

CHAPTER 36

TAXATION

ARTICLE I - ELECTRIC UTILITY TAX

36-1-1 **TAX IMPOSED.**

(A) A tax is imposed on all persons engaged in the privilege of using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the Village at the following rates, calculated on a monthly basis for each purchaser:

(1)	First 2,000 KWH	.4234 cents per KWH
(2)	Next 48,000 KWH	.2776 cents per KWH
(3)	Next 50,000 KWH	.2499 cents per KWH
(4)	Next 400,000 KWH	.2429 cents per KWH
(5)	Next 500,000 KWH	.2360 cents per KWH
(6)	Next 2,000,000 KWH	.2221 cents per KWH
(7)	Next 2,000,000 KWH	.2186 cents per KWH
(8)	Next 5,000,000 KWH	.2152 cents per KWH
(9)	Next 10,000,000 KWH	.2117 cents per KWH
(10)	Over 20,000,000 KWH	.2082 cents per KWH

The tax rates set forth in the preceding table will be used at least through **December 31, 2008**, are proportional to the rates enumerated in **65 ILCS Sec. 5/8-11-2** (as modified by Public Act 90-561), and do not exceed the revenue that could have been collected during 1997 using the rates enumerated in **65 ILCS Sec. 5/8-11-2** (as modified by Public Act 90-561).

36-1-2 **TYPE OF CUSTOMER -- RATE EFFECTIVE.** Pursuant to **65 ILCS Sec. 5/8-11-2**, the rates set forth in **Section 36-1-1** above shall be effective:

- (A) On **August 1, 1998** for residential customers; and
 (B) On the earlier of:
 (1) the last bill issued prior to **December 31, 2000**, or
 (2) the date of the first bill issued pursuant to **220 ILCS Sec. 5/16-104**, for non-residential customers.

36-1-3 **EFFECTIVE DATE FOR ARTICLE.** The provisions of **Section 36-1-1** shall not be effective until **August 1, 1998**.

36-1-4 **EXCEPTIONS.** None of the taxes authorized by this Article may be imposed with respect to any transaction in interstate commerce or otherwise to the extent to which the business or privileges may not, under the Constitution and statutes of the United

States, be made the subject of taxation by this State or any political subdivision thereof; nor shall any persons engaged in the business of distributing, supplying, furnishing, or selling or transmitting gas, water, or electricity, or engaged in the business of transmitting messages, or using or consuming electricity acquired in a purchase at retail, be subject to taxation under the provisions of the "**Municipal Retailers' Occupation Tax Act**" authorized by Section 8-11-1; nor shall any tax authorized by this Article be imposed upon any person engaged in a business or on any privilege unless the tax is imposed in like manner and at the same rate upon all persons engaged in business of the same class in the Village, whether privately or municipally owned or operated, or exercising the same privilege within the Village.

36-1-5 **ADDITIONAL TAXES.** Such tax shall be in addition to other taxes levied upon the taxpayer or its business.

36-1-6 **COLLECTION.** The tax authorized by this Article shall be collected from the purchaser by the person maintaining a place of business in this State who delivers the electricity to the purchaser. This tax shall constitute a debt of the purchaser to the person who delivers the electricity to the purchaser and if unpaid, is recoverable in the same manner as the original charge for delivering the electricity. Any tax required to be collected pursuant to this Article and any such tax collected by a person delivering electricity shall constitute a debt owed to the Village by such person delivering the electricity. Persons delivering electricity shall collect the tax from the purchaser by adding such tax to the gross charge for delivering the electricity. Persons delivering electricity shall also be authorized to add to such gross charge an amount equal to **three percent (3%)** of the tax to reimburse the person delivering electricity for the expense incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the Village upon request. If the person delivering electricity fails to collect the tax from the purchaser, then the purchaser shall be required to pay the tax directly to the Village in the manner prescribed by the Village. Persons delivering electricity who file returns pursuant to this Section shall, at the time of filing such return, pay the Village the amount of the tax collected pursuant to this Article.

