

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 11/25/2014 **CUT OFF DATE:** _____

PRESENTATION X

ITEM TITLE: Nonprofit Organization Activities Subject to Local Taxation

STAFF RECOMMENDATION: N/A

PUBLIC NOTICE AND HEARING:

ADVISORY BOARD RECOMMENDATION:

FUNDING DATA:

INSURANCE:

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<i>[Signature]</i>	_____	<i>11/20/2014</i>
6. City Manager	<i>[Signature]</i>	_____	<i>20 NOV 2014</i>
7. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature: _____

[Signature]

11/20/2014
Date



APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Ann T. Burkholder, Commissioner of the Revenue *ATB*
Date: 11/20/2014
Re: **Nonprofit Organization Activities Subject to Local Taxation**

THE ISSUE: Certain business activities and special events of nonprofit organizations may be subject to local business and excise taxation, an area which has been historically overlooked.

RELATIONSHIP TO STRATEGIC PLAN: This is a matter of fair and equitable taxation in accordance with state and local code.

BACKGROUND: Typically one reads City Code with respect to activities of for-profit entities. Council action earlier this year regarding a specific nonprofit organization prompted the Commissioner's office to conduct a comprehensive review regarding activities of nonprofit entities in general.

(Refer to accompanying memorandum)

BUDGET IMPACT: Additional revenue estimate unknown.

OPTIONS: Amend or leave intact the current City Code

RECOMMENDATIONS: As both the Commissioner of the Revenue and Treasurer have limited resources available to administer current City Code with regard to special events, it is the hope of both offices that an eventual Special Events Policy, currently under development, will include a comprehensive fee structure in lieu of certain individual local taxes.

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To: Honorable Mayor, Members of City Council
From: Ann T. Burkholder, Commissioner of the Revenue *ATB*
Date: November 20, 2014

SUBJECT: Non-Profit Organization Activities Subject to Local Taxation

Certain business activities and special events of non-profit organizations may be subject to local taxation. Determination of taxable status is best handled on a case-by-case basis and depends upon both the nature of the entity and the nature of activity in which engaged.

Nature of the entity

It is a common misconception that "not-for-profit" equates to "charitable", but in fact there are multiple distinctions within the IRS 501(c) classification. For instance, the 501(c) (4) classification includes many civic leagues and social welfare groups. Typically, only those structured as 501(c) (3) entities meet the definition of "charitable organization" as cited for exemption in state and local code.

Nature of the activity

- **Gross Receipts:** The receipts of a **charitable** nonprofit organization are exempt from BPOL, except to the extent the organization has receipts from an unrelated trade or business. For example, thrift stores operated by local charitable organizations are subject to BPOL and business personal property taxation. For **other** nonprofit organizations, gross receipts may be subject to BPOL, with certain exclusions.
- **Excise Taxes:** The excise taxes of meals, motel, admissions and short-term rental are trust taxes, collected by the organization on behalf of the City. As these are taxes levied on the final consumer rather than the organization itself, City Code offers few exclusions.
 - **Admissions tax:** Imposed on admission to any place of amusement or entertainment. Excluded for those engaged in participatory sports (but not for observers); excluded for events in which the gross receipts go wholly to charitable purposes; excluded for school events, museums and events sponsored by governmental agency.
 - **Meals tax:** Imposed on every meal served, sold or delivered in the City by a food establishment or caterer.
- **Special Events:** With any special event, regardless of the nature of the sponsor, any vendors or participating businesses are subject to all local taxes. Typically the Commissioner's office assesses a \$30.00 itinerant merchant license fee pursuant to City

Code §28-26, although an aggregation of vendors may meet the definition of "carnival" pursuant to City Code §28-33, whereby an overall license tax of \$500 is imposed. Special events pose particular challenges for the Commissioner and Treasurer for the following reasons:

- Vendors often appear just prior to the start of the event and leave immediately after
- These events typically occur on nights and weekends, when neither office has staff available
- Winchester is a very active community, with multiple large and small events occurring at any given time

Administration of Applicable Taxes

The Commissioner is responsible for full, fair and equitable administration of all local taxes and recognizes that taxation of nonprofit entities has been historically overlooked. Therefore, rather than suddenly commencing to assess taxes on certain activities as they arise, this office is working on a comprehensive implementation plan. We must build a body of knowledge including a list of various civic organizations and contact information for each. We plan to send a courtesy letter to each explaining how local taxation laws may apply to the activities in which they engage, with a tentative implementation date of January 01, 2015. This is a major project.