

ARTICLE 26

ORDINANCE NO. 2008 - 27

Simplified Municipal Telecommunications Tax Rate Change

Whereas, the Simplified Municipal Telecommunications Tax Act created a simplified municipal telecommunications tax and repealed the municipal tax on transmitting messages under 65 ILCS 5/8-11-2, the municipal telecommunications tax under 65 ILCS 5/8-11-17, the optional infrastructure maintenance fee under 35 ILCS 635/15, and the municipal infrastructure maintenance fee under 35 ILCS 635/20 effective January 1, 2003; and

Whereas, the Illinois Department of Revenue was required under Sections 5-25 and 5-30 of the Simplified Municipal Telecommunications Tax Act to publish a list and calculate a rate for the imposition of a simplified municipal telecommunications tax for each municipality that had in place one or more of the following: a municipal tax on transmitting messages under 65 ILCS 5/8-11-2, a municipal telecommunications tax under 65 ILCS 5/8-11-17, or a municipal infrastructure maintenance fee under 35 ILCS 635/20 as of July 1, 2002; and

Whereas, the list published by the Illinois Department of Revenue listed the City of Mt. Vernon and calculated a rate for the simplified municipal telecommunications tax of 1 % to be collected on gross charges by telecommunications retailers beginning January 1, 2003;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Mt. Vernon, Illinois that:

Section 1. The rate of the simplified municipal telecommunications tax imposed under the authority of the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5-1 et seq.) upon the act or privilege of originating in the municipality or receiving in the municipality intrastate or interstate telecommunications by a person is hereby changed to 2 % of the gross charges for such telecommunications purchased at retail.

Section 2. The tax hereby imposed shall be collected and enforced by the Department of Revenue of the State of Illinois. The Illinois Department of Revenue shall have full power to administer and enforce the provisions of this Ordinance.

Section 3. This Ordinance shall be in full force and effect from and after its passage and approval and publication in pamphlet form as required by law, provided, however, that Section 1 of this Ordinance shall take effect for all gross charges billed by telecommunications retailers on and after the first day of January 2009. The City Clerk is hereby directed to file a certified copy of this Ordinance with the Illinois Department of Revenue on or before September 20, 2008.

Section 4. All ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of the conflict, expressly repealed.

PASSED by the City Council of the City of Mt. Vernon, Illinois this 27th day of July, 2008.

APPROVED by the Mayor of the City of Mt. Vernon, Illinois this 27th day of July , 2008.

APPROVED:
Mary Jane Chesley, Mayor

ATTEST: Jackie Sharp - CMC, City Clerk

PUBLISHED in pamphlet form this 5th day of August, 2008.

Jackie Sharp -CMC, City Clerk

CERTIFICATION

I, Jackie Sharp, City Clerk of the City of Mt. Vernon, Illinois, do hereby certify that Ordinance 2008-27 "Simplified Municipal Telecommunications Tax Rate Change" above set forth was adopted by the City Council of the City of Mt. Vernon, Illinois at its regular meeting on July 21, 2008.

Jackie Sharp, CMC

ORDINANCE 2010 -12

AN ORDINANCE DEDICATING AND RESTRICTING THE EXPENDITURE OF REVENUE

WHEREAS, the City Council of the City of Mt. Vernon, Illinois previously enacted Article 31 imposing a Food and Beverage Tax, enacted Article 24 A imposing a Motor Fuel Tax on diesel, enacted Ordinance 2009-14 and Ordinance 2009-30, enacting certain increases in Water and Sewer Rates, and enacted Ordinance 2008-27 increasing the rate of the Simplified Municipal Telecommunications Tax imposed under the authority of the Simplified Municipal Telecommunications Tax Act by 1%; and

WHEREAS, the City Council now desires to formally dedicate and restrict the revenue

generated by the Food and Beverage Tax imposed by Article 31, the revenue generated by the Motor Fuel Tax imposed by Article 24A, the revenue generated from rate increases enacted by Ordinance 2009-14 and Ordinance 2009-30, and the revenue generated by the 1% increase in the rate of the Simplified Municipal Telecommunications Tax imposed by Ordinance 2008-27;

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Mt. Vernon, Illinois as follows:

Section 1: That Article 31 of the Revised Code of Ordinances be and the same is

hereby amended by revising Section 31.8 to read as follows:

Section 31.8: DISPOSITION OF PROCEEDS

All proceeds resulting from the imposition of the tax under this Article, including penalties, interest, fines and costs of collection shall be paid into the Treasury of the City and shall be credited to and deposited into the General Corporate Fund of the City; all proceeds shall be expended solely for capital construction projects or for capital equipment purchases of the City.

Section 2: That Article 24A of the Revised Code of Ordinances be and the same

is hereby amended by revising Section 6 to read as follows:

Section 6: DISPOSITION OF PROCEEDS

All proceeds resulting from the imposition of the tax under this Article, including penalties, interest, fines and costs of collection shall be paid into the Treasury of the City and shall be credited to and deposited into the General Corporate Fund of the City; all proceeds shall be expended solely for capital construction projects or for capital equipment purchases of the City.

