EXHIBIT NO. 1

25
4-26-05

~~18~~
4-12-05

City of Alexandria, Virginia

MEMORANDUM

DATE: APRIL 1, 2005

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER

SUBJECT: CONSIDERATION OF AN ORDINANCE TO ESTABLISH A MONTHLY TAX, NOT TO EXCEED $3.00, ON EACH CELLULAR TELEPHONE NUMBER

ISSUE: Consideration of an ordinance (Attached) to establish a monthly tax, not to exceed $3.00, on each cellular telephone number.

RECOMMENDATION: That City Council pass the proposed ordinance on first reading, schedule it for public hearing on April 26 and second reading and final passage on May 2, 2005.

BACKGROUND: As part of its initiative to lower the City's real estate tax rate by ta least 8 cents, Council requested that staff bring forward certain tax and fee diversification options such as the cell phone tax for active consideration. Prior to 1994, there was no explicit authority to levy a cellular phone tax. Jurisdictions that imposed such a tax relied on the authority to levy a utility tax on services provided by telegraph and telephone services. In addition, there was little uniformity in the administration of such a tax. To address these issues, the 1994 Session of the General Assembly amended the law to explicitly permit localities to tax consumers of cellular phones or other local mobile telecommunications services. The 1994 legislation limited the tax to 10 percent of the first $30.00 of monthly gross charges (i.e., $3.00 per month). The cellular phone tax was also limited to jurisdictions that have a telecommunications services consumer utility tax. Thus, Arlington County, which does not currently levy a utility tax on other telephone service, cannot levy a cellular phone tax.

In the past, the City has not recommended establishing a cellular phone tax, despite possessing the authority, primarily because the General Assembly was considering radical changes to the structure of local government phone taxes. The 2004 General Assembly passed HB 1174 which empowered a subcommittee to develop a new method of taxing consumers of local telephone services. However, the 2005 General Assembly did not pass the subcommittee's proposed changes. This provides the City with the ability to enact a cellular phone tax without an immediate change in tax structure being actively considered.

DISCUSSION: The proposed ordinance would impose a Consumer Utility Tax on cellular phones and other local mobile telecommunications services at a rate of 10 percent of the monthly

gross charges. The tax would be on every cell phone number (i.e., if there are two cell phones in a house, both would be billed 10% of the first $30 bill of each number). However, this tax cannot be imposed on any monthly gross charge in excess of $30.00 per month for each mobile telecommunications number billed to a consumer within the City. In effect, the tax equates to a $3.00 a month tax on cellular phone customers. The tax will be billed and collected by telecommunications providers who will bill based on the mailing address of the bill.

Under the provisions of the State Code, a Consumer Utility Tax such as the cellular phone tax can not go into effect until 120 days subsequent to receipt of a written notice sent by certified mail from the City to the registered agent of the cell phone provider that is required to collect the tax. Therefore, the effective date of tax collection would be no earlier than September 1, 2005.

During the past several years, many citizens have been replacing their land line telephone service with cellular phone service. As reported in Budget Memo #15, the typical resident of Alexandria pays approximately $8.50 a month in local taxes on their land line telephone service (Consumer Utility Tax, E-911 and Public Right-of-Way taxes) but no local taxes on their cellular phone service. The proposed ordinance would create a more "equitable" treatment of the different types of phone service. Currently, cellular phone tax is levied by 113 local Virginia jurisdictions, including Fairfax, Prince William and Loudoun Counties. Fairfax bills on a 3 maximum per household basis, while Prince William and Loudoun bill on a per cell phone number basis.

FISCAL IMPACT: City staff estimates that a Consumer Utility Tax on cellular phone services at a rate of 10 percent of the first $30.00 of monthly gross charges for each cellular phone number billed to a consumer within the City will generate approximately $2.0 million in annual revenue for the General Fund. With a September effective date, the FY 2006 cell phone tax revenues would total only $1.7 million. It should be noted that because there is no single data base of cell phone based by billing address in the City, the revenue estimates are based upon cell phone tax revenues of other jurisdictions adjusted to Alexandria's population total. As a result, these revenue numbers are guess-timates.

