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**Office of the Village Administrator**  
**Ordinance**

To: Mayor and Board of Trustees

From: Eric Guenther, Village Administrator

For: Village Board Meeting of: August 23, 2021

Subject: Utility Tax

Financial Impact:

**Motion**

**Motion** to Pass an Ordinance Amending the Mundelein Municipal Code to Create a New Chapter 3.68 Imposing a New Gas Utility Tax and a New Chapter 3.72 Imposing a New Electric Utility Tax.

**Comments**

A Utility Tax is being presented to the Board per the 2020 Strategic Planning document *“Priority # 2: Thoughtfully consider opportunities to enhance revenue to adequately support community development, infrastructure, public safety, and wellbeing, and environmental protection initiatives.”* Since a Utility Tax will encompass the entire community, both residential and business, we are suggesting to earmark the funds for two areas that will also benefit the entire village: 1) road improvements and 2) reserves.

Asphalt for Roads

**In order to adequately maintain the Village’s 188 “lane” miles of streets, our annual street budget needs to be between \$6M - \$7M.** Funding asphalt for roads in FY18 and FY19 was \$2.5M; FY20 \$2.8M; FY21 \$4.0M; and FY22 \$3.5M. The Village receives \$3M annually in the two main capital revenue sources – road and bridge property tax and state motor fuel tax. It should also be noted that in 2023 the Village will lose \$750K in funding from the Rebuild Illinois program due to the grant period ending.

Reserves

Most of our property tax is collected from June-September. However, it is important to have enough liquidity throughout the year to meet the twelve-month obligations of capital, payroll, operations, and debtholders. As we have seen in the past 18 months, a financial cushion is also needed for private business interruptions (hotel tax & video gaming) due to pandemics, future economic downturns (i.e., state aid reductions or major retailers’ closings), or other emergencies.

The steady decline in reserves was one of the two stated factors (along with the unfunded pension liability) in two recent financial downgrades by Moody's Ratings Agency (i.e., in 2017 and 2019) from Aa1 to Aa3.

The Village's official reserve policy adopted by the Village Board back in 2013 is:

The Village should maintain a minimum level of four months of annual expenditures in its general fund reserves. Reserve levels in excess of six months of annual expenditures should be considered for future capital purposes.

In other words, the Village's reserve levels should be in the 33-50% range. Below is a ten-year history of the Village's reserve levels.

An additional \$2.8 million would be needed to raise the reserve levels back to 50%.

	General Fund Reserves	Reserves as % of Expenditures
FY2013	\$14,510,614	61%
FY2014	\$14,180,955	57%
FY2015	\$14,029,946	54%
FY2016	\$13,751,781	52%
FY2017	\$12,884,085	48%
FY2018	\$11,960,431	45%
FY2019	\$11,109,787	40%
FY2020	\$10,048,508	35%
FY2021-estimated	\$11,300,000	40%
FY2022-budget	\$11,300,000	40%

**Staff Suggestions:**

- Implement a natural gas and electric utility tax beginning in January 2022. Use the proposed phased approach of 3%, 4%, and 5% over the next three years.
- Allocate 40% of the funds collected to increase reserves to a desired 50% (approximately four years).
- Allocate remaining funds to the annual street program. Once reserves have been met, all future funding will support the annual street program.
- Adjust reserve policy so that capital expenses below the 50% reserve amount would require board approval.

**ORDINANCE NO. (ID # 5081)**

**AN ORDINANCE AMENDING THE MUNDELEIN VILLAGE CODE TO CREATE  
A NEW CHAPTER 3.68 IMPOSING A NEW GAS UTILITY TAX AND  
A NEW CHAPTER 3.72 IMPOSING A NEW ELECTRIC USE TAX**

**WHEREAS**, the Village of Mundelein, Lake County, Illinois (the “Village”) is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the Village’s home rule powers and functions as granted in the Constitution of the State of Illinois; and

**WHEREAS**, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

**WHEREAS**, the Village Board of Trustees has determined that additional revenue is needed to fund necessary road repairs and improvements and bring surplus back to safe levels for the benefit of the safety and welfare of the Mundelein community; and

