

VILLAGE OF TOLONO  
CHAMPAIGN COUNTY, ILLINOIS

ORDINANCE NO. 2023-0-4

AN ORDINANCE REVISING THE VILLAGE OF TOLONO CODE OF ORDINANCES  
TO PROVIDE FOR A UTILITY TAX ON WATER

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Published in pamphlet form by authority of the President and the Board of Trustees of the Village of Tolono, Champaign County, Illinois. This 7th day of March, 2023.

VILLAGE OF TOLONO

AN ORDINANCE REVISING THE VILLAGE OF TOLONO CODE OF ORDINANCES TO PROVIDE FOR A UTILITY TAX ON WATER

ORDINANCE NO. 2023-0-4

WHEREAS, the Village of Tolono is an Illinois non-home rule municipal corporation organized and operating under the Illinois Municipal Code, 65 ILCS 5/1-1-1, et seq. (the "Code"); and

WHEREAS, 65 ILCS 5/8-11-2(4) of the Code authorizes the Village to levy and collect taxes on the delivery and/or consumption of certain utilities, including water; and

WHEREAS, the Village of Tolono previously adopted its Revised Code of Ordinances; and

WHEREAS, the Village has found it appropriate to adopt the within Ordinance to add an article to its Revised Code of Ordinances providing for the taxation of the sale of water in the Village; and

WHEREAS, the Village has contracted for the sale of its water and waste water systems to Illinois-American Water Company and after the closing on said sale desires to levy the tax contemplated herein; and

WHEREAS, the President and Board of Trustees hereby declare the levy of such a tax as necessary to support the operations of the Village and does hereby levy a municipal utility tax in the manner herein described.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Tolono, Champaign County, Illinois, hereby amends the Tolono Revised Code of Ordinances to additionally include as follows:

Section 34.49 of Chapter 34 of the Tolono Revised Code of Ordinances is hereby created and shall read, in entirety as follows:

34.49.1: Imposition of Water Utility Tax. Commencing the later of July 1, 2023 or the first day of the month following the sale of the Village water and wastewater system to Illinois American Water Company, a tax is imposed on all persons engaged in the following occupations or privileges:

The privilege of using or consuming water acquired in a Purchase at Retail and used or consumed within the corporate limits of the Village shall be taxed at the rate of 3% of the gross receipts and calculated on a monthly basis for each Purchaser.

#### 34.49.2: Exceptions; Exemptions.

A. None of the taxes authorized by this Chapter may be imposed with respect to any transaction in interstate commerce or otherwise to the extent to which the business or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State or any political subdivision thereof; nor shall any persons engaged in the business of distributing, supplying, furnishing, or selling, or using or consuming water acquired in a Purchase at Retail, be subject to taxation under the provisions of this Chapter for those transactions that are or may become subject to taxation under the provisions of the "Municipal Retailers' Occupation Tax Act" authorized by Section 8-11-1 of the Illinois Municipal Code; nor shall any tax authorized by this Chapter be imposed upon any person engaged in a business or on any privilege unless the tax is imposed in like manner and at the same rate upon all persons engaged in businesses of the same class in the Village, whether privately or municipally owned or operated, or exercising the same privilege within the Village. None of the within taxes shall be imposed on water sold directly by the Village but shall instead be imposed upon the sale of water by any other entity not otherwise excluded by this ordinance.

B. The Village of Tolono, the Tolono Fire Protection District, the Tolono Library District, and the Tolono Park District shall be exempted from the taxes imposed by this Chapter for such accounts attributable to buildings and facilities located in the Village.

34.49.3. Additional Taxes. Such taxes shall be in addition to other taxes levied upon the taxpayer or a Person Maintaining a Place of Business in this State. All of the taxes enumerated in this Chapter are in addition to the payment of money, or value of products or services furnished to the Village by the taxpayer or Person Maintaining a Place of Business in this State as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon or thereunder of equipment used in the operation of its business.

34.39.4. Collection. The tax authorized by this Chapter shall be collected from the Purchaser by the Person Maintaining a Place of Business in this State who delivers the water to the Purchaser. This tax shall constitute a debt of the Purchaser to the person who delivers the water to the Purchaser and if unpaid, is recoverable in the same manner as the original charge for delivering the water. Any tax collected by the Person Maintaining a Place of Business in this State delivering the water shall constitute a debt owed to the Village by such Person Maintaining a Place of Business in this State. Persons delivering the water shall collect the tax from the Purchaser by adding such tax to the gross charge for delivering the water. Persons delivering the water shall also be authorized to add to such gross charge an amount equal to 3% of the tax to reimburse the person delivering the water for the expense incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the Village upon request. If the person delivering the water fails to collect the tax from the Purchaser, then the Purchaser shall be required to pay the tax directly to the Village in the manner prescribed by the Village. Persons delivering the water who file returns pursuant to this paragraph shall, at the time of filing such return, pay the Village the amount of the tax collected pursuant to this Chapter.

34.39.5. Reports To Village. On or before the last day of each month, each Person Maintaining a Place of Business in this State who delivers the water to the Purchaser, in the case of the tax

imposed by this Chapter, and each taxpayer shall make a return to the Village for the preceding month stating:

- a) Its name.
- b) Its principal place of business.
- c) Its Gross Receipts, as applicable, during the month upon the basis of which the tax is imposed.
- d) Amount of tax.
- e) Such other reasonable and related information as the corporate authorities may require.

Each person making the return herein provided for shall, at the time of making such return, pay to the Village, the amount of tax herein imposed; provided that in connection with any return, the person may, if he so elects, report and pay an amount based upon a reasonable estimate of the total billings of business subject to the tax during the period for which the return is made (exclusive of any amounts previously billed) with prompt adjustments of later payments based upon any differences between such billings.

