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AN ORDINANCE

Evanston Gas Use Tax

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
EVANSTON:

WHEREAS, the City Council hereby finds as follows:

- (a) recent changes in federal law have permitted and encouraged large purchasers of gas to buy gas directly from out-of-state sellers rather than from local public utilities;
- (b) the municipal occupation tax authorized by section 8-11-2(2a) of the Illinois Municipal Code and imposed by section 3-2-9-2(B) of this Code applies to sales of gas by local public utilities but not to sales by sellers outside the state of Illinois;
- (c) the city has the home rule power to tax the use of tangible personal property such as gas purchased from sellers not subject to the municipal occupation tax.

WHEREAS, the Code of Evanston is amended by adding the following Sections:

EVANSTON GAS USE TAX

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3-2-9-7-1 Title

This chapter shall be known and may be cited as the "Evanston Gas Use Tax Ordinance." The tax shall be known as the "Evanston Gas Use Tax" and is imposed in addition to all other taxes imposed by the City of Evanston, the State of Illinois or any other municipal corporation or political subdivision of the State of Illinois.

3-2-9-7-2 Definitions

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

- A. "Evanston Occupation Tax" means the tax imposed by section 3-2-9-2(B) of this Code on persons engaged in the business of distributing, supplying, furnishing or selling gas.
- B. "City" means City of Evanston, Illinois.
- C. "Department" or "department of revenue" means the department of finance of the City.
- D. "Director" or "director of finance" means the director of finance of the City.
- E. "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, 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.
- F. "Public utility" means a public utility as defined in section 3-105 of the Public Utilities Act.
- G. "Public Utilities Act" means the Public Utilities Act, as amended, Illinois Compiled Statutes, chapter 220, section 5/1-101, et seq.
- H. "Retail purchaser" means any person who purchases gas in a sale at retail.
- I. "Sale at retail" means any sale 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.

3-2-9-7-3 Tax imposed.

- A. Except as otherwise provided by this section, a tax is imposed on the privilege of using or consuming in the city gas that is purchased in a sale at retail. The tax shall be at the rate of .95 cents per therm.
- B. The ultimate incidence of and liability for payment of the tax is on the retail purchaser, and nothing in this chapter 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 therms of gas delivered to the retail purchaser's premises, (1) to the public utility designated to collect the tax pursuant to section 3-2-9-7-5 of this code on or before the payment due date of the public utility's bill first reflecting the tax, or (2) directly to the department on or before the 15th 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 section 3-2-9-7-5 or if the gas is delivered by a person other than a public utility so designated.
- D. The tax shall not apply to the use or consumption of gas by, (1) a person purchasing the gas for use in operating or propelling a vehicle, or vehicle fuel, as that term is defined by this code or (2) a public utility engaged in the business of distributing gas or (3) a school district created and operating under the School Code of the State of Illinois.
- E. To prevent multiple taxation, the use of gas in the city by a retail purchaser properly subject to a tax imposed by any state or by the city or any other municipality with respect to the sale at retail of such gas, whether such tax is imposed (1) upon the retail purchaser or (2) upon the seller and separately charged to the retail purchaser by the seller, shall be exempt from the tax imposed by this chapter. For purposes of this subsection only, any charge imposed on a retail purchaser pursuant to section 9-221 or section 9-222 of the Public Utilities Act with respect to a sale at retail shall be treated as a tax properly imposed on the retail purchaser by the state of Illinois or by this city or other municipality.
- F. A purchaser who purchases gas for resale and therefore does not pay the tax imposed by this chapter with respect to the use or consumption of the gas, but who later uses

or consumes part of all of the gas, shall pay the tax directly to the department on or before the 15th day of the second month following the month in which the gas is used or consumed.

- G. The tax shall apply to gas for which the delivery to the customer is billed by a public utility after May 1, 1994.

3-2-9-7-4 Complementary relation to Evanston Occupation Tax

Notwithstanding any other provision of this chapter, the tax shall not apply to the use or consumption of gas if the gross receipts from the sale of the gas would not be taxable under the Evanston Occupation Tax despite all elements of the sale occurring in the city.

3-2-9-7-5 Collection of tax.

- A. The director is authorized to enter into a contract for collection of the tax imposed by this chapter 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 with respect to gas delivered by it to its customers as an independent contractor; (2) the public utility will remit collected taxes to the department 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 department; (4) the public utility will treat partial payments received from a customer as payments made pro rata for each item or charge billed to the customer, including the tax imposed by this section; (5) the obligation of the public utility to collect and remit the tax shall not apply to gas billed by the public utility to a retail purchaser prior to a date two months subsequent to the execution of such contract; (6) the public utility shall not be liable to the city for any tax not actually collected from a retail purchaser; and (7) such additional terms as the parties may agree upon.
- B. A public utility designated to collect the tax imposed by this chapter from its customers shall bill each customer for the tax on all gas delivered to the customer unless (1) the customer's use or consumption is exempt from the tax pursuant to subsection 3-2-9-7-3(E) of this code because the customer's purchase of the gas is subject to a charge authorized by section 9-221 or 9-222 of the Public Utilities Act, or (2) the public utility has received a written certificate issued by the city authorizing the public utility not to collect tax on deliveries to the customer.

3-2-9-7-6 Books and records.

A. 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 chapter. 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.

B. Every person that delivers customer-owned gas within the corporate limits of the city shall furnish to the department, upon the department's request, the names, addresses and therms delivered with respect to such deliveries.

3-29-7-7 Rules and regulations.

The director is authorized to adopt, promulgate and enforce reasonable rules and regulations pertaining to the administration and enforcement of this chapter.

SECTION 2: SEVERABILITY: If any provision of this ordinance of the application of any provision is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this ordinance or the chapters it amends, or their application, that can be given effect without the unconstitutional or invalid provision or its application. Each unconstitutional or invalid provision, or application of such provision, is severable, unless otherwise provided. The unconstitutionality or invalidity of this ordinance or of any of its provision shall not affect the specific ordinances or their provisions that this ordinance amends or supplements.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: This ordinance shall be in full force and effect from and after April 1, 1994, following its passage, approval, and publication in the manner provided by law.

Introduced: February 14, 1994

Adopted: February 28, 1994

Approved: February 28, 1994
Lorraine H. Morton
Mayor

ATTEST:
Austin Davis
City Clerk

Approved as to form:
[Signature]
Corporation Counsel