

RESOLUTION NO. 2325

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON FOR THE ADMINISTRATION OF THE LOCAL MOTOR VEHICLE FUEL TAX PROVIDED THROUGH ITS DEPARTMENT OF TRANSPORTATION.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. That 54% of the Troutdale voters in the November 3, 2015 Special Election voted in favor of Ballot Measure 26-168 approving a phased in local tax on motor vehicle fuels distributed within the City.
2. The City Council adopted Ordinance 834 on October 13, 2015 adding to the Troutdale Municipal Code (TMC) Chapter 3.07 establishing the administrative program for the Motor Vehicle Fuel Tax.
3. That sharing resources to avoid unnecessary duplication of staff, equipment, and training will promote efficiency and effectiveness in local government administration and service delivery such that the most cost efficient method for reporting, administration and collection of the fuel tax, for both the fuel dealers and the City, is through the existing dealer fuel tax system administered by Oregon Department of Transportation (ODOT).
4. That the Oregon Revised Statutes (ORS) 190.110 provide the necessary authority for the City and ODOT to enter into an Intergovernmental Agreement (IGA) for the administration of the local motor vehicle fuel tax.
5. That TMC 3.07.270.B. authorizes the selection of ODOT to provide for the administration of the local motor vehicle fuel tax.
6. The City and ODOT wish to enter into an IGA to provide for the administration of the local motor vehicle fuel tax which addressing all the parties needs and obligations has been successfully negotiated and is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Agrees now that the City enter into an IGA with ODOT to provide for the administration of the local motor vehicle fuel tax, and approves the IGA in substantial conformity with Exhibit A of the Staff Report.

Section 2. Designates the City Manager or Finance Director (each a "City Official") or a designee of the City Official, to act on behalf of the City, and without further action by the City Council the City Official is hereby authorized, empowered and directed to sign the IGA on behalf of the City, and any and all other required and necessary documents to implement the intent of the agreement.


Section 3. The City Official is hereby authorized to execute, acknowledge and deliver the IGA in substantial conformity with Exhibit A of the Staff Report, including any other supporting and implementing documents, and to take any other action as may be advisable, convenient, necessary, or appropriate to give full force and effect to the terms and intent of the IGA, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 4. Further, consistent with intent of the IGA, and in the best interest of the City, the City Official is authorized to determine, execute, acknowledge and deliver any subsequent addendums, extension, revisions, modification, or successor documents of the IGA, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 5. The Finance Director is authorized to disburse funds, subject to annual appropriations, as necessary to fulfill the IGA obligations, and is further directed to implement all such actions necessary to ensure budgetary compliance.

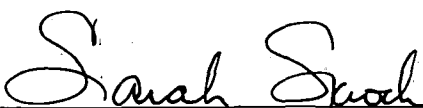
Section 6. This Resolution shall be effective upon adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Doug Daoust, Mayor
3/15/16

Date



Sarah Skroch, City Recorder
Adopted: February 9, 2016

**INTERGOVERNMENTAL AGREEMENT
Motor Vehicle Fuel Dealer Tax Collection
City of Troutdale**

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and the City of Troutdale, hereinafter referred to as "City," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Under ORS 802.010, ODOT has the authority to perform all of the duties, functions, and powers with respect to the administration of the laws relating to the motor vehicle fuel license tax, aircraft fuel license tax and use fuel license tax including ORS Chapter 319.
3. Under ORS 319.950, a city, county or other local government may enact or amend any charter provision, ordinance, resolution or other provision taxing fuel for motor vehicles after submitting the proposed tax to the electors of the local government for their approval.
4. On October 15, 2015, the City adopted City of Troutdale Ordinance No. 834 (attached as Exhibit A and by this reference made a part hereof) that was subsequently approved by the electors of the City, hereinafter referred to as "Ordinance 834." Ordinance 834 authorizes the collection and use of a \$.01-.03 per gallon motor vehicle fuel license tax (hereinafter referred to as "tax") on motor vehicle fuel dealers that sell, use or distribute fuel in the City.
5. Section 3.07.270(B) of Ordinance 834 authorizes the City to enter into an agreement with ODOT for the administration of Ordinance 834. City desires that ODOT act as the tax administrator for the purpose of taxes due under Ordinance 834.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. ODOT shall act as the tax administrator for the taxes due under Ordinance 834 pursuant to the terms and conditions of this Agreement.

2. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on December 31, 2035, unless extended by an amendment to this Agreement.
3. Upon the effective date of Ordinance 834, the City shall pay a fee to ODOT for activities performed by ODOT required or necessary for the implementation of City Ordinance 834 (hereinafter referred to as "start up costs"). The fee shall be at a rate of \$55.00 per hour not to exceed fifty (50) hours. The fee and the fifty (50) hour cap apply only to start up costs incurred by ODOT. Start up costs include but are not limited to programming charges, service and supplies, travel, Attorney General expenses, and ODOT staff time. The start up costs are in addition to the costs incurred by ODOT in the administration of Ordinance 834, described in Paragraph X, below. In no event will total start up costs be less than \$2,200 nor shall they exceed \$7,500. In Addition, the City will reimburse ODOT for the actual cost incurred by ODOT associated with the required upgrade to ODOT's computer system as a result of this Agreement. The cost to upgrade ODOT's computer system is estimated to be \$31,830.
4. The City shall be responsible for the actual costs incurred by ODOT for administration of Ordinance 834. The actual costs will be paid to ODOT pursuant to Paragraph X, below. Administration includes, but is not limited to, processing reports and payments; entering data into system; resolving errors and discrepancies; managing records; responding to licensee inquiries, and auditing.
5. Taxes paid under Ordinance 834 shall be collected by ODOT on behalf of the City. Actual costs incurred by ODOT in the administration of Ordinance 834 shall be retained by ODOT from the tax collected under Ordinance 834 on a monthly basis. The actual costs retained by ODOT under this paragraph shall be deposited by ODOT into the Department of Transportation Motor Vehicle Suspense Account with the State Treasurer pursuant to ORS 802.110. ODOT shall retain from the tax collected under Ordinance 834 all refunds due a tax payor under ORS 319.280 to ORS 319.320, and shall pay the refunds retained directly to the tax payor. The balance of the tax collected by ODOT under Ordinance 834 shall be transferred to the City's Local Government Investment Pool Account with the State Treasurer no later than the 15th day of the month following the month of collection.
6. ODOT shall be responsible for all aspects of tax administration as it pertains to Ordinance 834 and as further defined in this Agreement. ODOT **will not** act as tax administrator for purposes of declaring the effective date of the tax, or commencing and prosecuting lawsuits to final determination in any court. ODOT will provide litigation support in the event of a lawsuit. The City shall pay a fee to ODOT for litigation support at a rate of \$55.00 per hour. Litigation support includes, but is not limited to, document preparation, travel, and testimony.
7. ODOT may, at its sole discretion, determine what action shall be taken to enforce Ordinance 834 for purposes of tax administration. In exercising its discretion, ODOT shall provide a level of service comparable to the level of service it provides in the

administration of the Oregon motor vehicle fuel tax statutes. Audits will be limited to motor vehicle fuel dealers that are also licensed under ORS Chapter 319.

8. If the City requests and ODOT agrees, or if ODOT deems it necessary to vary substantially from the standard level of service, a supplemental Agreement shall be entered into between the Parties before services are performed.
9. ODOT's Project Manager responsible for this Agreement is ODOT Fuel Tax Manager or designee, Transportation Building – Mail Stop 21, 355 Capitol St NE, Salem, OR 97301-2530.
10. City's Project Manager responsible for coordinating the administrative requirements of this Agreement is the Finance Director or designee.
11. Beginning in January 2017 and no later than March 15 each year thereafter, ODOT shall provide a written report for the preceding calendar year to City showing the total revenue collected, refunds paid, the expenses incurred for administration and collection of the tax, and any other information ODOT deems pertinent to this Agreement. In the annual report, ODOT may also make recommendations concerning amendments to the code, ordinance, procedures, and policies in administration of the tax, or other related matters.
12. ODOT and the City shall coordinate all necessary announcements to the public so as to facilitate effective administration of the tax and maintain consistency in public announcements and information.
13. ODOT will maintain all databases and records created or received by ODOT under this Contract for not less than the period of time which ODOT maintains records for its administration of ORS Chapter 319. ODOT will make all such information available to City in the same format as the format used by ODOT. Such information shall include, but not be limited to, information concerning the identity, business operations and tax payment history of all fuel dealers who are subject to Ordinance 834. Upon termination of this Agreement for any reason, ODOT will provide City with copies of all of the data described above, in electronic format, if possible, or in the form otherwise existing within ODOT's databases.

