DATE: August 18, 2015

TO: Honorable Mayor and Members of the City Council

COPY TO: Greg Carpenter, City Manager

FROM: City Attorney’s Office

SUBJECT: City Council Agenda Item #9

As part of tonight’s City Council agenda, Item #9 on the consent calendar requests the City Council consider (1) adopting a resolution authorizing the examination of prepaid mobile telephony services surcharge and local records, and (2) authorizing the City Manager to execute an agreement for the Board of Equalization to collect local user utility taxes. The agenda packet distributed to the City Council included one proposed resolution which addressed all of the issues requested by the State Board of Equalization ("BOE").

Since the agenda packet was distributed, staff members in the City’s Department of Finance have had discussions with representatives of the State BOE, and those representatives have requested that the City Council adopt two resolutions rather than one (i.e., one resolution to authorize the examination of records, and one resolution authorizing the City Manager to execute the agreement). The State BOE representatives advised City staff that if the City presents only one approved resolution to the BOE, it could delay processing of the City’s request to contract with BOE for collection of local user utility taxes.

Accordingly, City staff members have completed the attached proposed resolutions:

1. Resolution Authorizing the Examination of Prepaid Mobile Telephony Services Surcharge and Local Charge Records, and
2. A Resolution of the City of El Segundo Authorizing City Manager to Execute Agreement with the State Board of Equalization for Implementation of the Local Prepaid Mobile Telephony Services Collection Act.

These resolutions will be distributed as part of Item #9 for the City Council’s consideration. Please let our office know if you have any questions regarding this matter.

Attachments
RESOLUTION NO.

A Resolution Authorizing the Examination of Prepaid Mobile Telephony Services Surcharge and Local Charge Records

WHEREAS, pursuant to Ordinance No., 1134, 1438 of the City of EL SEGUNDO and the Local Prepaid Mobile Telephony Services Collection Act, the City of EL SEGUNDO, hereinafter called Local Jurisdiction, entered into a contract with the State Board of Equalization, hereafter referred to as the Board, to perform all functions incident to the administration and collection of the prepaid mobile telephony services surcharge and local charges (Rev. & Tax. Code, § 42101.5); and

WHEREAS, the Local Jurisdiction deems it desirable and necessary for authorized representatives of the Local Jurisdiction to examine confidential prepaid mobile telephony services surcharge and local charge records pertaining to the prepaid mobile telephony services surcharge and local charges collected by the Board for the Local Jurisdiction pursuant to that contract;

WHEREAS, the Board will make available to the Local Jurisdiction any information that is reasonably available to the Board regarding the proper collection and remittance of a local charge of the Local Jurisdiction by a seller, including a direct seller, subject to the confidentiality requirements of Sections 7284.6, 7284.7 and 19542 of the Revenue and Taxation Code; and

WHEREAS, Sections 42110 and 42103 of the Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board of Equalization records and establishes criminal penalties for the unlawful disclosure of information contained in or derived from the prepaid mobile telephony services surcharge and local charge records of the Board;

NOW, THEREFORE IT IS RESOLVED AND ORDERED AS FOLLOWS:

Section 1. That the ________________________________ or other officer or employee of the Local Jurisdiction designated in writing by the ________________________________ to the Board is hereby appointed to represent the Local Jurisdiction with authority to examine prepaid mobile telephony services surcharge and local charge records of the Board pertaining to prepaid mobile telephony services surcharge and local charges collected for the Local Jurisdiction by the Board pursuant to the contract between the Local Jurisdiction and the Board. The information obtained by examination of Board records shall be used only for purposes related to the collection of the Local Jurisdiction’s prepaid mobile telephony services surcharge and local charges by the Board pursuant to the contract.

