



W E S T M I N S T E R

Staff Report

TO: The Mayor and Members of the City Council

DATE: March 24, 2006

SUBJECT: Study Session Agenda for May 1, 2006

PREPARED BY: J. Brent McFall, City Manager

Please Note: Study Sessions and Post City Council meetings are open to the public, and individuals are welcome to attend and observe. However, these meetings are not intended to be interactive with the audience, as this time is set aside for City Council to receive information, make inquiries, and provide Staff with policy direction.

Looking ahead to next Monday night's Study Session, the following schedule has been prepared:

A light dinner will be served in the Council Family Room 6:00 P.M.

CONSENT AGENDA

None at this time.

CITY COUNCIL REPORTS

1. Report from Mayor (5 minutes)
2. Reports from City Councillors (10 minutes)

PRESENTATIONS 6:30 P.M.

1. Internet Sales Tax Overview
2. Potential City Ballot Questions for November 2006 Election

EXECUTIVE SESSION

None at this time.

INFORMATION ONLY

1. Voice Over Internet Protocol (VoIP) Services and 911
2. Aquatic Enhancements Update

Additional items may come up between now and Monday night. City Council will be apprised of any changes to the Study Session meeting schedule.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



W E S T M I N S T E R

Staff Report

Information Only Staff Report
May 1, 2006



SUBJECT: Internet Taxation Background and Update

PREPARED BY: Barb Dolan, Sales Tax Manager

Summary Statement:

This report is for City Council information only and requires no action by City Council. City Staff will be present at Monday night's study session to provide a presentation and to answer questions. Though eight full years have passed since Congress first approved the Internet Tax Freedom Act, little progress has been made towards obtaining meaningful Federal action with respect to this issue. Internet sales continue to grow, as do sales tax revenue losses to state and local governments. The U.S. Department of Commerce reported that Internet sales in the third quarter of 2005 reached more than \$40 billion, representing a 22% year-over-year increase. E-commerce researchers believe the numbers are significantly higher and expect Internet retail sales to top \$95 billion in 2006 and balloon to \$144 billion in 2010. Staff thought it would be timely to update City Council on this issue and provide updated revenue loss estimates.

Background Information:

History

Prior to the explosion of Internet commerce, governments faced similar, though less significant, sales tax revenue losses from untaxed catalog sales. In 1992, the Supreme Court weighed in on the issue of "remote sales" in the Quill Corporation v. North Dakota case. Under the Quill decision, the Supreme Court ruled that states lack the authority to compel out-of-state firms to collect sales and use taxes unless they have "nexus," that is, a physical presence, within a jurisdiction. However, the Court's ruling noted that Congress has clear authority to resolve this problem via Federal legislation requiring remote retailers to collect taxes. Congress chose to take no action at that time.

Six years later, in 1998, this issue again rose to the forefront as a result of significant growth in Internet commerce. State and local governments, alarmed about the rapid erosion of their revenues due to lost tax on Internet sales, began to take action to stop the bleeding. Meanwhile, e-commerce businesses clamored for Federal intervention to shield the Internet from taxes and promote this method of making purchases. This time, Congress did take action with the passage of the Internet Tax Freedom Act. Despite its moniker, the Act *does not* prohibit taxation of sales made over the Internet. The Act *does* bar state and local governments from:

- Taxing Internet access charges;
- Imposing new "discriminatory" taxes on Internet transactions that are not specifically imposed on non-Internet transactions, such as a special tax on items sold on the Internet that isn't imposed on the item when it is sold in a store;

Information Only Staff Report – Internet Taxation Background and Update

May 1, 2006

Page 2

- Creating “multiple” taxes in which an electronic transaction ends up paying the same type of tax for one transaction in multiple states.

The Act originally expired in October 2001, but has been extended twice and is now set to expire on November 1, 2007.

The Act and subsequent extensions fail to address the issue of remote sales, or to mandate sales tax collection by remote vendors. Currently, Congress continues to grapple with this dilemma, but has yet to agree on a strategy that addresses both the needs of government and of business. With no Federal dollars at stake, there is little incentive for lawmakers to enable collection of what many consider to be a “new” tax on the Internet.

