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VILLAGE OF HARWOOD HEIGHTS  
COOK COUNTY, ILLINOIS

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ORDINANCE NO. 11 - 43

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AN ORDINANCE AMENDING ARTICLE 2 ("GAS USE TAX") OF CHAPTER  
3.20 ("UTILITY TAXES") OF THE HARWOOD HEIGHTS CODE OF  
ORDINANCES TO ENHANCE THE COLLECTIBILITY OF THE GAS USE TAX  
AND TO MORE CLOSELY ALIGN VILLAGE GAS USE TAX REGULATIONS  
AND NOMENCLATURE WITH OTHER HOME RULE MUNICIPALITIES

Passed by the Board of Trustees, December 8, 2011

Printed and Published, December 8, 2011

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By Authority of the Village Board of Trustees

VILLAGE OF HARWOOD HEIGHTS  
COOK COUNTY, ILLINOIS

I hereby certify that this document was  
properly published on the date stated above.

  
Village Clerk

**VILLAGE OF HARWOOD HEIGHTS**

**ORDINANCE NO. 11-43**

**AN ORDINANCE AMENDING ARTICLE 2 ("GAS USE TAX") OF CHAPTER 3.20 ("UTILITY TAXES") OF THE HARWOOD HEIGHTS CODE OF ORDINANCES TO ENHANCE THE COLLECTIBILITY OF THE GAS USE TAX AND TO MORE CLOSELY ALIGN VILLAGE GAS USE TAX REGULATIONS AND NOMENCLATURE WITH OTHER HOME RULE MUNICIPALITIES**

**WHEREAS**, the Village of Harwood Heights (hereinafter, "the Village") is a home rule unit of government pursuant to Section 6(a), Article VII of the 1970 Illinois Constitution; and

**WHEREAS**, the Village, as a home rule unit of government, may exercise any power and perform any function pertaining to its government affairs; and

**WHEREAS**, the Corporate Authorities of the Village of Harwood Heights are specifically authorized by 65 ILCS 5/8-11-2 to impose a municipal utility tax on the occupation or privilege of engaging in the business of distributing, supplying, furnishing or selling gas for use or consumption within the corporate limits of the Village, and the Village currently imposes such an occupation tax via Article 1 of Chapter 3.20 of the Village Code; and

**WHEREAS**, the Corporate Authorities are desirous of ensuring that all retail purchasers of gas from retailers not subject to the Village's municipal utility tax are subject in the alternative to the municipal Gas Use Tax, and that such taxes are appropriately collected and remitted to the Village Clerk; and

**WHEREAS**, the Corporate Authorities find it to be in the best interest of the health, safety and welfare of the Village to amend its Gas Use Tax in the manner set forth below to increase the collectability of such gas use tax and to improve the Village's

financial health.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Harwood Heights, County of Cook, Illinois, as follows:

**SECTION 1. Recitals.** The foregoing recitals shall be and are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section 1.

**SECTION 2. Title.** This Ordinance shall be known and may hereafter be referred to as the *Gas Use Tax Amendatory Ordinance*.

**SECTION 3. Enactment.** Title 3 (“Revenue and Finance”), Chapter 3.20 (“Utility Taxes”), Article 2 (“Gas Use Tax”), of the Harwood Heights Village Code of Ordinances, shall be, and hereby is repealed in its entirety and replaced with the following:

**SECTION 3.20.060: 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 Village of Harwood Heights, the State of Illinois, or any other municipal corporation or political subdivision of the State.

### **SECTION 3.20.070: DEFINITIONS.**

For the purposes of this article, the following definitions shall apply:

*PERSON:* An 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 UTILITIES ACT:* 220 ILCS 5/1-101, *et seq.*, as the same may be amended from time to time.

*PUBLIC UTILITY:* A public utility as defined in Section 3-105 of the Public Utilities Act.

*RETAIL PURCHASER:* Any person who purchases gas as part of a sale at retail.

*RETAILER:* Any person engaged in the business of distributing, supplying, furnishing or selling gas.

*SALE AT RETAIL:* Any sale of gas by a retailer to a person for use or consumption, and not for resale.

