

## **ORDINANCE**

### **AN ORDINANCE AMENDING CHAPTER 23A ("TAXES"), ARTICLE 7 ("MUNICIPAL GAS USE TAX"), SECTION 23A-7-3 ("TAXES") AND SECTION 23A-7-4 ("COLLECTION OF TAX") OF THE OAK PARK VILLAGE CODE**

**WHEREAS**, the Village of Oak Park ("Village") as a home rule unit of local government as provided by Article VII, Section 6 of the Illinois Constitution of 1970 has the authority to exercise any power and perform any function pertaining to its government and affairs except as limited by Article VII, Section 6 of the Illinois Constitution of 1970; and

**WHEREAS**, pursuant to its home rule powers and Section 8-11-2 of the Illinois Municipal Code, 65 ILCS 5/8-11-2, the Village may enact a tax on the privilege of using or consuming gas in the Village; and

**WHEREAS**, pursuant to said authority and the Village's home rule powers, the Village has determined to amend Chapter 23A ("Taxes"), Article 7 ("Municipal Gas Use Tax"), Section 23A-7-3 ("Taxes") of the Oak Park Village Code as set forth in this Ordinance.

**NOW THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Oak Park, Cook County, Illinois, in the exercise of their home rule powers, as follows:

**Section 1. Recitals Incorporated.** The above recitals are incorporated herein as though fully set forth.

**Section 2. Village Code Amended.** Chapter 23A ("Taxes"), Article 7 ("Municipal Gas Use Tax"), Section 23A-7-3 ("Taxes") and Section 23A-7-4 ("Collection of Tax") of the Oak Park Village Code is hereby amended to add the underlined language and delete the overstricken language as follows:

#### **23A-7-3: GAS USE TAX:**

A. Except as otherwise provided by this Article, a tax is imposed on the privilege of using or consuming gas in the Village that is purchased in a Sale at Retail at the rate of five cents (\$0.05) 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 therms of gas delivered to the Retail Purchaser's premises, to the Public Utility designated to collect the tax pursuant to Section 23A-7-4 of this Article on or before the payment due date of the Public Utility's bill first reflecting the tax, or directly to

the Village Finance Director 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 Section 23A-7-4 ~~of this Article~~ 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 Village by a Retail Purchaser shall be exempt from the tax imposed by this Article 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 Village's municipal utility tax, as amended from time to time authorized pursuant to Section 8-11-2 of the Illinois Municipal Code, 65 Illinois Compiled Statutes 5/8-11-2, as amended.~~ 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 Village.

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 Village Finance Director 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 February 1, 2003.

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.

H. No action to recover any amount of tax due under the provisions of this Article shall be commenced more than three (3) years after the due date of such amount.

I. To prevent multiple taxation, the use of gas in the Village by a Retail Purchaser shall be exempt from the tax imposed by this Article 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 Village's municipal utility tax, as amended from time to time, Article 9 of Chapter 23A,

Taxes, of the Village Code, authorized pursuant to Section 8-11-2 of the Illinois Municipal Code, 65 Illinois Compiled Statutes 5/8-11-2, as amended.

**23A-7-4: COLLECTION OF TAX:**

A. The ~~Finance Director~~ Village Manager 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 Village.

B. The contract pursuant to this section 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~~ from retail purchasers as an independent contractor;
2. The Public Utility will remit collected taxes to the ~~Finance Director~~ Village no more often than once each month;
3. The Public Utility will be entitled to withhold from ~~tax collections~~ tax collections a service fee ~~not equal to exceed~~ not exceed three percent (3%) of the amounts collected and timely remitted to the Finance Director;
4. The Public Utility shall not be ~~liable~~ responsible to the Village 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 Article 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 23A-7-3D of this Article, or 2) the Public Utility has received written notification from the Village that the customer is exempt from the tax.~~

**Section 3. Severability and Repeal of Inconsistent Ordinances.** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance. All ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 4. Effective Date.** This Ordinance shall be in full force and effect after its approval, passage and publication as provided by law on January 1, 2017.

**ADOPTED** this 5<sup>th</sup> day of December, 2016, pursuant to a roll call vote at follows:

Voting	Aye	Nay	Abstain	Absent
President Abu-Taleb				
Trustee Barber				
Trustee Brewer				
Trustee Button Ott				
Trustee Lueck				
Trustee Salzman				
Trustee Tucker				

**APPROVED** this 5<sup>th</sup> day of December, 2016.

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Anan Abu-Taleb, Village President

**ATTEST**

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Teresa Powell, Village Clerk

Published in pamphlet form this 5<sup>th</sup> day of December, 2016.

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Teresa Powell, Village Clerk

STATE OF ILLINOIS     )  
                                      ) ss.  
COUNTY OF COOK     )

**CERTIFICATE**

I, Teresa Powell, Village Clerk of the Village of Oak Park, County of Cook, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Village of Oak Park Ordinance No. 16-\_\_\_\_, "An Ordinance Amending Chapter 23A ("Taxes"), Article 7 ("Municipal Gas Use Tax"), Section 23A-7-3 ("Taxes") and Section 23A-7-4 ("Collection of Tax") of the Oak Park Village Code," which was adopted by the corporate authorities of the Village of Oak Park on December 5, 2016.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of the Village of Oak Park, Illinois aforesaid, at the said Village, in the County of Cook, State of Illinois, on December 5, 2016.

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Teresa Powell, Village Clerk

(SEAL)