E-commerce Myths

The question of taxing or not taxing Internet sales is complicated by the fact that there are so many myths and misunderstandings revolving around the issue. Some common misunderstandings are:

- The Internet Tax Freedom Act bans the collection of sales and use taxes on goods sold over the Internet – The act bans taxes on Internet access fees, not on Internet transactions.
- A tax on Internet sales would be a new tax – Sales over the Internet have always been subject to Westminster tax. However, as a result of the Quill decision, the City cannot compel sellers that do not have “nexus,” or a physical presence, to collect the sales tax.
- Remote retailers should not have to collect sales taxes because they do not use local community services – Sales taxes are paid by the consumer (purchaser) of the goods or services. They are collected by businesses and remitted to state and local governments. Westminster customers do use local services and it is appropriate that they support those services through tax payments.
- Prohibiting the taxation of Internet sales would benefit all taxpayers – Sales taxes are regressive in nature. Banning sales tax collection on e-commerce makes the tax more regressive by favoring the predominantly affluent consumers who shop online.
- Customers who purchase goods and services over the Internet are not subject to City sales tax – Persons who purchase goods over the Internet for use, storage or consumption in the City must pay the Westminster use tax on those purchases. The City can and does audit businesses and assess and collect use tax on items purchased over the Internet if the sales tax has not been paid on those items.

Estimated Revenue Impact

Gauging the revenue impact of Internet sales is difficult at best. While e-commerce sales account for only about 2.2% of total sales in the United States, electronic commerce continues to grow. Revenue losses result not only from sales tax dollars uncollected on Internet transactions, but also from the negative impact on local businesses that are forced to compete with e-tailers that can avoid sales tax collection obligations. For this reason, groups including the National Retail Council are in support of efforts to create more equitable treatment of all retailers through payment of Internet sales tax.

In order to attempt to quantify City sales tax dollars lost on Internet transactions, Staff utilized a study prepared by the University of Tennessee Center for Business and Economic Research. The study estimated national revenue losses and then allocated those losses to individual state and local

Information Only Staff Report – Internet Taxation Background and Update

May 1, 2006

Page 3

governments. Forecasts included both business-to-consumer and business-to-business e-commerce transactions. Based upon the information provided in the study, Staff has calculated the following estimated sales tax revenue loss for Westminster.

Year	Total City Sales Tax Revenue	Estimated Sales Tax Revenue Loss
2001	\$47,770,000	\$970,000
2006	\$56,836,000	\$3,120,000
2011	\$74,147,000	\$3,922,000

What Westminster can and is doing

While Westminster and other state and local governments do not have the authority to compel collection of sales taxes by remote vendors, there are things that can and are being done to mitigate the revenue loss.

- Enforce the collection of use tax on Internet transactions – As part of the City's routine audit program, use tax is routinely imposed and collected from business customers on Internet purchases. This diminishes the incentive to purchase goods online to avoid paying City sales tax.
- Pursue licensing of remote vendors that have substantial nexus in Westminster – While the Quill decision established a standard with respect to “nexus,” it does not preclude the City from pursuing the licensing of vendors who do more than merely deliver products into the City. Staff is currently pursuing audits of a number of e-tailers that provide on-site product maintenance or other services to Internet customers. Additionally, companies with Internet divisions that allow customers to return goods to their brick-and-mortar stores have also been found by courts to be responsible for tax collection. These Internet Divisions are included when audits of their brick-and-mortar counterparts are conducted.
- Pursue action against e-tailers that collect, but never remit, Westminster tax – On a number of occasions, Staff has identified remote vendors that have collected, but never remitted, the City tax. Frequently, the tax has been paid to the State of Colorado or, in some cases, never remitted to any taxing authority. The audit staff vigorously pursues these vendors not only to recover previously collected taxes, but to license and collect City tax on a prospective basis.
- Continue to work with the Colorado Municipal League, National League of Cities, and other organizations to lobby Congress to level the playing field between electronic commerce and local businesses. Additionally, oppose any federal preemption of state and local governments' ability to collect sales and use taxes on Internet sales.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



W E S T M I N S T E R

Staff Report

City Council Study Session Meeting
May 1, 2006



SUBJECT: Potential City Ballot Questions for November 2006 Election

PREPARED BY: J. Brent McFall, City Manager

Recommended City Council Action:

Provide direction to Staff regarding which ballot questions, if any, to prepare for City Council action to place on the November 2006 election.