*VILLAGE:* The Village of Harwood Heights, Illinois.

### **SECTION 3.20.080: TAX IMPOSED.**

A. Except as otherwise provided by this Article, a tax is hereby imposed at the rate of five cents (\$0.05) per therm on the privilege of using or consuming gas in the Village that is purchased in a sale at retail.

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, supply, furnishing, selling or transporting gas.

C. The retail purchaser shall pay the Municipal Gas Use Tax, as measured by terms of gas delivered to the retail purchaser's premises, to the public utility designated to collect the tax pursuant to Section 3.20.090 of the Village Code on or before the payment due date of the public utility's bill first reflecting the tax, or directly to the Village 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 (1) no public utility has been designated to collect the tax pursuant to Section 3.20.090 or (2) 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 Municipal Gas Use 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, article 1 of Chapter 3.20 of the Village Code, authorized pursuant to 65 ILCS 5/8-11-2.

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 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 imposed by this amended Article shall apply to gas for which the

delivery to the retail purchaser is billed on or after January 1, 2012.

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

H. 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.

I. 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.

#### **SECTION 3.20.090: COLLECTION OF TAX.**

The Village of Harwood Heights is authorized to enter into a contract, to be executed by the Village President, for collection of the Municipal Gas Use Tax imposed by this Article with any public utility providing gas service in the Village. Such contract shall include and substantially conform to 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 Village Clerk once per month;

3. The public utility will be entitled to withhold from tax collections a service fee equal to three percent (3%) of the amounts collected and timely remitted to the Village Clerk;
4. The public utility shall not be liable to the Village for any tax not actually collected from a retail purchaser; and
5. Such additional terms as the parties may agree upon.

**SECTION 3.20.100: 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 Village.

**SECTION 4. RESOLUTION OF CONFLICTS.**

All ordinances in conflict herewith are hereby repealed to the extent of such conflict.

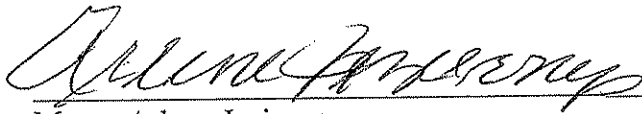
**SECTION 5. SAVING CLAUSE.**

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, which are hereby declared to be separable.


**SECTION 6. EFFECTIVE DATE.**

This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

Passed and Approved this 8th day of December, 2011.

  
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Mayor Arlene Jezierny

ATTEST:

  
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Marcia L. Polowy, Village Clerk

**VOTES**

AYES: Trustee Dobrzycki, Gadzinski, Steiner, Mougolias, Schuepfer, Szlendak

NAYS:

ABSENT:

ABSTAIN:

STATE OF ILLINOIS

COUNTY OF COOK

**CERTIFICATION**

I, Marcia L. Pollowy, do hereby certify that I am the duly elected and acting Clerk of the Village of Harwood Heights, County of Cook, State of Illinois.

I do further certify that the foregoing Ordinance 11-43 entitled:


**AN ORDINANCE AMENDING ARTICLE 2 ("GAS USE TAX") OF CHAPTER 3.20 ("UTILITY TAXES") OF THE HARWOOD HEIGHTS CODE OF ORDINANCES TO ENHANCE THE COLLECTIBILITY OF THE GAS USE TAX AND TO MORE CLOSELY ALIGN VILLAGE GAS USE TAX REGULATIONS AND NOMENCLATURE WITH OTHER HOME RULE MUNICIPALITIES**

Is true and correct copy of an Ordinance adopted by the Board of Trustees of the Village of Harwood Heights at a meeting held on the 8th day of December, 2011.

I do further certify that the original of which the foregoing is a true copy is entrusted to my care and safekeeping, and that I am keeper of the same.

I do further certify that I am the keeper of the records, ordinances, and resolutions of said Village of Harwood Heights, Cook County, Illinois.

In witness whereof I have hereunto set my official hand and seal this 8th day of December, 2011.

  
Marcia L. Pollowy  
Village Clerk

Corporate Seal

