

**ORDINANCE NO. F-0756****AN ORDINANCE AMENDING CHAPTER 66 - TAXATION, 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 repealing its municipal utility tax on gas and creating a 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:** Effective October 1, 2002, Chapter 66, Article VIII, Section 66-222 of the Wheaton City Code is hereby amended and restated to read as follows:

**"Sec. 66-222. Imposed.**

A tax is hereby imposed on all persons, corporations, and entities engaged in the following occupations or privileges:

(1) A tax shall be imposed with respect to the use or consumption of electricity by residential customers beginning with the first bill issued on or after September 1, 1998; and with respect to the use or consumption of electricity by nonresidential customers beginning with the first bill issued to such customers for delivery of services in accordance with section 16-104 of the Public Utilities Act (220 ILCS 5/16-104), or the first bill issued to such customers on or after January 1, 2001, whichever issuance occurs sooner. This tax shall be imposed at the following rates, calculated on a monthly basis, for each purchaser:

- a. For the first 2,000 kilowatt-hours used or consumed in a month; 0.404 cents per kilowatt-hour;
- b. For the next 48,000 kilowatt-hours used or consumed in a month; 0.265 cents per kilowatt-hour;
- c. For the next 50,000 kilowatt-hours used or consumed in a month; 0.239 cents per kilowatt-hour;
- d. For the next 400,000 kilowatt-hours used or consumed in a month; 0.232 cents per kilowatt-hour;

- e. For the next 500,000 kilowatt-hours used or consumed in a month; 0.225 cents per kilowatt-hour;
- f. For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.212 cents per kilowatt-hour;
- g. For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.209 cents per kilowatt-hour;
- h. For the next 5,000,000 kilowatt-hours used or consumed in a month; 0.205 cents per kilowatt-hour;
- i. For the next 10,000,000 kilowatt-hours used or consumed in a month; 0.202 cents per kilowatt-hour; and
- j. For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month; 0.199 cents per kilowatt-hour.

- 1. This tax is in addition to all taxes, fees, and other revenue measures imposed by the city, the State of Illinois, or any other political subdivision of the state.
- 2. Notwithstanding any other provision of this chapter, this tax shall not be imposed if and to the extent that imposition or collection of the tax would violate the Constitution or statutes of the United States or the Constitution of the State of Illinois."

**Section 2:** That the Chapter 66 of the Wheaton City Code is hereby further amended by adding the following Article XI:

## **"ARTICLE XI. Municipal Gas Use Tax**

### **Sec. 66-290. Short Title**

The tax imposed by this Article shall be known as the "Municipal Gas Use Tax" and is imposed in addition to all other taxes imposed by the City of Wheaton, the State of Illinois, or any other municipal corporation or political subdivision thereof.

### **Sec. 66-291. Definitions**

For the purpose of this Article, the following definitions shall apply:

"Person" means any individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, municipal corporation or political subdivision of this state, or a receiver, trustee, conservator or other representative appointed by order of any court.

“Public Utility” means a public utility as defined in section 3-105 of the Public Utilities Act.

“Public Utilities Act” means the Public Utilities Act as amended, (220 ILCS 5/1-101 et seq. (1996)).

“Retail Purchaser” means any person who purchases gas in a Sale at Retail.

“Sale at Retail” means any sale of gas by a retailer to a person for use or consumption, and not for resale. For this purpose, the term “retailer” means any person engaged in the business of distribution, supplying, furnishing or selling gas.

**Sec. 66-292. Tax.**

(1) 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 2 cents (\$0.02) per therm.

(2) 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.

(3) The Retail Purchaser shall pay the tax, measured by therms of gas delivered to the Retail Purchaser's premises, to the Public Utility designated to collect the tax pursuant to Section 66-278 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 has been designated to collect the tax pursuant to said Sec. 66-278 or if the gas is delivered by a person other than a Public Utility so designated.

(4) A purchaser who purchases gas for resale and therefore does not pay the tax imposed by this Article with respect to the use or consumption of 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.

(5) The tax shall apply to gas for which the delivery to the Retail Purchaser is billed by a Public Utility on or after October 1, 2002.

**Sec. 66-293. Collection of tax**

(1) 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:

- a. The Public Utility will collect the tax with respect to gas delivered by it to its customers as an independent contractor;

- b. The Public Utility will remit collected taxes to the City Clerk no more often than once each month;
- c. The Public Utility will be entitled to withhold from tax collections a service fee not to exceed 3% of the amounts collected and timely remitted to the City Clerk;
- d. The Public Utility shall not be liable to the City for any tax not actually collected from a Retail Purchaser; and
- e. Such additional terms as the parties may agree upon.

(2) A Public Utility designated to collect the tax imposed by this Article from its customers shall bill each customer for the tax on all gas delivered to the customer unless (i) the customer's use of consumption is exempt from the tax pursuant to a duly passed and authorized ordinance of the City, or (ii) the Public Utility has received written notification from the City that the customer is exempt from the tax.

**Sec. 66-294. Books and records**

Every taxpayer shall keep accurate books and records, including original source documents and books of entry, denoting the activities or transactions that gave rise, or may have given rise to any tax liability or exemption under this Article. All such books and records shall, at all times during business hours, be subject to and available for inspection by the city.

**Sec. 66-295 - 66-300. Reserved."**

**Section 3:** This Ordinance shall be in full force and effect, and shall be controlling, upon its passage and approval, provided, however, that Section 1 of this Ordinance shall be effective as to gross receipts actually paid to the taxpayer for services billed on or after October 1, 2002, and provided further, however, that any amounts due or payable for any tax periods ending prior to October 1, 2002, are nevertheless to remain payable as if this Ordinance had not been adopted.

**Section 4:** All ordinances or parts of ordinances thereof in conflict with this Ordinance are hereby repealed to the extent of any such conflict.

**Section 5:** Any section or provision of this Ordinance that is construed to be invalid or void shall not affect the remaining sections or provisions which shall remain in full force and effect thereafter.

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James Carr  
Mayor

ATTEST:

Emily M. Connelley  
City Clerk

Roll Call Vote

Ayes: Councilman Eckhoff  
Councilman Gresk  
Councilman Johnson  
Mayor Carr  
Councilwoman Johnson  
Councilman Mork  
Councilman Mouhelis

Nays: None

Absent: None

Motion Carried Unanimously

Passed: September 3, 2002

Published: September 4, 2002