GENERAL PROVISIONS

1. In order to ensure consistency in the administration of the tax, each Party shall notify the other in writing of any change in Ordinance 834, and in state or local regulations or rulings related to the tax at least thirty (30) days prior to the effective date of such change.
2. This Agreement may be terminated by either Party upon ninety (90) days' notice, in writing and delivered by certified mail or in person.

3. ODOT may terminate this Agreement on thirty (30) days notice to the extent permitted by law, effective upon delivery of written notice to City or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if ODOT is prohibited from paying for such work from the planned funding source.
 - b. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. The Parties agree to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or City with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
6. With respect to a Third Party Claim for which State is jointly liable with City (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by City in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of City on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the

same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

7. With respect to a Third Party Claim for which City is jointly liable with State (or would be if joined in the Third Party Claim), City shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of City on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of City on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. The Parties shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
10. All employers, including the Parties, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. The Parties shall ensure that each of its subcontractors complies with these requirements.
11. City acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
12. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

13. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that its signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

City of Troutdale, by and through its City Manager

By [Signature]

Date 4/4/16

By Craig R. Ward

City Manager
Date _____

APPROVED AS TO LEGAL
SUFFICIENCY

By [Signature]
Counsel

Date 4-4-16

City Contact:

Erich Mueller Finance Director
342 SW 4th Street
Troutdale, OR 97060
503-665-5175
Erich.Mueller@troutdaleoregon.gov

ODOT Contact:

Douglas Kleeb
ODOT Financial Services
Fuels Tax Group
503.378.5773

STATE OF OREGON, by and through
its Department of Transportation

By [Signature]

Deputy Director for Central Services

Date 4/5/16

APPROVAL RECOMMENDED

By [Signature] DOUGLAS KLEEB

Fuels Tax Manager

Date 4/4/2016

APPROVED AS TO LEGAL
SUFFICIENCY

By: Mark F. Schumock via email
Senior Assistant Attorney General

Date: March 10, 2016

ORDINANCE NO. 834

AN ORDINANCE CREATING CHAPTER 3.07 OF THE TROUTDALE MUNICIPAL CODE TO PHASE IN A MOTOR VEHICLE FUEL TAX OVER THREE YEARS AND TO PREMISE THE SAME ON VOTER APPROVAL.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Oregon law provides that cities such as Troutdale may impose a tax on sales of motor vehicle fuels to raise revenue to construct, repair, and maintain roadways which, over time, degrade and fall into disrepair through use for travel by the motoring public.
2. On July 14, 2015, The City Council for the City of Troutdale found that revenues from existing sources are inadequate to maintain the City's street system.
3. At its July 14, 2015, public meeting, the City Council devised, and afterwards ratified, a ballot measure putting the question of a motor vehicle tax to the voters at the November 3, 2015 general election (the "Election").
4. The Council wishes to prepare an administrative program for a motor vehicle fuel tax before the Election, to further inform interested parties.
5. This Ordinance only takes effect if the voters approve the motor vehicle fuel tax measure at the November 3, 2015 special election. If the voters reject the measure, this Ordinance will be automatically repealed.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Troutdale Municipal Code is amended by adding Chapter 3.07, to read as follows:

3.07.010 Short Title

This chapter shall be known as the "Motor Vehicle Fuel Tax Ordinance."

3.07.020 Definitions

As used in this chapter, unless the context requires otherwise:

"City" means City of Troutdale and any person, agency, or other entity authorized by the City to act as its agent related to administration of the motor vehicle fuel tax ordinance or collection of the motor vehicle fuel tax.

EXHIBIT A

"Dealer" means any person who:

- A. Supplies or imports motor vehicle fuel for sale, use, or distribution in, and after the same reaches the City, but "dealer" does not include any person who imports into the City motor vehicle fuel in quantities of five hundred (500) gallons or less purchased from a supplier who is permitted as a dealer hereunder and who assumes liability for the payment of the applicable motor vehicle fuel tax to the City;
- B. Produces, refines, manufactures, or compounds motor vehicle fuels in the City for use, distribution, or sale in the City; or
- C. Acquires in the City for sale, use, or distribution in the City motor vehicle fuels with respect to which there has been no motor vehicle fuel tax previously incurred.

