

ORDINANCE NO. 080121

Approving a settlement agreement with AT&T Mobility in the amount of \$9,207,080.32; authorizing the City Attorney to execute the necessary documents; reiterating the City's establishment of the current residential and business split for fees payable by wireless telephone service providers going forward; authorizing payment of attorneys fees of \$460,354.02; estimating and appropriating revenue; and recognizing an emergency.

WHEREAS, the City of Kansas City, Missouri is a putative class member in a lawsuit to recover unpaid Business License Taxes known as *City of University City, Missouri, et al. v. AT&T Wireless, Services, Inc., et al.*, No. 01-CC-004454, and is pending in the Circuit Court of St. Louis County, Missouri; and

WHEREAS, the City and AT&T Mobility wish to avoid the expense and uncertainty of continued litigation and desire to settle their disputes without further litigation; and

WHEREAS, a settlement agreement settling the litigation was signed by the named plaintiffs (as class representatives) and AT&T Mobility, and was filed with and preliminarily approved by the Circuit Court of St. Louis County on December 7, 2007; and

WHEREAS, the City and AT&T Mobility have conducted an investigation and evaluation of the facts and the law relating to the claims in the lawsuit and believe that the Settlement Agreement is fair, reasonable, adequate and in the best interest of all the parties; and

WHEREAS, pursuant to the Settlement Agreement, the City has received a Notice of Class Action Settlement and Approval Hearing, incorporated herein by reference, and a AT&T Mobility Municipal Tax Settlement Claim Form, incorporated herein by reference, which identify the total past tax consideration as defined in the Settlement Agreement that will be paid and released to the City pursuant to the Settlement Agreement after the Settlement Agreement becomes Final; and

WHEREAS, in recognition of the requirement of Section 818 Charter of Kansas City that the settlement of tax claims in the manner proposed be authorized by law; and

WHEREAS, the City's business license fee payable by telecommunications companies is 6% for residential accounts and 10% for commercial accounts as provided in Sections 40-360, 40-361, and 40-369, Code of Ordinances, and that wireless providers should, going forward, pay such amounts; NOW, THEREFORE

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

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**Section 1. Approval – General Terms.** That the City of Kansas City, Missouri approves, accepts, and adopts all terms and provisions of the Settlement Agreement as a binding and enforceable agreement between the City and AT&T Mobility, and as if the City was an original signatory.

**Section 2. Approval – Specific Amount.** That the City approves the total past tax consideration of \$9,207,080.32 as shown on the AT&T Mobility Municipal Tax Settlement Claim Form, along with the other relief provided in the Settlement Agreement, as adequate consideration for the release of claims by the City against AT&T Mobility as provided for in the Settlement Agreement.

**Section 3. Declaration of Dual Rates.** The City declares its intent that Sections 40-360, 40-361 and 40-369, Code of Ordinances, be interpreted and construed so that wireless telecommunications service billed to residential addresses be deemed residential in character and wireless telecommunications services billed to all other addresses be deemed as “commercial, industrial and all other users” in character. AT&T Mobility and other wireless carriers are therefore directed to pay gross receipts taxes at the nonresidential rate specified by ordinance only for service billed to addresses other than residential. This declaration and direction shall continue until and unless otherwise declared by the City.

**Section 4. Execution of Documents.** The City Attorney, on behalf of the City, is authorized and directed to execute the Settlement Claim Form and any other documents necessary under the Settlement Agreement.

**Section 5. Other Settlements.** The City reserves the right to conclude settlement agreements with other wireless telecommunications service providers in the lawsuit depending upon the circumstances of each case.

**Section 6. Payment of Attorneys Fees.** The City Attorney is authorized to expend a sum equal to 5% of the recovery from this settlement, which is \$460,354.02, for payment of attorneys fees representing the difference between the payment of 20% of the fees earned by counsel and paid by AT & T Mobility and the 25% fee arrangement agreed to by the City, upon receipt of the settlement.

**Section 7. Estimation of Revenue.** That revenue in the additional amount of \$460,354.02 is estimated in the following account in the General Fund:

09-1000-120000-453300	Wireless Telephone Companies	\$460,354.02
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**Section 8. Appropriation of Funds.** That \$460,354.02 is appropriated from the Unappropriated Fund Balance of the General Fund to the following account in the General Fund:

09-1000-131517-B	Wireless Telephone Settlement	\$460,354.02
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**Section 9. Severability.** The provisions of this ordinance are severable.

**Section 10. Emergency.** That this ordinance appropriates money and is hereby recognized to be an emergency measure within the meaning of Section 503 of the Charter of Kansas City, and as such shall become effective in accordance with that section.

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I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

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Wanda Gunter  
Acting Director of Finance

Approved as to form and legality:

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William Geary  
Assistant City Attorney