

Council Meeting
February 8, 2011

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

Members of the City Council:

SUBJECT: Finance, City Attorney - Adopt a RESOLUTION authorizing Robert E. Cendejas, Attorney, to examine sales and use tax records of the California State Board of Equalization

Expenditure: None

RECOMMENDATION

The Finance Director and the City Attorney recommend that your Honorable Body adopt the attached **RESOLUTION** granting Robert E. Cendejas, Attorney, access to examine City of Torrance sales and use tax records with the California State Board of Equalization.

FUNDING

Not applicable.

BACKGROUND/ANALYSIS

One of the functions of the Audit Division of the Finance Department is to review and audit the sales and use tax revenues received by the City from the State Board of Equalization ("Board") pursuant to ordinance. To perform these duties, it is necessary for staff to access confidential records maintained by the Board.

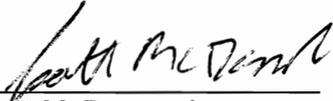
The confidentiality of sales tax records is governed under California Revenue and Taxation Code Section 7056 which requires a resolution by the governing body naming who in the City can access these records. The City Manager, Assistant City Manager, Finance Director, Assistant Finance Director and their designees are currently on the resolution. Individuals other than employees or officers of the City must be named separately.

In 2005, Council approved the addition of MuniServices, sales tax consultants who serve as a backstop to the City's audit program and in 2006 Al Koch, a sales tax attorney who was associated with MuniServices, was also added to the resolution. MuniServices contracts with other cities to perform similar services, so we are seeking to add an additional attorney who specializes in sales tax to avoid either a perceived or real conflict of interest on a specific case.

At this time, staff is in need of specialized expertise in the allocation of sales tax within the State of California's allocation framework. Staff will be contracting with Robert E. Cendejas, Attorney, and is recommending that the resolution on file with the Board be updated so that Mr. Cendejas can access these records.

Respectfully submitted,

ERIC E. TSAO
FINANCE DIRECTOR

By 

Scott McDonough
Audit Manager

CONCUR:



Eric E. Tsao
Finance Director



John L. Fellows III
City Attorney



LeRoy J. Jackson
City Manager

Attachment: RESOLUTION

RESOLUTION NO. 2011 - _____

**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, the City previously adopted Resolution No. 2006-40 designating Albin C. Koch to examine the sales and use tax records of the Board; and

WHEREAS, this Resolution is in addition to and does not supersede Resolutions No. 2005-60 and No. 2006-40; and

WHEREAS, the City has retained special counsel Robert E. Cendejas in addition to MBIA MuniServices Company and Albin C. Koch 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 Robert E. Cendejas 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 _____ day of _____, 2011.

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 _____
Patrick Q. Sullivan
Assistant City Attorney