

**VILLAGE OF DOWNERS GROVE**  
**COUNCIL ACTION SUMMARY**

**INITIATED:** Dir. of Finance **DATE:** August 7, 2001  
(Name)

**RECOMMENDATION FROM:** \_\_\_\_\_ **FILE REF:** \_\_\_\_\_  
(Board or Department)

**NATURE OF ACTION:**

**STEPS NEEDED TO IMPLEMENT ACTION:**

- Ordinance
- Resolution
- Motion
- Other

Motion to Adopt "AN ORDINANCE AMENDING THE DOWNERS GROVE UTILITY TAX", as presented.

03

**SUMMARY OF ITEM:**

Adoption of the attached will repeal the Infrastructure Maintenance Fee ordinance and increase the Telecommunication Tax rate to 3.5%.

**RECORD OF ACTION TAKEN:**

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE DOWNERS GROVE UTILITY TAX

BE IT ORDAINED by the Council of the Village of Downers Grove, in DuPage County, Illinois, as follows: (Additions are indicated by shading; deletions by ~~strikeout~~.)

SECTION 1. That Section 21-701 of the Downers Grove Municipal Code is hereby amended as follows:

**21-701. Tax Imposed.**

A tax to be known as the Downers Grove Utility Tax is imposed on all persons engaged in the following occupations or privileges:

(1) Persons engaged in the business of transmitting messages by means of electricity or radio magnetic waves, or fiber optics, at the rate of ~~two and three-tenth's percent (2.3%)~~ **three and one-half percent (3.5%)** of the gross receipts from such business originating within the corporate limits of the Village. Provided, the tax imposed under this Section shall not apply with respect to gross receipts pertaining to bills for telecommunications where the telecommunication activity is subject to the Telecommunications Tax imposed under Article VIII of this Chapter. In the event the Telecommunications Tax imposed by Section 21-802(1)(b) is declared unconstitutional or otherwise invalid, but the tax provided for in Section 21-802(1)(a) remains in full force and effect, the tax provided for pursuant to this Section on the business of transmitting messages as aforesaid, shall not be imposed.

(2) Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the Village, at the rate of two and three-tenth's percent (2.3%) of the gross receipts therefrom.

(3) Persons engaged in the business of distributing, supplying, furnishing, or selling electricity for use or consumption within the corporate limits of the Village, at the rate of two and three-tenth's percent (2.3%) of the gross receipts therefrom. Provided, 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 Electricity Tax imposed under Article X.

SECTION 2. That Section 21-802 of the Downers Grove Municipal Code is hereby amended as follows:

**21-802. Tax Imposed.**

(1) A tax is imposed upon:

(a) The act or privilege of originating in the Village or receiving in the Village intrastate telecommunications by a person at the rate of ~~two and one-half percent (2.5%)~~ **three and one-half percent (3.5%)** of the gross charge for such telecommunications purchased at retail from a retailer by such person.

(b) The act or privilege of originating in the Village or receiving in the Village interstate telecommunications by a person at the rate of ~~two and one-half percent (2.5%)~~ **three and one-half percent (3.5%)** of the gross charge for such telecommunications purchased at retail from a retailer by such person.

(2) The tax imposed in this Ordinance is not imposed on any act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by municipalities in this State.

(3) To prevent actual multi-state taxation of the act or privilege that is subject to taxation under Section 21-802(1)(b), any taxpayer, upon proof that the taxpayer has paid a tax in another state on such event, shall be allowed a credit against the tax authorized by Section 21-802(1)(b) to the extent of the amount of such tax properly due and paid in such other state which was not previously allowed as a credit against any other state or local tax in the State of Illinois.

(4) Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision used as a component of, or integrated into, end-to-end telecommunications service are sales for resale and are not subject to the tax imposed by this Ordinance.

SECTION 3. That Section 21-903 of the Downers Grove Municipal Code is hereby amended as follows:

**21-903. ~~Municipal telecommunications infrastructure maintenance fee~~Reserved.**

(a) ~~A Village telecommunications infrastructure maintenance fee is hereby imposed upon all telecommunications retailers in the amount of [1.0%] of all gross charges charged by the telecommunications retailer to service addresses within the Village for telecommunications originating or received in the Village.~~

(b) ~~Upon the effective date of the infrastructure maintenance fee authorized in this Article, the Village infrastructure maintenance fee authorized hereunder shall be the only fee or compensation for the use of all public rights of way within the Village by telecommunications retailers. Imposition of the infrastructure maintenance fee provided under this Article does not, however, serve as a limitation on the levying of any taxes or imposition of any fees otherwise authorized by law.~~

(c) ~~The Village telecommunications infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in Section 21-904 of this Article.~~

SECTION 4. That Section 21-904 of the Downers Grove Municipal Code is hereby amended as follows:

**21-904. ~~Collection, enforcement, and administration of telecommunications infrastructure maintenance fees~~Reserved.**

(a) ~~A telecommunications retailer shall charge to and collect from each customer an additional charge in an amount equal to the Village infrastructure maintenance fee attributable to that customer's service address.~~

(b) ~~Unless otherwise approved by the Village Manager the infrastructure maintenance fee shall be remitted by the telecommunications retailer to the Village not later than the last day of the month subsequent to the month in which a bill is issued to the customer; provided, however, that the telecommunications retailer may retain an amount not to exceed 2% of the Village infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee.~~

(c) ~~Remittance of the municipal infrastructure fee to the Village shall be accompanied by a return, in a form to be prescribed by the Village Manager, which shall contain such information as the Village Manager may reasonably require.~~

(d) ~~Any infrastructure maintenance fee required to be collected pursuant to this Article and any such infrastructure maintenance fee collected by such telecommunications retailer shall constitute a debt owed by the telecommunications retailer to the Village. The charge imposed under 21-904(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, the Village Manager may request, and telecommunications retailer shall provide, written substantiation for such credit. However, no claim for such credit may be made more than three years after the date of the erroneous payment unless:~~

~~(1) The credit is used only to offset a claim of underpayment made by the Village within the applicable statutory period of limitations; and~~

~~(2) The credit derives from an overpayment made by the same telecommunications retailer during the applicable statutory period of limitations.~~

(f) ~~Amounts paid under this Article by telecommunications retailers shall not be included in the tax base under any of the following acts as described immediately below:~~

~~(1) "gross charges" for purposes of the Telecommunications Excise Tax Act;~~

~~(2) "gross receipts" for purposes of the municipal utility tax as prescribed in Section 8-11-2 of the Illinois Municipal Code;~~

~~(3) "gross charges" for purposes of the municipal telecommunications tax as prescribed in Section 8-11-17 of the Illinois Municipal Code;~~

~~(4) "gross revenue" for purposes of the tax on annual gross revenue of public utilities prescribed in Section 2-202 of the Public Utilities Act.~~

~~(g) The Village shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this Article to determine whether the telecommunications retailer has properly accounted to the Village for the Village infrastructure maintenance fee. Any underpayment of the amount of the Village infrastructure maintenance fee due to the Village by the telecommunications retailer shall be paid to the Village plus five (5%) percent of the total amount of the underpayment determined in an audit, plus any costs incurred by the Village in conducting the audit, in an amount not to exceed five (5%) percent of the total amount of the underpayment determined in an audit. Said sum shall be paid to the Village within twenty one (21) days after the date of issuance of an invoice for same.~~

~~(h) The Village Manager, 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 21-902 of this Article of such regulations.~~

SECTION 5. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 6. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

\_\_\_\_\_  
Mayor

Passed:

Published:

Attest: \_\_\_\_\_

Village Clerk

[utiltax]