

City of Alexandria, Virginia

MEMORANDUM

DATE: DECEMBER 10, 2004

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *ps*

SUBJECT: RESOLUTION AFFIRMING THE CITY'S POLICY REGARDING REAL AND PERSONAL PROPERTY TAX EXEMPTIONS

ISSUE: Consideration of proposed resolution in support of the taxation of real and personal property, including that of not-for-profit owners (who have not previously received a property tax exemption from the Virginia General Assembly or by Constitutional provisions). The proposed resolution affirms a longstanding City policy in support of taxation of real and personal property, including that of not-for-profit owners, and provides that City Council may consider exceptions to such policy on a case by case basis in rare and compelling instances upon the demonstration of extraordinary circumstances.

RECOMMENDATION: That City Council set the attached resolution (Attachment 1) for public hearing at Council's Saturday, January 22, 2005, public hearing meeting.

DISCUSSION: In November 2002, the voters of the Commonwealth approved an amendment to the Constitution of Virginia that gave local jurisdictions the authority to designate property owned by certain not-for-profit entities as exempt from real and personal property taxes. The 2003 Session of the General Assembly responded by enacting amendments to the Virginia Code that provide the requirements for local governing bodies that choose to consider such requests for tax exemptions. The sole authority for granting exemptions by "designation" now rests with the local governing body. Prior to the 2002 Constitutional Amendment, this authority resided solely in the General Assembly.

Under Virginia law, there are two methods for determining whether real and personal property is exempt from taxation: (1) classification, or (2) designation. Exemption by classification is self-executing - - i.e., if property falls within one of the classifications set forth in Constitution Article X §6(a)(1) through §6(a)(4), it is automatically exempt from property taxation. The classifications include: (1) property owned by the federal government; (2) property owned by the Commonwealth or any political subdivision; (3) houses of worship and ministers' residences; and (4) property owned by public libraries or institutions of learning not conducted for profit. Under Article X §6(a)(6), exemption by classification also extends to "property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural or public park and playground

purposes.” The General Assembly has set out the specific requirements this type of property must meet to qualify for an exemption by classification. See Va. Code §58.1-3606(A) and §58.1-3609.

An exemption from property taxes may also be granted by designation. To be eligible for such an exemption, the property “must be used by its owner for religious, charitable, patriotic, historical, benevolent, cultural or public park and playground purposes.” Over the years, the property of more than 600 organizations statewide has been exempted from taxation by specific designation given by the General Assembly. See Va. Code §58.1-3607 and §58.1-3650, *et seq.* Tax exempt status by designation has been granted by the General Assembly to property owned by the following eight Alexandria entities:

1. Alexandria Community Y, Inc. (now known as The Campagna Center)
2. Civitan Recreation Club of Alexandria, Virginia
3. Friends of Women Prisoners, Inc.
4. Hopkins House Association of Alexandria, Virginia
5. Junior Auxiliary of Alexandria Hospital (now known as TWIG)
6. Lee-Fendall House in the City of Alexandria
7. Sheltered Homes of Alexandria
8. Portions of The Goodwin House, Inc.

Under Virginia Code §58.1-3651, after January 1, 2003, the real and personal property in Alexandria owned by a not-for-profit organization, which is used by such organization exclusively for “religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes,” and which either (1) did not have an exemption, either by classification or designation, prior to January 1, 2003, or (2) does not fit one of the exemptions by classification which are self-executing (or explained above), may be exempted from property taxes only by City Council action.

The City has many fine charitable institutions that could make a strong case for tax exemption. While the City has not adopted a formal policy of refusing to support their applications for tax exemption, the City has not supported many requests over the last thirty years for fiscal reasons (i.e., each tax exemption creates a greater annual tax burden for the remaining taxable properties). In the last 20 years, City Council has supported only one designation application - - for the Goodwin House (# 8 above). The City’s consistent position has been that City support of a charitable institution is nearly always better to be given in the form of a grant or contract for services, rather than an automatic annual tax subsidy (which does not show in the budget as an expenditure item).

Under the proposed resolution, City Council would affirm the City’s longstanding position on tax exemption by designation and would support the taxation of all real and personal property in the City, including that of not-for-profit owners. However, the resolution establishes a “rare and compelling instance” standard that would apply to any tax “exemption by designation” request filed with Council. The resolution provides that any application for a property tax exemption

designation be considered by City Council only during the City's annual budget process and only for the next calendar year and thereafter. Having exemption requests considered during the budget process makes it clear that a property tax exemption is an "expenditure" which should compete for funding with other City needs and priorities. The resolution also provides that any application for property tax exemption by designation be presented on a form prescribed by the City Manager and contain descriptive information and documentation as required by the Code of Virginia and the City Manager. Typical descriptive information and documentation would include but is not limited to the following:

- A description of the property for which the tax exemption is sought;
- A statement from the requesting organization specifying that the property is used for religious, charitable, patriotic, historical, benevolent, cultural, or public park and public playground purposes;
- A description of how the requesting organization provides services for the common good of the public;
- A copy of the application and supporting documents submitted to the Internal Revenue Service (IRS) for 501(c) tax-exempt status, together with copies of all responses from the IRS (required by the Code of Virginia);
- A statement signed by an officer of the requesting organization indicating whether a current annual alcoholic beverage license for serving alcoholic beverages has been issued by the Virginia Alcoholic Beverage Control Board to the organization for use on its property (required by the Code of Virginia);
- A statement signed by an officer of the requesting organization indicating whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries of other compensation for personal services which such director, officer, or employee actually renders (required by the Code of Virginia);
- A statement signed by an officer of the requesting organization indicating whether any part of the net earnings of the requesting organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, of local, state, or federal grants. Donations shall include the providing of personal services of the contribution of in-kind of other material services (required by the Code of Virginia);
- A statement signed by an officer of the requesting organization indicating whether a substantial part of the activities of the requesting organization involves lobbying or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign of behalf of any candidate for public office (required by the Code of Virginia);
- A statement signed by an officer of the requesting organization indicating the revenue impact to the City of Alexandria and its taxpayers of exempting the property (required by the Code of Virginia);
- Copies of current financial statements; and

- A copy of the current articles of incorporation and bylaws of the requesting organization.

