

ORDINANCE NO. 12-_____
Date Passed: November 12, 2012

**AN ORDINANCE AMENDING ARTICLES VII (MUNICIPAL GAS TAX)
AND VIII (MUNICIPAL ELECTRICITY TAX) OF CHAPTER 90 (TAXATION)
TO EXTEND UTILITY TAXES THROUGH APRIL OF 2018**

WHEREAS, the City of Rochelle is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1, et. seq.; and

WHEREAS, Articles VII and VIII of Chapter 90 of the Rochelle Municipal Code impose a municipal gas tax and a municipal electricity tax on the sale, use and consumption of natural gas and electricity within the City, both of which will expire at the end of April of 2013; and

WHEREAS, the City Council wishes to extend the imposition of these taxes through the end of April of 2018, and to clarify the uses for such taxes in certain respects;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROCHELLE, OGLE COUNTY, ILLINOIS, as follows:

1. That Article VII (Municipal Gas Tax) and VIII (Municipal Electric Tax), of Chapter 90 (Taxation) of the Municipal Code of the City of Rochelle be amended as shown in **Exhibit A**.

2. That this Ordinance shall take effect on April 1, 2013 and shall expire on May 1, 2018.

This ordinance shall become effective after its passage, approval and publication as provided by law, on the effective date set forth, and shall modify any inconsistent provisions in the municipal code prior to that date.

PASSED AND APPROVED this 12th day of November, 2012.

Ayes: _____ Nays: _____ Abstain: _____

Mayor

Attested: _____
City Clerk

EXHIBIT A

ARTICLE VII. MUNICIPAL GAS TAX

Sec. 90-141. Imposed; Rate.

Pursuant to 65 ILCS 5/8-11-2, a tax is imposed on all persons in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the City, and not for resale, at the rate of 1.5% of the gross receipts therefrom.

No tax is imposed by this Section with respect to any transaction in interstate commerce or otherwise to the extent to which such business may not, under the Constitution and statutes of the United States, be made subject to taxation by the State of Illinois (the "State") or any political subdivision thereof; nor shall any persons engaged in the business of distributing, supplying, furnishing, selling or transmitting gas be subject to taxation under the provisions of this Section for those transactions that are subject to taxation under the provisions of Article VI of this Chapter.

Such tax shall be in addition to the payment of money, or value of products or services furnished to the City by the taxpayer as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon or thereunder of poles, wires, pipes or other equipment used in the operation of the taxpayer's business.

Sec. 90-142. Definitions

For the purpose of this Article, the following definitions shall apply

- (a) "Gas" shall mean natural gas.
- (b) "Gross receipts" means the consideration received for distributing, supplying, furnishing or selling gas for use or consumption and not for resale, as the case may be; and for all services rendered in connection therewith valued in money, whether received in money or otherwise, including cash, credit, services and property of every kind and material and for all services rendered therewith; and shall be determined without any deduction on account for the cost of transmitting said messages without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever; provided, however that "gross receipts" shall not include any amounts specifically excluded from the definition of gross receipts in Section 8-11-2(d) of the Illinois Municipal Code.

- (c) "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, limited liability company, municipal corporation, the State or any of its political subdivisions, any State university created by statute, or a receiver, trustee, guardian, or other representative appointed by order of any court.

Sec. 90-143. Due Date of Returns and Taxes.

(a) The tax provided for in this Article shall be based on the gross receipts, as herein defined, actually paid to the taxpayer for services billed on or after the first day of May, 2013 through and including the last day of April, 2018.

(b) On or before the last day of June, 2013 each taxpayer shall make a return to the City Treasurer for the Month of May, 2013, stating:

- (1) His name;
- (2) His principal place of business;
- (3) His gross receipts during those months upon the basis of which tax is imposed.
- (4) Amount of tax; and
- (5) Such other reasonable and related information as the corporate authorities may require.

On or before the last day of every month thereafter until May 2018, each taxpayer shall make a like return to the City Treasurer for a corresponding one month period.

(c) The taxpayer making the return herein provided for shall, at the time of making such return, pay to the City Treasurer, 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.

Sec. 90-144. Credit for Erroneous Payments; Limitations.

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 therefore 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.

Sec. 90-145. 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) nor more than seven hundred fifty dollars (\$750) and in addition shall be liable in a civil action for the amount of tax due, plus costs of collection, including reasonable attorney's fees.

Sec. 90-146. Use of Taxes; Utility Tax Fund.

All payments received pursuant to the taxes imposed by this Article shall be deposited by the City Treasurer in a special fund hereby created, to be known as the "Utility Tax Fund." All monies received shall be retained in the Utility Tax Fund until allocated as provided in this Section.

Annually, during the budget process, the City Council shall allocate available funds in the Utility Tax Fund for the following projects: sidewalk repair or replacement, construction or reconstruction of sidewalk accessibility ramps and warning surfaces or premanufactured plates, new or missing sidewalk extensions and/or connections, pedestrian bridge and/or ramp facilities, shared use paths, alley approach aprons from the street edge of pavement to the street right-of-way line, curb and gutter repair or replacement, the construction of urban street improvements in residential areas lacking curb and gutter and sidewalks, ~~and all other~~ items associated with the restoration of said areas in which the work is completed and other professional services and engineering associated with the project. Allocation shall be based upon the amount authorized in the budget for each of the projects during the next fiscal year.

Secs. 90-147--90-150. Reserved.

ARTICLE VIII. MUNICIPAL ELECTRICITY TAX

Sec. 90-151. Imposed; Rate.

