

CHAPTER 36

TAXATION

ARTICLE I - FOREIGN FIRE INSURANCE TAX

**36-1-1**     PAYMENT, GENERALLY. All corporations, companies and associations not incorporated under the laws of the State which are engaged, within the limits of the municipality, in writing fire insurance, shall pay annually to the Treasurer of the municipality, for the use and support of the Fire Department of the municipality, the sum of **two percent (2%)** of the gross receipts of their agencies in the municipality. All such corporations, companies and associations shall pay at the rate of **two percent (2%)** upon the gross amount of premiums, which shall have been received for any insurance effected or agreed to be effected, within the limits of the municipality during each year ending **July first (1st)** by each association or company, respectively. (1917 Code; § 16-143)

**36-1-2**     PERSONS ACTING AS AGENT, ETC., TO REPORT PREMIUMS. Every person who shall act, within the municipality, as agent or otherwise, for or in behalf of any corporation, company or association as referred to in **Section 36-1-3** of this Code shall, on or before the **fifteenth (15th) day of July** of each year, render to the Clerk, a full, true and just account, verified by affidavit, of all the premiums which shall have been received by such agent for fire insurance during the year ending **July first (1st)**, preceding such report, in behalf of such corporation, company or association.

**36-1-3**     PERSON ACTING AS AGENT TO MAKE PAYMENT OF TWO PERCENT (2%) OF GROSS RECEIPTS; COMPANIES IN DEFAULT NOT TO TRANSACT BUSINESS. Every person who shall act within the municipality as agent or otherwise for or in behalf of any corporation, company or association as referred to in **Section 36-1-2** of this Code shall, on behalf of the corporation, company or association represented, pay annually to the Treasurer, at the time of making the report referred to in **Section 36-1-2**, **two percent (2%)** of the gross receipts or premiums of his agency, for which the corporation, company or association represented by the person making such report is chargeable by virtue of this Article. If such account be not rendered on or before the day designated in this Article, or if the rate above fixed shall remain unpaid after that date, it shall be unlawful for such corporation, company or association, so in default, to transact any business within the limits of the municipality, until the above requirements have been fully met; but this provision shall not relieve any such corporation, company or association from the payment of any risk taken in violation hereof.

**36-1-4      EFFECT OF FAILURE OF PERSON ACTING AS AGENT, ETC.,  
TO MAKE REPORT OF PREMIUMS OR TO PAY SUMS DUE; EFFECTING  
CONTRACTS OF FIRE INSURANCE FOR NON-COMPLYING COMPANIES, ETC.**

Any person acting as agent or otherwise for, or in behalf of any fire insurance company, corporation, or association, as referred to in this Article in effecting fire insurance within the limits of the municipality, who shall fail to make the report required in this Article, or fail to pay over the amount due from any such corporation, company, or association at the time designated for that purpose, or who shall effect or attempt to effect any contract of fire insurance in behalf of any such corporation, company, or association which has not complied with the provisions of this Article, shall, upon conviction, be deemed guilty of a misdemeanor; provided that any prosecution brought by the municipality to enforce the penalty for the violation of this Article shall not interfere with the rights of the municipality to recover, by appropriate action, the sum due the municipality, at the rate fixed in this Article, from any such corporation, company, or association, its agents or representatives.

**Revised Code****ARTICLE II - GENERAL TAXES**

**36-2-1 CORPORATE RATE.** The maximum rate for general corporate purposes of the City shall be and the same is hereby established at a rate of .25%. (65 ILCS Sec. 5/8-3-1)

**36-2-2 MAXIMUM RATES ESTABLISHED.** The maximum tax rates for the various purposes of the City of the full, fair, cash value as equalized or assessed by the Department of Revenue on all the taxable property within the City shall be as follows:

<b><u>FUND/PURPOSE</u></b>	<b><u>MAXIMUM RATE</u></b>
City Park	\$.25 per \$100.00
Emergency Service and Disaster Agency	\$.05 per \$100.00
IMRF	\$ NO LIMIT
Library	\$.25 per \$100.00 (#937)
Police Protection	\$.075 per \$100.00
Social Security	\$ NO LIMIT
Tort Liability	\$ NO LIMIT

## ARTICLE III

## TELECOMMUNICATIONS INFRASTRUCTURE FEE

**36-3-1**      **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:
  - (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 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, 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 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 provisions 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 service through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Section 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 in the City.

(I) **“Wireless telecommunications”** includes cellular mobile 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. §331(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services.

**36-3-2      REGISTRATION OF TELECOMMUNICATIONS PROVIDERS.**

(A) Every telecommunications provider as defined by this Article shall register with the City 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 City, provided, however, that any telecommunications retailer that has filed a return pursuant to **Section 36-3-4(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 36-3-2(A)** has an affirmative duty to submit an amended registration form or current return as required by **Section 36-3-4(C)**, as the case may be, to the City 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 City.