"Distributor" means, in addition to its ordinary meaning, the deliverer of motor vehicle fuel by a dealer to any service station or into any tank, storage facility, or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks or motor vehicles whether or not the service station, tank, or storage facility is owned, operated, or controlled by the dealer.

"Motor vehicle" means all vehicles, engines or machines, moveable or immovable, operated or propelled by the use of motor vehicle fuel.

"Motor vehicle fuel" means and includes gasoline, diesel, and any other flammable or combustible gas or liquid, by whatever name that gasoline, gas, or liquid is known or sold, usable as fuel for the operation of motor vehicles. Propane fuel and motor vehicle fuel used exclusively as a structural heating source are excluded as a taxable motor vehicle fuel.

"Motor vehicle fuelhandler" means any person who acquires or handles motor vehicle fuel within the City through a storage tank facility with storage tank capacity that exceeds five hundred (500) gallons of motor vehicle fuel.

"Person" includes every natural person, association, firm, partnership, or corporation.

"Service station" means and includes any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

3.07.030 Tax imposed

As of 12:01 AM on January 1, 2016, motor vehicle fuel tax is imposed on every dealer operating within the corporate limits of Troutdale. The City of Troutdale motor vehicle fuel tax imposed shall be paid monthly to the City.

EXHIBIT A

- A. A person who is not a permitted dealer or permitted motor vehicle fuelhandler shall not accept or receive motor vehicle fuel in this City from a person who supplies or imports motor vehicle fuel who does not hold a valid motor vehicle fuel dealers permit in this City. If a person is not a permitted dealer or permitted motor vehicle fuelhandler in this City and accepts or receives motor vehicle fuel, the purchaser or receiver shall be responsible for all taxes, interests and penalties prescribed herein.
- B. A permitted dealer or fuelhandler who accepts or receives motor vehicle fuel from a person who does not hold a valid dealer or fuelhandler permit in this City, shall pay the tax imposed by this chapter to the City, upon the sale, use, or distribution of the motor vehicle fuel.

3.07.040 Amount and payment

- A. Subject to subsections B through D of this section, by law, every dealer engaging in his or her own name, or in the name of others, or in the name of his or her representatives or agents in the City, in the sale, use, or distribution of motor vehicle fuel, shall:
 - 1. Not later than the 25th day of each calendar month, render a statement to the City, of all motor vehicle fuel sold, used, or distributed by him or her in the City as well as all such fuel sold, used, or distributed in the City by a purchaser thereof upon which sale, use, or distribution the dealer has assumed liability for the applicable motor vehicle fuel tax during the preceding calendar month; and
 - 2. Pay a motor vehicle fuel tax, computed on the basis specified in subsection C of this section, of such motor vehicle fuel so sold, used, or distributed as shown by such statement in the manner and within the time provided in this chapter.
- B. In lieu of claiming refund of the tax as provided in Section 3.07.200, or of any prior erroneous payment of motor vehicle fuel tax made to the City by the dealer, the dealer may show such motor vehicle fuel as a credit or deduction on the monthly statement and payment of tax.
- C. The amount of tax under subsection A(2) of this section is determined by the date such motor vehicle fuel is sold, used, or distributed by the person responsible for paying the tax. The date of such sale, use, or distribution shall be recorded in the statements that persons must file under this chapter, and the amount of tax will be calculated and owed as follows:
 - 1. The tax on motor vehicle fuel sold, used, or distributed from January 1, 2016, to December 31, 2016 is \$0.01 cents per gallon of fuel;

EXHIBIT A

2. The tax on motor vehicle fuel sold, used, or distributed from January 1, 2017, to December 31, 2017 is \$0.02 cents per gallon of fuel; and
 3. The tax on motor vehicle fuel sold, used, or distributed on or after January 1, 2018 is \$0.03 cents per gallon of fuel.
- D. The motor vehicle fuel tax shall not be imposed wherever it is prohibited by the Constitution or laws of the United States or of the State of Oregon.

3.07.050 Permit required

After January 30, 2015, no dealer or fuel handler, shall sell, use, or distribute any motor vehicle fuel until he or she has secured a dealer or fuelhandler permit as required herein.

