PAMPHLET

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ORDINANCE NO. 2006 - 0103

AN ORDINANCE OF THE VILLAGE OF HOPKINS PARK IN REGARD TO THE SIMPLIFIED MUNICIPAL TELECOMMUNICATIONS TAX

Published in pamphlet for this 18th day of September, 2006, by Order of the Corporate Authorities of the Village of Hopkins Park, Kankakee County, Illinois

By: Janice Rogers
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Village Clerk

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ORDINANCE NO. 2006 -O - 103

AN ORDINANCE OF THE VILLAGE OF HOPKINS PARK IN REGARD TO THE SIMPLIFIED MUNICIPAL TELECOMMUNICATIONS TAX

WHEREAS, the Village has the authority to adopt ordinances and to promulgate rules and regulations that protect the public health, safety, and welfare of its citizens; and

WHEREAS, the Village desires to impose certain taxes related to telecommunications services; and

WHEREAS, on February 8, 2002, the Governor of the State of Illinois signed into law Public Act 92-0526, entitled the Simplified Municipal Telecommunications Tax Act (hereinafter the "Act"), providing that effective January 1, 2003, the municipal telecommunications tax and municipal telecommunications infrastructure maintenance fee will be replaced with a simplified municipal telecommunications tax at a rate of up to six percent (6%) of gross charges in municipalities; and

WHEREAS, this Ordinance is intended to implement the provisions of the Act, including the imposition of the simplified telecommunications tax; and

WHEREAS, this Ordinance is intended to impose the tax authorized by the Act providing for a single Village imposed telecommunications tax which will be collected by the Illinois Department of Revenue;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Hopkins Park, Kankakee County, Illinois, as follows:

SECTION 1: The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

SECTION 2: That, as of January 1, 2007, the Village imposes a single Village telecommunications tax in accord with the following provisions:

I. DEFINITIONS

As used in this Ordinance, the following terms shall have the following meanings:

(a) "Amount paid" means the amount charged to the taxpayer's service address in the Village regardless of where such amount is billed or paid.

(b) "Department" means the Illinois Department of Revenue.

(c) "Gross charge" means the amount paid for the or privilege of originating or receiving telecommunications in the Village and for all services and equipment provided in connection therewith by a retailer, 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 Village, charges for the channel mileage between each channel point within the Village, and charges for that portion of the interstate inter-office channel provided within Illinois. However, "gross charge" shall not include:

(1) Any amounts added to a purchaser's bill because of a charge made pursuant to: (i) the tax imposed by this Ordinance, (ii) the tax imposed by the Telecommunications Excise Tax Act, (iii) the tax imposed by Section 4251 of the Internal Revenue Code, (iv) 911 surcharges, or (v) charges added to customers' bills pursuant to the provisions of Section 9-221 or 9-222 of the Public Utilities Act, as amended, or any similar charges added to customers' bills by retailers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amounts specified in those provisions of the Public Utilities Act;

(2) Charges for a sent collect telecommunication received outside the Village;

(3) Charges for leased time on equipment or charges for the storage of data or information subsequent retrieval or the processing data or information 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 as exempt 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 Department of Commerce and Community Affairs;

(6) Charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the tax imposed under this Ordinance has already been paid to a retailer 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 for the corporation rendering such service;

(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 telecommunication devices; or

(9) Amounts paid by telecommunications retailers under the Telecommunications Infrastructure Maintenance Fee Act.

(d) "Interstate telecommunications" means all telecommunications that either originate or terminate outside this State.

(e) "Intrastate telecommunications" means all telecommunications that originate and terminate within this State.

(f) "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian, or other representative appointed by order of any court, the Federal and State governments, including State universities created by statute, or any city, town, village, county, or other political subdivision of this State.

(g) "Purchase at retail" means the acquisition, consumption or use of telecommunications through a sale at retail.

(h) "Retailer" means and includes every person engaged in the business of making sales at retail as defined in this Section. The Department may, in its discretion, upon application, authorize the collection of the tax hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all of the gross charges for telecommunications in this State in the same manner and subject to the same requirements as a retailer maintaining a place of business within this State. The permit may be revoked by the Department at its discretion.

(i) "Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within this State, 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.

(j) "Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a consideration, to persons other than the Federal and State

governments, and State universities created by statute and other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries for their use or consumption and not for resale.

(k) "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, and maritime systems, service address means the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act. For air-to-ground systems and the like, "service address" shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.

(l) "Taxpayer" means a person who individually or through his or her agents, employees, or permittees engages in the act or privilege of originating or receiving telecommunications in the Village and who incurs a tax liability as authorized by this Ordinance.

