

PUBLIC NOTICE

In accordance with the Statutes of the State of Illinois and the Ordinances of the City of Highland Park, the next meeting of the Natural Resources Commission of the City of Highland Park is scheduled to be held at the hour of 6:30 p.m. on Wednesday, March 9, 2011 at 1707 St. John's Avenue, Highland Park, Illinois, during which it is anticipated there will be a discussion of the following:

CITY OF HIGHLAND PARK
NATURAL RESOURCES COMMISSION
WEDNESDAY, MARCH 9, 2011
1707 ST. JOHN'S AVENUE
HIGHLAND PARK, ILLINOIS
6:30 P.M.

MEETING AGENDA

I. Call to Order

II. Roll Call

III. Approval of Minutes: February 9, 2011

IV. Business from the Public

V. New Business

- A. Park District of Highland Park Status Report on Ravine 7L Project
- B. Recommendation on Natural Resources Commission Student Representative Applications
- C. Status Report on Polystyrene Foam Recycling Pilot Program
- D. Discussion of Bottled Water and Soft Drink Taxation
- E. Discussion of Potential Collaboration with the Highland Park Library for the Annual Green Festival
- F. Discussion of the Proposed Formation of Voluntary Ravine Neighbors Associations
- G. Discussion of 2011 Work Program and Project Assignments

VI. Old Business

- A. Green Team Status Report
- B. Discussion of Potential Movie Titles for the 2011 Movie Series

VII. Other Business

- A. Commissioner Comments
- B. Administrative Items

VIII. Adjournment

Posted in City Hall on March 2, 2011

**MINUTES OF A REGULAR MEETING OF
THE NATURAL RESOURCES COMMISSION OF THE CITY OF HIGHLAND
PARK, ILLINOIS**

MEETING DATE: Wednesday, February 9, 2011

MEETING LOCATION: Pre-Session Room, City Hall, 1707 St. Johns Avenue, Highland Park, IL

CALL TO ORDER

At 6:30 p.m., Chairman Bogot called the meeting to order and the Staff Liaison called the roll.

ROLL CALL

Members Present: Bogot, Dennison, Friedman, Hill, Himmelfarb, Matthews, Naftzger, Sultan and Meyer

Members Absent: Compher and Mandel

The Staff Liaison declared that there was a quorum of the Commission present.

Staff Present: Staff Liaison Barbara Cates and Technical Advisor Michael Bernardi

Also Present: None

MINUTES

A. Regular Meeting of the Natural Resources Commission—January 12, 2011

Commissioner Friedman requested an amendment to page 3 of the minutes to delete the sentence indicating that Commissioner Dennison left the meeting early. Chairman Bogot requested an amendment to page 2 of the minutes to clarify his sentence regarding the City Council's delayed consideration of the polystyrene recommendation. Commissioner Dennison moved approval of the amended minutes of the regular meeting of the Natural Resources Commission held on Wednesday, January 12, 2011. Commissioner Hill seconded the motion.

On a voice vote, Chairman Bogot declared that the motion passed unanimously.

NEW BUSINESS

A. Overview of Ravine-Bluff Geology, Ecology and Maintenance Guidelines

Commissioners Hill, Sultan and Naftzger presented an overview of this Item. Hill discussed Highland Park's unique topography and the role of influential residents such as Jesse Lowe Smith and Jens Jensen.

Sultan presented images of existing conditions in Highland Park and discussed topics including: the historic role of ice and water in the shaping of the Chicago region, ravine and bluff vegetation, slope stability, littoral drift and beach reinforcement practices.

The Commission discussed penalties for violations to the City's Steep Slope regulations, and best practices for slope maintenance. Commissioner Friedman directed Technical Advisor Bernardi to investigate the Central Park bluff stairway conditions and provide a status report. The Commission requested updated information on the Department of Public Works' ravine erosion assessment policies and parameters.

Commissioner Naftzger discussed the function of the ravine-bluff ecosystem and the importance of fostering restoration; Naftzger stressed that a broad, proactive approach to stormwater management is necessary to protect steep slope drainage ways.

Staff Liaison Cates and Park District Representative Meyer discussed ways in which respective staff members communicate steep slope regulations and recommended maintenance practices to the public. Commissioner Matthews suggested that the Commission could continue to add to the list of best practices, possibly by consulting outside professionals. Bogot suggested that a group could be formed in the future to broaden the existing list of recommended maintenance guidelines.

OLD BUSINESS

A. Green Team Status Report

Commissioner Himmelfarb reported that the Green Team will meet in March to discuss initiatives regarding solar panels and clean energy with the non-profit group Climate Cycle. Himmelfarb also informed the Commission of the Center for Neighborhood Technology's toolbox of environmental-based indices.

OTHER BUSINESS

Transportation Commissioner and City Council candidate Lane Young introduced himself to the Commission.

Commissioner Dennison reminded the Commission that the film *Tapped* is screening at the Library on February 13th. Dennison noted that the next environmental film screening is scheduled for May 22nd and will possibly feature the movie *Blue Gold: World Water Wars*. Park District Representative Meyer indicated that he would explore possibilities to screen a movie at a Park District facility in the summer. Meyer suggested creating a list of the screenings scheduled for the year and making it available to the public at the next screening event.

Commissioner Hill made note of the \$200,000 Great Lakes Restoration Initiative Grant that the Park District will be using for ravine and fish habitat restoration at Millard Park. Hill also reported that the Mayor is considering a Resolution regarding renewable energy that has been put forward by the Great Lakes St. Lawrence Cities Initiative.

Chairman Bogot and Commissioner Matthews discussed possible *Highlander* article topics,

and Bogot volunteered to write an article on phosphorus for an upcoming issue. Staff Liaison Cates noted that she would provide the *Highlander* article publication deadlines.

Staff Liaison Cates provided updates on the proposed text amendments related to lot coverage and Lakefront Commission references. Cates also reported that promotion of the polystyrene pilot program is being spearheaded by the Department of Public Works. An announcement will run in the March edition of the *Highlander* and online, and posters have been posted at the train stations and in City and Park District facilities.

ADJOURNMENT

Chairman Bogot adjourned the meeting at 8:28 p.m.

Respectfully Submitted,

Barbara E. Cates, Secretary

MINUTES APPROVED BY THE NATURAL RESOURCES COMMISSION ON _____

- WITH NO CORRECTIONS _____
- WITH CORRECTIONS _____
(SEE MINUTES OF [_____] MEETING FOR CORRECTIONS)



Memorandum

To: Members of the Natural Resources Commission

From: Barbara E. Cates, Planner
Michael Bernardi, Assistant Civil Engineer

Date: March 2, 2011

Re: Agenda Items for the March 9th Meeting of the Natural Resources Commission

NEW BUSINESS

A. Park District of Highland Park Status Report on Ravine 7L Project

Park District Representative Steve Meyer will present information on this agenda item.

B. Recommendation on Natural Resources Commission Student Representative Applications

Four Highland Park High School students submitted Student Representative Applications for the Commission's consideration. Technical Advisor Michael Bernardi and I interviewed all four candidates, and we will provide a recommendation for the position under separate cover. Staff suggests that the Commission consider the recommendation and vote to forward it to the Mayor for appointment at an upcoming City Council meeting.

C. Status Report on Polystyrene Foam Recycling Pilot Program

Chairman Bogot will present information on this agenda item.

D. Discussion of Bottled Water and Soft Drink Taxation

Commissioner Friedman will present information on this agenda item. Please see the attached memorandum for more details.

E. Discussion of Potential Collaboration with the Highland Park Library for the Annual Green Festival

Chairman Bogot will present information on this agenda item.

