

ORDINANCE NO. O-17-38

**AN ORDINANCE AMENDING THE VILLAGE OF HANOVER PARK'S
GAS USE TAX, SECTIONS 302-305 OF CHAPTER 94, OF THE
MUNICIPAL CODE OF THE VILLAGE OF HANOVER PARK**

WHEREAS, the Village of Hanover Park (the “Village”) is a Home Rule Unit under subsection (a) of Section 6 of Article VII of the Constitution of the State of Illinois of 1970 and the laws of the State; 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 Village of Hanover Park to amend its ordinances regarding the Village’s Gas Use Tax; now, therefore,

BE IT ORDAINED by the President and Board of Trustees of the Village of Hanover Park, DuPage and Cook Counties, Illinois as follows:

SECTION 1. That Sections 94-302, 94-303, 94-304, and 94-305 of Article XI, Gas Use Tax, of Chapter 94 of the Municipal Code of the Village of Hanover Park, as amended, be and is hereby amended to read as follows:

Sec. 94-302. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- (a) “*Department*” means the finance department of the Village.
- (b) “*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.
- (c) “*Public utility*” means a public utility as defined in section 3-105 of the Public Utilities Act (220 ILCS 5/3-105).
- (d) “*Public Utilities Act*” means the Public Utilities Act, as amended (220 ILCS 5/1-101 et seq.).
- (e) “*Retail purchaser*” means any person who purchases gas in a sale at retail.

(f) “*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 distributing, supplying, furnishing, or selling gas.

Sec. 94-303. Tax imposed.

(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 three cents (\$0.03) 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 section 94-304 on or before the payment due date of the public utility’s bill first reflecting the tax, or directly to the department on or before the fifteenth (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 94-304 or if the gas is delivered by a person other than a Public Utility so designated.

(d) Nothing in this section 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 department 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 June 1, 2002.

(g) If it shall appear that an amount of tax has been paid which was not due under the provisions of this section, 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 section 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 section shall be commenced more than three (3) years after the due date of such amount.

(i) Reserved.

Sec. 94-304. Collection of tax.

(a) The Village Manager is authorized to enter into a contract for collection of the tax imposed by this Section with any public utility providing gas service in the village. The contract shall include and substantially conform with 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 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 shall not be 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 the public utility has received a written certificate issued by the village authorizing the public utility not to collect tax on deliveries to the customer.

Sec. 94-305. 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 section. All such books and records shall, at all times during business hours, be subject to and available for inspection by the village.

(b) Every person that delivers customer-owned gas within the corporate limits of the village shall furnish to the village's finance director upon written request, all names, addresses, and therms delivered with respect to such deliveries.

SECTION 2. This ordinance shall be in full force and effect, and shall be controlling, upon its passage, approval and publication, and shall apply to any amounts billed on or after January 1, 2018; provided, however, that any amounts due or payable for any tax periods ending

prior to January 1, 2018 are nevertheless to remain payable as if this ordinance had not been adopted.

SECTION 3. That each section, paragraph, sentence, clause and provision of this Ordinance is separable and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance nor any part thereof, other than the part affected by such decision.

SECTION 4. That except as to the amendments heretofore mentioned, all chapters and sections of the Municipal Code of the Village of Hanover Park, as amended, shall remain in full force and effect.

SECTION 5. That this Ordinance shall, by authority of the Village Board of the Village of Hanover Park, be published in pamphlet form. From and after ten days after said publication, this Ordinance shall be in full force and effect.

ADOPTED this 16th day of November, 2017, pursuant to a roll call vote as follows:

AYES: Porter, Kemper, Kunkel, Shahjahan, Prigge, Roberts

NAYS: None

ABSENT: None

ABSTENTION: None

Approved: _____
Rodney S. Craig, Village President

ATTESTED, filed in my office
and published in pamphlet form
this 16th day of November, 2017.

Eira L. Corral Sepúlveda, Village Clerk