

CHAPTER 36

TAXATION

ARTICLE I – FOREIGN FIRE INSURANCE COMPANIES

36-1-1 **CONFORMANCE.** All corporations, companies and associations not incorporated under the laws of this State which are engaged in this Municipality in effecting or soliciting fire insurance, shall pay to the Treasurer of the Foreign Fire Insurance Board on the **fifteenth (15th) day of July of each and every year** a sum equal to **two percent (2%)** of the gross receipts of premiums received by such corporations, associations or companies, or their agent(s), for business effected or transacted for fire insurance within this City for the year preceding **July 1st**. The sum named above shall be as a tax or license fee upon all such corporations, companies or associations transacting said business within this City.

36-1-2 **REQUIRED REPORTS.** Every person acting as an agent, or otherwise, for or on behalf of any such corporation, company or association, shall, on or before the **fifteenth (15th) day of July of each and every year** render to the Treasurer of the Foreign Fire Insurance Board a full, true, and just account, verified by oath, of all the premiums which, during the year ending on the **first (1st) day of July of each and every year** shall have been received by him, or any other person for him, in behalf of such corporation, company or association, and shall fully and specifically set out in such report the amount or amounts received as premiums for fire insurance.

36-1-3 **FEES.** The said agent(s) shall also at the time of making the above mentioned report, pay to the Treasurer of the Foreign Fire Insurance Board the sum of **two percent (2%)** upon the gross receipts of such corporation, company or association obtained as premiums for effecting fire insurance in this City as specified in this Chapter.

36-1-4 **UNLAWFUL OPERATION.** If such an account be not rendered on or before the day herein specified for that purpose, or if the above mentioned rates for the tax or license fees shall remain unpaid after that day, it shall be unlawful for any such corporation, company or association to transact any business of fire insurance in this City until the requirements hereof are fully complied with; but this provision shall not relieve any company, corporation or association from the payment of any such risk that may be taken in violation hereof.

36-1-5 FOREIGN FIRE INSURANCE BOARD.

(A) **Establishment of Foreign Fire Insurance Board.** There is hereby established a Foreign Fire Insurance Board for the City. In accordance with the requirements of **65 ILCS 5/11-10-1** and **750 ILCS 5/11-10-2**, all monies which have been collected and received by the City in the year 2008 and which are collected and received by the City thereafter under the provisions of the foregoing state statute shall immediately be forwarded by the City Treasurer to the duly elected Treasurer of the Foreign Fire Insurance Board for disbursement by the duly elected officers of the Board. Such monies shall only be expended for the maintenance, use and benefit of the City Fire Department.

(B) **Election of Board Members.** The Board shall consist of a President, Treasurer, and Secretary, each of whom shall be an active member of the Fire Department. Board members shall be the elected by a vote of all of the members of the Fire Department. Additionally, the Fire Chief shall be an ex officio member of the Board and shall have the right to participate in all open or closed session discussions regarding the management of Foreign Fire Insurance tax monies and any other matter within the scope of the powers and duties of the Board and shall receive notice of any regular or special meeting in the same manner given to any voting member, but he shall not have any voting privileges.

(C) **Terms of Board Members.** The **three (3)** elected members of the Board shall serve **three (3) year** terms or until their successors are elected and installed. The initial Board shall be elected at a meeting to be held on **March 26, 2009**, and future boards shall be elected at a meeting held on the **fourth (4th) Thursday of January** each year thereafter. Vacancies shall be filled by election by the members of the Fire Department of the balance of any unexpired term, if more than **three (3) months** remain in the term of a member leaving the Board.

(D) **Bond.** The President and Treasurer of the Board shall each be required to post a bond, not to exceed **Fifteen Thousand Dollars (\$15,000.00)** so as to assure the faithful performance of his or her duties. The bond, form and content of which shall be approved by the Mayor, shall be conditioned on the faithful performance by the Board President or Treasurer, as the case may be, of his or her duties and shall indemnify the City for any loss by reason of any neglect of duty. The cost of such bond shall be paid out of the Foreign Fire Insurance Fund.

(E) **Disbursement of Funds.** The Board shall comply with all State and local bidding and purchasing laws. All monies disbursed by the Board shall be approved by a majority vote of the members of the Board and all checks or other disbursements shall be signed by the President and Treasurer of the Board.

(F) **Board Records and Meeting Minutes.** The Board Treasurer shall keep accurate and current records of the Foreign Fire Insurance monies, including all deposits, withdrawals, disbursements and balances of said monies. The Board Secretary shall keep accurate and current minutes of all meetings conducted by the Foreign Fire Insurance Board.

(G) **Annual Report.** The Foreign Fire Insurance Board shall, on or before **June 30** of each year, make and file with the City Clerk, an annual report of the activities of the Foreign Fire Insurance Board during the prior year ending **April 30**, including a full and detailed account of all receipts and disbursements made from the Foreign Fire Insurance Fund during the City's fiscal year ended immediately before the filing of such report.

