

HAYWARD CITY COUNCIL

RESOLUTION NO. 15- _____

Introduced by Council Member _____

A RESOLUTION AUTHORIZING THE EXAMINATION OF PREPAID MOBILE TELEPHONY SERVICES SURCHARGE AND LOCAL CHARGE RECORDS

WHEREAS, pursuant to Utility Users Tax Hayward Municipal Code Chapter 8 Article 18 of the City of Hayward and the Local Prepaid Mobile Telephony Services Collection Act, the City of Hayward (City) 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 City of Hayward deems it desirable and necessary for authorized representatives of the City 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 City of Hayward pursuant to that contract; and

WHEREAS, the Board will make available to the City of Hayward any information that is reasonably available to the Board regarding the proper collection and remittance of a local charge of the City 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 by the City Council of the City of Hayward, California

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 City by the Board pursuant to the contract between the City of Hayward 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 the Director of Finance as the UUT Tax Administrator or other officer or employee of the City designated in writing by the City Manager to the Board is hereby appointed to represent the City of Hayward 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 City:

- 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 City of Hayward 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 City of Hayward 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 City of Hayward that authorizes the person to examine the prepaid mobile telephony services surcharge and local charge records;
- b) is required by that contract with the City of Hayward to disclose information contained in or derived from, those records only to an officer or employee of the City 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 City of Hayward 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 City of Hayward 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 City’s prepaid mobile telephony services surcharge and local charges by the Board pursuant to the contract between the City and Board, or for purposes related to other governmental functions of the City, as identified above in section 2.

IN COUNCIL, HAYWARD, CALIFORNIA September 15, 2015

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward