

**TOWN OF LOXAHATCHEE GROVES**

**ORDINANCE NO. 2007-03**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, IMPLEMENTING A "PUBLIC SERVICE TAX" PURSUANT TO SECTION 166.231, FLORIDA STATUTES; PROVIDING FOR NOTICE TO THE DEPARTMENT OF REVENUE; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 166.231. *et.seq.* Florida Statutes authorizes a municipality to levy a tax on the purchase of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, manufactured gas either metered or bottled, and water service (the "Public Service Tax"); and

**WHEREAS**, Section 166.233, F.S., expressly authorizes a municipality to establish a Public Service Tax by ordinance; and

**WHEREAS**, prior to incorporation, the Palm Beach County Public Service Tax was levied on the authorized purchases within the boundaries of the newly incorporated Town of Loxahatchee Groves; and

**WHEREAS**, the Town Council of the Town of Loxahatchee Groves (hereinafter referred to as the "Town"), pursuant to Section 166.231, *et.seq.*, desires to adopt a Public Service Tax; and

**WHEREAS**, the Town Council deems the implementation of the Public Service Tax to be in the best interests of the health, safety, and welfare of the citizens and residents of the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AS FOLLOWS:**

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**Section 1.** The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

**Section 2.** That the Code of Ordinances of the Town of Loxahatchee Groves is hereby amended by enacting a new Section entitled "Public Service Tax" to read as follows:

**Sec. 17-221. Title.**

This article shall be known as the "Town of Loxahatchee Groves Public Service Tax Ordinance."

**Sec. 17-222. Definitions.**

As used in this article:

- (a) Purchase means every act or transaction whereby possession of, utilization of, control over or title to electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) becomes vested in the purchaser within the incorporated area of the Town of Loxahatchee Groves for which payment is made pursuant to a duty and obligation therefor.
- (b) Purchaser shall be construed to include but shall not be limited to any natural person, firm, corporation, partnership or joint venture who is legally liable for the payment of a taxable item or service rendered to such entity by any seller.
- (c) Sale shall be synonymous with "purchase" and vice versa.
- (d) Seller shall mean every person delivering or rendering a taxable item or service as set forth in this article to any purchaser thereof.
- (e) Manufactured gas is limited to manufactured natural gas and manufactured propane and excludes industrial gases.
- (f) Town shall mean the Town of Loxahatchee Groves

**Sec. 17-223. Levy of tax.**

(a) There is hereby levied by the Town on each and every purchase, within the corporate boundaries of the Town, of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) a tax at a rate of ten (10) percent of the first four thousand dollars (\$4,000.00) purchased by a purchaser during a monthly period, a rate of two (2) percent of the next two thousand dollars (\$2,000.00) purchased by a purchaser during a monthly period, and a rate of one (1) percent of any amount in excess of six thousand dollars (\$6,000.00) purchased by a purchaser during a monthly period. The monthly period referenced to in this section is the monthly billing cycle of a seller. The tax shall not be applied against

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any fuel adjustment charge, and such charge shall be separately stated on each bill. The term "fuel adjustment charge" means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.

### **Sec. 17-224. Date of application.**

The tax levied hereby shall apply to all purchases of electricity or metered or bottled gas occurring on or after January 1, 2008.

### **Sec. 17-225. Duty of seller as to collection of tax; liability for failure to collect.**

(a) It shall be the duty of every seller of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the corporate boundaries of the Town to collect from the purchaser thereof for the use of the Town the taxes hereby levied at the time of collecting the selling price charged for each and every transaction and to report and pay over on or before the fifteenth day of each calendar month to the Town Clerk all such taxes levied and collected during the preceding calendar month. The form of the return shall be determined by the seller, and the return shall be deemed sufficient if it identifies the name and address of the seller, the period of the return, the amount collected from the sale of taxable services, any collection allowance taken, the amount of tax remitted with the return, and the name and telephone number of a person authorized by the seller to respond to inquiries from the Town concerning the seller's administration of the tax.

(b) It shall be unlawful for any seller to collect the price of any purchase of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) sold within the corporate boundaries of the Town without at the same time collecting such tax hereby levied in respect to such purchase or purchases unless such seller shall elect to assume and pay such tax without collecting the same from the purchaser or consumer; however, the seller shall not be liable for the payment of such tax upon uncollected bills.

(c) Any seller failing to collect such tax at the time of collecting the price of any purchase and sale, as aforesaid, where the seller has not elected to assume and pay such tax shall be liable to the Town for the amount of such tax in like manner as if the same had actually been paid to the seller; and the Town shall bring and cause to be brought all such suits and actions and take such proceedings as may be necessary for the recovery of such tax.

(d) Interest shall be assessed, for failure to pay any tax when due or to file any required return, at a rate of 1 percent per month of the delinquent tax from the date the tax was due until paid.

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- (e) Penalties shall be assessed upon a determination by a hearing officer appointed by the Town Council that willful neglect, willful negligence or fraud was present regarding the failure to pay any tax due or to file any required return.
- (f) Penalties shall be assessed at a rate of 5 percent per month of the delinquent tax, not to exceed a total penalty of 25 percent. In no event shall the penalty for failure to file a return be less than fifteen dollars (\$15.00).
- (g) In the event the hearing officer determines that a fraudulent return has been filed or that a seller has willfully attempted to evade payment of the tax, the seller making such fraudulent return or willfully attempting to evade payment of the tax shall be liable for a specific penalty of one hundred (100) percent of the tax.
- (h) Interest and penalties shall be computed on the net tax due after application of any overpayment and are subject to compromise as provided by section 166.234(14), Florida Statutes (1997), as amended from time to time.
- (i) Appeal of any determination regarding interest and penalties assessed by the Town pursuant to this section shall be made by filing an action in circuit court as provided in section 166.234(12), Florida Statutes (1997), as amended from time to time.