3.07.060 Permit application and issuance

- A. Every person, before becoming a dealer or fuel handler in motor vehicle fuel in this City, shall make an application to the City or its duly authorized agent, for a permit authorizing such person to engage in business as a dealer or fuelhandler.
- B. Applications for the permit must be made on forms prescribed, prepared, and furnished by the City.
- C. Each application must include a certificate, signed by the applicant, that contains the following information:
 1. The business name under which the dealer or fuelhandler is transacting business;
 2. The place of business and location of distributing stations in the City and in areas adjacent to the City limits in the State of Oregon;
 3. The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership, and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.
- D. An application for a motor vehicle fuel dealer or fuelhandler permit having been accepted for filing, the City shall issue to the dealer or fuelhandler a permit in such form as the City may prescribe to transact business in the City. The permit so issued is not assignable, and is valid only for the dealer or fuel handler in whose name issued.
- E. The City Recorder's office shall keep on file a copy of all applications and/or permits.

EXHIBIT A

- F. The City will not charge a fee for seeking and obtaining the permit required by this section.

3.07.070 Failure to secure permit

- A. After January 30, 2016, if any dealer sells, distributes, or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.07.060, the motor vehicle fuel tax shall immediately be due and payable on account of all motor vehicle fuel sold, distributed, or used on or after January 1, 2016.
- B. The City shall proceed forthwith to determine, from the best available sources, the amount of such tax, and it shall assess the tax in the amount found due, together with a penalty of two hundred percent (200%) of the tax, and shall make its certificate of such assessment and penalty, determined by City Manager or designee. In any suit or proceeding to collect such tax or penalty or both, the certificate is prima facie evidence that the dealer therein named is indebted to the City in the amount of the tax and penalty therein stated.
- C. Any fuelhandler who sells, handles, stores, distributes, or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.07.060, shall be assessed a penalty of two hundred fifty dollars (\$250.00) unless modified by Subsection 3.07.270.A in the City Manager's determination. In any suit or proceeding to collect such penalty, the certificate is prima facie evidence that the fuelhandler therein named is indebted to the City in the amount of the penalty therein stated.
- D. Any tax or penalty so assessed may be collected in the manner prescribed in section 3.07.110 with reference to delinquency in payment of the tax, or by court action.

3.07.080 Revocation of permit

The City shall revoke the permit of any dealer or fuelhandler refusing or neglecting to comply with any provision of this chapter. The City shall mail by certified mail addressed to such dealer or fuelhandler at his or her last known address appearing on the files, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if within ten (10) days from the mailing of the notice the dealer or fuelhandler has not cured or remedied its default or delinquency.

3.07.090 Cancellation of permit

EXHIBIT A

- A. The City may, upon written request of a dealer or fuelhandler, cancel any permit issued to such dealer or fuelhandler, the cancellation to become effective thirty (30) days from the date of receipt of the written request.
- B. If the City ascertains and finds that the person to whom a permit has been issued is no longer engaged in the business of a dealer or fuelhandler, the City may cancel the permit of such dealer or fuelhandler upon investigation after thirty (30) days' notice has been mailed to the most recent mailing address of the dealer or fuel handler furnished to the City by the dealer or fuelhandler.

3.07.100 Remedies cumulative

Except as otherwise provided in Sections 3.07.110 and 3.07.130, the remedies provided in Sections 3.07.070, 3.07.080, and 3.07.090 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this chapter.

3.07.110 Payment of tax and delinquency

- A. The motor vehicle fuel tax imposed by Sections 3.07.030 and 3.07.040 shall be paid on or before the 25th day of each month to the City which, upon request, shall receipt the dealer, or fuelhandler therefor.
- B. Except as provided in subsection D of this section, to any motor vehicle fuel tax not paid as required by subsection A of this section, there shall be added a penalty of one percent (1%) of such motor vehicle fuel tax.
- C. Except as provided in subsection D of this section, if the tax and penalty required by subsection B of this section are not received on, or before the close of business on the last day of the month in which the payment is due, a further penalty of ten percent (10%) shall be paid in addition to the penalty provided for in subsection B of this section.
- D. If the City determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by subsections B and C of this section may be waived. Penalties imposed by this section shall not apply when the penalty provided in Section 3.07.070 has been assessed and paid.
- E. If any person fails to pay the motor vehicle fuel tax, or any penalty provided for by this chapter, the amount thereof shall be collected from such person for the use of the City. The City shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.
- F. If the City institutes any suit or action to collect the motor vehicle fuel tax, or any penalty provided for by this chapter, the City may recover from the person sued reasonable attorney's fees at trial, or upon appeal of such suit, or action, in addition to all other sums provided by law.