(H) **Meetings; Notice; Quorum.**

(1) The Board, in accordance with the Illinois Open Meetings Act, shall establish a regular time and place for its meetings. The President shall preside at the meetings, the Secretary shall keep a record of all resolutions, proceedings, minutes and actions of the Board and these records shall be open to the public. Special meetings may be called by the President or by no less than **two (2) members** of the Board.

(2) **Two (2) members** of the Board shall constitute a quorum for the transaction of its business. The affirmative vote of **two (2) members** of the Board shall constitute approval of business before it.

(I) **Rules and Regulations.** The Board may adopt all needful rules and regulations with respect to the management of the money which has been paid over to the Board's Treasurer. Such rules and regulations shall not be contrary to this Article.

(Ord. No. 1208; 03-02-09)

ARTICLE II - TAX ABATEMENT

36-2-1 **ABATEMENT ESTABLISHED.** Property Tax Abatement is hereby established for (1) new industrial and/or commercial firms locating in the City or (2) for existing industrial and/or commercial firms which are expanding their facilities and with such expansion, there is an increase in the firm's assessed property valuation. The City Council shall be authorized, by resolution, to abate City property taxes for such industrial and/or commercial firms provided that the tax abatement shall be in accordance with the provisions set forth herein. **(#598; 02-10-86)**

36-2-2 **FORMS OF ABATEMENTS.** Any tax abatement for any particular firm may vary from:

- (A) No abatement to a **one (1) year** abatement;
- (B) From a **one (1) year** abatement to a maximum of a **five (5) year** abatement; and
- (C) From a **five (5) year** abatement to a maximum of a **ten (10) year** abatement.

(#598; 02-10-86)

36-2-3 **NO ABATEMENT TO A ONE (1) YEAR ABATEMENT** applies to an existing industrial and/or commercial firm presently located within the City and which expands its facilities so as to have an increase in assessed valuation of taxable property, but which reduces the number of the firm's employees working within the City. **(#598; 02-10-86)**

36-2-4 **ONE (1) TO FIVE (5) YEAR TAX ABATEMENT** applies to an existing industrial and/or commercial firm which expands its facilities within the City limits; such expansion causing an increase in assessed valuation of taxable property in the City, but which does not have an increase or decrease in the number of its employees working within the City. **(#598; 02-10-86)**

36-2-5 **FIVE (5) TO TEN (10) YEAR TAX ABATEMENT** applies to an industrial and/or commercial firm which, prior to its locating within the City had not been in the City, or applies to an existing industrial and/or commercial firm which has expanded its facilities within the City so as to increase both its assessed valuation of taxable property in the City and increases its number of employees working within the City. **(#598; 02-10-86)**

36-2-6 **NEGOTIABLE TAX ABATEMENT.** Any tax abatement may be negotiated to allow the abatement to begin after the firm's construction project has been completed.

36-2-7 **ABATEMENT LIMITS.** No firm may receive an abatement at any time which exceeds **One Million Dollars (\$1,000,000.00)**. Further, any tax abatement may range from no abatement to a maximum of **one hundred percent (100%)** tax abatement on the increased assessed valuation of the taxable property of the firm being considered for tax abatement. The abatement granted shall be within the following categories:

(A) **0% to 50% Tax Abatement on the Increase Assessed Value of the Property Within the City.** This abatement applies to an existing industrial and/or commercial firm which expands its facilities so as to create an increase in assessed value of property within the City while reducing the number of employees working within the City.

(B) **25% to 75% Tax Abatement on the Increase in Assessed Value.** This abatement applies to an existing industrial and/or commercial firm which expands its facilities within the City so as to increase its assessed value of property within the City without increasing or decreasing its number of employees working within the City.

(C) **50% to 100% Tax Abatement on the Increase of Assessed Value.** This abatement applies to an existing industrial and/or commercial firm which expands its facilities so as to increase its assessed value of its property within the City and so as to increase the number of employees working within the City.

(D) **50% to 100% Tax Abatement on the Increase in Assessed Value.** This abatement applies to a new industrial and/or commercial firm which locates within the City so as to increase both the assessed value of property within the City and so as to increase the number of employees working within the City.
(#598; 02-10-86)

36-2-8 **ABATEMENT CRITERIA.** The actual percentage of abatement and the length of the abatement shall be on a firm-by-firm basis. While the number of employees affected is a major factor in the determination of the abatement, all other relevant factors will be considered. The Mayor and City Council, in their sole discretion, shall determine what constitutes an increase or decrease in the work force of the firm applying for tax abatement. **(#598; 02-10-86)**

36-2-9 **DEFINITIONS.** The terms "**industrial firm**" and "**commercial firm**" shall have the same definition, meaning and application as these terms have in **Chapter 35, Section 205/162 of the Illinois Compiled Statutes, as amended.**
(#598; 02-10-86)