ATTACHMENT: Proposed Ordinance to Establish a Consumer Utility Tax on Mobile Telecommunications Services

STAFF:
Mark Jinks, Assistant City Manager
D. A. Neckel, Director of Finance
Bruce Johnson, Director, Office of Management and Budget

EXHIBIT NO. 2

Introduction and first reading:	4/12/05
Public hearing:	4/26/05
Second reading and enactment:	5/02/05

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Article F (TAX ON PERSONS PURCHASING TELEPHONE AND WATER SERVICES), of Chapter 2 (TAXATION), Title 3 (FINANCE, TAXATION AND PROCUREMENT) of The Code of the City of Alexandria, Virginia, 1981, by adding thereto a new Section 3-2-71 (CELLULAR TELEPHONE TAX).

Summary

The proposed ordinance imposes a tax on cellular telephone service in the City, at the rate of 10 percent of the monthly gross charge for each cellular telephone number, not to exceed $3.00 for each such number.

Sponsor

Staff

Mark Jinks, Assistant City Manager
Daniel A. Neckel, Director of Finance
Bruce Johnson, Director of Management and Budget
Ignacio B. Pessoa, City Attorney

Authority

§58.1-3812, Code of Virginia
§2.02, Alexandria City Charter

Estimated Costs of Implementation

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

C:\Documents and Settings\jhenders\Local Settings\Temp\notesC9812B\Cell Phone Tax Ord Cover.wpd

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Article F (TAX ON PERSONS PURCHASING TELEPHONE AND WATER SERVICES), of Chapter 2 (TAXATION), Title 3 (FINANCE, TAXATION AND PROCUREMENT) of The Code of the City of Alexandria, Virginia, 1981, by adding thereto a new SECTION 3-2-71 (CELLULAR TELEPHONE TAX).

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article L, Chapter 2, Title 3 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained by adding thereto a new Section 3-2-71 to read as follows:

[The following is all new language.]

Sec. 3-2-71 Cellular telephone tax.

(a) Terms used in this section shall have the meanings set forth in Section 58.1-3812 of the Code of Virginia, 1950, as from time to time amended. Said definitions shall be applicable unless the context of this section clearly indicates to the contrary.

(b) There is hereby levied and imposed on all taxable purchases by a consumer of mobile local telecommunication service a tax equal to 10 percent of the monthly gross charge made to the consumer for each mobile local telecommunication service telephone number; provided, however, that the tax shall not exceed $3.00 per month for each such telephone number. This tax shall be applicable to all persons, corporations and other entities whose service address is in the City of Alexandria.

(c) A service provider of mobile local telecommunication services shall collect the tax from the consumer by adding the tax to the monthly gross charge for such services. The tax shall, when collected, be stated as a distinct item separate and apart from the monthly gross charge. Until the consumer pays the tax to the service provider, the tax shall constitute a debt of the consumer to the City. If any consumer refuses to pay the tax, the service provider shall notify the director of finance. After the consumer pays the tax to the service provider, the taxes collected shall be deemed to be held in trust by the service provider until remitted to the director of finance.

(d) The director of finance shall be responsible for collecting the tax imposed in this section. The director shall have the authority to adopt appropriate regulations and procedures to facilitate and expedite the collection of said taxes. All such regulations and procedures shall be consistent with state law and other provisions of this code.

(e) Each service provider shall report and remit to the director of finance the amount of tax billed during each calendar month to consumers with a service address in the City of Alexandria. All such remittances shall be reported and paid over to the director not later than the fifteenth day of the second calendar month following the month in which they are collected, or the first business day thereafter.

(f) Any consumer is entitled to a refund from the city equal to the amount of the tax the consumer paid to a jurisdiction outside of the Commonwealth, for mobile local telecommunication service taxed by the city, if such tax was legally imposed in such other jurisdiction. The amount of any such credit or refund shall not exceed the tax paid to the City of Alexandria.

(g) Any consumer who fails to pay the tax imposed in this article when due to the service provider and any service provider who fails to remit said taxes to the director of finance in accordance with this section shall be liable for interest and penalties. The interest and penalties for a consumer or service provider shall be computed in the same manner as interest and penalties are computed for failure to pay or remit utility taxes imposed by this article.

Section 2. That this ordinance shall become effective September 1, 2005.

WILLIAM D. EUILLE
Mayor

Introduction: 4/12/05
First Reading: 4/12/05
Publication:
Public Hearing:
Second Reading:
Final Passage:

C:\Documents and Settings\jhenders\Local Settings\Temp\notesC9812B\Cell Phone Tax Ord.wpd