



CITY OF HUNTINGTON BEACH
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May 21, 2024

Grant Parks
California State Auditor
621 Capital Mall
Sacramento, CA 95814

Assemblymember Gregg Hart
Chair, Joint Legislative Audit Committee
1020 N Street, Room 107
Sacramento, CA 95814

Re: ***Audit of the City of Huntington Beach***

Mr. Grant Parks:

Please allow this letter to serve as the City's further response to Senator David Min's request to "audit the City of Huntington Beach's settlement agreement with Pacific Airshow LLC ["Agreement"] to review the public funds that were used to compensate [Pacific] Airshow for revenues lost due to the cancellation of one day of the 2021 Airshow and the closure of local beaches following the oil spill off the coast of Huntington Beach" ("Audit"). As you are well-aware, on May 14, 2024, the State's Joint Legislative Audit Committee ("Committee") approved Senator Min's request for this Audit.

After the City's further research, and after consultation with City Council, the City is confirming its objection to your Audit of the City's municipal-level function(s) – and the Committee's misguided vote on May 14th to proceed with the Audit over the City's objections neither effectively preempts the City's local authority nor abates the City's staunch opposition to the Audit. Accordingly, the City will continue to object and will pursue any legal action necessary to protect the City's rights and prevent the State's interference into the City's municipal affairs.

To begin, as a Charter City, the City of Huntington Beach engages in local taxation and local spending pursuant to Article XI, Section 5 of the California Constitution. As I mentioned at the May 14th Committee hearing, the California Supreme Court, to which

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you and the Committee are subject (to its rulings, its power, and its legal direction), has instructed that a Charter City's spending of local monies and the decision-making related thereto, as a quintessential municipal affair, is beyond the purview of State control and inspection. (See California Supreme Court, *Johnson v. Bradley*, (1992) 4 Cal.4th 389; see also *City of Pasadena v. Charleville* 215 Cal. 384.)

At the May 14th Committee hearing, when challenged on your, or the State's, legal authority to conduct an Audit of the City's municipal affairs, you cited (at the Committee hearing), Government Code Section 8546.1. Yet, as your legal counsel very-well knows, no Government Code or other State Legislation can take away a Charter City's Constitutional rights. Moreover, no Government Code or other State Legislation can undermine or circumvent the sound legal rulings of the California Supreme Court. Additionally, a plain read of statutes makes it clear that the Audit falls squarely within Government Code Section 8546.7 and not Section 8546.1. As an aside, there are no legal cases that indicate that either Government Code Section 8546.1 or 8546.7, or any other section for Auditor's authority apply to Charter Cities. That is an inescapable conclusion of law.

Although not particularly applicable based on the foregoing, the State Auditor may audit contracts **only** if the audit is "at the request of the public entity or as part of any audit of the public entity..." (See Section 8546.7.) Sen Min does not represent the City and therefore, there was no Section 8546.7 compliant request for an Audit of the Airshow Agreement presented either to you or to the Committee. Just as importantly, the law states that such an Audit can only be conducted "after final payment under the contract." (See Section 8546.7.) As you know well by the public Memo disseminated in May of 2023, the Airshow Agreement provides for annual payments spanning six years. As such, if the Auditor is to comply with the Government Code, no Audit may commence until at least 2029 – when the final payment under the Airshow Agreement is scheduled to take place.

In sum, the State Auditor does not have the authority to Audit the Airshow Agreement as it is a municipal affair beyond the reach of the State, the State has no authority under Government Code Section 8546.1; and, even if the State had invoked the correct statute (Gov. Code Section 8546.7), the State would not have the authority to audit the Agreement because none of the necessary preconditions under that statute have been met or can be met at this time.

The inescapable conclusion is that the Committee's Audit approval of the City's Airshow Agreement is improper as beyond the reach, or purview, of the State, and is not consistent with State law.

Auditor, Grant Parks

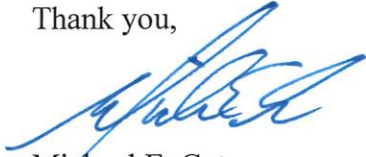
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If you have any questions, please feel free to contact me directly and if your legal counsel has any counter-authorities that are controlling on the issues raised in this letter, please feel free to have your legal counsel provide those authorities. Until then, the City will continue to object to the Audit by your office and will pursue any legal action necessary to protect the City's rights and prevent the State's interference into the City's municipal affairs.

Thank you,



Michael E. Gates
City Attorney