F. Discussion of the Proposed Formation of Voluntary Ravine Neighbors Associations

Chairman Bogot will present information on this agenda item.

G. Discussion of 2011 Work Program and Project Assignments

Chairman Bogot will present information on this agenda item. Please keep in mind that the following action items comprise the Commission's established 2011 Work Program:

- * Participate in environmental education events including Arbor Day, Earth Day, July 4th, beach and river cleanups and movie screenings
- * Organize an open house event to educate the public on acceptable on-site stormwater management technologies
- * Collaborate with the Park District of Highland Park to seasonally update the educational displays in the kiosks at Rosewood and Millard Parks

VI. Old Business

A. Green Team Status Report

Commissioner Himmelfarb will present information on this agenda item.

B. Discussion of Potential Movie Titles for the 2011 Movie Series

Commissioner Dennison will present more information on this agenda item. Commissioners are encouraged to bring ideas for other natural resource-themed movies to be used at future movie series screenings.

ATTACHMENTS

- Memorandum on Proposed Bottled Water and Soft Drink Taxation

FRIEDMAN & FRIEDMAN, LTD.

MEMORANDUM

DATE: March 1, 2011
TO: City of Highland Park
Natural Resources Commission
FROM: E. Friedman
RE: Proposed Tax on Bottled Water and Soft Drinks

A. *Background*

On Sunday, February 20, 2011, the City of Highland Park, under the auspices of the Natural Resources Commission, showed the movie *Tapped* at the Highland Park Public Library. That movie made a significant number of points on the very deleterious effects bottled water has on the environment. It also made a number of other observations. These included, *inter alia*:

1. The water bottling companies take all of the water they desire from any source where they happen to be located (and not accidentally). This can and has resulted in significantly lowered water levels for the local population for drinking and other purposes. The lowered water levels also can have a dramatic negative impact on the environment such as dried-up lakes and the such. In times of less rainfall or even drought, this can leave the local population bereft of drinking water.

2. Municipal water supplies, such as that in Highland Park, must undergo EPA testing for purity and healthfulness. In fact, these tests are performed at least 10

Proposed Amendments to the Illinois Eavesdropping Law

times a day and, if circumstances warrant, 20 times a day. In contrast, private bottled water need not undergo any tests whatsoever so long as the water is both bottled and sold in the same state.

3. Under the circumstances set forth in the preceding paragraph, if the water bottlers chose to conduct any testing, whatsoever, they are under no obligation to reveal the results of those tests to anyone (and were shown to be very reluctant to do so).

4. The terms “pure” or “purified” and the like on bottled water have absolutely no meaning whatsoever.

5. The plastic in soft-plastic bottles used for water (and soft drinks) is polyethylene terephthalate (“PET”). It is a petroleum-based polymer (i.e., in this case, plastic)¹. The production of PET from petroleum has apparently caused significant harm, principally cancer and respiratory illnesses, to the individuals residing in the vicinity of plants making PET. (The stacks at the plant shown in the movie were belching huge quantities of gasses and smoke.)

6. Various compounds included in the PET plastic will leach out (and thus are called “leachates”). They have the capability to harm humans.

7. Very large plastic bottles that hold a gallon or more of water (for coolers, for example) typically include BFA’s (bisphenol A). The movie strongly states that BPA’s can and do cause all sorts of serious maladies in growing fetuses and people. The Mayo Clinic has an article on BFA’s at www.mayoclinic.com/health/bpa/AN01955 (not reproduced here because of copyright concerns), which highlights these concerns.

¹ See the article in Wikipedia under Polyethylene terephthalate.

Proposed Amendments to the Illinois Eavesdropping Law

8. The Pacific Ocean, in particular, and the Atlantic Ocean, to a lesser degree, contain huge lakes of PET plastic pieces from bottles. These come from rivers and streams that empty into oceans. Not surprisingly, these huge lakes of plastic pieces have a devastating effect on the fauna in these waters.

9. Bottlers of water will and do sue any governmental unit that even attempts to restrict bottled water in any way. One such suit that was listed in the movie was the action against the City of Chicago for its 5¢ per bottle tax on bottled water. A copy of the decision of the Illinois Appellate Court, First District, in the case, encaptioned *American Beverage Association v. The City of Chicago*, No. 1-09-01511 (Ill.App. 4th Div. 2010) is attached. In rejecting the bottlers' constitutional challenge, the Court stated:

Plaintiffs contend that the City (of Chicago) raised the environmental concerns as an afterthought or an after-the-fact justification. The record indicates otherwise, as the resolution of several Chicago alderman that preceded the bottled tax ordinance declared: the single-use plastic bottles" in which bottled waters are sold are "made from non-renewable petroleum"; "their production creates toxic chemicals and greenhouse gasses"; and they create "litter" that is "nonbiodegradable" and "severely threatens the quality of life for the citizens of this city." Further, even if the environmental concerns were an after-the-fact justification, our supreme court has held "[the] reasons justifying the classification ***need not appear on the face of the statute, and the classification [in the statute] must be upheld if any state of facts reasonably can be conceived that could sustain it.."

(Page 14, case citations omitted.)

As further reasons, dentists that I have talked to are incensed over the introduction and widespread use of bottled water. The great dental health issue decades ago was dental caries (cavities). This started the teeth to ruin, a course that often resulted in a person ending up with complete dentures. The introduction and widespread use of

Proposed Amendments to the Illinois Eavesdropping Law

fluorination in municipal water supplies“solved” the problem and was on the verge of eliminating tooth decay. The use of (nonfluoridated) bottled water has set the clock back decades on this health issue.

Further, the tap water in Highland Park (which clearly meets and exceeds EPA standards) will soon be getting better. The city is installing reverse osmosis filtration for even greater purity. The only concern that I have ever heard from health professionals concerning this improvement is is it really necessary.

Additionally, Highland Park is replacing broken fountains with new ones that have a spigot for filling one’s own bottles.

Lastly, there appears no good reason not to subject bottled soft drinks to the same tax. We certainly do not want to *encourage* the consumption of soft drinks over water by taxing the latter and not the former. Accordingly, the suggestion is to tax it on the same basis as water.

B. Recommendation

In light of the above, I would seek the support of the commission to a bottle tax on both bottled water and soft drinks. The latter is included both to avoid encouraging the drinking of soft drinks instead of bottled water and to encourage the use of tap water.

I would suggest a tax in the amount of 10¢ for each 20 fluid ounces or portion thereof in a bottle. Thus, a quart (with 32 fluid ounces) would bear a tax of 20¢. Obviously, this would have the effect of discouraging the payment of the tax with its concomitant benefits through the use of huge bottles.

Proposed Amendments to the Illinois Eavesdropping Law

At the showing of “Taps” discussed above, the people in attendance were asked their opinion and preference between a tax (such as recommended here), a deposit, or a complete ban. The vote was overwhelmingly in favor of a ban.

However, upon reflection, I believe that a tax would more likely accomplish the objectives discussed above. I believe that an outright ban would simply cause people to shop out of the city. This would not only be self-defeating, but would also reduce Highland Park’s sales tax revenue because of people shopping outside of the city.

As for a deposit, that has all sorts of administrative nightmares for the city, the stores, and the consumers. Bottles would have to specially marked to avoid bottles bought in other locations being “returned” for the deposit. And, it may well not alleviate the other problems discussed above.

Respectfully submitted,

Eugene F. Friedman
Commissioner

**AMERICAN BEVERAGE ASSOCIATION,
INTERNATIONAL BOTTLED WATER ASSOCIATION,
ILLINOIS RETAIL MERCHANTS ASSOCIATION, and
FOOD RETAILERS ASSOCIATION, Plaintiffs-Appellants,**

v.

