
THE CITY OF ROCHELLE
Ogle County, Illinois

ORDINANCE
NO. _____

**AN ORDINANCE AMENDING ARTICLES VII (MUNICIPAL GAS TAX)
AND VIII (MUNICIPAL ELECTRICITY TAX) OF CHAPTER 90 (TAXATION)**

JOHN BEARROWS, Mayor
ROSE HUERAMO, City Clerk

TOM McDERMOTT
BIL HAYES
KATE SHAW-DICKEY
DAN McDERMOTT
JOHN GRUBEN
ROSAELIA ARTEAGA
City Council

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Rochelle

Law Offices of Peterson, Johnson, & Murray—Chicago, City Attorneys
200 W. Adams, Ste. 2125, Chicago, IL 60606

ORDINANCE NO. 22-_____
Date Passed: May 23, 2022

**AN ORDINANCE AMENDING ARTICLES VII (MUNICIPAL GAS TAX)
AND VIII (MUNICIPAL ELECTRICITY TAX) OF CHAPTER 90 (TAXATION)**

WHEREAS, Section 7 of Article VII of the 1970 Constitution of the State of Illinois provides that a municipality that is not a home rule unit shall only have the powers granted to them by law and as such the City of Rochelle, Ogle County, Illinois being a non-home rule unit pursuant to the provisions of said Section 7 of Article VII, and may exercise only the powers expressly granted by law; and

WHEREAS, the Illinois General Assembly granted non-home rule municipalities broad authority to “pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities.” 65 ILCS 5/1-2-1; and

WHEREAS, while “non-home rule municipalities have the authority to enact ordinances, such ordinances may in no event conflict with state law or prohibit what a state statute expressly permits . . . A local ordinance may impose more rigorous or definite regulations in addition to those enacted by the state legislature so long as they do not conflict with the statute.” (*Village of Wauconda v. Hutton*, 291 Ill. App. 3d 1058, 1060 (1997)); 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, were previously amended and both of which are set to expire at the end of December 31, 2023; and

WHEREAS, 65 ILCS 5/8-11-2, which sets forth the applicable percentages that can be charged pursuant to the Municipal Gas Tax and the Municipal Electricity Tax was revised by the Illinois legislature and became effective August 18, 2017; and

WHEREAS, the City Council previously amended the Municipal Gas Tax and the Municipal Electricity Tax to be consistent with the current applicable effective code, to extend the imposition of these tax through the end of December of 2023, and to clarify the uses for such taxes in certain respects;

WHEREAS, the City Council wishes to amend the Municipal Electric Tax rates to be consistent with the rates previously approved before the November 22, 2021 extension was approved by the Mayor and City Council in Ordinance 21-5308;

WHEREAS, the Mayor and City Council have determined that it is appropriate and in the best interest of the welfare of City and its residents to amend 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, as set forth herein;

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

SECTION ONE: The foregoing recitals shall be, and are hereby, incorporated into and made a part of this Ordinance as if fully set forth in this Section One.

SECTION TWO: 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** and that this Ordinance shall take effect on January 1, 2024 and shall expire on December 31, 2028. This Ordinance shall supersede the Municipal Electric Tax rates set forth in Ordinance 21-5308.

SECTION THREE: If any provision of this Ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

SECTION FOUR: Where the conditions imposed by any provisions of this Ordinance are more restrictive than comparable provisions imposed Ordinance in any other local law, ordinance, resolution, rule or regulation, the regulations of this Ordinance will govern.

SECTION FIVE: The City Clerk shall publish this Ordinance in pamphlet form.

SECTION SIX: This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED THIS 23rd day of May, 2022.

AYES:

NAYS:

ABSENT:

APPROVED THIS 23rd day of May, 2022.

MAYOR

ATTEST:

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 3.5% 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 January, 2024 through and including the last day of December 2028.

(b) On or before the last day of February, 2024 each taxpayer shall make a return to the City Treasurer for the Month of January, 2024, 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 December 2028, 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, hot mix asphalt patching or paving, the construction of urban street improvements in areas along and within public right of ways lacking curb and gutter and sidewalks, items associated with the restoration of said areas in which the work is completed and other professional and engineering services 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; 0.2135 cents per kilowatt hour;
- (2) For the next 48,000 kilowatt-hours used or consumed in a month; 0.1400 cents per kilowatt hour;

- (3) For the next 50,000 kilowatt-hours used or consumed in a month; 0.1260 cents per kilowatt hour;
- (4) For the next 400,000 kilowatt-hours used or consumed in a month; 0.1225 cents per kilowatt hour;
- (5) For the next 500,000 kilowatt-hours used or consumed in a month; 0.1190 cents per kilowatt hour;
- (6) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.112 cents per kilowatt hour;
- (7) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.1103 cents per kilowatt hour;
- (8) For the next 5,000,000 kilowatt-hours used or consumed in a month; 0.1085 cents per kilowatt hour;
- (9) For the next 10,000,000 kilowatt-hours used or consumed in a month; 0.1068 cents per kilowatt hour;
- (10) For all electricity used or consumed in excess of 20,000,000 kilowatt hours in a month; 0.1050 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, with 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 January, 2024 through and including the last bills issued to customers on or before the last day of December, 2028.

On or before the last day of February, 2024 each tax collector shall make a return to the City Treasurer for the month of January, 2024 on a form prescribed by the City. On or before the last day of every month thereafter until December, 2028, 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, hot mix asphalt patching or paving, the construction of urban street improvements in areas along and within public right of ways lacking curb and gutter and sidewalks, items associated with the restoration of said areas in which the work is completed and other professional and engineering services 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.

STATE OF ILLINOIS)
)
COUNTY OF OGLE) SS.

CERTIFICATE

I, ROSE HUERAMO, City Clerk of the City of Rochelle, County of Ogle and State of Illinois, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. _____, “AN ORDINANCE AMENDING ARTICLES VII (MUNICIPAL GAS TAX) AND VIII (MUNICIPAL ELECTRICITY TAX) OF CHAPTER 90 (TAXATION),” which was adopted by the Mayor and City Council of the City of Rochelle on May 23, 2022.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of Rochelle this 23rd day of May, 2022.

CITY CLERK