

**AN ORDINANCE AMENDING ORDINANCE NO. 09-63  
IN REGARD TO A MUNICIPAL GAS USE TAX**

WHEREAS, the Village of Carpentersville is a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; 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, on November 17, 2009, the Village of Carpentersville adopted Ordinance No. 09- 63 amending the Municipal Code to add Chapter 3.18 entitled "Municipal Gas Use Tax" and creating a municipal gas use tax; and

WHEREAS, it is necessary and in the public interest of the Village of Carpentersville to amend Ordinance No. 09-63.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Carpentersville, Kane County, Illinois, as follows:

**SECTION 1:**

Effective November 17, 2009, Ordinance No. 09-63, Section 1, is hereby amended by amending " 3.18.030 TAX IMPOSED" and "3.18.040 COLLECTION OF TAX" of said Section, which shall read as follows:

**3.18.030 TAX IMPOSED**

A. Except as otherwise provided by this Chapter, 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 4.5 cents (\$0.045) 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, to the Public Utility designated to collect the tax pursuant to Section 3.18.040 of this Chapter on or before the payment due date of the Public Utility's bill first reflecting the tax, or directly to the Village Treasurer 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 3.18.040 or if the gas is delivered by a person other than a Public Utility so designated.

D. Nothing in this Chapter 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 Chapter 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 Treasurer 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 January 1, 2010.

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

### 3.18.040 COLLECTION OF TAX:

The Director of Finance 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 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 Village Treasurer 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 Village Treasurer;
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.

**SECTION 2:**

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

**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.

Motion made by Trustee \_\_\_\_\_, seconded by Trustee \_\_\_\_\_, that the Ordinance be adopted.

**ADOPTED BY THE PRESIDENT AND BOARD OF TRUSTEES** of the Village of Carpentersville, Kane County, Illinois, this \_\_\_ day of \_\_\_\_\_, 2010, pursuant to a roll call vote as follows:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**APPROVED** by me this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Village President

(SEAL)

ATTEST:

\_\_\_\_\_  
Village Clerk