34.39.6. Credit for Over-Payment. If it shall appear that an amount of tax has been paid which was not due under the provisions of this Article, whether as the result of a mistake of fact or an error of law, then such amount shall be credited to the extent permitted by law.

34.39.7. Definitions. For the purpose of this Chapter the following terms shall have the meanings ascribed to them herein:

"Gross Receipts" The consideration received for distributing, supplying, or selling water for use or consumption and not for resale, and for all services rendered in connection therewith valued in money, whether received in money or otherwise, including cash, credit, services and property of every kind and material and for all services rendered therewith, and shall be determined without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever; provided, however that "Gross Receipts" shall not include (i) any amounts specifically excluded from the definition of gross receipts in Section 8-11-2(d) of the Illinois Municipal Code and (ii) that portion of the consideration received for the distributing, supplying, furnishing or selling water to the Village of Tolono.

"Person" Any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, limited liability company, municipal corporation, the State or any of its political subdivisions, any State university created by statute, or a receiver, trustee, guardian, or other representative appointed by order of any court.

"Person Maintaining a Place of Business in this State" Any person having or maintaining within this State, directly or by a subsidiary or other affiliate, an office, generation facility, distribution facility, transmission facility, sales office or other place of business, or any employee, agent, or other representative operating within this State under the authority of the person or its subsidiary or other affiliate, irrespective of whether such place of business or agent or other representative is located in this State permanently or temporarily, or whether such person, subsidiary or other affiliate is licensed or qualified to do business in this State.

"Public Utility" Shall have the meaning ascribed to it in Section 3-105 of the Public Utilities Act but shall include alternative retail water suppliers as defined in Section 16-102 of that Act.

"Purchaser" Any person who uses or consumes, within the corporate limits of the Village, water acquired in a Purchase at Retail, excluding any local governmental body or school district whose territory includes the municipality.

"Purchase at Retail" Any acquisition of water by a Purchaser for purposes of use or consumption, and not for resale.

34.39.8. Limitation of Liability. If the provisions of this Ordinance with respect to the exemption of the Village of Tolono from the taxes imposed by this Ordinance or the application thereof are held unconstitutional or otherwise invalid, the amount of tax due as a consequence of such holding shall be limited to the amount that the taxpayer is authorized to charge and collect from such school districts and units of local government pursuant the provisions of Section 9-221 of the Public Utilities Act or any successor thereto.

34.39.9. Notice• Address List. The Village Clerk is hereby directed to send a certified copy of this Ordinance to all utilities which provide service to customers within the Village and to cooperate with such utilities in determining addresses of premises subject to the taxes herein described, including but not limited to the names and addresses of each school district and unit of local government which own facilities within the corporate limits of the Village.

34.39.10. Prior Ordinances. To the extent that the within Ordinance conflicts with any prior Ordinances relating to the taxation of water in the Village, the within Ordinance shall prevail.

34.39.11. Effective Date. This Ordinance shall be in full force and effect, following its passage, approval and publications as required by law and shall be effective with respect to (i) the use or consumption of water and (ii) Gross Receipts actually paid to the taxpayer for services billed on or after the adoption of this ordinance."

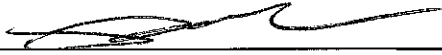
2. To the extent that the within Ordinance conflicts with the terms of the Tolono Revised Code of Ordinances as previously amended, the terms of the within ordinance shall prevail and all other terms of the said Revised Code of Ordinances shall remain in full force and effect.

3. This Ordinance shall be in effect upon passage and shall be published in pamphlet form in accordance with applicable law.

Passed by the board of Trustees of the Village of Tolono, Champaign County, Illinois on the 7<sup>th</sup> day of March, 2023 by the following roll call vote:

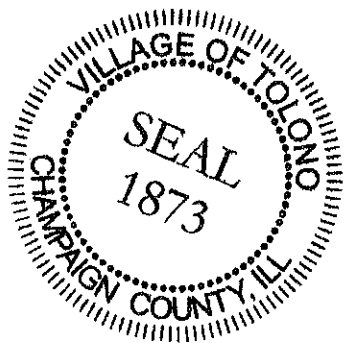
	AYE	NAY	ABSTAIN
Trustee Vicki Buffo:	—	<u>X</u>	—
Trustee Terrence Stuber	—	—	<u>X</u>
Trustee Jared Robbins	—	<u>X</u>	—
Trustee Ann Jack Haluzak	<u>X</u>	—	—
Trustee Kyle Hayden	<u>X</u>	—	—
President Robert Murphy	<u>X</u>	—	—

Approved this 7th day of March, 2023 and effective this date. This ordinance shall be published in pamphlet form in accordance with applicable law.

By:   
 Robert Murphy, President

Attest:

  
 Brandy Dalton, RMC, CMC, Village Clerk



State of Illinois )

County of Champaign )

CERTIFICATE

I, BRANDY DALTON, certify that I am the duly appointed and acting Village Clerk of the Village of Tolono, Champaign County, Illinois.

I further certify that on March 7, 2023 the Corporate Authorities of such municipality passed and approved Ordinance No. 2023-0-4 entitled "An Ordinance Revising the Village of Tolono Code of Ordinances to Provide for A Utility Tax on Water" which provided by its terms that it should be published in pamphlet form. A draft copy of said Ordinance was on file for public inspection at least once a week before passage.

The pamphlet form of said Ordinance and a cover sheet thereof, was prepared and posted in the Village Hall commencing on March 8, 2023 and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request to the Village Clerk.



Brandy Dalton, RMC, CMC, Village Clerk