36-2-10 APPLICATION OF ABATEMENT. Any tax abatement may apply to the assessment of taxes on all taxable property of a qualified industrial and/or commercial firm or only to an increase in the assessed valuation of taxable property of a qualified industrial and/or commercial firm within the City. **(#598; 02-1086)**

36-2-11 ABATEMENT REQUESTS. All requests for property tax abatement shall be made to the City Council. Each request shall include the following information:

- (A) Name of firm;
- (B) Location of firm;
- (C) Phone number;
- (D) Name and title of person requesting abatement;
- (E) Brief explanation of the firm's operations where abatement is being requested; length and percentage of abatement being requested;
- (F) If a new industry, the number of full-time and part-time employees expected to be employed in the first full year of operation, including their combined estimated payroll; total number of full-time and part-time employees expected to be employed when operating at full capacity; and when full capacity will be anticipated;
- (G) The total number of full-time and part-time employees hired, added or retained as a result of the expansion of an existing industry, including their combined estimated annual payroll;
- (H) If the firm is requesting maximum abatement allowable by the City, a brief narrative on its willingness to sign a **First Source Agreement** with **Randolph County's JTPA Division**;
- (I) Two-digit SIC Code number;
- (J) A copy of the firm's annual report, where the firm does have an annual report, unless waived by state or federal law. Where a subsidiary, the annual report of the parent corporation;
- (K) If a corporation, the corporation registration number, employer identification number and a copy of the firm's annual report, or where a subsidiary, the annual report of the parent corporation or holding corporation. If other than a corporation, photocopy of registration certificate, if any, received from the County Clerk;
- (L) Total cost of the expansion/location;
- (M) Market area for products manufactured;
- (N) Estimated amount of abatement being requested annually;
- (O) Length of abatement being requested;
- (P) Projected impact on City businesses producing a similar or the same product or service;
- (Q) Additional information as may be requested by the City Council.

(#598; 02-10-86)

ARTICLE III - GENERAL TAXES

36-3-1 **CORPORATE RATE.** The maximum rate for general corporate purposes of the City shall be and the same is hereby established at a rate of **.25%.**
(65 ILCS Sec. 5/8-31)

36-3-2 **MAXIMUM RATES ESTABLISHED.** The maximum tax rates for the various purposes of the City of the full, fair, cash value as equalized or assessed by the Department of Revenue on all the taxable property within the City shall be as follows:

<u>FUND/PURPOSE</u>	<u>MAXIMUM RATE</u>
City Park	\$.10 per \$100.00
Emergency Service and Disaster Agency	\$.05 per \$100.00
IMRF	NO LIMIT
Library	\$.15 per \$100.00
Police Protection	\$.075 per \$100.00
Social Security	NO LIMIT

ARTICLE IV - UTILITIES TAX

36-4-1 **DEFINITIONS.** In this Article, the term "**gross receipts**" shall mean the consideration to be received from each customer for electric and gas distributed, supplied, furnished or sold to the persons for use or consumption and not for resale, and includes cash, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service costs, or any other expenses whatsoever. The term "gross receipts" shall not include any charges added to a customer's bill for the following:

(A) Electric and gas service where the customer has not used any electric and gas;

(B) Bad checks received by the City from the customer, finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment;

(C) Reconnection of service or for replacement or relocation of facilities; advances or contributions in aid of construction; repair, inspection or servicing of equipment located on the customer's premises; leasing or rental of equipment, the leasing or rental of which is not necessary to distributing, furnishing, supplying, selling or transporting electric and gas; public utilities revenue tax (state and local) added to a customer's bill.

(#601; 04-07-86)

36-4-2 **NATURAL GAS TAX.**

(A) All gas billings are subject to the **Illinois Gas Revenue Tax Act, Chapter 35, Section 610/1 and following of the Illinois Compiled Statutes, as amended**, establishing a tax on gas users, such tax being added to the customer's account as follows:

(B) **Five percent (5%)** of the gross receipts received from each customer or **2.4-cents per therm** of gas used by each customer, whichever is less, as applied to each customer.

(#601; 04-07-86)

36-4-3 **ELECTRIC TAX.**

(A) All electric billings are subject to the **Illinois Public Utilities Revenue Act, Chapter 35, Section 620/1** and following of the **Illinois Compiled Statutes, as amended**, establishing a tax on electric users, such tax being added to the customer's account as follows:

(B) **Five percent (5%)** of the gross receipts received from each customer or **.32-cents per kilowatt-hour**, whichever is less, as applied to each customer for that customer's billing period.

