



Andrew T. Souza
City Manager

June 8, 2009

Rick Ballantyne, Executive Officer
Fresno Local Agency Formation Commission
2115 Kern Street, Suite 310
Fresno, CA 93721

Dear Mr. Ballantyne:

Please transmit this letter to the Commission for the June 10, 2009, meeting for their consideration related to Agenda Item No.7 on the "Belmont-Sunnyside No.3 Reorganization (Island Annexation)."

The City is supportive of the Staff recommendations and the proposed resolution with a request for some moderate changes. The City would like the annexation to go forward and agrees with LAFCo staff that the necessary findings have been met for the annexation. Additionally, without making a representation or conceding any of the City's rights related to a Proposition 218 claim, the City is agreeable to adding a condition to the resolution that would provide that no additional taxes or assessments will be collected from the new City residents without a Proposition 218 process or either a change in the law or new decisional case law.

Included in the staff report is the following Condition No. 3 of Section #5 of the March 11, 2009 resolution approving the annexation that is proposed by LAFCo staff and its attorney:

3. The annexation shall not be recorded until either verification has been provided to the satisfaction of the Executive Officer acknowledging that the voters have authorized and approved additional taxes, fees, and assessments resulting from the Proposition 218 requirement; or that the City's police and fire pension override assessment and Community Sanitation fee shall not be imposed without approval of a Proposition 218 vote.

Consistent with the City's statements above, the City respectfully requests that the above condition be replaced with the following language for Condition No. 3 of Section #5 before the Commission approves the resolution:

3. The City shall not impose the City of Fresno police and fire pension override assessment or the City of Fresno Community Sanitation fee on any residents in the annexed territory until any of the following occurs: (1) the City has followed applicable procedures under Proposition 218 to impose a fee, tax or assessment; (2) California or federal decisional case law provides that Proposition 218 proceedings are not required for a local agency

to impose a fee, tax or assessment on property owners in newly annexed territory that the property owners were not previously paying, (3) the City obtains a favorable court decision that would allow the City to collect the police and fire pension override assessment or the Community Sanitation fee on residents in the annexed territory without following an applicable procedure under Proposition 218, or (4) the California Constitution is amended such that the City is not required to comply with Proposition 218 procedures to impose the police and fire pension override assessment or the Community Sanitation fee on residents in the annexed territory.

The reasons supporting the City's request are the following:

- The City would like annexation to be effective even if the City does not collect the property tax override assessment and the Community Sanitation fee.
- The City should be able to impose the additional taxes, fees or assessment if it is clearly supported in the law either because of a change in the Constitution or court decision.

If the Commission chooses not to accept the City's proposed Condition No. 3 of Section #5 language, then the City respectfully requests that LAFCo staff's condition be amended as follows:

3. The annexation shall not be recorded until either verification has been provided to the satisfaction of the Executive Officer acknowledging that the City may impose additional taxes, fees, and assessments resulting from compliance with Proposition 218; or that the City's police and fire pension override assessment and Community Sanitation fee shall not be imposed.

The reasons the City requests the amendments to the LAFCo staff's Condition No. 3 of Section #5 language are the following:

- Not all Proposition 218 procedures require "voters," some are based on land-owner protests. The City's change refers to compliance with Proposition 218 in general without identifying whether a voter or land-owner procedure is required.
- The City believes we should be able to have the option of agreeing to not collect the pension override and Community Sanitation fee without conceding that a Prop. 218 proceeding is required. The City's change reflects this option.

Finally, the City requests that the following language be added to the recitals of the resolution to recognize that the City in agreeing to any condition is not taking a position on the Proposition 218 issue:

Whereas, the City is agreeable to adding the proposed Condition No. 3 of Section #5 to the annexation subject to the understanding that the City by doing so does not intend to take a position on the merits of the Proposition 218 claims made in this proceeding and the City does not intend by its support of the proposed condition to establish a precedent for any future reorganizations initiated or supported by the City. The City reserves the right in any future reorganization, to support or reject the imposition of a condition similar to the proposed Section #5 Condition 3.

We appreciate your time and consideration of these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Rudd". The signature is fluid and cursive, with the first name "Bruce" being larger and more prominent than the last name "Rudd".

Bruce A. Rudd
Assistant City Manager

CC: Georgeanne White, Chief of Staff to Mayor Ashley Swearengin
Keith Bergthold, Interim Director, Planning and Development Department
Kathryn Phelan, Senior Deputy City Attorney