36-1-7 **REPORTS TO VILLAGE.** On or before the last day of each month, each taxpayer shall make a return to the Village for the preceding month stating:

- (A) His name.
- (B) His principal place of business.
- (C) His gross receipts and/or kilowatt-hour usage during the month upon the basis of which the tax is imposed.
- (D) Amount of tax.
- (E) Such other reasonable and related information as the corporate authorities may require.

The taxpayer making the return herein provided for shall, at the time of making such return, pay to the Village, the amount of tax herein imposed; provided that in connection with any return, the taxpayer may, if he so elects, report and pay an amount based upon his total billings of business subject to the tax during the period for which the return is made (exclusive of any amounts previously billed) with prompt adjustments of later payments based upon any differences between such billings, and the taxable gross receipts.

36-1-8 **CREDIT FOR OVER-PAYMENT.** If it shall appear that an amount of tax has been paid which was not due under the provisions of this Article, whether as 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 taxpayer who made the erroneous payment; provided that no amounts erroneously paid more than **three (3) years** 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 **three (3) years** after the due date of such amount.

36-1-9 **PENALTY.** Any taxpayer 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 fined not less than **One Hundred Dollars (\$100.00)** nor more than **Two Hundred Dollars (\$200.00)** in addition, shall be liable in a civil action for the amount of tax due. (See 65 ILCS Sec. 5/8-11-2)

[Section 1-1-20 provides for \$750.00 penalty.]

[ED. NOTE: Article I - Sales Tax ordinances were deleted because the Municipality no longer has authority.]

(See 65 ILCS Sec. 5/8-11-2)
(Ord. No. 98-18; 06-01-98)

ARTICLE II

FOREIGN FIRE INSURANCE COMPANIES

36-2-1 **CONFORMANCE.** It shall be unlawful for any corporation or association not incorporated under the laws of the State of Illinois to engage in the Village in effecting fire insurance or to transact any business of fire insurance in the Village while in default by not fully complying with any of the requirements of this Code, and until such requirements shall have been fully complied with. However, this provision shall not relieve any company, corporation or association from the payment of any risk that may be undertaken in violation of this Code.

36-2-2 **REQUIRED FEES.** Any such corporation, company or association not incorporated under the laws of the State of Illinois, which is engaged in the Village in effecting fire insurance shall pay the Village Treasurer for the maintenance, use and benefit of the Fire Department of the Village a sum of money equal in amount to **two percent (2%)** per annum of the gross receipts as premiums upon fire insurance policies by any and all agents of such corporation, company, or association during the year ending on the first day of July in each year for any insurance effected, or agreed to be effected, on property located in the Village by or with such corporation, company or association during such year.

36-2-3 **REQUIRED REPORTS.** Every person acting in the Village as agent, 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 Village Clerk a full, true and just account verified by his oath, of all premiums upon fire insurance policies which, during the year ending the **first (1st) day of July** preceding such report, shall have been received by him or by some other person for him, in his behalf of any such corporation, company, or association on property located in the Village. Such agent shall also at the time of rendering the aforesaid report, pay to the Village Treasurer the sum of money for which company, corporation or association represented by him is chargeable by virtue of the provisions of this Article.

36-2-4 **RECOVERY OF CHARGES.** The sum of money for which such company, corporation or association is so chargeable may be recovered if it or its agent or agents, by an action in the name of and for the use of Village as for money had and received. Nothing in this Section shall be held to exempt any person, corporation, company or association from indictment and conviction under the provisions of an act entitled, "**An Act to enable cities, towns and Villages, organized under any general or special law, to levy and collect a tax or license fee from foreign fire insurance companies for the benefit of organized fire departments,**" in force **July 1, 1895.**

36-2-5 **UNLAWFUL OPERATION.** No insurance agent in the Village shall have any insurance business or dealings with any company, association or corporation not incorporated under the laws of this State which shall be in default for not reporting or making payments as hereinbefore provided, until it shall have complied with all the requirements of this Article.

