees.
- b) The applicant agrees to defend, hold harmless and indemnify LAFCO and/or its agents, officers and employees from any claim, action or proceeding against LAFCO and/or its agents, officers and employees to attack, set aside, void or annul the approval of LAFCO concerning this proposal or any action relating to or arising out of such approval.
- c) The County of Orange and the City of Huntington Beach shall provide the LAFCO Executive Officer with a copy of a Pre-Annexation Agreement in substantially the same form as the Agreement attached as "Exhibit A."
- d) The City of Huntington Beach and the Sunset Beach Community Association shall provide the LAFCO Executive Officer with a

## *Attachment 12*

copy of a Memorandum of Understanding in substantially the same form as the Memorandum of Understanding attached as "Exhibit B."

- e) The City of Huntington Beach and the County of Orange will use their best efforts to maintain the identity of Sunset Beach. For a transitional period of 5 years, the City and County shall identify Sunset Beach on all applicable public signage and on all official City and County maps, where currently identified.
- f) The City of Huntington Beach will not change any current Sunset Beach street names and addresses except as necessary for public safety purposes.
- g) The Huntington Beach City Council will form a committee comprised of three City Council members who will meet regularly with the Sunset Beach community to discuss and address issues distinct to Sunset Beach.
- h) The City of Huntington Beach will maintain the greenbelt generally located west of Pacific Coast Highway between North Pacific and South Pacific Avenues as a community park in its current configuration including all existing parking spaces and infrastructure.
- i) The City shall assume responsibility for the Sunset Beach underground utility project. The County shall fund the Engineering Report for the Bayview portion of the project, which costs shall be reimbursed to the County from the assessment district, if formed. (Section 3.1.4.2 of OAA).
- j) Upon the effective date of annexation, all right, title and interest of the County, including the underlying fee title where owned by the county in any and all sidewalks, trails, landscaped areas, open space, street lights, signals, storm drains, water quality

## *Attachment 12*

treatment basins, and/or structures, and water quality treatment systems serving roadway and bridges shall vest in the City subject to existing easements and encroachments, except for those properties to be retained by the County or other public agencies and specifically listed by these conditions.

k) Upon the effective date of annexation, the City shall be the owner of, and responsible for, all of the following property owned by the County: public roads, bridges, adjacent slopes, street lights, traffic signals, mitigation sites that have not been accepted by regulatory agencies but exist or are located in public right-of-way and were constructed or installed as part of a road construction project within the annexed area and storm drains within street right-of-way and any appurtenant slopes, medians and adjacent property. City shall also be responsible for the ongoing mitigation, but not the ownership of, mitigation sites that were installed on other county property, such as flood control property that were installed as a condition of road construction projects in or associated with the road projects in the annexed area and mitigation site that was annexed to the City.

l) Upon the effective date of annexation, the City assume ownership and maintenance responsibilities for all drainage devices, storm drains and culverts, appurtenant facilities (except regional OCFCD flood control facilities for which OCFCD has a recorded flood control easement or owns fee interest), site drainage, and all master plan storm drain facilities that are within the annexation area and are currently operated and maintain by the County of Orange.

m) Upon the effective date of annexation, the City accept and adopt the County of Orange Master Plan of Drainage (MPD), if any,

## *Attachment 12*

which is in effect for the annexation area. Sunset Beach (unincorporated) is within the limits of the Master Plan of Drainage for the Unincorporated West Orange County Area (approved by the Board on December 1, 1971).

- n) Upon the effective date of annexation, deviations from the MPD shall be submitted to the Manager of Flood Control Division, Orange County Public Works Department for review to ensure that such deviations will not result in diversions between watersheds and/or will not result in adverse impacts to OCFCD's flood control facilities. Any deviation from the MPD shall also be submitted to the Orange County Flood Control District (OCFCD) for review of conformity with the General Plans of the OCFCD and the County of Orange
- o) Upon the effective date of annexation, if applicable and within the annexation area only, the City shall be responsible for the administration of flood plain zoning and the Federal Emergency Management Agency's (FEMA) regulations within the annexation area.
- p) Upon the effective date of annexation, the City shall coordinate development within the annexation area that is adjacent to any existing flood control facilities for which OCFCD has a recorded flood control easement or owns fee interest, by submitting maps and proposals to the Manager of Flood Control Division, Orange County Public Works Department, for review and comment. If such facilities are in need of improvement to provide the required flood control and/or erosion protection for the development, require the developer to enter into an agreement with OCFCD for the design, review, construction, acceptance, and maintenance of such necessary flood control improvements.



**Attachment 12**

regularly adopted by said Commission at a regular meeting thereof, held on the 8<sup>th</sup> day of December, 2010.

IN WITNESS WHEREOF, I have hereunto set my hand this 8<sup>th</sup> day of December, 2010.

PETER HERZOG  
Chair of the Orange County  
Local Agency Formation Commission

By: \_\_\_\_\_  
Peter Herzog

DRAFT