

COUNCIL BILL NO. 2006-013

ORDINANCE NO. 2006-042

AN ORDINANCE amending section 30-141 of Article III of Chapter 30 of the Joplin code of ordinances to remove exchange telephone service from the Public Utility Gross Receipts Tax and further amending Chapter 30 Businesses of the Joplin Code of ordinances by enacting a new Division 7. Telecommunications Business License Tax. of Article III of Chapter 30 for the purpose of complying with the "Municipal Telecommunication Business License Simplification Act"; and containing an emergency clause.

WHEREAS, in 2005, the Missouri General Assembly enacted the "Municipal Telecommunications Business License Tax Simplification Act," Sections 92.074 through 92.095 of the Revised Statutes of Missouri, authorizing certain cities, including the City of Joplin, to impose its telephone gross receipts tax upon telecommunications companies offering telecommunications services, including telephone service; and,

WHEREAS, the City Council desires to amend the City's Utility Gross Receipts Tax to conform to the provisions of the "Municipal Telecommunications Business License Tax Simplification Act."; and,

WHEREAS, the Director of the Missouri Department of Revenue has not advised the City of the appropriate tax rate to be imposed upon the gross receipts of all telecommunications services sold at retail within the corporate limits of the City under section 92.086.6, of the Revised Statutes of Missouri. In the absence of such information, the City Council finds that it is reasonable to reduce the present telephone gross receipts tax imposed by the City from 6% to 5% in order to comply with the statutory requirement to create a "revenue-neutral effect" in the imposition of the City's Telecommunications Business License Tax; and,

WHEREAS, the Council of the City of Joplin finds that it is in the best interests of the citizens of the City to amend sections 30-141 of the Joplin City Code to remove exchange telephone service from the utility gross receipts tax and enact a new Division 7. Telecommunications Business License Tax of Article III of Chapter 30 for the purpose of complying with the "Municipal Telecommunication Business License Simplification Act", sections 92.074 through 92.095 of the Revised Statutes of Missouri.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That section 30-141., Definitions., be amended by removing the words 'exchange telephone service' from the definition of 'Public Utility'.

Section 2. That a new Division 7., Telecommunications Business License Tax of Article III Licenses., of Chapter 30., Businesses., be enacted to read as follows:

"DIVISION 7. Telecommunications Business License Tax.

Sec. 30-290. Imposition and Amount of Tax.

There is hereby imposed on all telecommunications companies engaged in the business of selling telecommunications services at retail within the corporate limits of the City of Joplin a "Telecommunications Business License Tax" upon the gross receipts derived from such business in an amount equal to 5% of such gross receipts to be paid to the City as a license or occupation tax.

To the extent required by law, the Finance Director of the City is hereby authorized and directed to promulgate and publish the revenue neutral rates to be applied in the City of Joplin for bills to be rendered on or after July 1, 2006 based on the rate information supplied by the Director of Revenue of the State of Missouri.

Effective July 1, 2006, to the extent required by law, notwithstanding the provisions of any municipal business license tax (as defined by Section 92.077 RSMo.) ordinance, this tax shall be based solely on those gross receipts of telecommunications companies for the retail sale of telecommunications services which are subject to taxation under sections 144.010 and 144.020, RSMo.

To the extent required or permitted by law, for bills rendered on and after July 1, 2006, the tax rate shall be five percent (5%) or the revenue neutral rate as promulgated and published herein, whichever is higher.

To the extent required by law, for bills rendered on and after July 1, 2007 the tax rate shall be adjusted as promulgated and published by the Director of the Department of Revenue for the State of Missouri pursuant to section 92.086 RSMo. The City shall notify the Director of the Department of Revenue in writing within thirty (30) days of any change in the tax rate to the extent required by section 92.086, RSMo.

Sec. 30-291. Definitions.

As used in this section, the following terms shall mean:

(a) "Business license tax": any tax, including any fee, charge or assessment in the nature of a tax, assessed by the City on a telecommunications company for the privilege of doing business within the corporate limits of the City, including a tax assessed under the authority of section 94.110 of the Revised Statutes of Missouri, as well an occupation license tax, gross receipts tax, franchise tax, or similar tax, but shall not include:

(1) Any state or municipal sales tax imposed under sections 144.010 to 144.525 of the Revised Statutes of Missouri; or

(2) Any municipal right-of-way usage fee imposed under the authority of a municipality's police powers under section 253(c) of the General Telecommunications Act of 1996, or under sections 67.1830 to 67.1846 of the Revised Statutes of Missouri; or

(3) Any tax or fee levied for emergency services under sections 190.292, 190.305, 190.325, 190.335, or 190.430 of the Revised Statutes of Missouri, or any tax authorized by the Missouri General Assembly after August 28, 2005, for emergency services; or

(4) Any flat tax duly imposed on or before August 28, 2005.

