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ORDINANCE NO. F-0260

AN ORDINANCE AMENDING ARTICLE VIII - UTILITY TAX,
OF CHAPTER 66 - TAXATION, OF THE WHEATON CITY CODE

WHEREAS, The City of Wheaton, Illinois ("City") is an Illinois home rule municipality pursuant to the provisions of Article VII, Section 6 of the Illinois Constitution, 1970, and as such the City may exercise any power to perform any functions pertaining to its governmental affairs; and

WHEREAS, Public Act 90-561, the Electric Service Customer Choice and Rate Relief Law of 1997, will take effect on August 1, 1998; and

WHEREAS, the City currently receives a tax on electrical usage by customers within the City based upon gross receipts; and

WHEREAS, according to Public Act 90-561 it is necessary for the City to convert from a gross receipts tax to an electric excise tax which is based upon the amount of kilowatt hours of electricity used by the customer; and

WHEREAS, after completing an analysis and in conformance with Public Act 90-561, the City has developed a revenue neutral excise tax which is more full detailed herein;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

Section 1. Section 66-221 "Definitions" shall be amended by adding the following language:

"City means the City of Wheaton, Illinois

Purchase at retail means any acquisition of electricity by a purchaser for purposes of use or consumption, and not for resale, but shall not include the use of electricity by a public utility, as defined in Section 8-11-2 of the Illinois Municipal Code (65 ILCS 5/8-11-2), directly in the generation, production, transmission, delivery or sale of electricity.

Purchaser means any person who uses or consumes, within the corporate limits of the City, telecommunications, gas or electricity acquired in a purchase at retail.

Tax collector means the person delivering telecommunications, gas or electricity to the purchaser."

Section 2. Section 66-222 "Imposed" shall be amended by adding the following language:

"(3) A tax shall be imposed with respect to the use or consumption of electricity by residential customers beginning with the first bill issued on or after September 1, 1998;

and with respect to the use or consumption of electricity by nonresidential customers beginning with the first bill issued to such customers for delivery of services in accordance with Section 16-104 of the Public Utilities Act (220 ILCS 5/16-104), or the first bill issued to such customers on or after January 1, 2001, whichever issuance occurs sooner. This tax shall be imposed at the following rates, calculated on a monthly basis, for each purchaser:

- (i) For the first 2,000 kilowatt-hours used or consumed in a month; 0.404 cents per kilowatt-hour;
- (ii) For the next 48,000 kilowatt-hours used or consumed in a month; 0.265 cents per kilowatt-hour;
- (iii) For the next 50,000 kilowatt-hours used or consumed in a month; 0.239 cents per kilowatt-hour;
- (iv) For the next 400,000 kilowatt-hours used or consumed in a month; 0.232 cents per kilowatt-hour;
- (v) For the next 500,000 kilowatt-hours used or consumed in a month; 0.225 cents per kilowatt-hour;
- (vi) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.212 cents per kilowatt-hour;
- (vii) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.209 cents per kilowatt-hour;
- (viii) For the next 5,000,000 kilowatt-hours used or consumed in a month; 0.205 cents per kilowatt-hour;
- (ix) For the next 10,000,000 kilowatt-hours used or consumed in a month; 0.202 cents per kilowatt-hour; and
- (x) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month; 0.199 cents per kilowatt-hour.

- a. This tax is in addition to all taxes, fees, and other revenue measures imposed by the City, the State of Illinois, or any other political subdivision of the State.
- b. Notwithstanding any other provision of this chapter, this tax shall not be imposed if and to the extent that imposition or collection of the tax would violate the Constitution or statutes of the United States or the Constitution of the State of Illinois."