(#600; 04-07-86)

ARTICLE V

TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE

36-5-1 **DEFINITIONS.** As used in this Code, the following terms shall have the following meanings:

(A) **"Gross Charges"** means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the City, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within the City, charges for the channel mileage between each channel point within the City, and charges for that portion of the interstate inter-office channel provided within the City. However, "gross charges" shall not include:

- (1) any amounts added to a purchaser's bill because of a charge made under:
 - (a) the fee imposed by this Section,
 - (b) additional charges added to a purchaser's bill under Section 9-221 or 9-222 of the Public Utilities Act,
 - (c) amounts collected under Section 8-11-17 of the Illinois Municipal Code,
 - (d) the tax imposed by the Telecommunications Excise Tax Act,
 - (e) 911 surcharges, or
 - (f) the tax imposed by Section 4251 of the Internal Revenue Code;
- (2) charges for a sent collect telecommunication received outside the City;
- (3) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement;

- (4) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;
- (5) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the City;
- (6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;
- (7) bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);
- (8) charges paid by inserting coins in coin-operated telecommunications devices; or
- (9) charges for telecommunications and all services and equipment provided to the City.

(B) **"Public Right-of-Way"** means any municipal street, alley, water or public right-of-way dedicated or commonly used for utility purposes, including utility easements wherein the City has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities. "Public Right-of-Way" shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings and other structures or improvements, regardless of whether they are situated in the public right-of-way.

(C) **"Retailer maintaining a place of business in this State"**, or any like term, means and includes any retailer having or maintaining within the State of Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

(D) **"Sale of telecommunications at retail"** means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

(E) **"Service address"** means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems, and the like, "service address" shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

(F) **"Telecommunications"** includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. "Telecommunications" shall not include value-added services in which computer-processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provisions and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable service through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Section 521 and following) as now or hereafter amended or cable or other programming services subject to an open video system fee payable to the City through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended.

(G) **"Telecommunications provider"** means (1) any telecommunications retailer; and (2) any person that is not a telecommunications retailer that installs, owns, operates or controls equipment in the public right-of-way that is used or designed to be used to transmit telecommunications in any form.

(H) **"Telecommunications retailer" or "retailer" or "carrier"** means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The City may, in its discretion, upon application, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the City, furnishes adequate security to ensure collection

and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business in the City.

(I) **"Wireless telecommunications"** includes cellular mobile services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104), 42 U.S.C. §331(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services.

36-5-2 REGISTRATION OF TELECOMMUNICATIONS PROVIDERS.

(A) Every telecommunications provider as defined by this Article shall register with the City within **thirty (30) days** after the effective date of this Article or becoming a telecommunications provider, whichever is later, on a form to be provided by the City, provided, however, that any telecommunications retailer that has filed a return pursuant to **Section 36-3-4(C)** of this Article shall be deemed to have registered in accordance with this Section.

(B) Every telecommunications provider who has registered with the City pursuant to **Section 36-3-2(A)** has an affirmative duty to submit an amended registration form or current return as required by **Section 36-3-4(C)**, as the case may be, to the City within **thirty (30) days** from the date of the occurrence of any changes in the information provided by the telecommunications provider in the registration form or most recent return on file with the City.

36-5-3 MUNICIPAL TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE.

(A) A City telecommunications infrastructure maintenance fee is hereby imposed upon all telecommunications retailers in the amount of **one percent (1%)** of all gross charges charged by the telecommunications retailers to service addresses within the City for telecommunications originating or received in the City.

(B) Upon the effective date of the infrastructure maintenance fee authorized in this Article, the City infrastructure maintenance fee authorized hereunder shall be the only fee or compensation for the use of all public rights-of-way within the City by telecommunications retailers. Imposition of the infrastructure maintenance fee provided under this Article does not, however, serve as a limitation on the levying of any taxes or imposition of any fees otherwise authorized by law.

(C) The City telecommunications infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in **Section 36-3-4** of this Article.

36-5-4 COLLECTION, ENFORCEMENT, AND ADMINISTRATION OF TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEES.

(A) A telecommunications retailer shall charge to and collect from each customer an additional charge in an amount equal to the City infrastructure maintenance fee attributable to that customer's service address.

(B) Unless otherwise approved by the City the infrastructure maintenance fee shall be remitted by the telecommunications retailer to the City not later than the last day of the month subsequent to the month in which a bill is issued to the customer; provided, however, that the telecommunications retailer may retain an amount not to exceed **two percent (2%)** of the City infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee.

(C) Remittance of the municipal infrastructure fee to the City shall be accompanied by a return, in a form to be prescribed by the City, which shall contain such information as the City may reasonably require.

(D) Any infrastructure maintenance fee required to be collected pursuant to this Article and any such infrastructure maintenance fee collected by such telecommunications retailer shall constitute a debt owed by the telecommunications retailer to the City. The charge imposed under **Section 36-5-4(A)** by the telecommunications retailer pursuant to this Article shall constitute a debt of the purchaser to the telecommunications retailer who provides such services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such services.