Summary Statement:

- The Westminster City Council has the authority to place certain ballot questions on the November 2006 election for consideration by Westminster voters.
- Staff has analyzed a number of potential ballot questions with respect to timing issues, need, potential for voter approval, impact on the City, and other related matters.
- Staff is recommending that City Council consider placing two ballot questions on the November 2006 election. These ballot questions are:
 1. Extension of the sunset provision of the current Parks and Open Space 0.25% sales tax from its expiration in 2016 to 2032 and authorization to sell bonds, the future principal and interest to be paid from the extended Parks and Open Space sales tax collections, in order to acquire and improve parks and open Spaces in accordance with the Parks Master Plan and the Open Space Plan.. Voter approval of this sales tax extension is required under TABOR. This recommendation is contingent upon perceived level of support reported in 2006 Citizen Survey. Staff is preparing estimates on the amount of bond funds that could be generated by the extension of the tax and will bring this back to Council at a later date.
 2. A Charter Amendment to conform the Charter provision in Section 3.18 Recall, and Sections 8.10-8.13 Initiative and Referendum, with provisions of the Colorado State Constitution and applicable state statutes.
- Once City Council direction is obtained, Staff will begin work on language for the proposed Charter amendment as well as the Parks and Open Space sales tax extension and bonding authority for formal action. Timing for adoption of the ballot language by City Council will coincide with requirements for placement on the consolidated ballots in both Adams and Jefferson Counties.

Expenditure Required:

Approximately \$35,000 for Consolidated Election Expenses

Source of Funds:

General Fund Contingency

Policy Issue:

Should Westminster place questions on the November 2006 ballot asking for voter approval to 1) extend the Parks and Open Space Sales Tax to 2032, and obtain authority to sell bonds to acquire and develop parks and open space to be repaid from proceeds of the extended Parks and Open Space sales tax; and 2) amend the City Charter provisions dealing with Recall, Initiative and Referendum to conform such provisions with the Colorado State Constitution and applicable state statutes?

Alternatives:

1. The City could decide not to ask voters to extend the current Parks and Open Space Sales Tax allowing the tax to expire in 2016 or decide to go to the voters on this question at a later date. This alternative would be recommended if the soon to be released 2006 Citizen Survey does not indicate sufficient support for a sales tax extension at this time.
2. The City could decide to ask the voters to extend the current Parks and Open Space Sales Tax, but not seek voter approval to bond against future tax revenue generated by the tax. This alternative is not recommended since extension of the Parks and Open Space Sales Tax is being considered primarily as a way to generate funds to acquire and develop more parks and open space through use of bonds.
3. The City could decide not to seek voter approval for amendments to the City Charter provisions regarding Recall, Initiative and Referendum. This is not recommended due to the need to conform these provisions of the Charter with the Colorado State Constitution and applicable state statutes.
4. The City could decide to place other City Charter amendments on the ballot for voter consideration. This is not recommended as other Charter amendments are unnecessary at this time, and placing too many questions on the ballot may make passage of priority issues more difficult.

Background Information:

Each year the City Council gives consideration to ballot questions that they wish to place on the November ballot. This year, Staff is recommending two ballot questions be placed on the November ballot. The proposed ballot questions are:

1. Extension of the sunset provision of the current Parks and Open Space .25% sales tax from its expiration in 2016 to 2032 and authorization to sell bonds, the future principal and interest to be paid from the extended Parks and Open space sales tax collections, in order to acquire and improve parks and open spaces in accordance with the Parks Master Plan and the Open Space Plan. Voter approval of this sales tax extension is required under TABOR. This recommendation is contingent upon perceived level of support reported in the 2006 Citizen Survey.
2. A Charter Amendment to conform the Charter provision in Section 3.18 Recall, and Sections 8.10-8.13 Initiative and Referendum, with provisions of the Colorado State Constitution and applicable state statutes.

In considering what ballot questions to recommend to Council, Staff investigated a number of potential issues. These included additional amendments to the City Charter, obtaining voter approval for additional bonding authority, and tax issues. In all cases, Staff determined that the issues were either not warranted, not feasible at this time or risked having too many

questions on the ballot making passage of priority issues more difficult. The ballot questions considered but not recommended by Staff are outlined below.

Charter Amendments:

Section 3.2 Elective Officers and Terms of Office. Consider changing the current at-large election of Councillors to election from wards. The at-large provisions of Westminster's Charter have served the City very well since adoption of the Charter with Councillors acting in the best interest of the entire city Ward representation is not recommended.

Section 3.2 Elective Officers and Terms of Office. Consider imposing local term limits in the Charter that differ from state term limits or abolishing term limits entirely. The charter is silent on the subject of term limits, and could be amended to add a provision dealing with term limits locally.