Section 3. Section 66-225 "Collection and return, credits; penalty for violation." shall be amended as follows:

"(a) The tax imposed by this article shall be collected from the taxpayer by a retailer maintaining a place of business in the state and making or effectuating the sale at retail or delivering the telecommunications, gas or electricity, and shall be remitted by such tax collector to the city. Any tax required to be collected by this article and any such tax collected by such tax collector shall constitute a debt owed by the tax collector to the City. Retailers shall collect the tax from the purchaser by adding the tax to the gross charge for the act or privilege of originating or receiving telecommunications, or of

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selling or supplying gas when sold for use, in the manner prescribed in this article. Persons delivering electricity shall also be authorized to add to such gross charge an amount equal to (3%) of the tax they collect to reimburse them for their expenses incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the City upon request. For the purposes of this chapter, any partial payment of a billed amount not specifically identified by the purchaser shall be deemed to be for the delivery of telecommunications, gas or electricity. Such tax shall constitute a debt of the purchaser to the retailer or deliverer who provides such taxable services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such taxable services. If the retailer or deliverer fails to collect the tax from the purchaser, then the purchaser shall be required to pay the tax directly to the City treasurer.

Whenever possible, the tax authorized by this article shall, when collected, be stated as a distinct item separate and apart from the gross charge for telecommunications, gas, or electricity.

(b) Each retailer or deliverer shall make a return to the city treasurer within 30 days following the receipt by the tax collector of taxes actually paid for the acts or privileges set forth in this article. The return shall include the tax collector's name and principal place of business, the gross charges during the collection period upon which the tax is imposed, the amount of the tax, and such other reasonable and related information as the city may require. The tax collector making the return provided for in this article shall, at the time of making such return, pay to the city treasurer the amount of tax imposed in this article; provided, that in connection with any return the tax collector may, if he so elects, report and pay an amount based upon his total billings of gross charges subject to the tax during the period for which the return is made, exclusive of any amounts previously billed, with prompt adjustments or later payments based upon any differences between such billings and the taxable gross charges.

(c) If it shall appear that an amount of tax has been paid which was not due under the provisions of this article, whether the result of a mistake of fact or an error of law, then such amount shall be credited against any tax due or to become due under this article from the tax collector who made the erroneous payment; provided, that no amounts erroneously paid more than one year prior to the filing of a claim therefor shall be so credited.

No action to recover any amount of tax due under the provisions of this article shall be commenced more than one year after the due date of such amount.

(d) Any tax collector who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$100.00 or more than \$500.00, and in addition shall be liable in a civil action for the amount of tax due."

Section 4. Section 66-226 "Sales for resale" shall be amended by adding the following language:

"(d) If a reseller has acquired electricity partly for use or consumption and partly for resale, the reseller shall pay the tax imposed by this chapter directly to the City pursuant to Section 66-225 on the amount of electricity that the reseller uses or consumes, and shall collect tax pursuant to Section 66-225 on the amount of electricity delivered by the reseller to a purchaser.

(e) Any person who delivers electricity to a reseller having an active resale number and complying with all other conditions of this section shall be excused from collecting and remitting the tax on any portion of the electricity delivered to the reseller, provided that the person reports to the City the total amount of electricity delivered to the reseller, and such other information that the City may reasonably require."

Section 5. Section 66-227 "Books and records" shall be added with the following language:

"Sec. 66-227. Books and records.

Every tax collector, and every taxpayer required to pay the tax imposed by this chapter shall keep accurate books and records of its business or activity, including contemporaneous books and records denoting the transactions that gave rise, or may have given rise, to any tax liability under this chapter. The books and records shall be subject to and available for inspection at all times during business hours of the day."

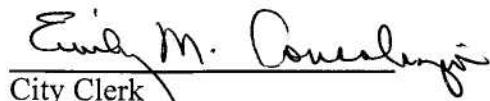
Section 6: All ordinances, or parts of other ordinances, in conflict with these provisions are hereby repealed.

Section 7: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.



James Carr
Mayor

ATTEST:



Emily M. Connelley
City Clerk

Ayes:

Roll Call Vote:

Councilwoman Davenport
Councilman Eckhoff
Councilman Gresk
Mayor Carr

Councilman Johnson
Councilwoman Johnson
Councilman Mork

Nays: None

Absent: None

Motion Carried Unanimously

Passed: July 20, 1998
Published: July 21, 1998