(E) If it shall appear that an amount of infrastructure maintenance fee has been paid that was not due under the provisions of this Article, whether as a result of a mistake of fact or an error of law, then such amount shall be credited against any infrastructure maintenance fee due, or to become due, under this Article, from the telecommunications retailer who made the erroneous payment; provided, however, the City may request, and telecommunications retailer shall provide, written substantiation for such credit. However, no claim for such credit may be made more than **three (3) years** after the date of the erroneous payment unless, (1) the credit is used only to offset a claim of underpayment made by the City within the applicable statutory period of limitations, and (2) the credit derives from an overpayment made by the same telecommunications retailer during the applicable statutory period of limitations.

(F) Amounts paid under this Article by telecommunications retailers shall not be included in the tax base under any of the following acts as described immediately below:

- (1) **"gross charges"** for purposes of the Telecommunications Excise Tax Act;
- (2) **"gross receipts"** for purposes of the municipal utility tax as prescribed in Section 8-11-2 of the Illinois Municipal Code;
- (3) **"gross charges"** for purposes of the municipal telecommunications tax as prescribed in Section 8-11-17 of the Illinois Municipal Code;
- (4) **"gross revenue"** for purposes of the tax on annual gross revenue of public utilities in Section 2-202 of the Public Utilities Act.

(G) The City shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this Article to determine whether the telecommunications retailer has properly accounted to the City for the City infrastructure maintenance fee. Any underpayment of the amount of the City infrastructure maintenance fee due to the City by the telecommunications retailer shall be paid to the City plus **five percent (5%)** of the total amount of the underpayment determined in an audit, plus any costs incurred by the City in conducting the audit, in an amount not to exceed **five percent (5%)** of the total amount of the underpayment determined in an audit. Said sum shall be paid to the City within **twenty-one (21) days** after the date of issuance of an invoice for same.

(H) The City or his or her designee, may promulgate such further or additional regulations concerning the administration and enforcement of this Article consistent with its provisions, as may be required from time to time and shall notify all telecommunications retailers that are registered pursuant to **Section 36-5-2** of this Article of such regulations.

36-5-5 **COMPLIANCE WITH OTHER LAWS.** Nothing in this Article shall excuse any person or entity from obligations imposed under any law, including but not limited to:

- (A) generally applicable taxes; and
- (B) standards for construction on, over, under, or within, use of or repair of the public rights-of-way, including standards relating to free standing towers and other structures upon the public rights-of-way, as provided; and
- (C) Any liability imposed for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way; and
- (D) Compliance with any ordinance or provision of this Code concerning uses or structures not located on, over, or within the right-of-way.

36-5-6 **PENALTIES.** Any telecommunications provider who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than **Twenty-Five Dollars (\$25.00)** nor more than **Five Hundred Dollars (\$500.00)**. Further, each day any violation of this Article exists, or continues, shall constitute a separate offense.

36-5-7 **ENFORCEMENT.** Nothing in this Article shall be construed as limiting any additional or further remedies that the City may have for enforcement of this Article.

36-5-8 SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

36-5-9 CONFLICT. This Article supersedes all ordinances or parts of ordinances adopted prior hereto which are in conflict herewith, to the extent of such conflict.

36-5-10 WAIVER AND FEE IMPLEMENTATION.

(A) The City hereby waives all fees, charges, and other compensation that may accrue, after the effective date of the waiver, to the City by a telecommunications retailer pursuant to any existing City franchise, license, or similar agreement with a telecommunications retailer during the time the City imposes the Telecommunications Infrastructure Maintenance Fee. This waiver shall only be effective during the time the Infrastructure Maintenance Fee provided for in this Article is subject to being lawfully imposed on the telecommunications retailer and collected by the telecommunications retailer from the customer.

(B) The City Clerk shall send a notice of the waiver by certified mail/return receipt requested to each telecommunications retailer to whom this Article applies and known by the City.

(C) The City infrastructure maintenance fee provided for in this Article shall become effective and imposed on the **first (1st) day** of the month following:

- (1) the effective date of this Article as to telecommunications retailers with which there is no effective franchise, license, or similar agreement with the City on the **first (1st) day** of the month following the effective date; or
- (2) not less than **ninety (90) days** after the City provides written notice by certified mail to each telecommunications retailer with whom the City has an existing franchise, license, or similar agreement that the City waives all compensation under such existing franchise, license, or similar agreement during such time as the fee is subject to being lawfully imposed and collected by the retailer and remitted to the City.

The infrastructure maintenance fee shall apply to gross charges billed on or after the **first (1st) day** of the month following the effective date as established in the preceding paragraph.

(Ord. No. 977; 12-04-00)

ARTICLE VI

TAXPAYERS' RIGHTS CODE

36-6-1 **TITLE.** This Article shall be known as, and may be cited as, the "Locally Imposed and Administered Tax Rights and Responsibility Code".

