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**AN ORDINANCE**

**Amending Chapter 2 of Title 3 of the Evanston City Code  
Relating to the Municipality Utility Tax**

WHEREAS, the Illinois Legislature has determined that a tax upon the privilege of using or consuming electricity purchased at retail shall be calculated based on the consumption of Kilowatt hours rather than a percentage of the gross receipts,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

**SECTION 1:** That Section 3-2-9-2 of the Evanston City Code, 1979, as amended, is hereby further amended by deleting Subsection 3-2-9-2(B) in its entirety and substituting in lieu thereof the following new subsection:

**3-2-9-2: TAX IMPOSED**

(B) The tax imposed under this Section shall not apply with respect to gross receipts pertaining to bills for the distribution, supply, furnishing or sale of electricity where the use or consumption of the electricity is subject to the tax imposed under Section 3-2-9-9.

**SECTION 2:** That Section 3-2-9-4(C) of the Evanston City Code, 1979, as amended, is hereby further amended by adding the following last sentence to said section:

If a taxpayer under this section is unable to use a credit authorized by this subsection solely because the tax imposed by Section 3-2-9-2 has been replaced by the tax imposed under Section 3-2-9-9, then the taxpayer may apply such credit against any tax due under Section 3-2-9-9.

**SECTION 3:** That Chapter 2 of Title 3 of the Evanston City Code, 1979, as amended, is hereby further amended by adding the following new section:

**3-2-9-9: MUNICIPAL UTILITY TAX (ELECTRICITY):**

**3-2-9-9-1: DEFINITIONS:** For the purpose of the taxes enumerated in this Section, the following definitions shall apply:

<b>CITY:</b>	The City of Evanston.
<b>PERSON:</b>	Any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, limited liability company, municipal corporation or political subdivision of the State, any state university created by statute or a receiver, trustee, conservator or other representative appointed by order of any court.
<b>PERSON MAINTAINING A PLACE OF BUSINESS IN THIS STATE:</b>	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 or agent or other representative is located in this State permanently or temporarily, or whether such person, subsidiary or other affiliate is licensed or qualified to do business in this State.
<b>PURCHASE AT RETAIL:</b>	Any acquisition of electricity by a purchaser for purposes of use or consumption, and not for resale, but not 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.
<b>PURCHASER:</b>	Any person who uses or consumes, within the corporate limits of the City, electricity acquired in a purchase at retail.
<b>TAX COLLECTOR:</b>	The person delivering electricity to the purchaser.

**3-2-9-9-2: TAX IMPOSED:**

- (A) Pursuant to Section 8-11-2 of the Illinois Municipal Code (65 ILCS 5/8-11-2) and any and all other applicable authority, a tax is imposed upon the privilege of using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the City at the following rates, calculated on a monthly basis for each purchaser, including a 3% administrative fee as authorized by State Statute and Section 3-2-9-9-3(C) of this Ordinance:
1. For that first 2,000 kilowatt-hours used or consumed in a month; 0.589 cents per kilowatt-hour;
  2. For the next 48,000 kilowatt-hours used or consumed in a month; 0.374 cents per kilowatt-hour;
  3. For the next 50,000 kilowatt-hours used or consumed in a month; 0.330 cents per kilowatt-hour;
  4. For the next 400,000 kilowatt-hours used or consumed in a month; 0.327 cents per kilowatt-hour;
  5. For the next 500,000 kilowatt-hours used or consumed in a month; 0.288 cents per kilowatt-hour;
  6. For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.287 cents per kilowatt-hour;
  7. For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.196 cents per kilowatt-hour;
  8. For the next 5,000,000 kilowatt-hours used or consumed in a month; 0.138 cents per kilowatt-hour;
  9. For the next 10,000,000 kilowatt-hours used or consumed in a month; 0.084 cents per kilowatt-hour; and
  10. For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month; 0.082 cents per kilowatt-hour.
- (B) The tax is in addition to all taxes, fees and other revenue measures imposed by the City, the State of Illinois or any other political subdivision of the State.
- (C) Notwithstanding any other provision of Section 3-2-9-9, the tax shall not be imposed if and to the extent that imposition or collection of the tax would violate the Constitution or statutes of the United States or the Constitution of the State of Illinois.
- (D) The tax shall be imposed with respect to the use or consumption of electricity by residential customers beginning on August 1, 1998; and with respect to the use

or consumption of electricity by non residential customers beginning with the first bill issued to such customers for delivery services in accordance with Section 16-104 of the Public Utilities Act (220 ILCS 5/16-104), or the first bill issued to such customers on or after January 1, 2001, whichever issuance occurs sooner.