Pursuant to 65 ILCS 5/8-11-2, a tax is imposed upon the privilege of using or consuming electricity acquired in a purchase at retail or used or consumed within the corporate limits of the City at the following rates, calculated on a monthly basis for each purchaser:

- (1) For the first 2,000 kilowatt-hours used or consumed in a month; 0.135 cents per kilowatt hour;

- (2) For the next 48,000 kilowatt-hours used or consumed in a month; 0.132 cents per kilowatt hour;
- (3) For the next 50,000 kilowatt-hours used or consumed in a month; 0.084 cents per kilowatt hour;
- (4) For the next 400,000 kilowatt-hours used or consumed in a month; 0.0845 cents per kilowatt hour;
- (5) For the next 500,000 kilowatt-hours used or consumed in a month; 0.086 cents per kilowatt hour;
- (6) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.105 cents per kilowatt hour;
- (7) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.115 cents per kilowatt hour;
- (8) For the next 5,000,000 kilowatt-hours used or consumed in a month; 0.120 cents per kilowatt hour;
- (9) For the next 10,000,000 kilowatt-hours used or consumed in a month; 0.125 cents per kilowatt hour;
- (10) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month; 0.130 cents per kilowatt hour;

The tax imposed by this Article is in addition to all taxes, fees, and other revenue measures imposed by the City, the State, or any other political subdivision of the State.

Notwithstanding any other provisions of this Article, the tax imposed by this Article shall not be imposed if and to the extent that imposition of collection of the tax would violate the Constitution or statutes of the United States or the Constitution of the State.

Sec. 90-152. Collection of Tax.

The tax imposed under this Article shall be collected from purchasers by the person maintaining a place of business in this State who delivers electricity to such purchasers. The tax shall constitute a debt of the purchaser to the person who delivers the electricity to the purchaser and is recoverable at the same time and in the same manner as the original charge for delivering the electricity.

Any tax required to be collected under this Article, and any tax in fact collected, shall constitute a debt owed to the city by the person delivering the electricity, provided, that the person delivering the electricity shall be allowed credit for such tax related to deliveries of electricity the charges for which are written off as uncollectible, and provided further, that if such charges are thereafter collected, the delivering supplier shall be obligated to remit such tax.

Persons delivering electricity shall collect the tax from the purchaser by adding such tax to the gross charge for delivering the electricity. Persons delivering the electricity shall also be authorized to add to such gross receipts 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 purposes of this Article, any partial payment of a billed amount not specifically identified by the purchaser shall be deemed to be for the delivery of electricity.

Sec. 153. Definitions.

For the purposes of this Article, the following definitions shall apply:

- (1) "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, limited liability company, municipal corporation, the State or any of its political subdivisions, any State university created by statute, or a receiver, trustee, guardian, or other representative appointed by order of any court.
- (2) "Person maintaining a place of business in this State" means any person having or maintaining within this State, directly or by a subsidiary or other affiliate, an office, generation, facility, distribution facility, transmission facility, sales office, or other place of business, or any employee, agent, or other representative operating within this State under the authority of the person or its subsidiary or other affiliate, irrespective of whether such place of business of agent or other representative is located in this State permanently or temporarily, or whether such person, subsidiary, or their affiliate is licensed or qualified to do business in this State.
- (3) "Purchase at retail" means any acquisition of electricity by a purchaser 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.
- (4) "Purchaser" means any person who uses or consumes, within the corporate limits of the City, electricity acquired in a purchase at retail.
- (5) "Tax collector" means the person delivering electricity to the purchaser.

Sec. 90-154. Due Date of Returns and Taxes.

The tax provided for in this Article shall be imposed with respect to the use or consumption of electricity, beginning with the first bill issued to customers on or after the first day of May, 2013, through and including the last bills issued to customers on or before the last day of April, 2018.

On or before the last day of June, 2013, each tax collector shall make a return to the City Treasurer for the month of May, 2013 on a form prescribed by the City. On or before the last day of every month thereafter until May, 2018, each taxpayer shall make a like return to the City Treasurer for a corresponding one month period.

If the person delivering electricity fails to collect the tax from the purchaser, then the purchaser shall file a return on a form prescribed by the City and pay the tax directly

to the City on or before the last day of the month following the month during which the electricity is used or consumed.

Sec. 90-155. Credit for Erroneous Payments; Limitations.

If it shall appear that an amount of tax has been paid which 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 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 therefore shall be so credited.

No action to recover any amount of tax has been paid which was not due under the provisions of this Article shall be commenced more than three (3) years after the due date of such amount.

Sec. 90-156. Violations; 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 nor more than seven hundred fifty dollars (\$750) and in addition shall be liable in a civil action for the amount of tax due.

Sec. 90-157. Use of Taxes; Utility Tax Fund.

All payments received pursuant to the taxes imposed by this Article shall be deposited by the City Treasurer in a special fund hereby created, to be known as the "Utility Tax Fund." All monies received shall be retained in the Utility Tax Fund until allocated as provided in this Section.

Annually, during the budget process, the City Council shall allocate available funds in the Utility Tax Fund for the following projects: sidewalk repair or replacement, construction or reconstruction of sidewalk accessibility ramps and warning surfaces or premanufactured plates, new or missing sidewalk extensions and/or connections, pedestrian bridge and/or ramp facilities, shared use paths, alley approach aprons from the street edge of pavement to the street right-of-way line, curb and gutter repair or replacement, the construction of urban street improvements in residential areas lacking curb and gutter and sidewalks, ~~and all other~~ items associated with the restoration of said areas in which the work is completed and other professional services and engineering associated with the project. Allocation shall be based upon the amount authorized in the budget for each of the projects during the next fiscal year.

Secs. 90-158--90-160. Reserved.

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