

**92-O-03**

**AN ORDINANCE**

**Amending Section 3-2-9-7-3 of the  
City Code of the City of Evanston  
Increasing the Evanston Gas Use Tax**

**WHEREAS**, the City of Evanston 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.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

**SECTION 1:** The Evanston City Code, 1979, as amended, be and is hereby further amended by deleting Chapter 3-2-9-7 in its entirety and replacing it with the following new Chapter:

**CHAPTER 3-2-9-7: EVANSTON GAS USE TAX**

**3-2-9-7-1: Short Title:**

The tax imposed by this Chapter 3-2-9-7 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 thereof. Section 3-2-9-7 shall be known and may be cited as the "Evanston Gas Use Tax Ordinance."

**3-2-9-7-2: Definitions:**

For the purpose of this Chapter 3-2-9-7, the following definitions shall apply:

- A. "City" means the City of Evanston, Illinois.

- B. "Department" or "Department of Revenue" means the Department of Finance of the City.
- C. "Director" or "Director of Finance" means the Finance Director of the City.
- D. "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.
- E. "Public Utility" means a public utility as defined in Section 3-105 of the Public Utilities Act.
- F. "Public Utilities Act" means the Public Utilities Act as amended, (220 ILCS 5/1-101 *et seq.* (2002)).
- G. "Retail Purchaser" means any person who purchases gas in a Sale at Retail.
- H. "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.

**3-2-9-7-3: Tax Imposed:**

- A. Except as otherwise provided by this Chapter 3-2-9-7, 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 2.5 cents (\$0.025) per therm.
- B. The ultimate incidence of and liability for payment of the tax is on the Retail Purchaser, and nothing in this Chapter 3-2-9-7 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, to the Public Utility designated to collect the tax pursuant to Section 3-2-9-7-5 of this Chapter 3-2-9-7 on or before the payment due date of the Public Utility's bill first reflecting the tax, or directly to the Finance Director on or before the fifteenth (15<sup>th</sup>) day of the second (2<sup>nd</sup>) 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. To prevent multiple taxation, the use of gas in the City by a Retail Purchaser shall be exempt from the tax imposed by this Chapter 3-2-9-7 if the gross receipts from the Sale at Retail of such gas to the Retail Purchaser are properly subject to a tax imposed upon the seller of such

gas pursuant to the City's municipal utility tax, Chapter 3-2-9 of the Evanston City Code, 1979, as amended from time to time, authorized pursuant to Section 8-11-2 of the Illinois Municipal Code (65 ILCS 5/8-11-2).

- E. A purchaser who purchases gas for resale and therefore does not pay the tax imposed by this Chapter 3-2-9-7 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 Finance Director on or before the fifteenth (15<sup>th</sup>) day of the second (2<sup>nd</sup>) 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 March 1, 2004.
- G. The tax shall not apply to the use or consumption of gas by (1) a public utility engaged in the business of distributing gas, (2) a school district created and operating under the School Code of the State of (3) a unit of local government.

**3-2-9-7-4: [RESERVED]**

**3-2-9-7-5: Collection of Tax:**

- A. The Finance Director is authorized to enter into a contract for collection of the tax imposed by this Chapter 3-2-9-7 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 Finance Director no more often than once each month;
- (3) 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 Finance Director;
- (4) the Public Utility shall not be liable to the City for any tax not actually collected from a Retail Purchaser; and
- (5) such additional terms as the parties may agree upon.

B. A Public Utility designated to collect the tax imposed by this Chapter 3-2-9-7 from its customers shall bill each customer for the tax on all gas delivered to the customer unless (i) the customer's use or 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.

**3-2-9-7-6: 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 give rise, or may

have given rise to any tax liability or exemption under this Chapter 3-2-9-7. All such books and records shall, at all times during business hours, be subject to and available for inspection by the City.

**3-2-9-7-7: 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:** Notwithstanding Section One of this ordinance, amounts due or payable for any tax periods ending prior to March 1, 2004, are nevertheless to remain payable as if Section One of this ordinance had not been adopted.