**3-2-9-9-3: COLLECTION OF TAX:**

- (A) Subject to the provisions of Section 3-2-9-9-5 regarding the delivery of electricity to resellers, the tax imposed under Section 3-2-9-9 shall be collected from purchasers by the person maintaining a place of business in this State who delivers electricity to such purchasers. This tax shall constitute a debt of the purchaser to the person who delivers the electricity to the purchasers and is recoverable at the same time and in the same manner as the original charge for delivering the electricity.
- (B) Any tax required to be collected by Section 3-2-9-9, 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 electricity shall be allowed credit of 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.
- (C) 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 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 section, any partial payment of a billed amount not specifically identified by the purchasers shall be deemed to be for the delivery of electricity.

**3-2-9-9-4: TAX REMITTANCE AND RETURN:**

- (A) Every tax collector shall on a monthly basis file a return in a form prescribed by the City Finance Director. The return and accompanying remittance shall be due on or before the last day of the month following the month during which the tax is collected or is required to be collected under Section 3-2-9-9-3.

- (B) If the person delivering electricity fails to collect the tax from the purchaser or is excused from collecting the tax under Section 3-2-9-9, then the purchaser shall file a return in a form prescribed by the City Finance Director and pay the tax directly to the City Finance Director on or before the last day of the month following the month during which the electricity is used or consumed.
- (C) Said return shall state:
1. Name;
  2. Principal place of business
  3. Amount of tax; and
  4. Such other reasonable and related information as the City may require.

**3-2-9-9-5: RESALES:**

- (A) Electricity that is delivered to a person in this City shall be considered to be for use and consumption by that person unless the person receiving the electricity has an active resale number issued by the City Finance Director and furnishes that number to the person who delivers the electricity, and certifies to that person that the sale is either entirely or partially nontaxable as a sale for resale.
- (B) If a person who receives electricity in the City claims to be an authorized reseller of electricity, that person shall apply to the City Finance Director for a resale number. The applicant shall state facts showing why it is not liable for the tax imposed by Section 3-2-9-9 on any purchases of electricity and shall furnish such additional information as the City Finance Director may reasonably require.
- (C) Upon approval of the application, the City Finance Director shall assign a resale number to the applicant and shall certify the number to the applicant.
- (D) The City Finance Director may cancel the resale number of any person if the person fails to pay any tax payable under this chapter for electricity used or consumed by the person, or if the number (a) was obtained through misrepresentation, or (b) is no longer necessary because the person has discontinued making resales.
- (E) (1) If a reseller has acquired electricity partly for use or consumption and partly for resale, the reseller shall pay the tax imposed by Section 3-2-9-9 directly to the City Finance Director pursuant to subsection B of Section 3-2-9-9-4 on the amount of electricity that the reseller uses or consumes, and shall collect the tax pursuant to Section 3-2-9-9-3 and remit the tax pursuant to Subsection A of

Section 3-2-9-9-4 on the amount of electricity delivered by the reseller to a purchaser.

(2) Any person who delivers electricity to a reseller having an active resale number and complying with all other conditions of Section 3-2-9-9 shall be excused from collecting and remitting the tax on any portion of the electricity delivered to the reseller, provided that the person reports to the City Finance Director the total amount of electricity delivered to the reseller, and such other information that the City Finance Director may reasonably require.

**3-2-9-9-6: BOOKS AND RECORDS:**

Every tax collector, and every taxpayer required to pay the tax imposed by Section 3-2-9-9, shall keep accurate books and records of its business or activity, including contemporaneous books and records denoting the transactions that gave rise, or may have given rise, to any tax liability under Section 3-2-9-9. The books and records shall be subject to and available for inspection at all times during business hours of the day.

**3-2-9-9-7: CREDITS AND REFUNDS:**

Notwithstanding any other provision of Section 3-2-9-9, in order to permit sound fiscal planning and budgeting by the City, no person shall be entitled to a refund of, or credit for, a tax imposed under Section 3-2-9-9 unless the person files a claim for refund or credit within one year after the date on which the tax was paid or remitted to the City Finance Director.

**3-2-9-9-8: FAILURE TO MAKE RETURN; FRAUDULENT RETURN:**

Any taxpayer who fails to make a return, or who makes a fraudulent return, or who wilfully violates any other provision of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00), and in addition shall be liable in a civil action for the amount of tax due, plus interest and costs.

**SECTION 4:** That nothing in this Ordinance shall be construed as limiting any additional or further remedies that City may have for enforcement of this Ordinance.

**SECTION 5:** That, if any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions hereof.

**SECTION 6:** That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 7:** That this ordinance shall be in full force and effect on August 1, 1998.

Introduced: July 13, 1998

Adopted: July 27, 1998

Approved: July 31, 1998

Lorraine H. Norton  
Mayor

ATTEST:

Mary J. Morris  
City Clerk

Approved as to form:

[Signature]  
Corporation Counsel