THE CITY OF CHICAGO, Defendant-Appellee.

No. 1-09-1511

FOURTH DIVISION

September 23, 2010

**Appeal from the Circuit Court of Cook County.No. 08 CH 396Honorable E. James Tolmaire III,
Judge Presiding.**

JUSTICE O'BRIEN delivered the opinion of the court:

Plaintiffs, American Beverage Association, International Bottled Water Association, Illinois Retail Merchants Association, and Food Retailers Association, brought an action challenging the constitutionality of an ordinance enacted by defendant, City of Chicago, that imposed a tax of five cents on each bottle of water purchased at retail. Plaintiffs contended the tax was an unconstitutional occupation tax that violated article VII, section 6(e)(2), of the Illinois Constitution of 1970. (Ill. Const. 1970, art. VII, §6(e)(2)). Plaintiffs also contended the tax violated the uniformity clause of the Illinois Constitution. Ill. Const. 1970, art. IX, §2. The circuit court granted summary judgment in favor of defendant. Plaintiffs appeal. We affirm.

On September 5, 2007, a group of Chicago aldermen adopted a resolution stating sales of bottled water are "growing approximately 7 to 10 percent each year," and emphasizing: "Single-use plastic bottles are ubiquitous and non-biodegradable. They are made from non-

Page 2

renewable petroleum and their production creates toxic chemicals and greenhouse gases. The resulting plastic litter introduced into the environment severely threatens the quality of life for the citizens of this city." The resolution requested "the Committee on Finance hold hearings to determine the efficacy of a bottled water surcharge to be used, in part, to defray the cost associated with collecting and recycling

single-use plastic water bottles and to mitigate the negative consequences their unchecked manufacture and use will ultimately produce."

On November 13, 2007, the City of Chicago (the City) enacted the Chicago Bottled Water Tax Ordinance, which provides for a five-cent-per-bottle tax on the sale of bottled water within the City. Chicago Municipal Code §3-43-030 (2008). The tax must be collected from the retail dealer by the wholesale dealer, who remits the tax to the City. Chicago Municipal Code §3-43-050(A), (B) (2008).

The ordinance defines "bottled water" as "all water which is sealed in bottles offered for sale for human consumption" (Chicago Municipal Code §3-43-020 (2008)) and states the term does not include any beverage defined as a "soft drink" under section 3-45-020 of the Chicago Soft Drink Tax Ordinance. Chicago Municipal Code §3-45-020 (2008). To implement the ordinance, the City's Department of Revenue issued the "Chicago Bottled Water Tax Guide," which lists bottled beverages that the ordinance does not tax, including soft drinks as well as vitamin water, mineral water, and "[o]ther products [having] features such as flavoring, vitamins, caffeine, or nutritional additives."

The ordinance requires the City to deposit all proceeds of the bottled water tax into the City's corporate fund. Chicago Municipal Code §3-43-140 (2008). For fiscal year 2008, the City

Page 3

made appropriations from that fund for programs that include recycling collection and education, environmental enforcement and remediation, and energy conservation.

On January 4, 2008, plaintiffs sought a declaratory judgment that the bottled water tax constituted an unconstitutional occupation tax in violation of article VII, section 6(e)(2), of the Illinois Constitution and the tax also violated the article IX, section 2, uniformity clause of the Illinois Constitution. The parties filed cross-motions for summary judgment. The circuit court found the ordinance to be valid and constitutional, granted the City's motion for summary judgment, and denied plaintiffs' motion. Plaintiffs filed this timely appeal.

Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits, when viewed in the light most favorable to the nonmovant, reveal no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. State Farm Fire & Casualty Co. v. Martinez, 384 Ill. App. 3d 494, 497-98 (2008). When, as here, the parties file cross-motions for summary judgment, they agree no genuine issue of material fact exists and only a question of law is involved, and they invite the court to decide the issues based on the record. Martinez, 384 Ill. App. 3d at 498. Review is de novo. Martinez, 384 Ill. App. 3d at 498.

First, plaintiffs contend the bottled water tax is an occupation tax that has not been affirmatively authorized by the General Assembly and thus violates article VII, section 6(e)(2), of the Illinois Constitution, which states:

"(e) A home rule unit shall have only the power that the General Assembly may provide by law *** to license for revenue or impose taxes upon or measured

Page 4

by income or earnings or upon occupations." Ill. Const. 1970, art. VII, §6(e)(2).

Absent specific authorization from the General Assembly, a home rule unit may not impose a tax on an occupation. Commercial National Bank of Chicago v. City of Chicago, 89 Ill. 2d 45, 51 (1982).

"An occupation[] tax is one that in practical effect imposes a tax upon a given occupation or the provider of particular services." Mr. B's, Inc. v. City of Chicago, 302 Ill. App. 3d 930, 934 (1998). "Services" is defined as including all sales transactions other than sales of tangible property. Mr. B's, 302 Ill. App. 3d at 934. By contrast, a sales tax is a tax on the sale of tangible personal property. Mr. B's, 302 Ill. App. 3d at 934.

A tax on tangible personal property is not considered an occupation tax when the ordinance enacting it declares its legal incidence falls on the purchaser, rather than the seller. Archer Daniels Midland Co. v. City of Chicago, 294 Ill. App. 3d 186, 191 (1997). In the present case, the five-cent tax on each bottle of water purchased at retail is a tax on the sale of tangible personal property. The ordinance enacting it expressly declares "[t]his tax shall be paid by the purchaser" (Chicago Municipal Code §3-43-030 (2008)) and "[t]he ultimate incidence and liability for payment of the tax *** is to be borne by the purchaser" (Chicago Municipal Code §3-43-040 (2008)). As such, the tax on bottled water is a sales tax and not an occupation tax.

Plaintiffs argue, though, the tax on bottled water is an occupation tax because the ordinance enacting it expressly provides the responsibility for collecting and returning the tax is imposed solely on wholesale and retail bottled water dealers, the practical effect of which is to place the legal incidence of the tax on them. In support, plaintiffs cite Commercial National

Page 5

Bank of Chicago v. City of Chicago, 89 Ill. 2d 45 (1982), in which the supreme court examined whether a Chicago service tax ordinance was an unconstitutional attempt to

impose an occupation tax without authorization by the General Assembly. The supreme court noted the ordinance expressly imposed the tax on the purchaser (Commercial National Bank, 89 Ill. 2d at 51), and other cases had upheld home rule taxes in which the ordinances had placed the legal incidence of the taxes on the purchasers (Commercial National Bank, 89 Ill. 2d at 62-63). However, in those other cases, the tax was upon the transfer of a tangible object (such as cigarettes and alcoholic beverages) and were the type of taxes that the 1970 Illinois constitutional convention had perceived to be within the power of home rule units to impose. Commercial National Bank, 89 Ill. 2d at 63. In contrast, the debates of the delegates to the 1970 Illinois constitutional convention clearly indicated a tax on services constituted an unconstitutional occupation tax and did not fall within the power of home rule units to impose. Commercial National Bank, 89 Ill. 2d at 63-65.

The supreme court further noted the simple declaration in the service tax ordinance that the tax was imposed on the purchasers of services was not sufficient to avoid the restrictions imposed by the constitution. Commercial National Bank, 89 Ill. 2d at 68. The supreme court stated "the practical operation of the entire ordinance, not just the simple declaration that the tax is on the purchaser, must be judged against the intent expressed by the delegates in the constitutional convention in determining whether the tax imposed by the ordinance falls within the proscription of section 6(e) of article VII." Commercial National Bank, 89 Ill. 2d at 65. In conducting this "practical-effect" analysis, the supreme court determined all of the legal

Page 6

obligations imposed upon a seller by an occupation tax are also imposed on the seller of services by the Chicago service tax ordinance. Commercial National Bank, 89 Ill. 2d at 66. Accordingly, the supreme court held the Chicago service tax was an occupation tax prohibited under section 6(e)(2) of article VII. Commercial National Bank, 89 Ill. 2d at 68.

However, in a subsequent case, the supreme court held the practical-effect analysis is not appropriate where the tax at issue was one that the constitutional convention intended to allow to home rule units. In Illinois Gasoline Dealers Ass'n v. City of Chicago, 119 Ill. 2d 391 (1988), the plaintiffs Illinois Gasoline Dealers Association and Midwest Petroleum Marketers Association challenged the constitutionality of the "Chicago Vehicle Fuel Tax." The main provision of the Chicago Vehicle Fuel Tax Ordinance reads:

" 'A tax is hereby imposed upon the privilege of purchasing or using, in the City of Chicago, vehicle fuel purchased in a sale at retail. The tax shall be at a rate of five cents per gallon of vehicle fuel. The ultimate incidence of and liability for payment of the tax shall be upon the purchaser or user of the vehicle fuel, and nothing in this chapter shall be construed to impose a tax upon the occupation of selling or distributing vehicle fuel. It shall be a violation of this chapter for any distributor or retail dealer to fail to add this tax to the retail price of vehicle fuel or to absorb the tax.' " Illinois Gasoline Dealers, 119 Ill. 2d at 395, quoting Chicago Municipal Code §200.10-2 (1986).

The ordinance imposes a duty on fuel dealers to collect the tax and keep collection records and subjects them to various penalties for failing to comply with the requirements of the ordinance. Illinois Gasoline Dealers, 119 Ill. 2d at 395-96.

Page 7

The plaintiffs brought an action challenging the tax as an impermissible occupation tax in violation of section 6(e)(2) of article VII. Illinois Gasoline Dealers, 119 Ill. 2d at 398. The trial

court ruled the vehicle fuel tax was not an occupation tax. Illinois Gasoline Dealers, 119 Ill. 2d at 398. On appeal to the supreme court, plaintiffs argued, as in Commercial National Bank, the vehicle fuel tax was an occupation tax because the practical effect of the ordinance was to place the legal incidence of the tax on those engaged in the business of selling vehicle fuel. Illinois Gasoline Dealers, 119 Ill. 2d at 399.

In analyzing the issue, the supreme court declined to apply the practical-effect analysis utilized in Commercial National Bank:

"[The] practical-effect analysis *** is not appropriate in considering the tax now before us because, as disclosed by the constitutional convention debates, it is not a tax which the constitutional convention intended to deny to home rule units. The report of the Local Government Committee of the convention sets forth several examples of permissible home rule taxes. Significantly, the report stated under a city's home rule power, it could impose a tax at a fixed rate per gallon on gasoline and that taxes upon hotel rooms, liquor, food, drug, etc., were permissible. (7 Record of Proceedings, Sixth Illinois Constitutional Convention 1655-56.) The Chicago vehicle fuel tax is a tax at a fixed rate of five cents per gallon on vehicle fuel. The shifting of the incidence of the tax is not here an attempt to evade the intent of the constitutional convention to prohibit a tax on the sale of services." (Emphasis in original.) Illinois Gasoline Dealers, 119 Ill. 2d at 400.

Page 8

As the Chicago vehicle fuel tax was a permissible tax on the transfer of a tangible object (vehicle fuel) and was not a tax on services, it was substantially similar to other home rule taxes that had been upheld. Illinois Gasoline Dealers, 119 Ill. 2d at 401. In those cases, "significance was attached" to the provisions in the ordinances indicating the legal incidence of the taxes were on the purchaser (Illinois Gasoline Dealers, 119 Ill. 2d at 401), a provision that also was present in the Chicago Vehicle Fuel Tax Ordinance. Illinois Gasoline Dealers, 119 Ill. 2d at 395. The supreme court concluded the vehicle fuel tax was a proper home rule tax "consistent with the consensus expressed in the constitutional convention" and was not an occupation tax. Illinois Gasoline Dealers, 119 Ill. 2d at 401.

Similarly, in the present case, the practical-effect analysis is not appropriate for considering the tax on bottled water because it is not a tax that the constitutional convention intended to deny home rule units. The constitutional convention intended for home rule units to impose taxes on "food" (see 7 Record of Proceedings, Sixth Illinois Constitutional Convention 1655-56), and plaintiffs concede for purposes of this case bottled water is considered "grocery store food," ye., food for human consumption to be consumed off the premises where it is sold. As such, bottled water falls within the City's home rule power to tax, and any shifting of the incidence of the tax is not an attempt to evade the intent of the constitutional convention to prohibit a tax on the sale of services. As the tax is on the transfer of a tangible object (bottled water) and is not a tax on services, the provision in the ordinance indicating the legal incidence of the tax falls on the purchaser is controlling. Therefore, the tax on bottled water is not an occupation tax.

Page 9

Next, plaintiffs contend the City is prohibited from implementing the bottled water tax by section 8-11-1 of the Illinois Municipal Code, which states in pertinent part:

"The corporate authorities of a home rule municipality may impose a tax upon all persons engaged in the business of selling tangible personal property, other than an item of tangible personal property titled or registered with an agency of this State's government, at retail in the municipality on the gross receipts from these sales made in the course of such business. If imposed, the tax shall only be imposed in 1/4% increments. On and after September 1, 1991, this additional tax may not be imposed on the sales of food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food that has been prepared for immediate consumption)." (Emphasis added.) 65 ILCS 5/8-11-1 (West 2002).

Plaintiffs contend the emphasized portion of section 8-11-1 expressly bars home rule entities from taxing retail sales of food to be consumed off the premises where it is sold (*i.e.*, "grocery store food" like the bottled waters at issue here.)

The primary rule of statutory construction is to ascertain and give effect to the true intent of the legislature. Augustus v. Estate of Somers, 278 Ill. App. 3d 90, 97 (1996). In determining legislative intent, a court should consider the statutory language first, giving the terms of the statute their ordinary meaning. MQ Construction Co. v. Intercargo Insurance Co., 318 Ill. App. 3d 673, 681 (2000). Where the language of the statute is clear, it will be given effect without resort to other aids for construction. Augustus, 278 Ill. App. 3d at 97. Because the construction of a statute is a question of law, our review is *de novo*. O'Loughlin v. Village of River Forest,

338 Ill. App. 3d 189, 191 (2003).

Our examination of the language of section 8-11-1 indicates the first sentence expressly provides a home rule municipality may impose an occupation tax on the persons selling tangible personal property at retail in the municipality on the "gross receipts from these sales made in the course of such business." 65 ILCS 5/8-11-1 (West 2002). The second sentence provides the tax shall be imposed only in 1/4% increments. The third sentence states on and after September 1, 1991, this "additional tax," *ye..*, the occupation tax on gross receipts referenced in the first two sentences, may not be imposed on the sale of grocery store food. 65 ILCS 5/8-11-1 (West 2002).

Thus, section 8-11-1 prohibits only occupation taxes on grocery store food measured by gross receipts. Section 8-11-1 does not apply here because, as discussed above, the bottled water tax is not an occupation tax imposed on the persons selling bottled water but rather is a sales tax. Also, section 8-11-1 does not apply here because the bottled water tax is not measured by the gross receipts from the sales of bottled water, but instead is a flat amount (five cents) on each bottle sold.