36-6-2 **SCOPE.** The provisions of this Code shall apply to the City's procedures in connection with all of the City's locally imposed and administered taxes.

36-6-3 **DEFINITIONS.** Certain words or terms herein shall have the meaning ascribed to them as follows:

(A) **Act.** "Act" means the "Local Government Taxpayers' Bill of Rights Act".

(B) **Corporate Authorities.** "Corporate Authorities" means the City's Mayor and City Council.

(C) **Locally Imposed and Administered Tax or "Tax".** "Locally Imposed and Administered Tax" or "Tax" means each tax imposed by the City that is collected or administered by the City not an agency or department of the State. It does not include any taxes imposed upon real property under the Property Tax Code or fees collected by the City other than infrastructure maintenance fees.

(D) **Local Tax Administrator.** "Local Tax Administrator", the City's Administrative Assistant, is charged with the administration and collection of the locally imposed and administered taxes, including staff, employees or agents to the extent they are authorized by the local tax administrator to act in the local tax administrator's stead. The local tax administrator shall have the authority to implement the terms of this Code to give full effect to this Code. The exercise of such authority by the local tax administrator shall not be inconsistent with this Code and the Act.

(E) **City.** "City" means the City of Red Bud, Illinois.

(F) **Notice.** "Notice" means each audit notice, collection notice or other similar notice or communication in connection with each of the City's locally imposed and administered taxes.

(G) **Tax Ordinance.** "Tax Ordinance" means each ordinance adopted by the City that imposes any locally imposed and administered tax.

(H) **Taxpayer.** "Taxpayer" means any person required to pay any locally imposed and administered tax and generally includes the person upon whom the legal incidence of such tax is placed and with respect to consumer taxes includes the business or entity required to collect and pay the locally imposed and administered tax to the City.

36-6-4 **NOTICES.** Unless otherwise provided, whenever notice is required to be given, the notice is to be in writing mailed not less than **seven (7) calendar days** prior to the day fixed for any applicable hearing, audit or other scheduled act of the local tax administrator. The notice shall be sent by the local tax administrator as follows:

- (A) First class or express mail, or overnight mail, addressed to the persons concerned at the persons' last known address, or
- (B) Personal service or delivery.

36-6-5 **LATE PAYMENT.** Any notice, payment, remittance or other filing required to be made to the City pursuant to any tax ordinance shall be considered late unless it is:

- (A) physically received by the City on or before the due date, or
- (B) received in an envelope or other container displaying a valid, readable U.S. postmark dated on or before the due date, properly addressed to the City, with adequate postage prepaid.

36-6-6 **PAYMENT.** Any payment or remittance received for a tax period shall be applied in the following order:

- (A) first to the tax due for the applicable period;
- (B) second to the interest due for the applicable period; and
- (C) third to the penalty for the applicable period.

36-6-7 **CERTAIN CREDITS AND REFUNDS.**

(A) The City shall not refund or credit any taxes voluntarily paid without written protest at the time of payment in the event that a locally imposed and administered tax is declared invalidly enacted or unconstitutional by a court of competent jurisdiction. However, a taxpayer shall not be deemed to have paid the tax voluntarily if the taxpayer lacked knowledge of the facts upon which to protest the taxes at the time of payment or if the taxpayer paid the taxes under duress.

(B) The statute of limitations on a claim for credit or refund shall be **four (4)** or less years after the end of the calendar year in which payment in error was made. The City shall not grant a credit or refund of locally imposed and administered taxes, interest, or penalties to a person who has not paid the amounts directly to the City.

(C) The procedure for claiming a credit or refund of locally imposed and administered taxes, interest or penalties paid in error shall be as follows:

- (1) The taxpayer shall submit to the local tax administrator in writing a claim for credit or refund together with a statement specifying:
 - (a) the name of the locally imposed and administered tax subject to the claim;
 - (b) the tax period for the locally imposed and administered tax subject to the claim;

- (c) the date of the tax payment subject to the claim and the cancelled check or receipt for the payment;
 - (d) the taxpayer's recalculation, accompanied by an amended or revised tax return, in connection with the claim; and
 - (e) a request for either a refund or a credit in connection with the claim to be applied to the amount of tax, interest and penalties overpaid, and, as applicable, related interest on the amount overpaid; provided, however, that there shall be no refund and only a credit given in the event the taxpayer owes any monies to the City.
- (2) Within **ten (10) days** of the receipt by the local tax administrator of any claim for a refund or credit, the local tax administrator shall either:
- (a) grant the claim; or
 - (b) deny the claim, in whole or in part, together with a statement as to the reason for the denial or the partial grant and denial.
- (3) In the event the local tax administrator grants, in whole or in part, a claim for refund or credit, the amount of the grant for refund or credit shall bear interest at the rate of **ten percent (10%)** per annum, based on a year of **three hundred sixty-five (365) days** and the number of days elapsed, from the date of the overpayment to the date of mailing of a refund check or the grant of a credit.

