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OFFICE OF THE CITY CLERK
OAKLAND

AGENDA REPORT
12 DEC 13 PM 2:11

TO: CITY COUNCIL

FROM: Barbara Parker,
City Attorney

SUBJECT:
Designation and Authorization of City Representative
to Examine Sales and Use Tax Records

DATE: December 18, 2012

COUNCIL DISTRICT: City Wide

RECOMMENDATION

Adopt the Resolution of the City Council of the City of Oakland Designating and Authorizing Douglas R. Boyd of the Law Office of Douglas R. Boyd, as a City Representative To Examine Sales And Use Tax Records.

REASON FOR URGENCY

The urgency came to the attention of the City Attorney's Office after posting of the agenda on Friday, December 7, 2012 (Brown Act section 54954.2(b)(2); Sunshine Ordinance, OMC section 2.20.080(E)(2)). There is a need for immediate action by the City Council, which cannot wait until the next regular City Council meeting on January 15, 2013. The pending action involves state sales and use taxes and the state recently denied the City's legal counsel access to requested information necessary to the City's case. Deferral to the January 15, 2013, City Council agenda would cause substantial adverse impact in that it would not allow the City's expert counsel sufficient time to review statewide sales and use tax records, prepare and submit briefing to meet approaching submission deadlines as early as February 2013, and prepare the City's case in time for upcoming proceedings in mid-March or May 11, 2013 before the Board of Equalization.

EXECUTIVE SUMMARY

The City Attorney's Office engaged the Law Offices of Douglas R. Boyd to represent the City in proceedings before the Board of Equalization, which requires review of confidential statewide sales and use tax records. Pursuant to California Revenue and Taxation Code Section 7056, the City of Oakland may designate by resolution any officer, employee or any other person to examine all of the sales and use tax records of the Board pertaining to sales and use taxes collected for the City. Adoption of the resolution will allow the City's legal counsel to access records necessary to represent the City's interest in the pending Board of Equalization proceedings.

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DISCUSSION

Pursuant to California Revenue and Taxation Code Section 7200, et seq., the City of Oakland has adopted a sales and use tax ordinance, which imposes a tax and provides to be administered and collected by the State Board of Equalization along the same and existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes. 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 of Equalization. In accordance with Section 7056, the City Council is required to designate by resolution officers, employees, consultants or other agents to examine confidential state sales and use tax records. In addition, the City Council must certify that the designated consultant will maintain the confidentiality of these records.

In 2004, Douglas R. Boyd of the Law Offices of Douglas R. Boyd provided highly-specialized legal advice and represented the City in a similar, related action before the Board of Equalization. He continues his representation of the City as legal counsel in pending proceedings before the Board of Equalization relating to the sales and use taxes collected by the state and distributed to the City and other taxing jurisdictions throughout the state. Access to the state's tax records is necessary to allow legal counsel to analyze the facts, prepare briefing and prepare the case for the City of Oakland in upcoming proceedings before the Board of Equalization.

Due to the state statutory constraints regarding confidentiality of the pending proceedings, details regarding the underlying action cannot be discussed in open session.

FISCAL IMPACTS

This resolution will not have any fiscal impacts.


PROPOSED OUTCOME

Passage of the resolution will allow the City's legal counsel to access confidential statewide sales and use tax records maintained by the Board of Equalization.

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For questions regarding this report, please contact Kathleen Salem-Boyd, Deputy City Attorney, at (510) 238-3034.

Respectfully submitted,


BARBARA J. PARKER
City Attorney

Attachments

Resolution of the City Council of the City of Oakland Designating and Authorizing Douglas R. Boyd of the Law Office of Douglas R. Boyd, as a City Representative To Examine Sales And Use Tax Records.

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OAKLAND

INTRODUCED BY COUNCIL MEMBER _____

2017 DEC 13 PM 2:09

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C. M. S.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLAND DESIGNATING AND AUTHORIZING DOUGLAS R. BOYD OF THE LAW OFFICE OF DOUGLAS R. BOYD A COUNSEL, AS A CITY REPRESENTATIVE TO EXAMINE SALES AND USE TAX RECORDS

WHEREAS, pursuant to California Revenue and Taxation Code Section 7200, et seq., the City of Oakland has adopted a sales and use tax ordinance which imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization along the same and existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes; and

WHEREAS, pursuant to California Revenue and Taxation Code Section 7056, the City of Oakland, by resolution, may designate any officer, employee or any other person to examine all of the sales and use tax records of the Board pertaining to sales and use taxes collected for the City; and

WHEREAS, the City of Oakland has retained consultant, the Douglas R. Boyd of the Law Office of Douglas R. Boyd, as the authorized legal representative of the City to examine such sales and use tax records maintained by the Board on behalf of the City of Oakland; and now, therefore, be it

RESOLVED: That the City Council of the City of Oakland hereby certifies to the State Board of Equalization that the Law Office of Douglas R. Boyd is a designated representative of the City of Oakland to examine all of the sales and use tax records of the Board pertaining to sales and use taxes collected by the Board on behalf of the City of Oakland; and be it

FURTHER RESOLVED: That pursuant to California Revenue and Taxation Section 7056(b), the City Council of the City of Oakland certifies that the Law Offices of Douglas R. Boyd (hereinafter referred to as "Consultant") meets all of the following conditions:

a. Consultant has an existing contract with the City to represent the City in a matter requiring examination of Board of Equalization sales tax records;

b. Consultant is required by that contract to disclose information contained in, or derived from, those sales tax records only to an officer or employee of the City who is authorized by resolution to examine the information;

c. Consultant is prohibited by the contract from performing consulting services for a retailer during the term of the contract; and

d. Consultant is prohibited from retaining the information contained in, or derived from, those sales tax records, after the contract has expired; and be it

FURTHER RESOLVED: The officers and employees authorized to examine information contained in or derived from sales and use tax records accessed by Law Office of Douglas R. Boyd are: Douglas R. Boyd; and be it

FURTHER RESOLVED: That this Resolution shall take effect immediately upon its passage.

IN OAKLAND, COUNCIL, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

**AYES - DE LA FUENTE, KERNIGHAN, NADEL, SCHAAF, BROOKS, BRUNNER, KAPLAN,
AND PRESIDENT REID**

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California