ARTICLE III - GENERAL TAXES

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

36-3-2 **POLICE TAX.** The maximum rate for police protection purposes of the Village shall be and the same is hereby established at a rate of **.075%**. (See **65 ILCS Sec. 5/11-1-3**)

36-3-3 **E.S.D.A. TAX.** The Mayor may make an appropriation for ESDA purposes only, a tax not to exceed **Five Cents (\$.05)** per **One Hundred Dollars (\$100.00)** of the assessed value of all taxable property in addition to all other taxes, as provided by “**The State ESDA Act of 1988**”, and amendments thereto; however, that amount collectible under such levy shall in no event exceed **Twenty-Five Cents (\$.25)** per capita.

36-3-4 **MISCELLANEOUS MAXIMUM RATES ESTABLISHED.** The maximum tax rates for the various purposes of the Village of the full, fair cash value as equalized or assessed by the Department of Revenue on all the taxable property within the Village shall be as follows:

<u>FUND/PURPOSE</u>	<u>MAXIMUM RATE PER \$ ASSESSED VALUATION</u>
Audit	NO LIMIT
Fire Protection	\$.15 per \$100.00 (Ord. #144)
Garbage Fund	\$.20 per \$100.00 (Ord. #373; 11-01-65)
I.M.R.F.	NO LIMIT
Parks	\$.10
Police Pension	NO LIMIT
Social Security	NO LIMIT
Street & Bridge	\$.1000 per \$100.00
Street Lighting	\$.05 per \$100.00
Tort Liability	NO LIMIT

ARTICLE IV - UTILITY TAX

36-4-1 **IMPOSITION OF TAX.** The Village of Bethalto does hereby impose a tax upon all persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the Village of Bethalto, and not for resale, at a rate of **four percent (4%)** of the gross receipts therefrom.

36-4-2 **RESERVED.**

36-4-3 **TERMS.** For purposes of this Article, the term “gross receipts”, “person”, and “public utility” shall be that as defined under **65 ILCS Sec. 5/8-11-2(d)**.

36-4-4 **EXEMPTIONS.** The above referenced tax shall not be imposed upon another unit of local government or school district which is located within the corporate limits of the Village of Bethalto.

36-4-5 **GROSS RECEIPTS.** The tax provided for herein shall be based on the gross receipts, as herein defined, actually paid by the consuming taxpayer for services billed on or after the **1st day of August, 1995**.

36-4-6 **CERTIFIED COPIES.** The Village Clerk shall be instructed to forward a certified copy of this Article to such persons so engaged in the occupations or privileges referenced immediately upon passage of this Article.

(Ord. No. 95-10; 06-05-95)

ARTICLE V

TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE

36-5-1 **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 Village, 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 Village, charges for the channel mileage between each channel point within the Village, and charges for that portion of the interstate inter-office channel provided within the Village. 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 Village;
- (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 Village;
- (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 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 Village.

(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 Village 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 Village property that is not specifically described in the previous sentence and shall not include Village 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 Village 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 Village 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 Village, 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 Village.

(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.

36-5-2 REGISTRATION OF TELECOMMUNICATIONS PROVIDERS.

(A) Every telecommunications provider as defined by this Article shall register with the Village 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 Village, provided, however, that any telecommunications retailer that has filed a return pursuant to **36-5-4(C)** of this Article shall be deemed to have registered in accordance with this Section.

(B) Every telecommunications provider who has registered with the Village pursuant to **36-5-2(A)** has an affirmative duty to submit an amended registration form or current return as required by **36-5-4(C)**, as the case may be, to the Village 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 Village.

36-5-3 MUNICIPAL TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE.

(A) A Village 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 Village for telecommunications originating or received in the Village.