36-6-8 **AUDIT PROCEDURE.** Any request for proposed audit pursuant to any local administered tax shall comply with the notice requirements of this Code.

- (A) Each notice of audit shall contain the following information:
- (1) the tax;
 - (2) the time period of the audit; and
 - (3) a brief description of the books and records to be made available for the auditor.
- (B) Any audit shall be conducted during normal business hours and if the date and time selected by the local tax administrator is not agreeable to the taxpayer, another date and time may be requested by the taxpayer within **thirty (30) days** after the originally designated audit and during normal business hours.
- (C) The taxpayer may request an extension of time to have an audit conducted. The audit shall be conducted not less than **seven (7) days** nor more than **thirty (30) days** from the date the notice is given, unless the taxpayer and the local tax administrator agreed to some other convenient time. In the event taxpayer is unable to comply with the audit on the date in question, the taxpayer may request another date within the **thirty (30) days**, approved in writing, that is convenient to the taxpayer and the local tax administrator.

(D) Every taxpayer shall keep accurate books and records of the taxpayer's business or activities, including original source documents and books of entry denoting the transactions which had given rise or may have given rise to any tax liability, exemption or deduction. All books shall be kept in the English Language and shall be subject to and available for inspection by the City.

(E) It is the duty and responsibility of every taxpayer to make available its books and records for inspection by the City. If the taxpayer or tax collector fails to provide the documents necessary for audit within the time provided, the local tax administrator may issue a tax determination and assessment based on the tax administrator's determination of the best estimate of the taxpayer's tax liability.

(F) If an audit determines there has been an overpayment of a locally imposed and administered tax as a result of the audit, written notice of the amount of overpayment shall be given to the taxpayer within **thirty (30) days** of the City's determination of the amount of overpayment.

(G) In the event a tax payment was submitted to the incorrect local governmental entity, the local tax administrator shall notify the local governmental entity imposing such tax.

36-6-9 APPEAL.

(A) The local tax administrator shall send written notice to a taxpayer upon the local tax administrator's issuance of a protestable notice of tax due, a bill, a claim denial, or a notice of claim reduction regarding any tax. The notice shall include the following information:

- (1) the reason for the assessment;
- (2) the amount of the tax liability proposed;
- (3) the procedure for appealing the assessment; and
- (4) the obligations of the City during the audit, appeal, refund and collection process.

(B) A taxpayer who receives written notice from the local tax administrator of a determination of tax due or assessment may file with the local tax administrator a written protest and petition for hearing, setting forth the basis of the taxpayer's request for a hearing. The written protest and petition for hearing must be filed with the local tax administrator within **forty-five (45) days** of receipt of the written notice of the tax determination and assessment.

(C) If a timely written notice and petition for hearing is filed, the local tax administrator shall fix the time and place for hearing and shall give written notice to the taxpayer. The hearing shall be scheduled for a date within **fourteen (14) days** of receipt of the written protest and petition for hearing, unless the taxpayer requests a later date convenient to all parties.

(D) If a written protest and petition for hearing is not filed within the **forty-five (45) day** period, the tax determination, audit or assessment shall become a final bill due and owing without further notice.

(E) Upon the showing of reasonable cause by the taxpayer and the full payment of the contested tax liability along with interest accrued as of the due date of the tax, the local tax administrator may reopen or extend the time for filing a written protest and petition for hearing. In no event shall the time for filing a written protest and petition for hearing be reopened or extended for more than **ninety (90) days** after the expiration of the **forty-five (45) day** period.

36-6-10 HEARING.

(A) Whenever a taxpayer or a tax collector has filed a timely written protest and petition for hearing under **Section 36-6-9**, above, the local tax administrator shall conduct a hearing regarding any appeal.

(B) No continuances shall be granted except in cases where a continuance is absolutely necessary to protect the rights of the taxpayer. Lack of preparation shall not be grounds for a continuance. Any continuance granted shall not exceed **fourteen (14) days**.

(C) At the hearing the local tax administrator shall preside and shall hear testimony and accept any evidence relevant to the tax determination, audit or assessment. The strict rules of evidence applicable to judicial proceedings shall not apply.

(D) At the conclusion of the hearing, the local tax administrator shall make a written determination on the basis of the evidence presented at the hearing. The taxpayer or tax collector shall be provided with a copy of the written decision.

36-6-11 INTEREST AND PENALTIES. In the event a determination has been made that a tax is due and owing, through audit, assessment or other bill sent, the tax must be paid within the time frame otherwise indicated.

(A) **Interest.** The City hereby provides for the amount of interest to be assessed on a late payment, underpayment, or nonpayment of the tax to be **five percent (5%)** per annum, based on a year of **three hundred sixty-five (365) days** and the number of days elapsed.