(m) "Telecommunications", in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll, and wide area telephone service, private line services, channel services, telegraph services, teletypewriter, computer exchange services, cellular mobile telecommunications service, specialized mobile radio, stationary two-way radio, paging service, or any other form of mobile and portable one-way or two-way communications, 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. As used in this Ordinance, "private line" means a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. The definition of "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 purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by such provider to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into, end-to-end telecommunications service shall be non-taxable as sales for resale.

Prepaid telephone calling arrangements shall not be considered "telecommunications" subject to the tax imposed under this Ordinance. For purposes of this Ordinance, "prepaid telephone calling arrangements" means that term as defined in Section 2-27 of the Retailers' Occupation Tax Act.

II. SIMPLIFIED MUNICIPAL TELECOMMUNICATIONS TAX IMPOSED

A tax is hereby imposed upon any and all of the following acts or privileges:

(a) The act or privilege of originating in the Village or receiving in the Village intrastate telecommunications by a person at a rate of six percent (6%) of the gross charge for such telecommunications purchased at retail from a retailer.

(b) The act or privilege of originating in the Village or receiving in the Village interstate telecommunications by a person at a rate of six percent (6%) of the gross charge for such telecommunications purchased at retail from a retailer. To prevent actual multi-state taxation of the act or privilege that is subject to taxation under this subsection, any taxpayer, upon proof that the taxpayer has paid a tax in another state on such event, shall be allowed a credit against any tax enacted pursuant to or authorized by this Section 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 this State.

(c) The tax imposed by 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 the Village.

III. COLLECTION OF TAX BY RETAILERS

(a) The tax authorized by this Ordinance shall be collected from the taxpayer by a retailer maintaining a place of business in this State and shall be remitted by such retailer to the Department. Any tax required to be collected pursuant to or as authorized by this Ordinance and any such tax collected by such retailer and required to be remitted to the Department shall constitute a debt owed by the retailer to the State. Retailers shall collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege of originating or receiving telecommunications when sold for use, in the manner prescribed by the Department. The tax authorized by this Ordinance shall constitute a debt of the taxpayer to the retailer until paid, and, if unpaid, is recoverable at law in the same manner as the original charge for such sale at retail. If the retailer fails to collect the tax from the taxpayer, then the taxpayer shall be required to pay the tax directly to the Department in the manner provided by the Department.

(b) Whenever possible, the tax authorized by this Ordinance shall, when collected, be stated as a distinct item separate and apart from the gross charge for telecommunications.

IV. RETURNS TO DEPARTMENT

On or before the last day of February 2007, and on or before the last day of every month thereafter, the tax imposed under this Ordinance on telecommunication retailers shall be returned with appropriate forms and information as required by the Department pursuant to the Illinois Simplified Municipal Telecommunications Tax Act (Public Act 92-526, Section 5-50) and any accompanying rules and regulations created by the Department to implement the Illinois Simplified Municipal Telecommunications Tax Act.

V. RESELLERS

(a) If a person who originates or receives telecommunications claims to be a reseller of such telecommunications, such person shall apply to the Department for a resale number. Such applicant shall state facts which will show the Department why such applicant is not liable for the tax authorized by this Ordinance on any of such purchases and shall furnish such additional information as the Department may reasonably require.

(b) Upon approval of the application, the Department shall assign a resale number to the applicant and shall certify such number to the applicant. The Department may cancel any number which is obtained through misrepresentation, or which is used to send or receive such telecommunication tax-free when such actions in fact are not for resale, or which no longer applies because of the person having discontinued the making of resales.

(c) Except as provided hereinabove in this Section, the act or privilege of originating or receiving telecommunications in this State shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number from the Department and furnishes that number to the retailer in connection with certifying to the retailer that any sale to such person is non-taxable because of being a sale for resale.

VI. SEVERABILITY

If any provision of this Ordinance, or the application of any provision of this Ordinance, is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this Ordinance, or their application, that can be given effect without the unconstitutional or invalid provision or its application. Each

unconstitutional or invalid provision, or application of such provision, is severable, unless otherwise provided by this Ordinance.

VII. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its adoption and approval and publication in pamphlet form as required by law.

SECTION 3: A copy of this Ordinance shall be certified by the Village Clerk and sent to the Illinois Department of Revenue.

SECTION 4: This Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

ADOPTED this 18th day of September, 2006, pursuant to a roll call vote as follows:

AYES: Jeanie Jarrett, Samuel Payton, Zacharias Burton, Mayor Dyson

NAYS: None

ABSENT: Verlean Mullens, Bennie Walker

APPROVED by me this 18th day of September, 2006.

Mayor

ATTEST:

Village Clerk

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