

ORDINANCE NO. 2010-07-053

**AN ORDINANCE ADDING SECTION 45.1 TO CHAPTER 22
OF THE URBANA MUNICIPAL CODE**

(Municipal Gas Use Tax)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That Section 45.1 "Municipal Gas Use Tax" is hereby added to Chapter 22 of the Urbana Municipal Code, and shall read as follows:

Sec. 45.1 Short title. Municipal Gas Use Tax

The tax imposed by this section shall be known as the "Municipal Gas Use Tax" and is imposed in addition to all other taxes imposed by the City of Urbana, the state of Illinois, or any other municipal corporation or political subdivision thereof.

Sec. 45.1. Definitions.

For the purpose of this section, the following definitions shall apply:

"*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.

"*Public Utility*" means a public utility as defined in Section 3-105 of the Public Utilities Act.

"*Public Utilities Act*" means the Public Utilities Act as amended, (220ILCS 5/1-101 et seq.).

"*Retail purchaser*" means any person who purchases gas in a sale at retail.

"*Sale at retail*" means any sale of gas by a retailer to a person or 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. 45.1. Tax.

(a) Except as otherwise provided, 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 \$3.5 cent(s) per therm.

(b) the ultimate incidence of liability for payment of the tax is on the retail purchaser, and nothing in this section 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 on or before the payment due date of the public utility's bill first reflecting the tax, or directly to the Finance Department 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, 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 City.

(e) A person who purchases gas for resale and therefore does not pay the tax imposed by this division with respect to the use or consumption of the gas, but who later uses or consumes part of all of the gas, shall pay the tax directly to the Finance 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 the effective date hereof.

(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 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 years after the due date of such amount.

(i) To prevent multiple taxation, the use of gas in the City by a retail purchaser shall be exempt from the tax imposed by this division 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, as amended from time to time, authorized pursuant to section 8-11-2 of the Illinois Municipal Code (65 ILCS 5/8-11-2).

Sec. 45.1. Collection of Tax by Public Utility.

The Comptroller is authorized to enter in to a contract for collection of the tax imposed by this section 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 from retail purchasers as an independent contractor;

(2) The public utility will remit collected taxes to the Finance 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 three percent of the amounts collected and timely remitted to the City;

(4) The public utility shall not be responsible to the City for any tax not actually collected from a retail purchaser; and

(5) Such additional terms as the parties may agree upon.

Sec. 45.1. 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 division. All such books and records shall, at all times during business hours, be subject and available for inspection by the City.

Sec. 45.1. Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Article or failing to remit the tax owed shall upon conviction thereof be punished by a fine of not less than \$50.00 nor more than \$10,000 or five times the amount of tax imposed, whichever is greater. A separate and distinct offense shall be regarded as committed each day upon which said person shall continue any such violation or permit any such violation to exist after notification thereof.

Section 2. That the City Clerk is hereby directed to publish this ordinance ten (10) days after passage and the effective date is on the first day of the month which occurs at least sixty (60) days thereafter.

Section 3. If any section, paragraph or provision of this ordinance is held to be invalid or unenforceable, such invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance, or the provision of the Code.

Section 4. The provisions of this ordinance shall take precedence and be interpreted as superseding any other ordinance or statues in conflict with the provisions of this ordinance.

Section 5. This Ordinance is hereby passed by the affirmative vote of the majority of the members of the corporate authorities then holding office, the "ayes" and "nays" being called at a regular meeting of said Council.

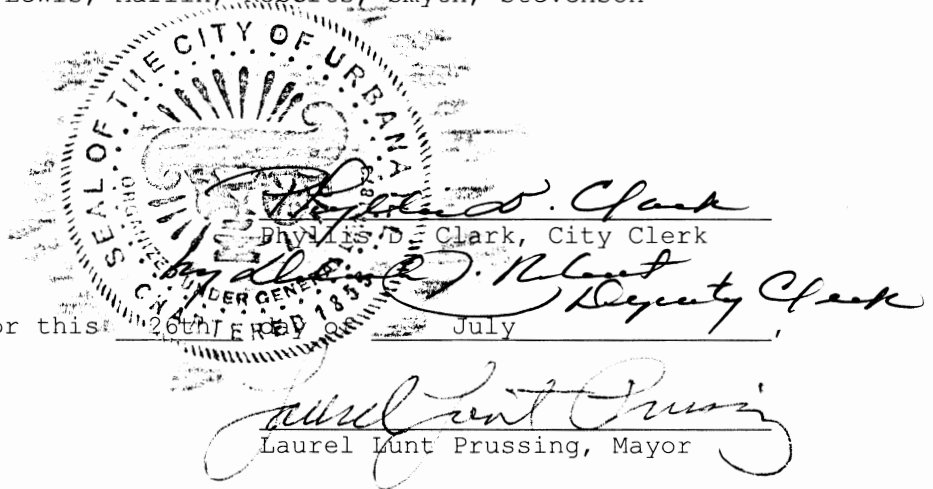
PASSED by the City Council this 19th day of July,
2010 .

AYES: Gehrig, Lewis, Marlin, Roberts, Smyth, Stevenson

NAYS:

ABSTAINS:

APPROVED by the Mayor this 26th day of July,
2010 .





CERTIFICATE OF PUBLICATION IN PAMPHLET FORM



I, PHYLLIS D. CLARK, certify that I am the duly elected and acting
Municipal Clerk of the City of Urbana, Champaign County, Illinois.

I certify that on the 19th day of July, 2010,
the Corporate Authorities of the City of Urbana passed and approved Ordinance
No. 2010-07-053, entitled:

[Ord. No. 2010-07-053] "AN ORDINANCE ADDING SECTION 45.1
TO CHAPTER 22 OF THE URBANA MUNICIPAL CODE (MUNICIPAL
GAS USE TAX)"

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2010-07-053 was prepared,
and a copy of such Ordinance was posted in the Urbana City Building
commencing on the 26th day of July, 2010, and
continuing for at least ten (10) days thereafter. Copies of such Ordinance
were also available for public inspection upon request at the Office of the
City Clerk.

Dated at Urbana, Illinois, this 26th day of July,
2010.

Phyllis D. Clark
Phyllis D. Clark, City Clerk
by [Signature] Deputy Clerk

