Council Meeting
May 16, 2006

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the City Council:

SUBJECT: Continuation with the appeals process for a sales and use tax matter pending before the California State Board of Equalization

Expenditure: $20,000

RECOMMENDATION

The Finance Director and the City Attorney recommend that Your Honorable Body authorize a continuation with the appeals process for a sales and use tax matter pending before the California State Board of Equalization and adopt a **RESOLUTION** authorizing Attorney Al Koch to examine the sales and use tax collected for the City by the State Board of Equalization.

FUNDING

Funding is available in the 2005-06 and 2006-07 Finance operating budget.

BACKGROUND/ANALYSIS

The City has a pending appeal before the State Board of Equalization regarding the allocation of local tax (1% of Sales) of a Taxpayer located in the City. The Board has deemed the sales made by this Taxpayer to be classified as a "use tax", as opposed to a "sales tax", and is proposing to take away in excess of $1.1 million from the City that was received from January 2001 through June 2002. The City receives a much larger allocation when the local tax is classified as a "sales tax". The City disagrees with the Board's interpretation of facts in this matter and has collected evidence that contradicts the Board's findings.

California's Revenue and Taxation Code outlines a five step appeals process when there is a disagreement between the City and the Board of Equalization regarding the allocation of local tax. During the first two steps of the appeals process the Board took away in excess of $1.1 million from the City. By presenting the City's arguments through telephone and written correspondence, Staff was successful in

obtaining a full refund of this money. The City will retain use of these funds until a final outcome is determined in this matter.

The third step in the appeal process involves legal council submitting oral and written arguments to support the City's position. If the City's argument prevails, then the City may stand to gain approximately $200,000 per quarter in new sales tax revenues. Staff believes that the argument for continuing to classify the local tax as "sales tax" is stronger than the Board's argument for "use tax". Should the Council decide not to pursue this matter the Board would require the City to forfeit the $1.1 million refunded to the City.

Respectfully submitted,

Saboohi Currim
Audit Manager

CONCUR:

Eric E. Tsao
Finance Director

John L. Fellows III
City Attorney

LeRoy J. Jackson
City Manager

RESOLUTION NO. 2006 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TORRANCE AUTHORIZING EXAMINATION OF SALES AND USE TAX RECORDS

WHEREAS, pursuant to ordinance, the City of Torrance entered into a contract with the State Board of Equalization to perform all functions incident to the administration and collection of local sales and use taxes; and

WHEREAS, the City Council of the City of Torrance deems it desirable and necessary for authorized representatives of the City to examine confidential sales and use tax records of the State Board of Equalization pertaining to sales and use taxes collected by the Board for the City pursuant to that contract; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board records, and establishes criminal penalties for the unlawful disclosure of information contained in, or derived from, the sales and use tax records of the Board; and

WHEREAS, the City previously adopted Resolution No. 2005-60 designating MBIA MuniServices Company to examine the sales and use tax records of the Board; and

WHEREAS, this Resolution is in addition to and does not supersede Resolution No. 2005-060; and

WHEREAS, the City has retained special counsel Albin C. Koch individually in addition to MBIA MuniServices Company to represent the City before the Board and to examine the sales and use tax records of the Board in accordance with Section 7056 of the California Revenue and Taxation Code:

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TORRANCE HEREBY RESOLVES AS FOLLOWS:

Section 1.
That the City Manager, Assistant City Manager, Director of Finance, Assistant Finance Director, or other officer or employee of the City designated in writing by the City Manager, Assistant City Manager, Director of Finance or Assistant Finance Director to the State Board of Equalization ("Board"), are hereby appointed to represent the City with authority to examine sales and use tax records of the Board pertaining to sales and use taxes collected for the City by the Board pursuant to the contract between the City and the Board. The information obtained by examination of Board records shall be used only for purposes related to the collection of City sales and use taxes by the Board pursuant to that contract.

Section 2.
That the City Manager, Assistant City Manager, Director of Finance or Assistant Finance Director, or other officer or employee of the City designated in writing by the City Manager, Assistant City Manager, Director of Finance or Assistant Finance Director to the Board, are

hereby appointed to represent the City with authority to examine those sales and use tax records of the Board, for purposes of review of records for accuracy of local tax allocation.

Section 3.
The information obtained by examination of Board records shall be used only for purposes related to the collection of City sales and use taxes by the Board pursuant to the contract between the City and the Board and for purposes relating to the governmental functions of the City listed in Sections 1 and 2 of this Resolution.

Section 4.
That attorney Albin C. Koch is hereby designated to examine the sales and use tax records of the Board pertaining to sales and use taxes collected for the City by the Board. The person or entity designated by this section meets all of the following conditions:

a) has an existing contract with the City to examine those sales and use tax records;
b) is required by that contract to disclose information contained in, or derived from, those sales and use tax records only to the officer or employee authorized under Sections 1 and 2 of this Resolution to examine the information;
c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract; and
d) is prohibited by that contract from retaining the information contained in, or derived from those sales and use tax records, after that contract has expired.

The information obtained by examination of Board records shall be used only for purposes related to the collection of City sales and use taxes by the Board pursuant to the contract between the City and the Board and for purposes relating to the governmental functions listed in Sections 1 and 2 of this Resolution.

INTRODUCED, APPROVED, AND ADOPTED this 18th day of April, 2006

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Mayor of the City of Torrance

ATTEST:

_____
City Clerk of the City of Torrance

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By_____
Ronald T. Pohl
Assistant City Attorney