(B) Upon the effective date of the infrastructure maintenance fee authorized in this Article, the Village infrastructure maintenance fee authorized hereunder shall be the only fee or compensation for the use of all public rights-of-way within the Village 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 Village telecommunications infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in **Section 36-5-4** 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 Village infrastructure maintenance fee attributable to that customer's service address.

(B) Unless otherwise approved by the Village the infrastructure maintenance fee shall be remitted by the telecommunications retailer to the Village 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 Village 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 to the Village shall be accompanied by a return, if a form to be prescribed by the Village, which shall contain such information as the Village 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 Village. The charge imposed under **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 Village 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 Village 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 Village 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 Village for the Village infrastructure maintenance fee. Any underpayment of the amount of the Village infrastructure maintenance fee due to the Village by the telecommunications retailer shall be paid to the Village plus **five percent (5%)** of the total amount of the underpayment determined in an audit, plus any costs incurred by the Village 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 Village within **twenty-one (21) days** after the date of issuance of an invoice for same.

(H) The Village's Mayor, 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 **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 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 **EXISTING FRANCHISES AND LICENSES.** Any franchise, license, or similar agreements between telecommunications retailers and the Village 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.

36-5-7 **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 Village Municipal Code.

36-5-8 **ENFORCEMENT.** Nothing in this Article shall be construed as limiting any additional or further remedies that the Village may have for enforcement of this Article.

36-5-9 **WAIVER AND FEE IMPLEMENTATION.**
(A) The Village hereby waives all fees, charges, and other compensation that may accrue, after the effective date of the waiver, to the Village by a telecommunications retailer pursuant to any existing Village franchise, license, or similar agreement with a telecommunications retailer during the time the Village imposes the Telecommunications

Infrastructure Maintenance Fee. This waiver shall only be effective during the time the Infrastructure Maintenance Fee provided for in this Code is subject to being lawfully imposed on the telecommunications retailer and collected by the telecommunications retailer from the customer.

(B) The Village Clerk shall send a notice of the waiver by certified mail/return receipt requested to each telecommunications retailer with whom the Village has a franchise.

(C) The Village infrastructure maintenance fee provided for in this Code shall become effective and imposed on the **first (1st) day** of the month not less than **ninety (90) days** after the Village provides written notice by certified mail to each telecommunications retailer with whom the Village has an existing franchise, license, or similar agreement that the Village waives all compensation under such existing franchise, license, or similar agreements during such time as the fee is subject to being lawfully imposed and collected by the retailer and remitted to the Village. The infrastructure maintenance fee shall apply to gross charges billed on or after the effective date as established in the preceding sentence.

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 Village’s procedures in connection with all of the Village’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 Village’s President and Board of Trustees.

(C) **Locally Imposed and Administered Tax or “Tax”.** “Locally Imposed and Administered Tax” or “Tax” means each tax imposed by the Village that is collected or administered by the Village 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 Village other than infrastructure maintenance fees.

(D) **Local Tax Administrator.** “Local Tax Administrator”, the Village Clerk, 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) **Village.** “Village” means the Village of Bethalto, Madison County, Illinois.

(F) **Notice.** “Notice” means each audit notice, collection notice or other similar notice or communication in connection with each of the Village’s locally imposed and administered taxes.

(G) **Tax Ordinance.** “Tax Ordinance” means each ordinance adopted by the Village 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 Village.

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 Village pursuant to any tax ordinance shall be considered late unless it is:

- (A) physically received by the Village 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 Village, 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 Village 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 Village 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 Village.

(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 Village.
- (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 **six percent (6%)** 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 Village.

(E) It is the duty and responsibility of every taxpayer to make available its books and records for inspection by the Village. 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 Village'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 Village 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 Village hereby provides for the amount of interest to be assessed on a late payment, underpayment, or nonpayment of the tax to be **twelve percent (12%)** 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 Village 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 Village 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 Village, 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 Village, 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 form 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 Village 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 Village'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 Village'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. 2000-43; 12-05-00)