

**CITY OF WINCHESTER, VIRGINIA**

**PROPOSED CITY COUNCIL AGENDA ITEM**

**CITY COUNCIL/COMMITTEE MEETING OF:** 01/13/2015 **CUT OFF DATE:** \_\_\_\_\_

PRESENTATION X

**ITEM TITLE:** Nonprofit Organization Activities Subject to Local Taxation

**STAFF RECOMMENDATION:** N/A

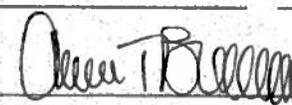
**PUBLIC NOTICE AND HEARING:**

**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		_____	20150108
6. City Manager		_____	8 Jan 2015
7. Clerk of Council	_____	_____	_____
Initiating Department Director's Signature:		_____	01/07/2014 Date



**APPROVED AS TO FORM:**

  
**CITY ATTORNEY**



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To: Honorable Mayor, Members of City Council  
From: Ann T. Burkholder, Commissioner of the Revenue *ATB*  
Date: January 7, 2015

**SUBJECT: Non-Profit Organization Activities Subject to Local Taxation -  
Update and Recommendation of Commissioner**

This memo continues a topic presented at the November 20, 2014, and December 16, 2014, Council Work Sessions for informational purposes only. This update includes additional information along with the recommendation of the Commissioner of the Revenue.

This memo addresses only those activities directly conducted by or attributable to non-profit organizations. Vendors or other for-profit businesses participating in an event hosted by a non-profit organization remain responsible for all applicable taxes and are not entitled to any benefit of exemption for which the hosting organization may qualify.

**Types of local taxation**

- **Gross Receipts:** There is no change to information presented earlier regarding gross receipts subject to BPOL. Current practice and local code are in compliance with state code.
- **Meals Tax:** Based upon a very recent change to state code and corresponding new Attorney General Opinion, this office will prepare modifications to local code for Council's consideration. The updated Code of Virginia §58.1-3840 provides that no such taxes on meals may be imposed when sold or provided by:

volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations, the first three times per calendar year and, beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales of meals (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes...

As state code supersedes local code, this office will administer accordingly in the interim. As clarified in the related Attorney General opinion, it is the responsibility of the commissioner to make a factual determination on a case-by-case basis as to whether a

particular activity satisfies the requirements for exemption. When there is any doubt, particularly in the categories of "charitable" or "benevolent" it will be up to that organization to prove the exemption is merited. In a general sense, it appears that many of the occasional meal events hosted by local non-profit organizations will meet the qualification for this exemption.

- **Admissions Tax:** While there are no new updates to state code regarding this tax, a careful review of has revealed several sections of local code which are outdated or readily confusing. This office will prepare amendments to local code for Council's consideration. One substantive change will be the commissioner's recommendation to incorporate verbiage from Code of Virginia §58.1-3818 exempting admission tax on:

admission to an event, provided that the purpose of the event is solely to raise money for charitable purposes and that the net proceeds derived from the event will be transferred to an entity or entities that are exempt from sales and use tax.

These recommendations are the result of significant research and feedback from multiple sources. It is the belief of the commissioner that such changes will clarify local code, address concerns expressed by members of Council and effectively serve the common interest. The changes will clarify the exemption of many non-profit activities which serve a charitable or benevolent purpose to the City, in some cases reducing a need for services the City might otherwise need to provide, while also distinguishing other activities subject to local taxation. A formal recommendation will come before Council following further consultation with the City Manager and City Attorney, and in consideration of additional feedback City Councilors may wish to provide.