Plaintiffs also contend section 8-11-6a of the Illinois Municipal Code preempts the bottled water tax. The first sentence of section 8-11-6a states in pertinent part:

"Except as provided in [section 8-11-1,] on and after September 1, 1990, no home rule municipality has the authority to impose, pursuant to its home rule authority, a retailer's occupation tax, service occupation tax, use tax, sales tax or other tax on the use, sale or purchase of tangible personal property based on the gross receipts from such sales or the selling or purchase price of said tangible personal property." (Emphasis added.) 65

Page 11

ILCS 5/8-11-6a (West 2008).

Plaintiffs contend since the word "or" is disjunctive, the words prior to "or" in section 8-11-6a are to be taken separately from the words that follow. Under plaintiffs' analysis, we first look at only the words in section 8-11-6a prior to "or," which are: "Except as provided in [section 8-11-1,] on and after September 1, 1990, no home rule municipality has the authority to impose, pursuant to its home rule authority, a retailer's occupation tax, service occupation tax, use tax, sales tax." 65 ILCS 5/8-11-6a (West 2008). Plaintiffs contend this portion of the sentence categorically preempts all retailer's occupation taxes, service occupation taxes, use taxes and sales taxes, including the bottled water tax at issue here, regardless of whether those taxes are flat per unit taxes or whether they are based on gross receipts. Next, under plaintiffs' analysis, we look at the words in section 8-11-6a after "or", which preempt any "other tax on the use, sale or purchase of tangible personal property based on the gross receipts from such sales or the selling or purchase price of said tangible personal property." (Emphasis added.) 65 ILCS 5/8-11-6a (West 2008). Plaintiffs contend this portion preempts any tax other than the retailer's occupation tax, service occupation tax, use tax or sales tax where such other tax is on the use, sale or purchase of tangible personal property and is based on gross receipts or the selling or purchase price. In effect, plaintiffs contend section 8-11-6a preempts all retailer's occupation taxes, service occupation taxes, use taxes, and sales taxes (including the bottled water tax) regardless of how the tax is measured, but preempts any other tax only if those other taxes are measured by gross receipts or the selling or purchase price.

The City counters the legislature's reference to gross receipts and price in the first

Page 12

sentence of section 8-11-6a applies not only to the phrase "other tax" that appears after the word

"or," but also to the phrases "retailer's occupation tax," "service occupation tax," "use tax," and "sales tax" that appear before the word "or." Under the City's analysis, only those retailer's occupation taxes, service occupation taxes, use taxes, and sales taxes that are measured by gross receipts or the selling or purchase price are preempted. Since the bottled water tax is not measured by gross receipts or the selling or purchase price, the City contends it is not preempted.

We need not delve into an extensive analysis of the first sentence of section 8-11-6a, because the second sentence clarifies the General Assembly's intent. The second sentence states:

"Notwithstanding the foregoing, this Section does not preempt any home rule imposed tax such as the following: (1) a tax on alcoholic beverages, whether based on gross receipts, volume sold or any other measurement; (2) a tax based on the number of units of cigarettes or tobacco products ***; (3) a tax, however measured, based on the use of a hotel or motel room or similar facility; (4) a tax, however measured, on the sale or transfer of real property; (5) a tax, however measured, on lease receipts; (6) a tax on food prepared for immediate consumption and on alcoholic beverages sold by a business which provides for on premise consumption of said food or alcoholic beverages; or (7) other taxes not based on the selling or purchase price or gross receipts from the use, sale or purchase of tangible personal property." (Emphasis added.) 65 ILCS 5/8-11-6a (West 2008).

Thus, exception (7) in the second sentence of section 8-11-6a makes clear that outside the

six preceding exceptions, section 8-11-6a does not preempt taxes that are not based on the selling

Page 13

or purchase price or gross receipts from the use, sale or purchase of tangible personal property. Exception (7) excepts the bottled water tax from preemption, as it is a flat tax of five cents per bottle and is not based on the selling or purchase price or gross receipts from the use, sale or purchase of tangible personal property.

Next, plaintiffs contend the bottled water tax violates the uniformity clause of the Illinois Constitution, which states:

"In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable." Ill. Const. 1970, art. IX, §2.

To survive scrutiny under the uniformity clause, a nonproperty tax classification must pass a two-prong test. First, the classification must be based on a real and substantial difference between those taxed and those not taxed. Second, the classification must be reasonably related to the object of the legislation or to public policy. *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 153 (2003).

In the present case, the ordinance defines "bottled water" as "all water which is sealed in bottles offered for sale for human consumption." See Chicago Municipal Code §3-43-020 (2008). The City has issued a "Chicago Bottled Water Tax Guide" (the Guide) intended to help identify the types of bottled water that are taxable. The Guide states "[i]n general, all brands of non carbonated bottled water intended for human consumption" are taxable. The Guide also lists

the following examples of nontaxable items: (1) any beverage that qualifies as a "Soft Drink" per

Page 14

the Chicago Soft Drink Tax Ordinance; (2) Pedialyte; (3) Gatorade; (4) vitamin water; (5) Sobe Life Water; (6) Propel Fitness Water; (7) Water Joe; (8) Perrier, seltzer water, club soda or tonic water; (9) mineral water (as defined by the Food and Drug Administration); (10) distilled water; (11) other products similar to those listed above due to carbonation and/or other features such as flavoring, vitamins, caffeine, or nutritional additives; and (12) water provided by home or business water delivery services, where the water is delivered in a reusable container that is not sold with the water.

Thus, the City taxes noncarbonated bottled water, but does not tax any beverage marketed for certain specific features such as flavoring, vitamins, caffeine, or nutritional additives. As a real and substantial difference exists between those items taxed and those not taxed, the bottled water tax satisfies the first prong of the uniformity clause.

The second prong of the uniformity clause is the classification "bear[s] some reasonable relationship to the object of the legislation or to public policy." *Arangold Corp.*, 204 Ill. 2d at 153. In the present case, the City enacted the bottled water tax to raise revenue in a manner that discourages consumers from buying noncarbonated bottled water, both to conserve energy from nonrenewable sources and to reduce the discharge of toxic contaminants and litter. The classification is reasonably related to those purposes and therefore satisfies the second prong of the uniformity clause.

Plaintiffs contend the City raised the environmental concerns as an afterthought or an after-the-fact justification. The record indicates otherwise, as the resolution of several Chicago alderman that preceded the bottled tax ordinance declared: the "single-use plastic bottles" in

Page 15

which bottled waters are sold are "made from non-renewable petroleum"; "their production creates toxic chemicals and greenhouse gases"; and they create "litter" that is "nonbiodegradable" and "severely threatens the quality of life for the citizens of this city." Further, even if the environmental concerns were an after-the-fact justification, our supreme court has held " '[t]he reasons justifying the classification *** need not appear on the face of the statute, and the classification must be upheld if any state of facts reasonably can be conceived that would sustain it.' " Empress Casino Joliet Corp. v. Giannoulis, 231 Ill. 2d 62, 76 (2008), quoting Department of Revenue v. Warren Petroleum Corp., 2 Ill. 2d 483, 490 (1954). As discussed above, the environmental concerns are sufficient to sustain the classification.

Plaintiffs also contend the bottled water tax is "grossly underinclusive" because it taxes only noncarbonated bottled water and not other products sold in disposable containers. However, the proper inquiry is not whether the City should have taxed other products, but whether a reasonable relationship exists between the product taxed and the justification for the tax. Arangold Corp., 204 Ill. 2d at 155. As discussed, such a reasonable relationship exists in this case; accordingly, the bottled water tax satisfies the requirements of the uniformity clause.