**36-3-3      MUNICIPAL TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE.**

(A) A City 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 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 36-3-4** of this Article.

**36-3-4      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 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 **two percent (2%)** of the City 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 fee to the City shall be accompanied by a return, in a form to be prescribed by the City, which shall contain such information as the City 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 36-3-4(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 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 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 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 percent (5%) 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 percent (5%) 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 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 36-3-2** of this Article of such regulations.

**36-3-5**        **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.

**36-3-6**        **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.

**36-3-7**        **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.

**36-3-8**        **ENFORCEMENT.** Nothing in this Chapter shall be construed as limiting any additional or further remedies that the City may have for enforcement of this Chapter.

**36-3-9**        **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.

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**36-3-10**      **CONFLICT.** This Article supersedes all Article or parts of Articles adopted prior hereto which are in conflict herewith, to the extent of such conflict.

**36-3-11**      **WAIVER AND FEE IMPLEMENTATION.**

(A)            The City hereby waives all fees, charges, and other compensation that may accrue, after the effective date of the waiver, to the City by a telecommunications retailer pursuant to any existing City franchise, license, or similar agreement with a telecommunications retailer during the time the City imposes the Telecommunications Infrastructure Maintenance Fee. This waiver shall only be effective during the time the Infrastructure Maintenance Fee provided for in this Article is subject to being lawfully imposed on the telecommunications retailer and collected by the telecommunications retailer from the customer.

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

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

(Ord. No. 97-09; 11-05-97)

**ARTICLE IV - HOTEL/MOTEL TAX**

**36-4-1**        **DEFINITIONS.** For the purpose of this Article, whenever any of the following words, terms, or definitions are used herein, they shall have the meaning ascribed to them in this Section:

(A)        **Hotel Room or Motel Room** means a room within a structure offered for rental on a daily basis and containing facilities for sleeping. **One (1) room** offered for rental with or without an adjoining bath shall be considered as a single hotel or motel room. The number of hotel or motel rooms within a suite shall be computed on the basis of those rooms utilized for the purpose of sleeping.

(B)        **Owner** means any person having an ownership interest in, conducting the operation of a hotel or motel room, or receiving the consideration for the rental of such hotel or motel room.

(C)        **Person** means any natural person, trustee, court appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution, agency, government corporation, municipal corporation, district or other political subdivision, contractor, supplier, vendor, vendee, operator, user or owner, or any officers, agents, employees or other representative, acting either for himself or for any other person in any capacity, or any other entity recognized by law as the subject of rights and duties. The masculine, feminine, singular or plural is included in any circumstances.

**36-4-2**        **TAX IMPOSED.** There is hereby levied and imposed a tax of five percent (5%) of the rent charged for the privilege and use of renting a hotel or motel room within the City for each **twenty-four (24) hour** period or any portion thereof for which a daily room charge is made; provided, however, that the tax shall not be levied and imposed upon any person who rents a hotel or motel room for more than **thirty (30) consecutive days** or to a person who works and lives in the same hotel or motel.

**36-4-3**        **EXCLUSION.**

(A)        The ultimate incidence of, and liability for, payment of said tax is to be borne by the person who seeks the privilege of occupying the hotel or motel room, said person hereinafter referred to as "renter".

(B)        The tax herein levied shall be paid in addition to any and all other taxes and charges. It shall be the duty of the owner of every hotel or motel to secure said tax from the renter of the motel or hotel room, and to pay over to the City Clerk or any authorized representative of the City said tax under procedures prescribed by the City Clerk, or as otherwise provided in this Chapter.

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(C) Every person required to collect the tax levied by this Chapter shall secure said tax from the renter at the time he collects the rental payment for the hotel or motel room. Upon receipt of the invoice, or other statement or memorandum of the rent given to the renter at the time of payment, the amount due under the tax provided in this Chapter shall be stated separately on said document.

**36-4-4**        **BOOKS AND RECORDS.**        The City Manager or authorized representative may enter the premises of any hotel or motel for inspection and examination of records in order to effectuate the proper administration of this Chapter, and to assure the enforcement of the collection of the tax imposed. It shall be unlawful for any person to prevent, hinder, or interfere with the City Manager or authorized representative in the discharge of their duties on the enforcement of this Chapter. It shall be the duty of every owner to keep accurate and complete books and records to which the City Manager or authorized representative shall at all times have full access, which records shall include a daily sheet showing:

(A)            The number of hotel or motel rooms rented during the **twenty-four (24) hour period**, including multiple rentals of the same hotel or motel rooms where such shall occur, and

(B)            The actual hotel or motel tax receipts collected for the date in question.