(B) **Late Filing and Payment Penalties.** If a tax return is not filed within the time and manner provided by the controlling tax ordinance, a late filing penalty, of **five percent (5%)** of the amount of tax required to be shown as due on a return shall be imposed; and a late payment penalty of **five percent (5%)** of the tax due shall be imposed. If no return is filed within the time or manner provided by the controlling tax ordinance and prior to the City issuing a notice of tax delinquency or notice of tax liability, then a failure to file penalty shall be assessed equal to **twenty-five percent (25%)** of the total tax due for the applicable reporting period for which the return was required to be filed. A late filing or payment penalty shall not apply if a failure to file penalty is imposed by the controlling ordinance.

36-6-12 ABATEMENT. The local tax administrator shall have the authority to waive or abate any late filing penalty, late payment penalty or failure to file penalty if the local tax administrator shall determine reasonable cause exists for delay or failure to make a filing.

36-6-13 INSTALLMENT CONTRACTS. The City may enter into an installment contract with the taxpayer for the payment of taxes under the controlling tax ordinance. The local tax administrator may not cancel any installment contract so entered unless the taxpayer fails to pay any amount due and owing. Upon written notice by the local tax administrator that the payment is **thirty (30) days** delinquent, the taxpayer shall have **fourteen (14) working days** to cure any delinquency. If the taxpayer fails to cure the delinquency within the **fourteen (14) day** period or fails to demonstrate good faith in restructuring the installment contract with the local administrator, the installment contract shall be canceled without further notice to the taxpayer.

36-6-14 STATUTE OF LIMITATIONS. The City, through the local tax administrator, shall review all tax returns in a prompt and timely manner and inform taxpayers of any amounts due and owing. The taxpayer shall have **forty-five (45) days** after receiving notice of the reviewed tax returns to make any request for refund or provide any tax still due and owing.

(A) No determination of tax due and owing may be issued more than **four (4) years** maximum after the end of the calendar year for which the return for the applicable period was filed or for the calendar year in which the return for the applicable period was due, whichever occurs later.

(B) If any tax return is not filed or if during any **four (4) year** period for which a notice of tax determination or assessment may be issued by the City, the tax paid was less than **seventy-five percent (75%)** of the tax due, the statute of limitations shall be **six (6) years** maximum after the end of the calendar year in which return for the applicable period was due or end of the calendar year in which the return for the applicable period was filed.

(C) No statute of limitations shall not apply if a fraudulent tax return was filed by the taxpayer.

36-6-15 VOLUNTARY DISCLOSURE. For any locally imposed and administered tax for which a taxpayer has not received a written notice of an audit, investigation, or assessment from the local tax administrator, a taxpayer is entitled to file an application with the local tax administrator for a voluntary disclosure of the tax due. A taxpayer filing a voluntary disclosure application must agree to pay the amount of tax due, along with interest of **one percent (1%)** per month, for all periods prior to the filing of the application but not more than **four (4) years** before the date of filing the application. A taxpayer filing a valid voluntary disclosure application may not be liable for any additional tax, interest, or penalty for any period before the date the application was filed. However, if the taxpayer incorrectly determined and underpaid the amount of tax due, the taxpayer is liable for the underpaid tax along with applicable interest on the underpaid tax, unless the underpayment was the result of fraud on the part of the taxpayer, in which case the application shall be deemed invalid and void. The payment of tax and interest must be made by no later than **ninety (90) days** after the filing of the voluntary disclosure application or the date agreed to by the local tax administrator. However, any additional amounts owed as a result of an

underpayment of tax and interest previously paid under this Section must be paid within **ninety (90) days** after a final determination and the exhaustion of all appeals of the additional amount owed or the date agreed to by the local tax administrator, whichever is longer.

36-6-16 PUBLICATION OF TAX ORDINANCES. Any locally administered tax ordinance shall be published via normal or standard publishing requirements. The posting of a tax ordinance on the Internet shall satisfy the publication requirements. Copies of all tax ordinances shall be made available to the public upon request at the City Clerk's office.

36-6-17 INTERNAL REVIEW PROCEDURE. The local tax administrator shall establish an internal review procedure regarding any liens filed against any taxpayers for unpaid taxes. Upon a determination by the local tax administrator that the lien is valid, the lien shall remain in full force and effect. If the lien is determined to be improper, the local tax administrator shall:

- (A) timely remove the lien at the City's expense;
- (B) correct the taxpayer's credit record; and
- (C) correct any public disclosure of the improperly imposed lien.

36-6-18 APPLICATION. This Ordinance shall be liberally construed and administered to supplement all of the City's tax ordinances. To the extent that any tax ordinance is in conflict with or inconsistent with this ordinance, this ordinance shall be controlling.

(Ord. No. 980; 01-09-01)