**SECTION 3:** All ordinances or parts of ordinances thereof in conflict with this ordinance are hereby repealed to the extent of any such conflict.

**SECTION 4:** 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.

**SECTION 5:** The Finance Director is hereby directed to provide notice to Northern Illinois Gas Company (d/b/a/Nicor Gas Company ("Nicor Gas")) of the increase in the City's municipal gas use tax and to request a waiver of the notification period set forth in Section 2 of Exhibit 1 of the Tax Collection Agreement between the City and Nicor Gas. The Notice and Acknowledgement of Increase in Municipal Gas Use Tax is attached as Exhibit 1 and made a part hereof.

**SECTION 6:** This ordinance shall be in full force and effect from and after  
March 1, 2004.

Introduced October 13, 2003

Adopted: February 23, 2004

Approved: 2-23-04, 2004

Larry M. Norton  
Mayor

ATTEST:

Mary J. Morris  
City Clerk

Approved as to form:

[Signature]  
Corporation Counsel

**EXHIBIT 1****NOTICE AND ACKNOWLEDGEMENT OF INCREASE IN MUNICIPAL GAS USE TAX**

**WHEREAS**, the City of Evanston, Illinois (the "City") and Northern Illinois Gas Company (d/b/a Nicor Gas Company) ("Nicor Gas") entered into a Tax Collection Agreement dated May 1, 1994 (the "Agreement"); and

**WHEREAS**, pursuant to the Agreement, Nicor Gas is to collect a municipal gas use tax (the "Tax") at the rate of \$0.0095 (.95 cent) per therm of gas delivered and billed by Nicor Gas to each Customer Account, as that term is defined in the Agreement; and,

**WHEREAS**, Section 2 of Exhibit 1 of the Agreement states that if the rate of the Tax is changed, Nicor Gas shall collect the Tax at the new with respect to bills issued for a Customer Account, as that term is defined in the Agreement, on or after: (i) the effective date of the amended ordinance; or (ii) three months after the date on which the amended ordinance is passed, whichever is later (the "Notice Provision"); and

**WHEREAS**, Section 9.9 of the Agreement states that Nicor Gas by a proper authority may waive a requirement or condition to Nicor Gas's performance of the Agreement; and

**WHEREAS**, Ordinance No. 92-O-03 (the "Ordinance") has been duly passed by the City Council of the City on the 23<sup>rd</sup> day of February, 2004, and duly approved by the Mayor of the City on the 23<sup>rd</sup> day of February, 2004; and



**WHEREAS**, the Ordinance, a copy of which is attached, increases the rate of the Tax to \$0.025 (2.5 cents) per therm of gas delivered and billed by Nicor Gas to each of its Customer Accounts, as that term is defined in the Agreement; and

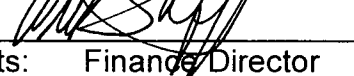
**WHEREAS**, Section Five of the Ordinance directs the Finance Director to give Nicor Gas notice of the increase in the Tax and to request a waiver of the condition to Nicor Gas's performance set forth in the Notice Provision,

**NOW, THEREFORE:**

1. The City hereby gives notice to Nicor Gas of the increase in the Tax. Furthermore, the City requests that Nicor Gas waive the condition to Nicor Gas's performance set forth in the Notice Provision and begin collecting the Tax at the new rate with respect to bills issued for a Customer Account, as that term is defined in the Agreement, on or after March 1, 2004;

2. Nicor Gas hereby acknowledges that it has received notice of the increase in Tax. Furthermore, notwithstanding the Notice Provision, Nicor Gas hereby agrees to begin collecting the Tax at the new rate with respect to bills issued for a Customer Account, as that term is defined in the Agreement, on or after March 1, 2004.

**CITY OF EVANSTON, ILLINOIS**

By:   
Its: Finance Director

**Acknowledged and Agreed:**

**Northern Illinois Gas Company  
(d/b/a Nicor Gas Company)**

By: \_\_\_\_\_

Its: \_\_\_\_\_