**WHEREAS**, pursuant to its home rule powers and Section 8-11-2 of the Illinois Municipal Code, 65 ILCS 5/8-11-2, the Mayor and Board of Trustees of the Village have determined that it is useful, appropriate, and in the best interests of the Village to impose new utility-related taxes on (i) persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the Village, and (ii) the privilege of using or consuming electricity acquired in the purchase at retail and used or consumed within the corporate limits of the Village.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Board of Trustees of the Village of Mundelein, Lake County, Illinois, pursuant to its home rule authority, as follows:

**SECTION I:** The foregoing recitals shall be and are hereby incorporated herewith.

**SECTION II:** The Village Code shall be amended to add a new Chapter 3.68 that shall read as follows:

Chapter 3.68: GAS UTILITY TAX:

3.68.010 Establishment of Tax: A tax is imposed on all persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the Village, and not for resale, at a rate of 3% of the gross receipts therefrom from the effective date of this ordinance through all of the year 2022; at a rate of 4% of the gross receipts therefrom for the year 2023; and at a rate of 5% of the gross receipts therefrom starting on January

1, 2024 and thereafter going forward.

3.68.020 Limitations: No tax is imposed by this Section with respect to any transaction in interstate commerce or otherwise to the extent to which that business may not be made the subject of taxation by the State of Illinois or this Village under the Constitution and statutes of the United States. Nor will any persons engaged in the business of distributing, supplying, furnishing, selling or transmitting gas within the corporate limits of the Village be subject to taxation under the provisions of this Section for such transactions as are or may become subject to taxation under the provision of the Illinois Municipal Retailer's Occupation Tax Act.

3.68.030 Taxes in Addition to Other Compensation: The tax enumerated in this Section is in addition to the payment of money or value of products or services furnished to the Village 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.

3.68.040 Definitions: For the purposes of this Section, the definitions shall be those used in 65 ILCS 5/8-11-2, as may be subsequently amended.

3.68.050 Payment of Tax to the Village/Returns: On or before the last day of every month, each taxpayer engaged in the business of distributing, supplying, furnishing, or selling gas must make a return to the Village Finance Director, on forms supplied by the Village Finance Director for that purpose which may include on-line forms, for the preceding month, stating at a minimum:

1. The taxpayer's name;
2. The taxpayer's principal place of business;
3. The taxpayer's gross receipts during those months on the basis of which the tax is imposed;
4. The amount of tax owed; and
5. Such other reasonable and related information as the Village Finance Director may reasonably require.

3.68.060 Returns: The taxpayer making a return pursuant to this section must pay, at the time of making that return, to the Village Finance Director the amount of tax herein imposed; except that in connection with any return the taxpayer, may elect to report and pay an amount based on the taxpayer's 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 on

any differences between such billings and the taxable gross receipts.

3.68.070 Credits For Overpayment; Limitation: If it appears that an amount of tax has been paid that was not due under the provisions of this section, whether as a result of a mistake of fact or an error of law, then that amount will be credited against any tax due, or to become due, under this section from the person who made the erroneous payment on a filing of a claim for a credit by that person with the Village, except that no amount erroneously paid will be credited if that amount was paid more than three (3) years prior to the filing of a claim for a credit.

3.68.080 Actions for Past Due Amounts: No action to recover any amount of tax due under the provisions of this section may be commenced more than three (3) years after the due date of that amount.

3.68.090 Administration and Implementation: The Village Finance Director, or his or her designee, may prescribe reasonable rules, definitions and regulations to administer the implementation and collection of this tax.

3.68.100 Violations; Penalty: Any person found guilty of violating any provision of this Chapter may, in addition to any fee or penalty due, be assessed a fine up to seven hundred fifty dollars (\$750.00). Each day a violation continues to exist shall be a separate offense. Citations for violations of this Chapter shall be adjudicated by the Village's administrative adjudication hearing officer, or at the choice of the Village, by any court of competent jurisdiction.

