Council/Agency Meeting Held:_______________ Deferred/Continued to:_______________ ☐ Approved ☐ Conditionally Approved ☐ Denied	_______________ City Clerk's Signature
Council Meeting Date: 08/04/2008	Department ID Number: FN 08-003

CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: PAUL EMERY, INTERIM CITY ADMINISTRATOR

PREPARED BY: DAN T. VILLELLA, CPA

SUBJECT: ADOPT RESOLUTION TO ESTABLISH FISCAL YEAR 2008/09 TAX RATE

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue:
Should the City of Huntington Beach adopt a tax rate to fund the portion of public safety retirement costs that can be legally collected in accordance with court cases, state law, and the City Charter?

For Fiscal Year 2008/09, it is proposed to levy a tax rate of $.00900 per $100 of assessed valuation on secured values. This proposed tax rate would bring in an estimated $2,320,653 in tax revenue to be used for funding a portion of the cost of pre-1978 public safety employee retirement benefits.

Funding Source:
Not applicable.

Recommended Action: Motion to:
Adopt Resolution Number 2008-47, *"A Resolution of the City Council of the City of Huntington Beach Levying a Retirement Property Tax for Fiscal Year 2008/2009 to pay for Pre-1978 Public Safety Employee Retirement Benefits"* of $.00900 per $100 of assessed valuation.

Alternative Action(s):
1. Adopt a tax rate that will recover the entire allowable portion of the safety employer contribution rate, generating approximately $8,025,569 in General Fund revenues.
2. Adopt last year's tax rate of $.00800 per $100 of assessed valuation.
3. Adopt an alternative tax rate less than the maximum.
4. Do not adopt a tax rate which will reduce General Fund revenue for FY 2008/09.

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Analysis:

History of the Retirement Levy

The City receives a pro-rata (approximately 15 percent) of the one-percent basic levy collected as property taxes on all real property within the City limits. In addition, the City can legally levy taxes to recover costs related to pre-1978 retirement benefits.

The City has levied a retirement property tax since 1966, when a City Charter amendment allowed the City to recover retirement costs. Section 607(b)2 of the City Charter states, "There shall be levied and collected at the same time and in the same manner as other property taxes for municipal purposes are levied and collected...a tax sufficient to meet all obligations of the City for the retirement system in which the City participates, due and unpaid or to become due during the ensuing fiscal year." In 1978, after the passage of Proposition 13, the City was still allowed to levy tax overrides above the one percent basic levy. This authority was limited by Revenue and Taxation Section 96.31(a)(4), which effectively set the City's maximum retirement tax rate at $.04930 per $100 of assessed valuation.

In response to a lawsuit in 1999, the court determined that the City could only levy taxes for retirement costs that were in effect prior to 1978. Determining the exact amount of pre-1978 benefits in any given year requires an actuarial report. In 2004, the City commissioned a report from an actuary, John Bartel of Bartel Associates, which made assumptions and recommendations concerning how to determine these amounts. Subsequently, the California Attorney General issued an opinion supporting the assumptions made by the City.

It should also be noted that this actuarial study only analyzed the cost of safety related retirement costs. The City could commission an actuarial report to calculate the pre-1978 retirement costs of miscellaneous (i.e., non-safety) employees. For FY 2008/09, it is being recommended that only a portion of the maximum amount of safety retirement costs be recovered.

Staff is recommending the City Council adopt a tax rate of $.00900 per $100 of assessed valuation ($.00100 higher than the tax rate in FY 2007/08). This will yield approximately $2,320,653 in revenue in FY 2008/09. This amount represents approximately thirty-one percent of the total amount of safety retirement costs which could be recovered. This suggested rate increase would result in a homeowner with a $500,000 assessed valuation (e.g., a property assessed at $500,000) paying an additional five dollars ($5.00) per year. The revenue generated by this tax rate enables the General Fund to maintain current levels of Police and Fire protection, infrastructure maintenance, and other essential services.

Calculation of Possible Tax Rates

The City may levy any tax rate between zero and the maximum allowable tax rate. To compute the maximum allowable tax rate, the pre-1978 retirement costs are divided by the City's total secured assessed valuation. For FY 2008/09, the City's secured assessed valuation (not including Redevelopment Agency incremental assessed valuation) is estimated at $25,785,037,602. This represents an estimated increase of $1,227,858,933, over the prior year's actual citywide secured assessed valuation. This estimate is made using Orange County Assessor's local assessment roll value data and represents the change over the 2007-08 roll year.