This resolution is proposed in order to affirm and to make clear the City's policy, as well as to establish procedures to consider exemptions. Absent such a resolution the City would not have clear criteria, which would likely lead to a disjointed exemption consideration process, as well as a more costly outcome.

In lieu of providing a tax exemption to non-profits which provide a direct community service or are under contract with the City, the Council could decide to provide a grant or service contract related to the organization and add an appropriate amount to the budget. This would have the same practical effect as a tax exemption and would have the advantage of putting the tax subsidy on the more visible expenditure side of the City's budget. It should be noted that nearly all of the City's non-profits which are currently tax liable have likely historically included their existing taxes in the overhead amounts which are allocated in the City grant and contracting process, or have identified other sources of funds to pay their taxes. An expenditure-side tax subsidy policy for non-profits which provide services to the City can be more easily revisited by future Councils as contrasted with a Council deciding to revoke a property tax exemption. The expenditure side method would only work for those non-profits who provide services directly to City residents.

This expenditure-side tax subsidy method would not work for non-profits who are trade and professional associations because those organizations do not directly serve the City, but have missions to serve their membership. The City has over 300 associations, which is the fourth largest number located in any city in the United States (only Washington, D.C., New York City and Chicago have more associations). Nearly all of the associations in the City are non-profit and eligible under state law for City property tax exemption consideration. However, most of these associations serve a national membership and are not Alexandria-focused in their primary service mission. Several of these organizations have recently contacted the City about receiving a property tax exemption. In one of the inquiries, the cost to the City would be in the hundreds of thousands of dollars per year if a property tax exemption were granted to the association.

In November 2003, City Council first considered the attached resolution and set it for public hearing in January 2004 subject to staff meeting with the not-for-profit community. Because there needed to be a meeting with the Council of Non-Profits before the public hearing, and because a meeting could not be held before the public hearing, the January public hearing did not occur. City staff met with the Council of Non-Profits later in the year and explained the proposed policy to them. That discussion consisted mostly of detailing the legislative history of tax exemptions and assuring the non-profits who had existing tax exemptions that this proposed policy was not aimed at repealing those exemptions. One newer non-profit who is not tax exempt expressed their concern about not having a tax exemption. The City's Budget and Fiscal Affairs Advisory Committee (BFAAC) reviewed the proposed policy and concurred with the City Manager's recommendation that City Council should adopt the proposed policy.

Since it has been some time since staff has had discussions with various non-profit organizations in the City about the proposed tax exemption policy, and since tax exemptions of non-profits in Virginia is a very complex and arcane area of law, a second information, question and answer session will be scheduled by staff and held in early January before the proposed January 22 Council public hearing.

ATTACHMENT: Resolution

STAFF:

Mark Jinks, Assistant City Manager

Daniel Neckel, Director of Finance

Cindy Smith-Page, Director of Real Estate Assessments

RESOLUTION NO. _____

WHEREAS, prior to a Constitutional Amendment adopted by the voters in November, 2002, the Virginia General Assembly, with a recommendation from the appropriate local governing body, had the sole authority to exempt from taxation the real and personal property of certain not for profit entities, by designating such entity for an exemption; and

WHEREAS, under the Constitutional Amendment adopted in 2002, and under implementing legislation adopted by the General Assembly, the authority to grant new exemptions by designation for real and personal property located in the City of Alexandria resides solely with the Alexandria City Council; and

WHEREAS, this change in the law does not affect the validity of exemptions by classification or exemptions by designation in effect prior to January 1, 2003; and

WHEREAS, the City of Alexandria has had a long-standing general policy supporting the taxation of all property, including that owned by not for profit entities, and of not supporting tax exemptions by designation of property owned by such entities; and

WHEREAS, local real estate and personal property taxes are the primary sources of revenue for local government services, and all property owners, including not for profit entities, benefit from local government services; and

WHEREAS, the City Council wishes to affirm the City's general policy with regard to property tax exemptions by designation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF ALEXANDRIA, VIRGINIA:

1. That City Council affirms the City policy in support of taxation of all real and personal property, including that owned by not for profit entities, and that exemptions by designation to such property shall be considered by City Council on a case by case basis and may be granted only in rare and compelling instances upon the demonstration of extraordinary circumstances.
2. That any application for property tax exemption by designation shall be considered by City Council only during the annual budget process, and, if approved, shall take effect only at the start of the following calendar year.
3. That an application for property tax exemption by designation shall be presented on a form prescribed by the City Manager, and shall contain such descriptive information and documentation as may reasonably be required by the City Manager.

ADOPTED: _____
DATE

WILLIAM D. EUILLE, MAYOR

ATTEST:

JACKIE HENDERSON, CITY CLERK