**SECTION III:** The Village Code shall be amended to add a new Chapter 3.72 that shall read as follows:

3.72 ELECTRIC USE TAX:

3.72.010 Establishment of Tax: An electric use tax at the rates specified in this subsection is hereby established and levied by the Village on all persons engaged in the privilege of using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the Village, calculated on a monthly basis for each purchaser beginning on the effective date of this ordinance through all of the year 2022:

1. For the first 2,000 kilowatt-hours used or consumed in a month; 0.366 cents per kilowatt-hour;
2. For the next 48,000 kilowatt-hours used or consumed in a month; 0.240 cents per kilowatt-hour;
3. For the next 50,000 kilowatt-hours used or consumed in a month; 0.216 cents per kilowatt-hour;

4. For the next 400,000 kilowatt-hours used or consumed in a month; 0.210 cents per kilowatt-hour;
5. For the next 500,000 kilowatt-hours used or consumed in a month; 0.204 cents per kilowatt-hour;
6. For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.192 cents per kilowatt-hour;
7. For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.189 cents per kilowatt-hour;
8. For the next 5,000,000 kilowatt-hours used or consumed in a month; 0.186 cents per kilowatt-hour;
9. For the next 10,000,000 kilowatt-hours used or consumed in a month; 0.183 cents per kilowatt-hour; and
10. For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month; 0.180 cents per kilowatt-hour.

Starting in the year 2023, the tax rate shall increase as follows:

1. For the first 2,000 kilowatt-hours used or consumed in a month; 0.488 cents per kilowatt-hour;
2. For the next 48,000 kilowatt-hours used or consumed in a month; 0.320 cents per kilowatt-hour;
3. For the next 50,000 kilowatt-hours used or consumed in a month; 0.288 cents per kilowatt-hour;
4. For the next 400,000 kilowatt-hours used or consumed in a month; 0.280 cents per kilowatt-hour;
5. For the next 500,000 kilowatt-hours used or consumed in a month; 0.272 cents per kilowatt-hour;
6. For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.256 cents per kilowatt-hour;
7. For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.252 cents per kilowatt-hour;

8. For the next 5,000,000 kilowatt-hours used or consumed in a month; 0.248 cents per kilowatt-hour;
9. For the next 10,000,000 kilowatt-hours used or consumed in a month; 0.244 cents per kilowatt-hour; and
10. For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month; 0.240 cents per kilowatt-hour.

Starting in the year 2024 and thereafter going forward, the tax rate shall increase as follows:

1. For the first 2,000 kilowatt-hours used or consumed in a month; 0.61 cents per kilowatt-hour;
2. For the next 48,000 kilowatt-hours used or consumed in a month; 0.40 cents per kilowatt-hour;
3. For the next 50,000 kilowatt-hours used or consumed in a month; 0.36 cents per kilowatt-hour;
4. For the next 400,000 kilowatt-hours used or consumed in a month; 0.35 cents per kilowatt-hour;
5. For the next 500,000 kilowatt-hours used or consumed in a month; 0.34 cents per kilowatt-hour;
6. For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.32 cents per kilowatt-hour;
7. For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.315 cents per kilowatt-hour;
8. For the next 5,000,000 kilowatt-hours used or consumed in a month; 0.31 cents per kilowatt-hour;
9. For the next 10,000,000 kilowatt-hours used or consumed in a month; 0.305 cents per kilowatt-hour; and
10. For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month; 0.30 cents per kilowatt-hour.

3.72.020 Limitations: No tax is imposed by this section with respect to any transaction in interstate commerce or otherwise to the extent to which that business or privilege may not be made the subject of taxation by the state of Illinois or this village under the constitution and statutes of the United States. Nor will any persons engaged in using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the Village be subject to taxation under the provisions of this section for such transactions as are or may become subject to taxation under the provisions of the Illinois Municipal Retailers' Occupation Tax Act.

3.72.030 Tax In Addition To Other Compensation: The tax is in addition to all taxes, fees, franchise agreements, payments for use of streets, alleys or other public places, use of wires, poles or other infrastructure and equipment, and any other revenue measures and agreements imposed by the Village, the State of Illinois or any other political subdivision of the State.

