

ORDINANCE NO. 2378-24

AN ORDINANCE AMENDING THE VILLAGE CODE OF THE VILLAGE OF HAWTHORN WOODS—TITLE 3, MUNICIPAL OCCUPATION TAXES—REPEAL AND REPLACE 3-2-1—NON-HOME RULE MUNICIPAL RETAILERS' OCCUPATION TAX AND NON-HOME RULE MUNICIPAL SERVICE OCCUPATION TAX; AND REPEAL AND RESERVE SECTION 3-2-2

WHEREAS, the Illinois Municipal Code, 65 ILCS 5/1-2-1, provides that the corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper; and,

WHEREAS, the Village of Hawthorn Woods (Village) is a non-home rule Illinois municipality pursuant to the Constitution of the State of Illinois of 1970, as amended; and,

WHEREAS, Section 8-11-1.1 of the Illinois Municipal Code (65 ILCS 5/8-11-1.1) empowers non-home rule Illinois municipalities to impose certain Municipal Retailers' Occupation Taxes as outlined at Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) (the "Non-Home Rule Municipal Retailers' Occupation Tax"); and,

WHEREAS, Section 8-11-1.1 of the Illinois Municipal Code (65 ILCS 5/8-11-1.1) empowers non-home rule Illinois municipalities to impose certain Municipal Service Occupation Taxes as outlined at Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) (the "Non-Home Rule Municipal Service Occupation Tax"); and,

WHEREAS, Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) empowers a non-home rule municipality to "impose a tax upon all persons engaged in the business of selling tangible personal property, other than on an item of tangible personal property which is titled and registered by an agency of this State's Government, at retail in the municipality" based upon the "gross receipts from such sales made in the course of such business" for "expenditure on public infrastructure or for property tax relief or both" as defined in Section 8-11-1.2 (65 ILCS 5/8-11-1.2); and,

WHEREAS, Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) empowers a non-home rule municipality to "impose a tax upon all persons engaged, in such municipality, in the business of making sales of service . . . of the selling price of all tangible personal property transferred by such servicemen either in the form of tangible personal property or in the form of real estate as an incident to a sale of service;" and,

WHEREAS, Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) and Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) empower the Village to impose the Non-Home Rule Municipal Retailers' Occupation Tax and the Non-Home Rule Municipal Service Occupation Tax in 1/4% increments up to 1%; and,

WHEREAS, Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) requires any municipality imposing a Non-Home Rule Municipal Retailers' Occupation Tax under Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) to impose a Non-Home Rule Municipal Service Occupation Tax under Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) at "the same rate" as the rate imposed as the Non-Home Rule Municipal Retailers' Occupation Tax being imposed; and,

WHEREAS, any Non-Home Rule Municipal Retailers' Occupation Tax imposed by the Village under Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) shall be administered, collected and enforced by the Illinois Department of Revenue; and,

WHEREAS, any Non-Home Rule Municipal Service Occupation Tax imposed by the Village under Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) shall be administered, collected and enforced by the Illinois Department of Revenue; and,

WHEREAS, proceeds generated from the imposition of any Non-Home Rule Municipal Retailers' Occupation Tax or Non-Home Rule Municipal Service Occupation Tax by the Village must be used for "public infrastructure" or "property tax relief," as those terms are defined at Section 8-11-1.2 of the Illinois Municipal Code (65 ILCS 5/8-11-1.2); and,

WHEREAS, the Corporate Authorities of the Village of Hawthorn Woods believe that it is appropriate, necessary, and in the best interests of the Village and its residents, that the Village levy a Non-Home Rule Municipal Retailers' Occupation Tax pursuant to Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) and a Non-Home Rule Municipal Service Occupation Tax pursuant to Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) so that the Village can provide property tax relief and invest in public infrastructure, as those terms are defined at Section 8-11-1.2 of the Illinois Municipal Code (65 ILCS 5/8-11-1.2).

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Board of Trustees of the Village of Hawthorn Woods as follows:

SECTION ONE: The foregoing recitals shall be and are hereby incorporated as findings of fact as if said recitals were fully set forth herein.