For the foregoing reasons, we affirm the circuit court.

Affirmed.

O'BRIEN, J., with FROSSARD, J., and LAVIN, J., concurring.

CHAPTER 3-43 CHICAGO BOTTLED WATER TAX*

* **Editor's note** – Coun. J. 3-31-04, p. 20916, § 1.1, repealed former Ch. 3-43, which pertained to tax on sale of carry-out food.

- 3-43-010 Title.**
- 3-43-020 Definitions.**
- 3-43-030 Tax imposed.**
- 3-43-040 Liability for payment.**
- 3-43-050 Collection.**
- 3-43-060 Tax payments and returns.**
- 3-43-070 Returns and payments required upon implementation of the tax and after future tax rate increases.**
- 3-43-080 Books and records.**
- 3-43-090 Payment of tax required.**
- 3-43-100 Authority to appoint collection agents.**
- 3-43-110 Exemptions.**
- 3-43-120 Registration.**
- 3-43-130 Supplementary provisions.**
- 3-43-140 Deposit of funds.**

3-43-010 Title.

This chapter shall be known and cited as the “Chicago Bottled Water Tax Ordinance,” and the tax herein imposed shall be known and cited as the “Chicago Bottled Water Tax.”

(Added Coun. J. 11-13-07, p. 15814, § 2)

3-43-020 Definitions.

Whenever any of the following words, terms or phrases are used in this chapter, they shall have the following meanings:

“Bottle” means any closed container which is labeled by a manufacturer of bottled water and used to contain or

convey bottled water.

“Bottled water” means all water which is sealed in bottles offered for sale for human consumption. The term does not include any beverage defined as a “soft drink” under Section 3-45-020 of the Chicago Soft Drink Tax Ordinance, Chapter 3-45 of this Code.

“Department” or “department of revenue” means the department of revenue of the City.

“Director” or “director of revenue” means the director of revenue of the City.

“Manufacturer” means any processor, bottler or other person who fills or refills a bottle with bottled water and others engaged in purifying, filtrating or any other alteration of water for the purpose of selling or reselling bottled water.

“Person” is defined as provided in Section 1-4-090 of this Code.

“Purchaser” means any person who purchases in a retail sale.

“Sale” or “purchase” means any transfer of ownership or title or both, any exchange or barter, in any manner or by any means whatsoever for a valuable consideration.

“Retail bottled water dealer” or “retailer” means any person who engages in the business of the retail sale of bottled water in the City.

“Retail sale” means any sale to a person for use or consumption, and not for resale.

“Wholesale bottled water dealer” or “wholesaler” means any person who engages in the business of selling or supplying bottled water to any person for resale in the City.

(Added Coun. J. 11-13-07, p. 15814, § 2)

3-43-030 Tax imposed.

A tax is hereby imposed on the retail sale of bottled water in the City. This tax shall be paid by the purchaser, and nothing in this chapter shall be construed to impose a tax on the occupation of retail or wholesale bottled water dealer. The tax shall be levied at the rate of \$0.05 per bottle.

(Added Coun. J. 11-13-07, p. 15814, § 2)

3-43-040 Liability for payment.

The ultimate incidence and liability for payment of the tax herein levied is to be borne by the purchaser of bottled water. It shall be a violation of this chapter for a retail bottled water dealer to fail to include the tax imposed herein in the sale price of the bottled water, or to otherwise absorb such tax.

(Added Coun. J. 11-13-07, p. 15814, § 2)

3-43-050 Collection.

A. Except as otherwise provided herein, the tax levied herein shall be collected by each wholesale bottled water dealer who sells bottles of water to a retail bottled water dealer located in the City. The wholesale bottled water dealer shall remit the tax and file returns in accordance with Section 3-43-060 of this chapter.

B. Any wholesale bottled water dealer who shall pay the tax levied by this chapter shall collect the tax from each

retail bottled water dealer in the city to whom the sale of said bottled water is made, and any such retail bottled water dealer shall in turn then collect the tax from the retail purchaser of said bottled water.

C. If any retailer located in the City shall receive or otherwise obtain bottled water upon which the tax imposed herein has not been collected by any wholesale bottled water dealer, then the retailer shall collect such tax and remit it directly to the department of revenue in accordance with Section 3-43-060 of this chapter.

D. If a wholesale bottled water dealer sells bottled water to a purchaser for use or consumption and not for resale, such wholesale bottled water dealer shall collect the tax imposed herein from such purchaser and remit it to the department in the same manner as sales to retail bottled water dealers.

(Added Coun. J. 11-13-07, p. 15814, § 2)

3-43-060 Tax payments and returns.

A. All tax payments and remittances shall be made in accordance with either Section 3-4-187 (payment of actual tax liabilities) or Section 3-4-188 (payment of estimated taxes).

B. All tax returns shall be filed with the department on an annual basis on or before August 15 of each year in accordance with Sections 3-4-186 and 3-4-189 of this Code.

(Added Coun. J. 11-13-07, p. 15814, § 2)

3-43-070 Returns and payments required upon implementation of the tax and after future tax rate increases.

A. On or before January 25, 2008, every retail bottled water dealer shall file with the department, on a form prescribed by the director, a tax return reporting the inventory of bottled water in the retail dealer's possession or control on the effective date of this section. The retail dealer shall include with the tax return any tax due on the inventory of bottled water in its control and possession for which all applicable tax has not been collected. The retail dealer shall in turn collect the tax from its retail purchasers.

B. Every retail bottled water dealer who possesses bottled water purchased prior to the effective date of a Chicago bottled water tax increase shall file with the department, on a form prescribed by the director, a tax return attesting to the quantities of bottled water in its possession as of the last day prior to the tax increase and pay to the department the amount of tax due as a result of each rate increase. The retail dealer shall in turn collect the tax from its retail purchasers. Each such tax return and payment due under this subsection shall be filed and received by the department by the 24th day following the effective date of each tax increase.

C. Every retail bottled water dealer required to file a tax return under subsection A or B of this section who does not file such tax return by its due date, or alternatively does not provide all required information on such tax return, or fails to pay all required tax due computed thereon, shall be subject to a penalty of \$100.00 per business location required to be reported on the tax return, in addition to all other penalties and interest that may be due under the provisions of the Uniform Revenue Procedures Ordinance, Chapter 3-4 of this Code.

D. If the director determines that a party to whom the penalty in subsection C of this section has accrued had reasonable cause for paying late, underpaying the applicable tax, or filing a late or incomplete tax return, then the applicable penalty shall be waived.

E. The director, or his or her designee, may at any time during the statute of limitations outlined in Section 3-4-120 of this Code, examine the books and records of any party required to file a tax return under this section and may issue a tax determination and assessment to the party as per Section 3-4-160 of this Code if a determination is made that any amount of tax, penalty or interest is due.

F. Every party required to file a tax return under subsection A or B of this section who files a complete tax return

by its due date and makes timely payment of the amount computed thereon shall be eligible to retain a commission in the amount of one percent of the tax computed due thereon.

(Added Coun. J. 11-13-07, p. 15814, § 2)

3-43-080 Books and records.

Every person required to collect the tax imposed by this chapter shall keep accurate books and records of its business or activity, including original source documents and books of entry denoting the transaction that gave rise, or may have given rise, to the tax liability or any exemption that may be claimed. All such books and records shall be kept in the English language and, at all times during business hours of the day, shall be subject to and available for inspection by the department.

(Added Coun. J. 11-13-07, p. 15814, § 2)

3-43-090 Payment of tax required.

The failure of the wholesale or retail bottled water dealer to collect the tax herein imposed shall not relieve the purchaser of his duty to pay it. If the wholesale and retail bottled water dealers fail to collect the tax, the purchaser shall be required to pay it directly to the department in the same manner and form as a retail bottled water dealer.

(Added Coun. J. 11-13-07, p. 15814, § 2)

3-43-100 Authority to appoint collection agents.

The director may appoint one or more persons within or without the City as collection agents for the tax herein levied.

(Added Coun. J. 11-13-07, p. 15814, § 2; Amend Coun. J. 11-19-08, p. 48243, Art. I, § 4)

3-43-110 Exemptions.

A. This tax shall not apply to purchases of bottled water wherein the purchaser is a passenger on an interstate carrier; nor shall this tax apply to the extent it would violate the United States Constitution or the Constitution of the State of Illinois.

B. It shall be presumed that all sales of bottled water from wholesale or retail bottled water dealers are subject to tax under this chapter until the contrary is established. The burden of proving that such is not taxable hereunder shall be upon the person so claiming.

(Added Coun. J. 11-13-07, p. 15814, § 2)

3-43-120 Registration.

Every wholesale bottled water dealer in existence on January 1, 2008, shall register with the department before February 1, 2008. Every wholesale bottled water dealer commencing business after January 1, 2008 shall register with the department within 30 days after the date of commencing such business.

(Added Coun. J. 11-13-07, p. 15814, § 2)

3-43-130 Supplementary provisions.

Whenever not inconsistent with the provisions of this chapter, or whenever this chapter is silent, the provisions of the Uniform Revenue Procedures Ordinance, Chapter 3-4 of this Code, as amended, shall apply and supplement this chapter.

(Added Coun. J. 11-13-07, p. 15814, § 2)

3-43-140 Deposit of funds.

All proceeds resulting from the imposition of this tax, including; interest and penalties, shall be deposited in the City's corporate fund.

(Added Coun. J. 11-13-07, p. 15814, § 2)

Disclaimer:

This Code of Ordinances and/or any other documents that appear on this site may not reflect the most current legislation adopted by the Municipality. American Legal Publishing Corporation provides these documents for informational purposes only. These documents should not be relied upon as the definitive authority for local legislation. Additionally, the formatting and pagination of the posted documents varies from the formatting and pagination of the official copy. The official printed copy of a Code of Ordinances should be consulted prior to any action being taken.

For further information regarding the official version of any of this Code of Ordinances or other documents posted on this site, please contact the Municipality directly or contact American Legal Publishing toll-free at 800-445-5588.

© 2011 American Legal Publishing Corporation
techsupport@amlegal.com
1.800.445.5588.

CHAPTER 3-45 CHICAGO SOFT DRINK TAXES

Article I.

- 3-45-010 Title.
- 3-45-020 Definitions.
- 3-45-030 Rules and regulations.

Article II.

- 3-45-040 Tax imposed.
- 3-45-050 Collection of tax.

Article III.

- 3-45-060 Tax imposed – Fountain soft drinks.
- 3-45-070 Sales not subject to tax.
- 3-45-080 Collection of fountain soft drink tax.
- 3-45-090 Report of sales and tax remittances.
- 3-45-100 Commission for collecting and remitting tax.
- 3-45-110 Reserved.
- 3-45-120 Registration.
- 3-45-130 Books and records.
- 3-45-140 Application of Uniform Revenue Procedures Ordinance.

ARTICLE I.

3-45-010 Title.

This chapter shall be known and may be cited as the “Chicago Soft Drink Tax Ordinance”.

The taxes imposed by this chapter are imposed in addition to all other taxes imposed by the City of Chicago, the State of Illinois or any other municipal corporation or political subdivision of the State of Illinois. Nothing in this chapter shall be construed to impose a tax upon any business or activity which, under the constitutions of the United States and the State of Illinois, may not be made the subject of taxation by the city.

(Added Coun. J. 12-15-93, p. 43839)

3-45-020 Definitions.

When any of the following words or terms are used in this chapter, they shall have the meaning ascribed to them in this section:

- A. "City" means the City of Chicago, Illinois.
- B. "City department" means the department of revenue of the city.
- C. "Director" or "director of revenue" means the director of revenue of the city.
- D. "Fountain soft drink" means any soft drink that is prepared by a retail seller by mixing soft drink syrup or concentrate with water, by hand or through a soft drink dispensing machine, at or near the point and time of sale to retail purchasers.
- E. "Soft drink" has the meaning set forth in Section 2-10 of the Illinois Retailers' Occupation Tax Act, as may be amended from time to time, except that this term shall not be limited to drinks contained in a closed or sealed bottle, can, carton or container.
- F. "Illinois Retailers' Occupation Tax Act" means the Retailers' Occupation Tax Act, as amended, 35 ILCS 120/1, et seq.
- G. "Retail seller" or "retailer" means any person that engages in the business of selling fountain soft drinks in the city.
- H. "Sale at retail" means any transfer of ownership or title for valuable consideration to a purchaser for the purpose of use or consumption, and not for the purpose of resale.
- I. "Soft drink dispensing machine" means a device which mixes soft drink syrup or concentrate with water and dispenses the resulting mixture into an open container as a ready to drink soft drink.
- J. "Soft drink supplier" or "supplier" means any person that sells soft drink syrup or concentrate to retail sellers for the purpose of resale as fountain soft drinks.

(Added Coun. J. 12-15-93, p. 43839)

3-45-030 Rules and regulations.

The director is authorized to adopt, promulgate and enforce rules and regulations pertaining to

the administration and enforcement of this chapter.

(Added Coun. J. 12-15-93, p. 43839)

ARTICLE II.

3-45-040 Tax imposed.

Pursuant to Section 8-11-6(b) of the Illinois Municipal Code, as amended, a tax is imposed on all persons engaged in the business of selling soft drinks other than fountain soft drinks at retail in the city. The rate of the tax shall be three percent of the gross receipts from sales of soft drinks other than fountain soft drinks made in the course of such business.

(Added Coun. J. 12-15-93, p. 43839)

3-45-050 Collection of tax.

Consent and authority are given to the Illinois Department of Revenue to collect, administer and enforce the tax imposed by Section 3-45-040 of this chapter and all civil penalties that may be assessed as an incident thereof for and on behalf of the city pursuant to Section 8-11-6(b) of the Illinois Municipal code, as amended.

(Added Coun. J. 12-15-93, p. 43839)

ARTICLE III.

3-45-060 Tax imposed – Fountain soft drinks.

Pursuant to Section 8-11-6(b) of the Illinois Municipal Code, as amended, a tax is imposed on all persons engaged in the business of selling fountain soft drinks at retail in the city. The rate of the tax shall be nine percent of the cost price of the fountain soft drinks sold at retail in the city.

For purposes of this section, “cost price” means the consideration paid by a retail seller for the purchase of soft drink syrup or concentrate which is designed to be further mixed with water before it is consumed as a soft drink, valued in money, whether paid in money or otherwise, including cash, credits and services, determined without any deduction on account of any of the soft drink supplier’s costs or other expenses.

(Added Coun. J. 12-15-93, p. 43839)

3-45-070 Sales not subject to tax.

Notwithstanding any other provision of this Article III, if a sale of a fountain soft drink is not subject to the Illinois Retailers’ Occupation Tax Act then it is not subject to the tax imposed by Section 3-45-060 of this chapter.

(Added Coun. J. 12-15-93, p. 43839)

3-45-080 Collection of fountain soft drink tax.

A. It shall be the duty of every soft drink supplier to collect the tax imposed by Section 3-45-060 of this chapter from retailers to whom they sell soft drink syrup or concentrate, and to remit the tax to the city department pursuant to Section 3-45-090. The supplier shall collect the tax by adding the tax to the selling price of soft drink syrup or concentrate to be used to prepare fountain soft drinks for sale in the city.

B. If a supplier fails to collect or remit the tax required to be collected by this section, the supplier shall be liable to the city for the amount of such tax (unless the retail seller has paid such tax directly to the city department).

(Added Coun. J. 12-15-93, p. 43839)

3-45-090 Monthly report of sales and tax remittances.

A. On or before the last day of each calendar month beginning May, 1994, every soft drink supplier shall file with the city department a sworn report of soft drink syrup and concentrate sales made to retailers during the immediately preceding calendar month. The report shall be in a form prescribed by the director, containing such information as the director may reasonably require. Each report of sales shall be accompanied by a remittance of the tax required to be collected by this article.

B. If a supplier fails to collect the tax imposed by Section 3-45-060 from a retail seller, the retail seller shall file a monthly report of soft drink syrup and concentrate purchases and shall pay the tax directly to the city department on or before the date required by Section 3-45-090(A).

C. Notwithstanding any other provision of this chapter, for all periods beginning on or after January 1, 2000, (1) all tax returns shall be filed with the department on an annual basis on or before August 15 of each year in accordance with Sections 3-4-186 and 3-4-189 of this Code, (2) all tax payments and remittances shall be made in accordance with either Section 3-4-187 (payment of actual tax liabilities) or Section 3-4-188 (payment of estimated taxes), and (3) the provisions of Sections 3-4-186, 3-4-187, 3-4-188 and 3-4-189 shall control over any contrary provisions in this chapter regarding the subjects covered by those sections.

(Added Coun. J. 12-15-93, p. 43839; Amend Coun. J. 11-17-99, p. 18040, § 2.1)

3-45-100 Commission for collecting and remitting tax.

Soft drink suppliers may retain 1.75 percent of the tax they collect pursuant to this article to reimburse themselves for expenses incurred in collecting and remitting the tax. This commission shall not be allowed for taxes not timely remitted to the city department.

(Added Coun. J. 12-15-93, p. 43839)

3-45-110 Reserved.

Editor's note – Coun. J. 3-31-04, p. 20916, § 1.1, repealed § 3-45-110, which pertained to retailers' report of inventory.

3-45-120 Registration.

A. Every soft drink supplier shall register with the city department on a form prescribed by the director within 30 days after commencing business. Retail sellers that pay the tax imposed by this chapter directly to the city department on a frequently recurring basis also shall register with the city department.

B. If any information provided by a person on a registration form ceases to be accurate, then the person shall file a corrected form with the city department prior to the following January 1st.

(Added Coun. J. 12-15-93, p. 43839; Amend Coun. J. 3-31-04, p. 20916, § 3.16)

3-45-130 Books and records.

Every soft drink supplier, and every retail seller required to pay directly to the city department the tax imposed by Section 3-45-060 of this chapter, shall keep accurate books and records of its business, including all invoices and other source documents denoting the transactions that gave rise, or may have given rise, to any tax liability or exemption under this chapter. All such books and records shall be kept in the English language and, at all reasonable times during business hours of the day, shall be open to inspection by the city department.

(Added Coun. J. 12-15-93, p. 43839)

3-45-140 Application of Uniform Revenue Procedures Ordinance.

Whenever not inconsistent with the provisions of this article or whenever this article is silent, the provisions of the Uniform Revenue Procedure Ordinance, Chapter 3-4 of this Code, as amended, shall apply to and supplement this article.

(Added Coun. J. 12-15-93, p. 43839)

Disclaimer:

This Code of Ordinances and/or any other documents that appear on this site may not reflect the most current legislation adopted by the Municipality. American Legal Publishing Corporation provides these documents for informational purposes only. These documents should not be relied upon as the definitive authority for local legislation. Additionally, the formatting and pagination of the posted documents varies from the formatting and pagination of the official copy. The official printed copy of a Code of Ordinances should be consulted prior to any action being taken.

For further information regarding the official version of any of this Code of Ordinances or other documents posted on this site, please contact the Municipality directly or contact American Legal Publishing toll-free at 800-445-5588.

© 2011 American Legal Publishing Corporation
techsupport@amlegal.com
 1.800.445.5588

CHAPTER 3-4 UNIFORM REVENUE PROCEDURES

Article I. General Provisions

- 3-4-010 Title and application.
- 3-4-020 Definitions.
- 3-4-030 Publication of rules and regulations.
- 3-4-040 Notice.
- 3-4-050 Postmark rule.
- 3-4-060 Reserved.
- 3-4-070 Counting Saturdays, Sundays and holidays.
- 3-4-080 Confidentiality.
- 3-4-090 Application of payment.
- 3-4-100 Credits and refunds.
- 3-4-110 Survival of liability.
- 3-4-120 Statute of limitations.
- 3-4-130 General presumptions and burden of proof.
- 3-4-140 Bulk sales or transfers.

Article II. Powers of the Director

- 3-4-150 General powers.
- 3-4-151 Additional duties of the department.
- 3-4-152 Problems resolution.
- 3-4-153 Financial hardship.

3-4-160 Power to issue tax determination and assessment.

Article III. Duties of the Taxpayer and Tax Collector

3-4-170 Maintaining books and records.

3-4-180 Duty to produce documents.

3-4-185 Reserved.

3-4-186 Annual returns.

3-4-187 Tax payments.

3-4-188 Estimated tax payment option.

3-4-189 Consolidated returns and payments.

Article IV. Interest and Penalties

3-4-190 Interest on tax debts.

3-4-200 Late penalties.

3-4-210 Failure to file penalty.

3-4-220 Negligence or wilfulness penalty.

3-4-230 Failure to remit collected taxes penalty.

3-4-240 Reasonable cause standards.

3-4-250 Nonsufficient funds check provision; invalid credit card payments.

3-4-260 Interest on nontax debt.

3-4-265 Voluntary disclosure.

Article V. Enforcement Provisions

3-4-270 Officer and employee liability.

3-4-280 Tax collector funds as debt to city.

3-4-290 Reserved.

3-4-300 Liens and right to levy.

- 3-4-305 Removal of liens.
- 3-4-310 Fines.
- 3-4-320 License suspension and revocation.
- 3-4-325 Erroneous written information or written advice.

Article VI. Hearing Process

- 3-4-330 Right to protest tax determination and assessment.
- 3-4-335 Action to enforce payment.
- 3-4-340 Hearing procedures.

Article VII. Other Provisions

- 3-4-350 Powers of the finance committee.
- 3-4-360 Severability.

ARTICLE I. GENERAL PROVISIONS

3-4-010 Title and application.

A. This chapter shall be known as the “uniform revenue procedures ordinance” and shall supplement all other applicable chapters of the Municipal Code of Chicago (hereinafter, the “code”).

B. The provisions of this chapter shall apply to the extent that they are not inconsistent with the provisions of applicable chapters of the code and to the extent other chapters or ordinances are silent.

(Added Coun. J. 11-14-91, p. 7458)

3-4-020 Definitions.

When any of the following words or terms are used herein, whether or not capitalized, they shall have the meaning or construction ascribed to them in this section:

“Administrative law officer” means a licensed attorney appointed by the department of administrative hearings to conduct hearings and to issue final determinations regarding taxpayer or tax collector petitions and protests as to any issue arising under the provisions of this ordinance or under any other ordinance that imposes a tax or creates any nontax debt due and owing the city.