



August 31, 2015

**TO:** Honorable Mayor and City Council  
**THROUGH:** Finance Committee  
**FROM:** Department of Finance  
**SUBJECT: EXTENSION OF THE UTILITY USERS TAX ON WIRELESS  
MOBILE TELEPHONE SERVICE TO INCLUDE PREPAID SALES**

**RECOMMENDATION:**

It is recommended that the City Council:

- A) Find that the proposed action is not a project subject to the California Environmental Quality Act (CEQA) as defined in Section 21065 of CEQA and Section 15378 of the State CEQA Guidelines and, as such, no environmental document pursuant to CEQA is required for the project;
- B) Authorize the City Manager to execute a certification that communicates to the State Board of Equalization the tiered rate for utility user tax, as provided by the Prepaid Mobile Services Telephony Surcharge Collection Act;
- C) Adopt a resolution authorizing the City Manager to execute an agreement with the State Board of Equalization ("BOE") for the implementation of the Prepaid Mobile Services Telephony Surcharge Collection Act;
  - a. The proposed agreement with the BOE is exempt from competitive bidding pursuant to City Charter, Section 1002(H) (contracts with government entities or their contractors) as well as competitive selection pursuant to Pasadena Municipal Code Section 4.08.049(A)(3), contracts with other government entities;
- D) Adopt a resolution authorizing MuniServices, LLC, to examine prepaid mobile telephony services surcharge and local charge records; and

- E) Authorize the City Manager to execute an amendment to the City's existing contract with MuniServices, LLC, contract no. 20,109, to conform the authorizations and restrictions imposed by contract to the requirements of the Prepaid Mobile Services Telephony Surcharge Collection Act;
  - a. To the extent this transaction could be a separate transaction subject to competitive selection, grant the amendment an exemption from competitive selection process pursuant to Pasadena Municipal Code Section 4.08.049(B), contracts where the City's interests are best served. The proposed amendment is exempt from competitive bidding pursuant to City Charter Section 1002(F), contracts for professional or unique services.

### **BACKGROUND:**

The utility users tax (UUT) is a tax imposed on the users of a utility such as telephone, cellular or wireless communication services, electric energy services, water services, gas services and cable television services. City of Pasadena Ordinance No. 7133 imposes a tax rate on each of these utility services and requires the utility providers to collect and remit the UUT tax directly to the City. Currently, there is no mechanism to collect the UUT tax on prepaid mobile telephone services. Prepaid mobile telephony services are an important and growing segment of the communications industry. To ensure equitable contributions from end-use consumers of postpaid as well as prepaid mobile telephony services in this state, there should be standardization with respect to the method used to collect communications taxes, fees, and surcharges from end-use consumers of prepaid mobile telephony services. AB 1717 allows for prepaid mobile telephony services, which are frequently sold by a third-party retailer that is not the provider of mobile telephony services, to collect UUT at the time of the retail transaction. This change is necessary to provide a more efficient and competitively neutral means of collection from both postpaid and prepaid services. An equitable distribution mechanism is necessary to ensure that utility user taxes and other telecommunication charges are collected on behalf of cities and counties and are properly distributed to those jurisdictions. AB1717 would on and after January 2016, impose a utility user tax on the consumption of prepaid communications services to be collected and administered by the State as prescribed in the Prepaid Mobile Telephony Services Surcharge Collection Act.

Beginning January 1, 2016, AB 1717, the Prepaid Mobile Services Telephony Surcharge Collection Act, will take effect and solve the collection problem by requiring California retailers and online sellers to collect the local utility users tax (UUT) at the same time it collects sales tax on its other retail products, based on the point of sale (for retail stores in the City). Under this new law, all local jurisdictions have to contract with the State Board of Equalization (BOE) in order to receive UUT imposed on consumers of prepaid wireless phone service. It should be noted that AB 1717 has a sunset provision of 2020, but it is expected that the Legislature will permanently renew AB

1717 if the actual cost of collection proves to be reasonable and the level of collections are as anticipated.

In order to receive the UUT collected by the BOE commencing on January 1, 2016, the City Manager must execute an agreement with BOE and a certification as required by the State BOE on or before September 1, 2015. This agreement between the City and the BOE allows for the collection of local charges by the State. If the City elects not to contract with the BOE, it will not receive this revenue. The documents also authorize certain City employees and the City's UUT revenue consultant to examine the local charge records and surcharges on prepaid mobile telephone services.

On March 10, 2008, the City of Pasadena adopted Ordinance No. 7133 amending Chapter 4.56 of the Pasadena Municipal Code to modernize the application of the Utility Users Tax (UUT). The current ordinance authorizes the City to collect UUT tax on prepaid wireless services. In Pasadena, the UUT tax rate on wireless services is 8.28%. The BOE has established a new tax rate table for the prepaid wireless telephone services. For jurisdictions that levy a tax rate between 7.5% and 9%, the tiered tax rate on prepaid telephone services provided by the not direct sellers is established at 7.5%.

The recommended Agreement by resolution For State Collection and Administration of Local Charges defines the responsibilities and functions of the Board of Equalization (The Board) related to the collection of the local charges from sellers that are not direct sellers such as liquor stores and retail stores (for example Target & Best Buy) as opposed to direct sellers such as Verizon, AT&T and T-Mobile. The agreement also defines the local jurisdiction's responsibilities which include the defending of any claim regarding the validity of the ordinance, responding to specified consumer claims, refunding taxes if any, and enforcing and auditing the collection of the taxes.

The recommended resolution authorizing MuniServices, the City of Pasadena's revenue consultant, to examine prepaid mobile telephony services surcharge and local charge records necessitates an amendment to the City's existing contract with MuniServices in order to satisfy the requirements of AB1717. The proposed amendment to the City's contract with MuniServices would, among other things, prohibit MuniServices from consulting for a "seller" of prepaid wireless services and would prohibit the City from having a contingent fee arrangement with MuniServices.

**FISCAL IMPACT:**

Beginning January 1, 2016, AB 1717 will take effect and allow the City to commence collecting Utility User's Tax (UUT) on prepaid mobile telephone services (also referred to as prepaid wireless). While the actual impact of this new revenue source is unknown, the City's UUT revenue consultant (Muni Services) estimates it will range from 15% to 20% of current UUT telecommunication revenues. This estimate is a statewide average, and individual cities will vary depending on their demographics and the number of large retail stores (located in a city) selling prepaid wireless services. For Pasadena, this 15-20% increase equates to an estimated annual UUT of \$695,000 to \$925,000. The City will be required to reimburse the State Board of Equalization (BOE) for its implementation costs, with the City's share estimated to be approximately 5% to 6% of the total amounts collected on behalf of the City, or approximately \$41,700 to \$55,500 annually. The BOE costs, and the City's proportionate share, are expected to decline after the first year. The estimated net impact to the Fiscal Year 2015/16 General Fund Operating Budget is an increase of revenues of approximately \$305,800 to \$407,000.

Respectfully submitted,

  
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Prepared by:

  
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Approved by:

  
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