**36-4-5**        **TRANSMITTAL OF TAX REVENUE.**

(A)            Commencing on **May 1, 2000**, the owner or owners of each hotel or motel within the City shall file tax returns showing tax receipts received with respect to each hotel and motel room during each month commencing on **May 1, 2000**. The return shall be due on or before the last day of each succeeding calendar month, and the return shall indicate for what period the return is to be filed; i.e., return for January tax receipts is due on or before the last day of February.

(B)            Commencing on **May 1, 2000**, the tax return and payment for such period shall be due on **June 30, 2000**. Thereafter, reporting periods and taxes shall be paid in accordance with the provisions of this Chapter. At the time of filing said tax returns, the owner shall pay to the City Clerk all taxes due for the period to which the tax return applies.

(C)            If for any reason any tax is not paid when due, a penalty at the rate of **one and one-half percent (1 ½%) per thirty (30) day period**, or portion thereof from the date of delinquency, shall be added and collected.

**36-4-6**        **COLLECTION.**        Whenever any person shall file to pay any tax as herein provided, the Corporation Counsel shall, upon the request of the City Council, bring, or cause to be brought, an action to enforce the payment of said tax on behalf of the City in any court of competent jurisdiction.

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**36-4-7**      **PROCEEDS OF TAX AND FINES.** All proceeds resulting from the imposition of the tax under this Chapter, including penalties, shall be appropriated as follows:

(A)            **Five percent (5%)** of the gross tax revenue collected each year shall be appropriated for and directed to the office of the City Clerk to defray the costs of administering and processing the imposition, application and collection of the tax.

(B)            All the rest, residue and remainder of the Tax Revenue collected each year shall be paid into the Treasury of the City into a special fund to be used and applied for the promotion and development of tourism and conventions in the City.

(C)            A committee shall be established as the "City of Breese Tourism Committee". The primary responsibility of this Tourism Committee is to convene as often as necessary and make recommendations to the City Council as to the orderly disbursement of funds collected.

**36-4-8**      **PENALTIES.** Any person, firm or corporation found willfully guilty of failing to pay, collect, report and transmit said hotel or motel tax to the City Clerk in accordance with the terms of this Chapter shall, except when otherwise specifically provided, upon conviction thereof, be punished by a fine not to exceed **Five Hundred Dollars (\$500.00)** for each offense. A separate and distinct offense shall be regarded as committed each day upon which said person shall continue any such violation, or permit any such violation to exist after notification thereof.

(Ord. No. 978; 04-04-00)

## ARTICLE V

## TAXPAYERS' RIGHTS CODE

**36-5-1 TITLE.** This Article shall be known as, and may be cited as, the "Locally Imposed and Administered Tax Rights and Responsibility Code".

**36-5-2 SCOPE.** The provisions of this Code shall apply to the City's procedures in connection with all of the City's locally imposed and administered taxes.

**36-5-3 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 City's Mayor and City Council.

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

(D) **Local Tax Administrator.** "Local Tax Administrator", the City's 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) **City.** "City" means the City of Breese, Illinois.

(F) **Notice.** "Notice" means each audit notice, collection notice or other similar notice or communication in connection with each of the City's locally imposed and administered taxes.

(G) **Tax Ordinance.** "Tax Ordinance" means each ordinance adopted by the City 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 City.

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**36-5-4 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.

**36-5-5 LATE PAYMENT.** Any notice, payment, remittance or other filing required to be made to the City pursuant to any tax ordinance shall be considered late unless it is:

- (A) physically received by the City 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 City, with adequate postage prepaid.

**36-5-6 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.

**36-5-7 CERTAIN CREDITS AND REFUNDS.**

(A) The City 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 two (2) years after the end of the calendar year in which payment in error was made. The City 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 City.

(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 City.
- (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 five percent (5%) 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.

**36-5-8**      **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

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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 City.

(E) It is the duty and responsibility of every taxpayer to make available its books and records for inspection by the City. 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 City'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.

**36-5-9 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 City 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.

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(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.

**36-5-10 HEARING.**

(A) Whenever a taxpayer or a tax collector has filed a timely written protest and petition for hearing under **Section 36-5-9**, 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.

**36-5-11 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 City hereby provides for the amount of interest to be assessed on a late payment, underpayment, or nonpayment of the tax to be **nine percent (9%)** 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 City 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.

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**36-5-12**      **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.

**36-5-13**      **INSTALLMENT CONTRACTS.** The City 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.

**36-5-14**      **STATUTE OF LIMITATIONS.** The City, 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** 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 City, 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.

**36-5-15**      **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

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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.

**36-5-16 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 City Clerk's office.

**36-5-17 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 City's expense;
- (B) correct the taxpayer's credit record; and
- (C) correct any public disclosure of the improperly imposed lien.

**36-5-18 APPLICATION.** This Ordinance shall be liberally construed and administered to supplement all of the City'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. 1003; 12-19-00)