3.72.040 Definitions: For the purposes of this Section, the definitions shall be those used in 65 ILCS 5/8-11-2, as may be subsequently amended.

3.72.050 Payment of Tax to the Village/Returns:

1. Collection Of Tax: The person maintaining a place of business in the state of Illinois who delivers the electricity to the purchaser shall collect the tax authorized by this section from the purchaser and shall file a return with, and pay the amount of the tax collected to, the Village. This tax constitutes 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.
2. Persons delivering electricity may collect the tax from the purchaser by adding the tax to the gross charge for delivering the electricity. Persons delivering electricity also are authorized to add to the gross charge an amount equal to three percent (3%) of the tax to reimburse the person delivering electricity for the expense incurred in keeping records, billing customers, preparing and filing returns, remitting the tax, and supplying data to the Village on the Village's request.
3. Any tax required to be collected pursuant to this Section and any such tax collected by a person delivering electricity constitutes a debt owed to the Village by the person delivering the electricity. With respect to such debt owed to the Village, the person delivering electricity may be allowed a credit against such debt to the extent the tax related to deliveries of electricity is not collected because the charges for such electricity are written off as uncollectible; except that if such charges are thereafter collected by the person delivering electricity, then that person must remit the tax to the

Village. Any partial payment not specifically identified by the purchaser will be deemed to be for the delivery of electricity.

4. Every tax collector shall on a monthly basis file a return in a form and manner prescribed by the Village's Finance Director. The return and accompanying payment 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 this Section.
5. If the person delivering electricity fails to collect the tax from the purchaser, then the purchaser will be required to pay the tax directly to the Village by filing a tax return in the form and manner that the Village Finance Director will prescribe.

3.72.060 Credits For Overpayment; Limitation: If it appears that an amount of tax has been paid that was not due under the provisions of this section, whether as a result of a mistake of fact or an error of law, then that amount will be credited against any tax due, or to become due, under this section from the person who made the erroneous payment on a filing of a claim for a credit by that person with the Village, except that no amount erroneously paid will be credited if that amount was paid more than three (3) years prior to the filing of a claim for a credit.

3.72.070 Actions for Past Due Amounts: No action to recover any amount of tax due under the provisions of this section may be commenced more than three (3) years after the due date of that amount.

3.72.080 Books and Records: The person maintaining the place of business in the state of Illinois who collects the tax authorized by this section from the purchaser is required to 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 this section. The books and records are subject to and available for inspection by the village at reasonable times during normal business hours.

3.72.090 Administration and Implementation: The Village Finance Director, or his or her designee, may prescribe reasonable rules, definitions and regulations to collect this fee.

3.72.100 Violations; Penalty: Any person found guilty of violating any provision of this Chapter may, in addition to any fee or penalty due, be assessed a fine up to seven hundred fifty dollars (\$750.00). Each day a violation continues to exist shall be a separate offense. Citations for violations of this Chapter shall be adjudicated by the Village's administrative adjudication hearing officer, or at the choice of the Village, by any court of competent jurisdiction.

**SECTION IV:** Prior to the effective date of this Ordinance, the Village Finance Director is hereby authorized and directed to send a certified copy of this Ordinance to each utility company affected by this Ordinance.

**SECTION V: Severability.** If any section, paragraph, clause, or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance.

**SECTION VI: Repeal of Prior Ordinances.** All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

**SECTION VII: Effective Date.** This Ordinance shall be in full force and effect January 1, 2022, following its approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

ADOPTED this \_\_\_ day of \_\_\_ 2021 by a roll call vote as follows:

AYES

NAYS

ABSENT AND/OR NOT VOTING

\_\_\_\_\_  
Steve Lentz, Mayor

APPROVED: \_\_\_\_\_, 2021

PUBLISHED in pamphlet form: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Karen Walsh, Village Clerk

ADOPTED this 23rd day of August, 2021 by a roll call vote as follows:

\_\_\_\_\_  
President

ADOPTED: August 23, 2021 \_\_\_\_\_

APPROVED: August 23, 2021 \_\_\_\_\_

PUBLISHED in pamphlet form: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Village Clerk