



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: September 3, 2024
TO: Paul Buddenhagen, City Manager
FROM: John I. Kennedy, City Attorney
SUBJECT: **Resolution Authorizing The Mayor To Issue An Administrative Subpoena To Grocery Outlet For Federal And State Tax Returns For 2021, 2022, and 2023**

RECOMMENDATION

Staff recommends that the City Council authorize the Mayor to issue an administrative subpoena on behalf of the City Council pursuant to California Government Code section 37104 requiring Grocery Outlet to produce federal and state tax returns for 2021, 2022, and 2023.

BACKGROUND

On April 2, 2024, the City's Finance Director sent a letter to Grocery Outlet requesting federal and state tax returns pursuant to Section 3-1.137 of the Emeryville Municipal Code for the purpose of determining or confirming the amount of business tax owed to the City. At that time, Grocery Outlet was informed that the City would keep any tax records produced confidential. On April 26, 2024, Grocery Outlet responded to the City's letter but did not provide any tax returns. On May 21, 2024, the City's Finance Director sent a second letter to Grocery Outlet clarifying that the scope of the City's audit was for Grocery Outlet's business taxes for 2022, 2023, and 2024, and that the City requested state and federal tax returns, including all schedules, for the period from January 1, 2021 to December 31, 2023.

On June 21, 2024, Grocery Outlet responded by agreeing to provide federal and state tax returns for January 1, 2021 to December 31, 2022 in a "read-only" electronic format until July 2, 2024; however, the documents could not be downloaded or printed. After several email exchanges regarding the need for the City to download or print Grocery Outlet's documents and Grocery Outlet's refusal to provide the records in such a format, the Finance Director sent Grocery Outlet a letter on July 17, 2024, that the City could not properly conduct its audit and that if Grocery Outlet continued to refuse to provide its tax records in a format that was acceptable to the City, he would ask the City Council to issue an administrative subpoena pursuant to Government Code section 37104 requiring Grocery Outlet to produce these tax returns.

DISCUSSION

In its July 17th letter, the City gave Grocery Outlet thirty days, until August 16, 2024, to produce the records sought by the City. Since Grocery Outlet failed to comply with the City's request, staff recommends that the City Council adopt a resolution authorizing the

Mayor to issue on behalf of the City Council an administrative subpoena to require the production of these documents pursuant to California Government Code section 37401.

FISCAL IMPACT

None.

STAFF COMMUNICATION WITH THE PUBLIC

None.

CONFLICT OF INTEREST

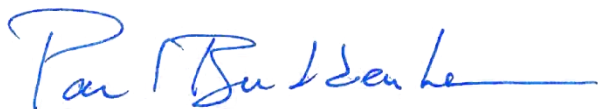
None.

CONCLUSION

Staff recommends that the City Council approve the attached Resolution to authorize the Mayor to issue an administrative subpoena on behalf of the City Council pursuant to California Government Code section 37104 requiring Grocery Outlet to produced federal and state tax returns for 2021, 2022, and 2023.

PREPARED BY: John I. Kennedy, City Attorney

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Paul Buddenhagen, City Manager

ATTACHMENTS

- Draft Resolution