In addition, in July, 2008, a prepayment of retirement costs resulting in savings to the City and taxpayer were made to CalPERS. Since the City can recover only actual costs of the retirement program, only the discounted amounts can be recovered and thus were used in calculating estimated costs for FY 2008/09.

The amount of safety retirement costs related to the pre- and post-1978 benefits was computed as follows:

	Employer Safety Retirement Rate FY 2007/2008	Ratio of Costs	Estimated Employer Safety Retirement Costs FY 2008/09
Retirement Percentage Attributable to Pre-1978 Benefits	23.5420%	83.65%	$8,025,569
Retirement Percentage Attributable to Post-1978 Benefits (per actuarial study)	4.6000%	16.35%	$1,568,160
Total Safety Employer Rate 2007/2008	28.1420%	100.00%	$9,593,729*

**Amount includes savings of $364,821 from pre-paying the City's PERS contribution in July, 2008.*

Below is a table summarizing the estimated revenue for FY 2008/09 if one of three rates were levied: the maximum allowable rate, the prior year tax rate (FY 2007/08), and a staff recommended rate:

	Maximum Allowable Rate	Prior Year (FY 2007/08) Rate	Staff Recommendation
Total Pre-1978 Retirement Costs Recoverable through Property Tax Levy	$8,025,569	$8,025,569	$8,025,569
Amount of Pre-1978 Costs to be Recovered	$8,025,569	$2,062,803	$2,320,653
Total City-wide Secured Assessed Valuation	$25,785,037,602	$25,785,037,602	$25,785,037,602
Tax Rate (per $100 of assessed valuation)	$0.03112	$0.00800	$0.00900
Estimated Cost for Parcel with Assessed Valuation of $500,000	$155.62	$40.00	$45.00

The maximum allowable rate is the lesser of the above calculation ($0.03112 per $100 of assessed valuation) and the amount allowed under Revenue and Taxation Code 96.31(a)(4) ($.04930 per $100 of assessed valuation for Huntington Beach).

Because of Orange County's timeline for approving the tax rate and the city's budget cycle, the rate must be set before the City Council takes action on its annual budget adoption. The recommended action preserves the city's future option of adjusting the rate without creating an increased burden upon residents this year and allows the city's financial plan to be studied over the next year. This will give City Council adequate time to consider its options and impacts prior to the adoption of the FY 2009/10 budget.

Strategic Plan Goal:
Financial – Fully understand the financial implications of financial decisions before they are made, and recognize and disclose fiscal impacts of the pension crisis.

Environmental Status:
N/A

Attachment(s):

City Clerk's Page Number	No.	Description
5	1.	Resolution Number 2008-47, *"A Resolution of the City Council of the City of Huntington Beach Levying a Retirement Property Tax for Fiscal Year 2008/2009 to pay for Pre-1978 Employee Retirement Benefits"* of $.00900 per $100 of assessed valuation to pay for pre-1978 employee retirement benefits.

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ATTACHMENT #1

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RESOLUTION NO. 2008-47

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH LEVYING A RETIREMENT PROPERTY TAX FOR FISCAL YEAR 2008/2009 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 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 2008/2009, CalPERS is requiring the City to contribute 28.1420% 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 28.1420% to set the override tax at the equivalent of 23.5420% of safety employee payroll. The cost to the City of 23.5420% of safety employee payroll for 2008/2009 will be $8,025,569 and consequently, the City may set the override tax for 2008/2009 at $0.03112 per $100 of assessed value; and

Notwithstanding this authority, the City Council chooses to set the override tax rate for 2008/2009 at $0.00900 per $100 of assessed value, which will yield approximately $2,320,653 in revenue. This amounts to an override tax of approximately $9.00 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 0.00900/100th Dollars ($0.00900) per $100 of assessed value shall be levied for employee retirement costs for Fiscal Year 2008/09;

BE IT FURTHER RESOLVED that the remainder of the Zero and 0.03112/100th Dollars ($0.03112) per $100 of assessed value levy authorized under Revenue & Taxation Code Section 96.31(a)(4) is suspended for Fiscal Year 2008/2009;

BE IT FURTHER RESOLVED that the City Council declares that although it is suspending a portion of the retirement property tax for Fiscal Year 2008/2009, it retains the authority to levy the tax in future years up to the rate of $0.0493 per $100 of assessed value.

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PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the ______ day of ______________________, 2008.

____
Mayor

REVIEWED AND APPROVED:

____
City Administrator

APPROVED AS TO FORM:

____
City Attorney MV 7-28-08

7-29-08

INITIATED AND APPROVED:

____
Finance Director

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