Amend Section 4.14 Special Counsel. Amend this section to authorize the City Manager to enter into agreements for special legal counsel in an amount up to the Manager's spending authority. Currently, the Charter requires Council approval of all outside legal counsel regardless of dollar amount. While cumbersome, this amendment does not rise to the level of other items recommended for the ballot.

Amend Section 13.4 Powers to Lease Property. Currently the Charter requires all leases be approved by ordinance, which is inconsistent with our powers to buy or sell property without an ordinance. While cumbersome, amending this section of the Charter does not rise to the level of other items recommended for the ballot.

Housekeeping Charter Amendments:

Section 3.3 Wards and Precincts. Reference to wards and precincts in the Charter are outdated due to the coordinated elections held with Adams and Jefferson Counties.

Section 4.12 Treasures: Functions and Duties. The Finance Director is the Treasurer. Future consideration could be given to amending the Charter to reflect "Finance Director" and delete "Treasurer."

Amend Section 16.2 Presiding Officer (Judge): Qualifications and Compensation. The Charter requires that the Presiding Judge's salary be set by ordinance. No other appointed official compensation is set by ordinance. Repealing this requirement would make setting the Judge's compensation the same as the process for setting the compensation of the City Manager and the City Attorney.

Sections 18.1 – 18.8 Transitional Provisions. These are the provisions dealing with implementation of the Charter nearly fifty years ago and are no longer applicable.

Other Potential Ballot Questions (not recommended):

Increase the tax rate on the City's admissions tax.

Increase the tax rate on the City's accommodations tax.

Adopt a "Head Tax" or "Occupations Tax."

Staff Report – Potential Ballot Questions for November 2006 Election

May 1, 2006

Page 4

Obtain voter approval of bonding authority of Community Enhancement funds.

After reviewing the various options outlined above, Staff recommends that Council direct Staff to proceed to develop the ballot language for the two recommended ballot questions and direct Staff to bring the ballot language to Council for official action at a later date.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



W E S T M I N S T E R

Staff Report

Information Only Staff Report
May 1, 2006



SUBJECT: Voice over Internet Protocol (VoIP) services and 911
PREPARED BY: David Puntenney, Information Technology Director

Summary Statement

This report is for City Council information only and requires no action by City Council.

During the City Council and Department Head Strategic Planning Session held on April 8th, 2006, City Council asked staff to investigate the status of Voice over Internet Protocol (VoIP) and 911 services. This staff report provides City Council members with current information, directly from the FCC, related to this issue.

As Council recognized, the ability to access emergency services by dialing 911 is a vital component of public safety and emergency preparedness. The Federal Communications Commission (FCC) reports of consumers' inability to access life-saving emergency services while using Voice over Internet Protocol (VoIP) services have highlighted a critical public safety gap. The FCC has taken steps to close this gap by imposing Enhanced 911 (E911) obligations on providers of "interconnected" VoIP services, i.e., VoIP services that allow users generally to receive calls from and terminate calls to the public switched telephone network (PSTN), including wireless phone networks. E911 systems automatically provide a 911 caller's call back number and, in most cases, location information to emergency service personnel.

The City of Westminster has received 52 VoIP calls to 911 during 2006. Dispatch staff did not report any incorrect location data on the calls received in 2006. However, in one situation, the VoIP call was misrouted from a Florida location.

Background Information

What Is Interconnected VoIP Service?

Interconnected VoIP service allows users to make and receive calls to and from traditional phone numbers using a high-speed (broadband) Internet connection (i.e., DSL, cable modem or broadband wireless technology). VoIP Service can be used in place of traditional phone service. Typically, interconnected VoIP technology works by either placing an adapter between a traditional phone and broadband connection, or by using a special VoIP phone that connects directly to the user's computer or Internet connection. While the user may choose to use interconnected VoIP service from a single location, like a residence, some interconnected

VoIP services can be used during travel, as long as a broadband Internet connection is available. Companies offering interconnected VoIP service call it by a number of different brand names.

The Public Safety Challenges of VoIP Services

Traditional phone services have generally associated a particular phone number with a fixed address. Portable interconnected VoIP services enable consumers to take their home or business phone service almost anywhere. Because certain interconnected VoIP services can be used from virtually any broadband connection, the location of the caller cannot automatically be determined.

This portability raises a number of challenges for the emergency services community. The FCC has recently taken action to make sure that emergency calls from these VoIP services will get through to the appropriate public safety authorities, but there are certain details that consumers need to be aware of.

When the consumer calls 911 from a traditional telephone, the call in most cases is sent to emergency service providers who are responsible for helping people in a particular geographic area or community. These emergency service providers often can automatically identify the location and direct the closest emergency personnel to that location. They can also often automatically identify the telephone number so that they can call the party back if they are disconnected. But, the FCC reports that consumers who use interconnected VoIP telephone service have had difficulty and/or experienced problems accessing 911 services. Examples of these problems include:

- VoIP service simply did not connect to 911;
- VoIP service rang to the administrative line of the public safety answering point (PSAP), which is not often staffed after hours, and is usually not staffed by trained 911 operators;
- VoIP service rang to the correct line of the PSAP, but did not automatically include the consumer's/customer's phone number and/or location information;
- Customer must provide certain information (such as location information) in order for the VoIP provider to set up 911 service, but failed to do so (some customers claimed that 911 warnings were hidden in pages of Terms and Conditions);
- Customer moved VoIP service (phone number can be used anywhere the customer has a broadband connection);
- VoIP service did not work during a power outage;
- VoIP service did not work when the broadband connection (cable modem or DSL) went down or was congested.

The FCC is working to alleviate these problems and the risks to public safety posed by interconnected VoIP services by requiring the following:

- All interconnected VoIP providers must automatically provide 911 services to all customers as a standard, mandatory feature without customers having to specifically request this service. VoIP providers may not allow their customers to "opt-out" of 911 service.
- Before an interconnected VoIP service provider can activate a new customer's service, the provider must obtain from the customer the physical location at which the service will first be used, so that emergency services personnel will be able to locate callers who dial 911. Interconnected VoIP providers must also provide one or more easy ways for all customers to update the physical location they have registered with the provider, if it changes.
- Interconnected VoIP providers must transmit all 911 calls, as well as a callback number and the caller's registered physical location, to the appropriate emergency services call center or local emergency authority.
- Interconnected VoIP providers must take appropriate action to ensure that their customers have a clear understanding of the limitations, if any, of their 911 service. All providers must specifically advise new and existing subscribers, prominently and in plain language, of the circumstances under which 911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional 911 service. They

Staff Report - Voice over Internet Protocol (VoIP) services and 911

May 1, 2006

Page 2

must distribute labels to all subscribers warning subscribers if 911 service may be limited or not available and instructing subscribers to place the labels on and/or near the equipment used in conjunction with the interconnected VoIP service.

- Interconnected VoIP service providers must obtain affirmative acknowledgement from all existing customers that they are aware of and understand the limitations of their 911 service.
- In some areas, emergency service providers are not capable of receiving or processing the location information or call back number that is automatically provided with 911 calls. In those areas, interconnected VoIP service providers must ensure that the call is routed to the appropriate public safety answering point.

Staff will continue to monitor this situation and report back to City Council if VoIP service issues become a problem in the City.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



W E S T M I N S T E R

Staff Report

Information Only Staff Report
May 1, 2006



SUBJECT: Aquatic Enhancements Update

PREPARED BY: Peggy Boccard, Recreation Services Manager

Summary Statement:

This report is for City Council information only and requires no action by City Council.

- In July 2005, City Council approved carryover funds of \$150,000 for upgrades to the aquatic operations. These funds were to be used to update and automate outdated equipment, which is needed due to safety and liability issues.
- Industry standard has shifted away from using gas chlorine for pool operations. A portion of these funds will be devoted towards converting all four City pools from gas chlorine to a safer option of liquid bleach.
- Implementation of the disinfectant and chemical monitoring portions of this project is scheduled to begin late summer of 2006, with enhancements being completed at the Swim and Fitness Center and City Park Recreation Center by year end. Conversion of the outdoor pools, Countryside and Kings Mill, is scheduled to be completed by May of 2007.
- Additional enhancements such as filter media replacement and ozone upgrades will also begin in 2007.

Background Information

In an effort to provide safer and more efficient pools, Staff identified the need to upgrade and enhance aquatics maintenance operations at the City's four swimming pools. As industry standard has shifted away from the use of gas chlorine as a primary disinfectant at pools, the most critical need identified was the conversion of our systems from gas chlorine to an alternate method. As a point of clarification, City Park uses ozone as its primary form of disinfectant but, per health code, must also maintain a level of chlorine in the pool as well. After much research, Staff recommended a safer and equally effective disinfectant comprised of liquid bleach.

Monitoring the use and amount of chemicals dispensed is another priority staff identified and automated controllers will be installed to address these concerns. The automated controllers are designed to assess the chemicals into the pools and adjust chemicals as needed.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager