



# City of Grand Island

Tuesday, July 26, 2011

Council Session

## Item F1

**#9308 - Consideration of Amending Chapter 23 of the Grand Island City Code Relative Telephone Occupation Tax**

Staff Contact: Robert Sivick

# Council Agenda Memo

**From:** Robert J. Sivick, City Attorney

**Meeting:** July 26, 2011

**Subject:** Telephone Occupation Taxes

**Item #'s:** F-1

**Presenter(s):** Robert J. Sivick, City Attorney

## Background

This memo concerns the City of Grand Island's telephone occupation tax.

## Discussion

### 1. THE PRESENT STATE OF AFFAIRS

A. Neb. Rev. Stat. §16-205 states,

*A city of the first class may raise revenue by levying and collecting a license or occupation tax on any person, partnership, limited liability company, corporation, or business within the limits of the city and to regulate same by ordinance. All such taxes shall be uniform in respect to the class upon which they are imposed.*

B. Pursuant to the authority granted it by Neb. Rev. Stat. §16-205, the City of Grand Island imposes an occupation tax of 3% on monthly gross receipts received by telephone providers for cellular and residential telephones. This tax is set forth in Grand Island City Code §23-21. This ordinance does not differentiate between cellular and residential telephone service.

C. LB 165 (codified at Neb. Rev. Stat. §86-704) makes various changes to telecommunications occupation taxes. Beginning on January 1, 2013 said taxes are capped at 6.25% and can only be raised in increments of .25% pursuant to approval of the public at an election.

D. Neb. Rev. Stat. §77-2703.04(7)(r) defines mobile wireless service as a "service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and termination points of the transmission, conveyance, or routing are not fixed..."

E. Neb. Rev. Stat. §77-2703.04(7)(y) defines residential communications service as a "telecommunications service or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment."

## 2. RESIDENTIAL AND CELLULAR TELEPHONE SERVICES ARE SEPARATE BUSINESSES

In 2008 20% of American homes had no landline. By 2010 that percentage increased to 25%. This year it is estimated 30% have no landline and rely solely on cellular telephone service. Undoubtedly that percentage will increase in the future as landlines go the way of VHS tapes and the dinosaur. In Grand Island the prevalence of cell phone only users is, estimated at 41%, greater than the national trend.

Additionally, the number of telephone service providers that offer residential and cellular service continues to shrink. Telephone companies are increasingly divided between those like Century Link (formerly Qwest) which offer landline service (Century Link stopped offering cellular service in 2009) and carriers like US Cellular which offer only cellular service. Not only are landline and cellular service defined separately in law but it is obvious to every citizen they are two entirely separate types of businesses. Being separate businesses, it stands to reason they can be taxed differently pursuant to the authority the City has to impose occupation taxes.

## 3. ADDITIONAL PUBLIC EXPENSE WROUGHT BY CELLULAR TELEPHONES

When someone calls 911 from a traditional landline the exact location of the telephone and caller is known instantly by emergency management personnel as the location of the telephone is fixed. When someone calls 911 from a cellular telephone the location of the telephone and caller can only be determined by a process called triangulation in which the telephone signal is bounced off towers at known locations and the location of the caller can then be calculated with varying degrees of accuracy. Triangulation requires additional equipment, software, and expense.

Twenty years ago when an accident or disturbance occurred which necessitated summoning public safety personnel, 911 could only be reached by someone using a residential, business, or pay telephone. Usually a 911 center would only receive one or two calls reporting an individual emergency. Today with almost everyone possessing a cellular telephone, it is not unusual for a 911 center to receive dozens of calls reporting the same emergency. Obviously, the public should not be discouraged from reporting emergencies but the ubiquitous nature of cellular telephones means numerous calls are placed, each of which must be answered, recorded, and addressed by emergency management personnel at public expense.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve.
2. Refer the issue to a Committee.
3. Postpone the issue to future date.
4. Take no action on the issue.

## **Recommendation**

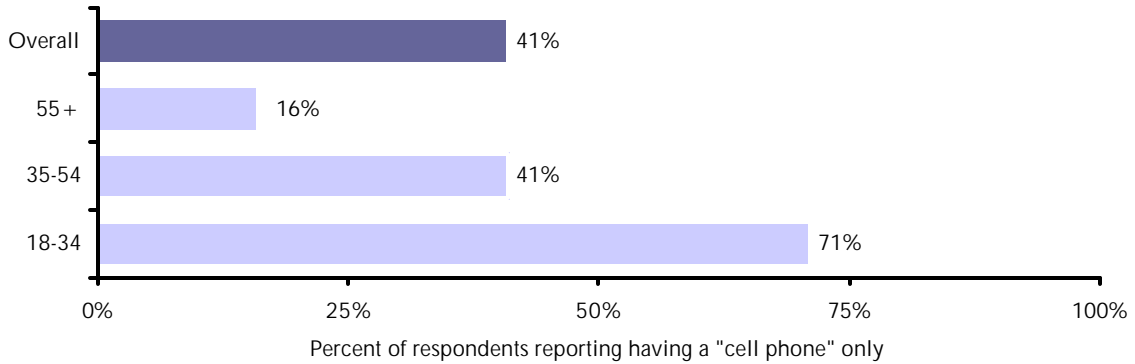
City Administration recommends the Council formally approve the Ordinance before it amending Grand Island City Code §23-21 and enacting Grand Island City Code, Article VIII, §23-80.

## **Sample Motion**

Move to approve Ordinance No. 9308 amending Grand Island City Code §23-21 and enacting Grand Island City Code, Article VIII, §23-80.

In response to the growing number of the cell-phone only households, questions about cell phones and land lines are included in the 2011 Survey of Grand Island Residents. The survey results show that 41% of Grand Island households have a cell phone but no landline, which is higher than the national average of 26.6% as of the end of 2010. Among younger adults (age 18-34), 71% of households have a cell phone but no landline, which is significantly higher than the nationwide 2010 estimates of 53.7%.

FIGURE 92: PREVALENCE OF CELL-PHONE ONLY RESPONDENTS IN GRAND ISLAND



<sup>1</sup> <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201012.pdf>

ORDINANCE NO. 9308

WHEREAS, the City of Grand Island finds it necessary to amend Grand Island City Code §23-21, its telephone occupation tax, to reflect modern technological advances and reality, and

WHEREAS, the City of Grand Island finds it necessary to amend Grand Island City Code Chapter 23, Occupation Taxes, to reflect the additional costs of City services necessitated by the increased use of cellular telephones,

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

I. That Grand Island City Code §23-21 be amended to read as follows:

Article III. Telephone Companies

§23-21. Occupation Tax; Exemption

All telephone companies doing business in the City and providing fixed location or landline telephone service are required to pay an occupation tax to the City in an amount equal to three percent of the gross receipts from the legally established basic monthly charges collected for local exchange telephone service and intrastate message toll telephone service to subscribers in the City. There shall be exempted from the provisions of this article all receipts for telephone service to the United States government or any of its departments and all receipts from the State of Nebraska or any of its departments and no part or portion of the tax provided for in this article shall be levied upon or assessed against or taken from the United States government, the government of the State of Nebraska, or any of either of their departments.

II. That Grand Island City Code, Article VIII, §23-80 be enacted to read as follows:

Article VIII. Cellular or Wireless Telephone or Communications Companies

§23-80. Occupation Tax; Exemption

All telephone or communications companies doing business in the City and providing two way cellular, wireless, mobile, and/or radio telephone or communications service are required to pay an occupation tax to the City in an amount equal to six percent of the gross receipts from the legally established basic monthly charges collected for local and intrastate telephone or communications services to subscribers within the City. There shall be excepted from the provisions of this article all receipts for cellular, wireless, mobile, and/or radio telephone or communications service to the United States government or any of its departments and all receipts from the State of Nebraska or any of its departments and no part or portion of the tax provided for in this article shall be levied upon or assessed against or taken from the United States government, the government of the State of Nebraska, or any of either of their departments.

III. Any ordinances or parts of ordinances in conflict are hereby repealed.

IV. This ordinance shall be in full force and will take effect from and after its passage and publication on October 1, 2011.

Enacted: July 26, 2011.

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Jay Vavricek, Mayor

ATTEST:

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RaNae Edwards, City Clerk