SECTION TWO: That Title 3, Section 3-2-1, entitled "Municipal Retailers' Occupation Tax" is hereby repealed in its entirety and replaced with a new Section 3-2-1, as follows:

"3-2-1: Non-Home Rule Municipal Retailers' Occupation Tax and Non-Home Rule Municipal Service Occupation Tax

A. Non-Home Rule Municipal Retailers' Occupation Tax Imposed: A tax is hereby imposed upon all persons engaged in the business of selling tangible personal property, other than an item of tangible personal property titled or registered with an agency of this state's government, at retail in this municipality at the rate of 1% of the gross receipts from such sales made in the course of such business while this Ordinance is in effect. The imposition of this tax is in accordance with and subject to

the provisions of Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3).

- B. **Non-Home Rule Municipal Service Occupation Tax Imposed:** A tax is hereby imposed upon all persons engaged in this municipality in the business of making sales of service, of the selling price of all tangible personal property transferred by such serviceman as an incident to a sale of service. The rate of this tax shall be the same rate identified in Section A, above. The imposition of this tax is in accordance with and subject to the provisions of Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4).
- C. **Illinois Department of Revenue to Administer Both Taxes:** The taxes hereby imposed, and all civil penalties that may be assessed as an incident thereto, shall be collected and enforced by the Department of Revenue of the State of Illinois. The Department of Revenue shall have full power to administer and enforce the provisions of this Ordinance.
- D. **Clerk to file Ordinance with Illinois Department of Revenue:** As required under Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3), the Clerk is hereby directed to file a certified copy of this Ordinance with the Illinois Department of Revenue on or before October 1, 2024.
- E. **Effective Date:** This Ordinance shall take effect on: (i) the first day of July next following the adoption and filing of this Ordinance with the Department of Revenue, if filed on or before the preceding April 1st; or, (ii) the first day of January next following the adoption and filing of this Ordinance with the Department of Revenue, if filed on or before the preceding October 1st.
- F. **Limitation on Use of Proceeds:** The Village shall only expend the proceeds generated from any tax imposed by virtue of this Ordinance on: (i) expenditures related to “municipal roads and streets, access roads, bridges, and sidewalks; waste disposal systems; and water and sewer line extensions, water distribution and purification facilities, storm water drainage and retention facilities, and sewage treatment facilities[;]” (ii) efforts to “reduce the levy for real estate taxes or avoid an increase in the levy for real estate taxes that would otherwise have been required” by the Village; or (iii) any other or further permitted uses under Section 8-11-1 of the Illinois Municipal Code (65 ILCS 5/8-11-1) as may now or hereafter be authorized therein.
- G. **Qualified Exemption of Aviation Fuel from Both Taxes:** No provision of this Ordinance shall be interpreted to impose any tax on aviation fuel, as defined in Section 3 of the Retailers’ Occupation Tax Act (35 ILCS 120/3), unless the proceeds of said tax are expended for airport-related purposes, as that term is defined in Section 6z-20.2 of the State Finance Act (30 ILCS 105/6z-20.2), and said expenditures are made in compliance with the certification requirements for airport-related purposes under Section 2-22 of the Retailers’ Occupation Tax Act (35 ILCS 120/2–22).”

SECTION THREE: That Title 3, Section 3-2-2 is hereby repealed and Reserved.

SECTION FOUR: Repeal of Conflicting Provisions. That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, superseded by this Ordinance.

SECTION FIVE: Severability. If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

SECTION SIX: Headings/Captions. The headings/captions identifying the various sections and subsections of this Ordinance are for reference only and do not define, modify, expand or limit any of the terms or provisions of the Ordinance.

SECTION SEVEN: Publication. The Clerk is directed by the corporate authorities to publish this Ordinance in pamphlet form. This Ordinance shall be in full force and effect after its passage and publication in accordance with 65 ILCS 5/1-2-4.

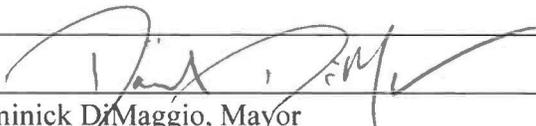
The foregoing Ordinance was adopted by a roll call vote as follows:

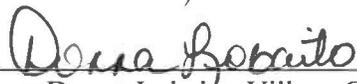
AYES: Kaiser, McCartney, Reynolds, Bauer, Hurst, Haman

NAYS: 0

ABSTENTIONS: 0

ABSENT: 0

APPROVED: 
Dominick DiMaggio, Mayor

ATTEST: 
Donna Lobaito, Village Clerk

PASSED: Sept. 23, 2024

APPROVED: Sept. 23, 2024

PUBLISHED: Sept. 24, 2024