



**CITY OF LOS ALTOS
CITY COUNCIL MEETING
August 25, 2015**

CONSENT CALENDAR

Agenda Item # 10

SUBJECT: Adopt Resolution No. 2015-31, authorizing the City Manager and the City Attorney to execute certain documents required by the State Board of Equalization to collect the City's Utility Users' Tax on prepaid wireless service; and adopt Resolution No. 2015-32, authorizing the examination of prepaid mobile telephony services surcharge and local charge records

BACKGROUND

The City collects a Utility Users' Tax (UUT) at a rate of 3.5% (3.2% for telecommunications) from businesses and residents in the City. The City UUT is a general tax that represents approximately 9% of the annual revenue sources in the General Fund and is estimated to generate \$2.76 million during the 2015/16 fiscal year.

The City's UUT is assessed on wireless telecommunication charges and is collected by service providers on monthly service statements. However, pre-paid wireless services, which represent an increasing share of the telecommunications market, historically avoid paying any UUT due to collection complications. Prepaid wireless services are typically sold by retailers, not service providers, without a contract and monthly invoice. It is estimated that approximately 70% of all prepaid wireless services are sold by retailers. Since these transactions bypass the local UUT, the City experiences a significant loss of revenue. Additionally, traditional service provider users are treated disparately and the burden of the UUT is not equally shared among all telephone users.

EXISTING POLICY

None

PREVIOUS COUNCIL CONSIDERATION

None

DISCUSSION

Assembly Bill 1717 goes into effect on January 1, 2016 and will require California retailers and on-line sellers of pre-paid wireless services to collect the local UUT at the same time it collects sales tax on its other retail products, based on the point of sale (for retail stores in Los Altos). Under this new law, all local jurisdictions have to contract with the California State Board of Equalization (BOE) by September 1, 2015 in order to receive UUT imposed on consumers of prepaid wireless phone service. It is recommended that the City Council adopt two resolutions that will serve the following purposes:

1. Adopt Resolution No. 2015-31, authorizing the City Manager and the City Attorney to execute certain documents required by the State Board of Equalization to collect the City's UUT on prepaid wireless service, including authorizing the City Manager to enter into an agreement with California State Board of Equalization in order to receive UUT imposed on consumers of prepaid mobile services

2. Adopt Resolution No. 2015-32, authorizing the examination of prepaid mobile telephony services surcharge and local charge records by the City and its consultant to ensure proper collection and remittance

PUBLIC CONTACT

Posting of the meeting agenda serves as notice to the general public.

FISCAL/RESOURCE IMPACT

Early estimates indicate that the City can expect a 15% to 20% increase in its annual wireless Utility Users' Tax once AB 1717 goes into effect. This would equate to an additional \$58,000 to \$78,000 per year in UUT revenue. It is estimated that the BOE administrative fees will be approximately 5.5% of total prepaid wireless UUT remitted to the City.

ENVIRONMENTAL REVIEW

Not applicable

RECOMMENDATION

1. Adopt Resolution No. 2015-31, authorizing the City Manager and the City Attorney to execute certain documents required by the State Board of Equalization to collect the City's UUT on prepaid wireless service
2. Adopt Resolution No. 2015-32, authorizing the examination of prepaid mobile telephony services surcharge and local charge records

ALTERNATIVES

1. Recommend changes to the resolutions.
2. Do not adopt one or both resolutions. Either alternative action may result in a delay in receiving UUT on prepaid wireless services from the BOE.

Prepared by: Kim Juran-Karageorgiou, Administrative Services Director

ATTACHMENTS:

1. Resolution No. 2015-31
2. Resolution No. 2015-32

Adopt Resolution No. 2015-31, authorizing the City Manager and the City Attorney to execute certain documents required by the State Board of Equalization to collect the City's Utility Users' Tax on prepaid wireless service; and adopt Resolution No. 2015-32, authorizing the examination of prepaid mobile telephony services surcharge and local charge records

RESOLUTION NO. 2015-31

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO
EXECUTE CERTAIN DOCUMENTS REQUIRED BY THE BOARD OF
EQUALIZATION TO COLLECT THE CITY'S UTILITY USERS' TAX ON
PREPAID WIRELESS SERVICE**

WHEREAS, pursuant to Ordinance No. 85-128 of the City of Los Altos and the Local Prepaid Mobile Telephony Services Collection Act, the City of Los Altos (hereinafter CITY), wishes to enter 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) effective January 1, 2016; and

WHEREAS, the BOARD requires that CITY: enter into a contract with the BOARD by September 1, 2015; certify the CITY'S UUT ordinance, its rate and applicability; and adopt a resolution authorizing certain persons access to confidential information of the BOARD that is reasonably available to the Board regarding the proper collection and remittance of a local charge of the CITY.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Los Altos hereby resolves and orders as follows:

The City Manager is hereby authorized to sign on behalf of the City a contract with the BOARD, as approved by the City Attorney, including any other related documents required by 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).

Further, the City Attorney is hereby authorized to sign on behalf of the City a certification required by the BOARD certifying certain information regarding the CITY's utility users' tax ordinance, the applicable rate, and that it applies to all wireless telecommunication services, including prepaid wireless.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the ___day of___, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Janis C. Pepper, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK

RESOLUTION NO. 2015-32

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
AUTHORIZING THE EXAMINATION OF PREPAID MOBILE TELEPHONY
SERVICES SURCHARGE AND LOCAL CHARGE RECORDS**

WHEREAS, pursuant to Ordinance No. 85-128 of the City of Los Altos and the Local Prepaid Mobile Telephony Services Collection Act, the City of Los Altos, 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; and

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, BE IT RESOLVED, that the City Council of the City of Los Altos hereby resolves and orders as follows:

Section 1. That the City Manager, or other officer or employee of the Local Jurisdiction designated in writing by the City Manager 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 City Manager and Administrative Services Director or other officer or

employee of the Local Jurisdiction designated in writing by the City Manager 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, including but not limited to refunds and defense of claims against ordinance

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 MuniService, 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.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the ____day of____, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Janis C. Pepper, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK