

**ORDINANCE NO. F-1477**

**AN ORDINANCE AMENDING CHAPTER 66 (TAXATION), ARTICLE XI  
(MUNICIPAL GAS USE TAX) OF THE WHEATON CITY CODE**

**WHEREAS**, the City of Wheaton is a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; 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**, in furtherance of its home rule powers, it is necessary and desirable for the City of Wheaton to amend its ordinances regarding taxation by amending its municipal gas use tax.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Wheaton, DuPage County, Illinois, as follows:

Section 1: That Chapter 66 (Taxation), Article XI (Municipal Gas Use Tax), Section 66-292 (Tax) of the Wheaton City Code is hereby repealed and rescinded in its entirety and replaced, subject to the savings provision set forth in Section 5 of this Ordinance, with a new Section 66-292. "Tax" which shall provide as follows:

"Sec. 66-292. Tax.

(a) Except as otherwise provided by this Article, a tax is imposed on the privilege of using or consuming gas in the City that is purchased in a Sale at Retail at the rate of 3 cents (\$0.03) per therm.

(b) The ultimate incidence of and liability for payment of the tax is on the Retail Purchaser, and nothing in this Article shall be construed to impose a tax on the occupation of distributing, supplying, furnishing, selling or transporting gas.

(c) The Retail Purchaser shall pay the tax, measured by terms of gas delivered to the Retail Purchaser's premises, to the Public Utility designated to collect the tax pursuant to section 66-293 of this article on or before the payment due date of the public utility's bill first reflecting the tax, or directly to the City Clerk on or before the fifteenth day of the second month following the month in which the gas is delivered to the retail purchaser if no Public Utility had been designated to collect the tax pursuant to said section 66-293 or if the gas is delivered by a person other than a Public Utility so designated.

(d) Nothing in this Article shall be construed to impose a tax upon any person, business or activity which, under the constitutions of the United States or State of Illinois, may not be made the subject of taxation by the City.

(e) A Person who purchases gas for resale and therefore does not pay the tax imposed by this Article with respect to the use or consumption of the gas, but who later uses or consumes part or all of the gas, shall pay the tax directly to the City Clerk on or before the fifteenth day of the second month following the month in which the gas is used or consumed.

(f) The tax shall apply to gas for which the delivery to the Retail Purchaser is billed by a Public Utility on or after May 1, 2010.

(g) If it shall appear that an amount of tax has been paid which was not due under the provisions of this Article, whether as a result of mistake of fact or an error of law, then such amount shall be (i) credited against any tax due, or to become due, under this Article from the taxpayer who made the erroneous payment or (ii) subject to a refund if no such tax is due or to become due; provided that no amounts erroneously paid more than three (3) years prior to the filing of a claim therefore shall be so credited or refunded.”

Section 2: That Chapter 66 (Taxation), Article XI (Municipal Gas Use Tax), Section 66-293 (Collection of tax), of the Wheaton City Code is hereby repealed and rescinded in its entirety and replaced , subject to the savings provision set forth in Section 5 of this Ordinance, with a new Section 66-293, “Collection of Gas Use Tax” which shall provide as follows:

“Sec. 66-293. Collection of Gas Use Tax.

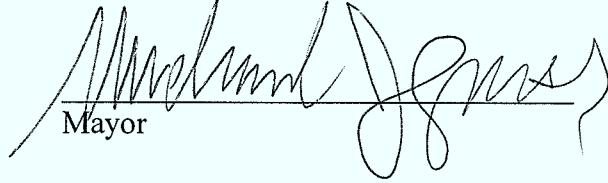
The Director of Finance is authorized to enter into a contract for collection of the tax imposed by this article with any Public Utility providing gas service in the City. The contract shall include and substantially conform with the following provisions:

- (1) the Public Utility will collect the tax from Retail Purchasers as an independent contractor;
- (2) the Public Utility will remit collected taxes to the City Clerk no more often than once each month;
- (3) the Public Utility will be entitled to withhold from tax collections a service fee equal to 3% of the amounts collected and timely remitted to the City Clerk;
- (4) the Public Utility shall not be responsible to the City for any tax not actually collected from a Retail Purchaser; and
- (5) such additional terms as the parties may agree upon.”

Section 3: For the purpose of this Ordinance, the terms “Retail Purchaser” and “Public Utility” have the same meaning as in Section 66-291 of the Wheaton City Code, as amended.

Section 4: All ordinances or parts of ordinances in conflict with these provisions are repealed to the extent of such conflict.

Section 5: This ordinance shall become effective from and after its passage, approval and publication in pamphlet form in the manner prescribed by law; provided, however, that the amendment to Section 66-292(a) of the Wheaton City Code set forth in Section 1 of this Ordinance is intended to be effective with respect to gas for which the delivery to the Retail Purchaser is billed by a Public Utility on or after May 1, 2010; and provided, further, however, that any amounts due or payable for any tax periods ending prior to May 1, 2010, shall nevertheless remain payable as if such amendment as set forth in Section 1 had not been adopted.

  
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Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Roll Call Vote

Ayes: Councilman Scalzo  
Councilman Sues  
Councilman Mouhelis  
Mayor Gresk

Nays: Councilwoman Corry  
Councilman Levine  
Councilman Prendiville

Absent: None

Motion Carried

Passed: March 15, 2010  
Published: March 16, 2010