(b) "Director": the Director of the Missouri Department of Revenue.

(c) "Telecommunications company": any company doing business in this state that provides telecommunications service and are subject to taxation pursuant to section 144.010 and 144.020 RSMo..

(d) "Telecommunications service": shall include "telephone service,": and shall have the same meaning as such term is defined in section 144.010 of the Revised Statutes of Missouri. The term "telephone company", as used in sections 94.110, 94.270, and 94.340 of the Revised Statutes of Missouri, shall have the same meaning as telecommunications company as defined in this section.

(e) "Gross receipts": means all receipts from the retail sale of telecommunications service taxable under section 144.020 of the Revised Statutes of Missouri, and from any retail customer now or hereafter exempt from the state sales tax.

Sec. 30-292. Statement of gross receipts required; payment of tax; credit for service rendered City.

All persons engaged in the businesses described in sections 30-290 and 30-291 in the City are hereby required to file with the Finance Director a sworn statement showing the gross receipts of such business within the City. For the business transacted and the gross receipts each month, a statement shall be due and filed by the last day of the following month. At the same time the statement is required to be filed, payment of the tax due on the gross receipts reported in the statement shall be made to the City of Joplin at the rate set forth in sec. 620.160. The payment shall be a license to operate for the month immediately succeeding the month in which the payment is made.

Effective July 1, 2006, to the extent required by law, the Director of the Department of Revenue for the State of Missouri shall collect, administer, and distribute telecommunications business license tax revenues in accordance with the provisions of sections 92.074 and 92.095 RSMo., and returns filed by telecommunications companies with the Director and tax payments made by such companies to the Director pursuant to such statutes shall take the place of the statements and payments described above.

Sec. 30-293. Tax to be in lieu of other occupation taxes.

The tax required to be paid under Section 30-290 shall be in lieu of any other occupation tax required of any person engaged in any of the businesses described in section 30-290 and 30-291. Except as otherwise required by sections 92.074 to 92.095 RSMo., nothing contained in this article shall be construed to exempt any person to which this article is applicable from payment to the City of any taxes, other than occupation license taxes, levied by the City upon such person or the real or personal property of such person.

Sec. 30-294. Investigation of gross receipts statement.

The Finance Director and such other persons may be designated by the City Council, from time to time, is and are hereby authorized to investigate the correctness and accuracy of any statement filed under the provisions of section 30-292, and for that purpose shall have access at all reasonable times to the books, documents, papers and records of any person filing such statement. Effective July 1, 2006, any audit of a telecommunications company for purposes of sections 92.074 to 92.095 shall be conducted pursuant to the such statutes and any rules promulgated hereunder.

Sec. 30-295. Violations; penalties.

(a) Any person engaged in any of the businesses described in section 30-290 and 30-291 who shall violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to punishment as provided in Section 1-5 of this Code.

(b) Delinquent taxes under this article shall be subject to the penalties as provided for by other ordinances of the City, now or hereafter enacted, relating to penalties upon delinquent taxes.

(c) To the extent required by law, unless specifically stated otherwise in sections 92.074 to 92.095, RSMo., taxpayer remedies, enforcement mechanisms, tax refunds, tax protests, assessments, and all other procedures regarding the tax imposed by this article shall be the same as those provided in Chapter 144, RSMo."

Section 3. That in the event that the Municipal Telecommunication Business License Tax Simplification Act shall be repealed in total or in substantial part or declared unconstitutional, invalid or otherwise null and void in total or in substantial part, then this ordinance shall become null and void and the sections amended by this ordinance shall revert to their original provisions and shall continue in effect as they existed prior to the effective date of this Ordinance, unaffected by the provisions herein to the greatest extent possible without preventing the City from receiving tax revenues under this article. Nothing in this ordinance shall be construed to affect any suit or proceeding now pending in any court or any rights acquired or liability incurred nor any cause or causes of action occurred or existing, under any act or

ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired, or affected by this ordinance.

Section 4. That this Ordinance, fixing a tax rate or assessment of the City, is an emergency within the meaning of Section 2.12 (5) of THE HOME RULE CHARTER OF THE CITY OF JOPLIN, MISSOURI, and shall be in full force and effect immediately from and after its passage.

Section 5. The City Clerk is hereby directed to promulgate and publish the new telecommunications business license tax rate in accordance with the requirements of the "Municipal Telecommunications Business License Tax Simplification Act," and other applicable laws.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 27th day of March, 2006, by a 7-0-1 vote.

Phil G. Stinnett, Mayor

ATTEST:

Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

Brian W. Head, City Attorney