Section 3: That Article 16 of the Revised Code of Ordinances be and the same is

hereby amended by adding the following paragraph to each Section 16.6 (i) and Section 16.7 (m):

The proceeds from 3% of the rate increase effective on May 1, 2009 enacted by Ordinance 2009-14 and all proceeds from each increase effective November 1 of 2009, 2010, 2011, and 2012 enacted by Ordinance 2009-30 shall be expended solely for capital construction projects or for capital equipment purchases for the Public Utility Department.

Section 4: That all revenue received by the City of Mt. Vernon from the 1%

increase in the rate of the Simplified Municipal Telecommunications Tax Act imposed by

Ordinance 2008-27 shall be expended solely for capital construction projects or capital equipment purchases of the City.

That Article 26 of the Revised Code of Ordinances imposing the Simplified Municipal Telecommunications Tax enacted under the authority of the Simplified Municipal Telecommunications Tax Act shall be amended by setting forth within Article 26 this Ordinance in its entirety (provided that this Ordinance shall not be an Ordinance amending or superceding Ordinance 2008-27, but only an Ordinance restricting and dedicating the revenues arising therefrom).

BE IT FURTHER ORDAINED that the City Manager and Finance Director shall implement such procedures and accounting practices to ensure that the revenues subject of this Ordinance are expended as restricted and dedicated herein.

This Ordinance constitutes a declaration of how the above described revenues have been expended and will be expended and does not constitute a change in the manner in which said revenues have been previously expended.

This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

PASSED by the City Council of the City of Mt. Vernon, Illinois this 5th day of April, 2010.

APPROVED by the Mayor of the City of Mt. Vernon, Illinois this 5th day of April, 2010.

APPROVED:

Mary Jane Chesley
Mayor

ATTEST:

JackieSharp
City Clerk

TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE
(See above Ordinance 2008-27)

SECTION 26.1 DEFINITIONS.

As used in this Article, 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: (i) the fee imposed by this Section, (ii) additional charges added to a purchaser's bill under Section 9-221 or 9-222 of the Public Utilities Act, (iii) amounts collected under Section 8-11-17 of the Illinois Municipal Code, (iv) the tax imposed by the Telecommunications Excise Tax Act, (v) 911 surcharges, or (vi) the tax imposed by Section 4251 of the Internal Revenue Code;

(2) charges for a sent collect telecommunication received outside the Village [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 or between

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 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 provision 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 services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 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 within the City.

(i) "Wireless telecommunications" includes cellular mobile telephone 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. §332(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services.

SECTION 26.2 REGISTRATION OF TELECOMMUNICATIONS PROVIDERS.

(a) Every telecommunications provider as defined by this Article shall register with the City within 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 26.4(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 26.2 (a) has an affirmative duty to submit an amended registration form or current return as required by Section 26.4(c), as the case may be, to the City within 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.

SECTION 26.3 MUNICIPAL TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE.

(a) A City telecommunications infrastructure maintenance fee is hereby imposed upon all telecommunications retailers in the amount of 1.0% of all gross charges charged by the telecommunications retailer 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 26.4 of this Article.

SECTION 26.4 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 Manager 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 2% of the City infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee. If the telecommunications retailer is otherwise required to file a monthly return and if the telecommunications retailer's average monthly tax liability to the City does not exceed \$10.00, the telecommunications retailer may file his returns on a quarter annual basis, with the return for January, February and March of a given year being due by April 30 of such year; with the return for April, May and June of a given year being due by July 31 of such year; with the return for July, August and September of a given year being due by October 31 of such year; and with the return for October, November and December of a given year being due by January 31 of the following year. Such quarter annual returns as to form and substance shall be subject to the same requirements as monthly returns.

(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 Manager, which shall contain such information as the City Manager 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 26.4(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 Manager may request, and telecommunications retailer shall provide, written substantiation for such credit. However, no claim for such credit may be made more than three 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 prescribed 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 (5%) percent 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 (5%) percent 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 Manager, 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 26.2 of this Article of such regulations.

SECTION 26.5 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.

SECTION 26.6 EXISTING FRANCHISES AND LICENSES. Any franchise, license, or similar agreements between telecommunications retailers and the City entered into before the effective date of this Article regarding the use of public rights-of-way shall remain valid according to and for their stated terms except for any fees, charges or other compensation to the extent waived.

SECTION 26.7 PENALTIES. Any telecommunications provider who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Article shall be subject to fine in accordance with the general penalty provisions of the City Municipal Code.

SECTION 26.8 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.

SECTION 26.9 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.

SECTION 26.10 CONFLICT. This Article supersedes all Articles or parts of Articles adopted prior hereto which are in conflict herewith, to the extent of such conflict.