Section 2. That the ________________________________ or other officer or employee of the Local Jurisdiction designated in writing by the ________________________________ to the Board is hereby appointed to represent the Local Jurisdiction with authority to examine those prepaid mobile telephony services surcharge and local charge records of the Board for purposes related to the following governmental functions of the Local Jurisdiction:

a) compliance and enforcement of the utility users tax (local charge)

b) administrative functions set out in City’s utility users tax ordinance

c) legal interpretation and enforcement of utility users tax ordinance

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The information obtained by examination of Board records shall be used only for those governmental functions of the Local Jurisdiction listed above.

Section 3. That MuniServices, LLC is hereby designated to examine the prepaid mobile telephony services surcharge and local charges records of the Board of Equalization pertaining to prepaid mobile telephony services surcharge and local charges collected for the Local Jurisdiction by the Board. The person or entity designated by this section meets all of the following conditions (Rev. & Tax. Code, § 42110, subd. (b)(2)):

a) has an existing contract with the Local Jurisdiction that authorizes the person to examine the prepaid mobile telephony services surcharge and local charge records;

b) is required by that contract with the Local Jurisdiction to disclose information contained in or derived from, those records only to an officer or employee of the Local Jurisdiction authorized by the resolution to examine the information;

c) is prohibited by that contract from performing consulting services for a seller during the term of that contract;

d) is prohibited by that contract from retaining information contained in, or derived from, those prepaid mobile telephony services surcharge and local charge records, after that contract has expired.

The contract between the Local Jurisdiction and MuniServices, LLC designated by the Local Jurisdiction to request information from the Board shall be subject to the following limitations (Rev. & Tax. Code, § 42103, subd. (g)):

a) MuniServices, LLC shall, to the same extent as the Board, be subject to Section 55381, relating to unlawful disclosures.

b) the contract between the Local Jurisdiction and MuniServices, LLC shall not provide, in whole or in part, in any manner a contingent fee arrangement as payment for services rendered.

BE IT FURTHER RESOLVED THAT the information obtained by examination of the Board records shall only be used for purposes related to the collection of the Local Jurisdiction's prepaid mobile telephony services surcharge and local charges by the Board pursuant to the contract between the Local Jurisdiction and Board, or for purposes related to other governmental functions of the Local Jurisdiction, as identified above in section 2.

Introduced, approved and adopted this 18th day of August, 2015.

__________________________________________
(Signature)

Suzanne Fuentes, Mayor City of El Segundo
(Printed name & title)

__________________________________________
(Date)

__________________________________________
(Attest)
RESOLUTION NO. ________________

A RESOLUTION OF THE CITY OF EL SEGUNDO
AUTHORIZING ________________ TO EXECUTE AGREEMENT WITH THE STATE BOARD OF EQUALIZATION FOR IMPLEMENTATION OF THE LOCAL PREPAID MOBILE TELEPHONY SERVICES COLLECTION ACT

WHEREAS, on 4/13/2010, the ________________ certified that Ordinance No. 1438 applies its local charge(s) (access to 911 or communication services and/or utility user tax) to prepaid mobile telephony services; and

WHEREAS, the Local Prepaid Mobile Telephony Services Collection Act, mandates the Board of Equalization (Board) to administer and collect the local charges for all applicable local jurisdictions (Rev. & Tax Code section 42103); and

WHEREAS, the Board will perform all functions incident to administration and collection of the local charges for the ________________; and

WHEREAS, the Board requires that the ________________ enter into an “Agreement for State Collection and Administration of Local Charges” prior to implementation of the Local Prepaid Mobile Telephony Services Collection Act, and

WHEREAS, the Board requires that the ________________ authorize the agreement;

NOW, THEREFORE BE IT RESOLVED by the ________________ that the attached “Agreement for State Collection and Administration of Local Charges” is hereby approved and the ________________ is hereby authorized to execute the agreement.

* * * * * * * * *
The foregoing resolution was introduced and adopted at a regular meeting of the City of El Segundo held on 8/18/2015, by the following vote:

AYES: ____________________________

NOES: ____________________________

ABSENT: __________________________

DATED: __________________________

ATTEST: (s) ________________________ (s) ________________________

(Printed Name & Title) (Printed Name & Title)