### **Sec. 17-226. Records to be kept by seller; inspection of records; transcripts; provision of street name; and block numbers at unincorporated boundaries.**

- (a) Each and every seller of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the corporate boundaries of the Town, with respect to sales and purchases, on which the tax is hereby levied, shall keep full and complete records showing all purchases and sales of such electricity, or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the corporate boundaries of the Town, which records shall show the price charged upon each sale and purchase, the date and period of time covered thereby, and the date of payment thereof.
- (b) The records referred to in subsection (a) above shall, with sixty (60) days' prior notice by the Town, be open for inspection by duly authorized agents of the Town during regular business hours of the seller at a place designated by the seller at the sole expense of the Town. The agents of the Town shall have the right, power and authority to make such transcripts or copies thereof as they may desire. Notice of intent to audit by the Town shall be given in accordance with the provisions of Florida Statutes, § 166.234, as may be amended from time to time.
- (c) The Town shall provide, in response to any person making a request, a listing of street addresses within the Town, in accordance with the requirements and procedures set forth in Florida Statutes, § 166.233(3), as may be amended from time to time. The Town shall be entitled to collect a fee, not to exceed the actual cost of duplicating the information, from the person requesting the

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information, not to exceed the actual cost of providing the information to the person. The seller shall be responsible for charging the tax only to the service, street and billing addresses contained in this listing, which include all the required procedures required by Florida Statutes, § 166.233(3).

### **Sec. 17-227. Seller made collecting agent for tax; certification of correctness of billings; transmissions of certification.**

(a) The sellers of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the Town's corporate boundaries shall act as the collection medium and collecting agency for the collection from the purchaser of the tax levied in this article for the use of the Town. The Town may bring such legal action as in its discretion may appear advisable under the terms of this section.

(b) The sellers of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the corporate boundaries of the Town shall furnish to the Town a certification duly executed by one of the officials of the company certifying as to the accuracy and correctness of billing and collections required under the terms of this section, which certification shall accompany the remittance of such tax collected or paid for the preceding month.

### **Sec. 17-228. Exemptions.**

(a) The following purchasers are declared to be exempt from the tax imposed hereby: the purchase of any taxable item by the United States government, the state, all counties, school districts, municipalities of the state, or any other public body as defined in Florida Statutes, § 1.01, Florida Statutes; the purchase of any taxable item by any recognized church within the state for use exclusively for church purposes; and the purchase of gas (natural, liquefied petroleum gas or manufactured) by a public or private utility, either for resale or for use as fuel in the generation of electricity.

(b) Residential users of electricity are exempted from the tax imposed by this article in an amount up to and including the first two hundred (200) kilowatt hours of electricity purchased per month for residential use. Such exemption shall apply to each separate residential unit, regardless of whether such unit is on a separate meter or a central meter, and shall be passed on to each individual tenant.

(c) A purchaser who claims an exemption under this section shall certify to the seller that he or she qualifies for the exemption, which certification may encompass all purchases after a specified date or other multiple purchases. A seller accepting the certification required by this subsection is relieved of the obligation to collect and remit tax; however, a governmental body that is exempt from the tax shall not be required to furnish such certification and a seller is not required to collect tax from such an exempt governmental body.

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### **Sec. 17-229. Tax shall be computed on aggregate amount of sales.**

In all cases where the seller of the taxable commodity or service collects the price thereof in monthly periods, the tax levied by this article shall be computed on the aggregate amount of sales during each monthly period; providing that the amount of tax to be collected shall be the nearest whole cent to the amount computed. When a seller renders a bill to a purchaser to cover purchases made during the particular period of time to which a bill is applicable, the amount of the public service tax shall be stated separately from other governmental charges and taxes and shall not be levied on such taxes and charges.

### **Sec. 17-230. Penalty for violation.**

Any purchaser willfully failing or refusing to pay the tax imposed by this Article, where the seller has not elected to assume and pay such tax, and any seller violating the provisions of this article, or any officer, agent or employee of any seller violating the provisions of this article may be punished as provided in the Town's Code of Ordinances. The Town may further bring suit to restrain, enjoin or otherwise prevent the violation of this article and shall be entitled to reasonable attorney's fees if it prevails in such suit. The penalties referenced in this section are supplementary to and in addition to the penalties set forth in the Town's Code of Ordinances. The Town retains the discretion to enforce this ordinance in any manner authorized by law or ordinance.

### **Section 3.** It is the intention of the Town Council of the Town of Loxahatchee Groves

that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Loxahatchee Groves, Florida, and that the Sections of this ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section", "Article" or such other word or phrase in order to accomplish such intention.

### **Section 4.** If any clause, section, or other part or application of this Ordinance shall be

held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the remaining portions or applications remaining in full force and effect.

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**Section 5.** All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

**Section 6.** Upon adoption, the Town Clerk shall transmit a copy of this Ordinance to the State of Florida Department of Revenue as provided by Section 166.233, Florida Statutes.

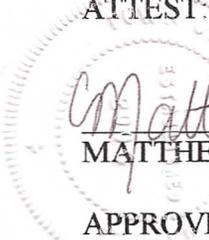
**Section 7.** This Ordinance shall become effective on January 1, 2008, as provided by Florida law.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS 17<sup>th</sup> DAY OF JULY, 2007.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS 7<sup>th</sup> DAY OF AUGUST 2007.

  
\_\_\_\_\_  
DAVID BROWNING, MAYOR

ATTEST:

  
  
\_\_\_\_\_  
MATTHEW LIPPMAN, INTERIM TOWN CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
OFFICE OF THE TOWN ATTORNEY

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