EXHIBIT A

- G. The city has a cause of action to collect any tax or penalty unpaid pursuant this chapter. The city may collect any tax or penalty in one or more demands, actions, or suits. The City may collect any such sum in any procedure or form of action available to it, including but not limited to the action embodied in this paragraph, actions for collecting amounts due, including due under agreements, or as a penalty in an ordinance violation proceeding.
- H. No dealer who collects from any person the tax provided for herein, shall knowingly or intentionally fail to report and pay the same to the City, as required herein.

3.07.120 Monthly statement of dealer and fuelhandler

Unless modified by Subsection 3.07.270.B, every dealer and fuelhandler in motor vehicle fuel shall render to the City, on or before the 25th day of each month, on forms prescribed, prepared, and furnished by the City, a signed statement of the number of gallons of motor vehicle fuel sold, distributed, used, or stored by him or her during the preceding calendar month. The statement shall be signed by the permit holder. All statements as required in this section are public records.

3.07.130 Failure to file monthly statement

If any dealer, or fuelhandler fails to file the report required by Section 3.07.120, the City shall proceed forthwith to determine from the best available sources the amount of motor vehicle fuel sold, distributed, used, or stored by such dealer or fuelhandler for the period unreported, and such determination shall be prima facie evidence of the amount of such fuel sold, distributed, used, or stored. The City immediately shall assess the motor vehicle fuel tax in the amount so determined, as pertaining to the reportable dealer, adding thereto a penalty of ten percent (10%) for failure to report. Fuelhandlers failing to file a monthly statement of motor vehicle fuel shall be assessed a penalty of fifty dollars (\$50.00). The penalty shall be cumulative to other penalties provided in this chapter. In any suit brought to enforce the rights of the City under this section, any such determination showing the amount of tax, penalties, and costs unpaid by any dealer, or fuelhandler and that the same are due and unpaid to the City is prima facie evidence of the facts as shown.

3.07.140 Billing purchasers

Bills shall be rendered to all purchasers of motor vehicle fuel by dealers in motor vehicle fuel. The bills shall separately state and describe to the satisfaction of the City the different products shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the City are maintained. The bills required hereunder may be the same as those required under ORS 319.210.

3.07.150 Failure to provide invoice or delivery tag

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No person shall receive and accept any shipment of motor vehicle fuel from any dealer, or pay for the same, or sell, or offer the shipment for sale, unless the shipment is accompanied by an invoice or delivery tag showing the date upon which shipment was delivered and the name of the dealer in motor vehicle fuel:

3.07.160 Transportation motor vehicle fuel in bulk

Every person operating any conveyance for the purpose of hauling, transporting, or delivering motor vehicle fuel in bulk shall, before entering upon the public streets of the City with such conveyance, have and possess during the entire time of such hauling or transporting of motor vehicle fuel, an invoice, bill of sale, or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee of the same. The person hauling such motor vehicle fuel shall at the request of any officer authorized by the City to inquire into, or investigate such matters, produce and offer for inspection the invoice, bill of sale, or other statement.

3.07.170 Exemption of export fuel

- A. The license tax imposed by Sections 3.07.030 and 3.07.040 shall not be imposed on motor vehicle fuel that is:
1. Exported from the City by a dealer, or
 2. Sold by a dealer in individual quantities of five hundred (500) gallons, or less for export by the purchaser to an area, or areas outside the City in containers other than the fuel tank of a motor vehicle, but every dealer shall be required to report such exports and sales to the City in such detail as may be required.
- B. In support of any exemption from motor vehicle fuel taxes claimed under this section other than in the case of stock transfers, or deliveries in a person's own equipment, every dealer must execute and file with the City an export certificate in such form as shall be prescribed, prepared, and furnished by the City, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the City, and giving such details with reference to such shipment as may be required. The City may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The City may, in a case where it believes no useful purpose would be served by filing of an export certificate, waive the certificate.
- C. Any motor vehicle fuel carried from the City in the fuel tank of a motor vehicle shall not be considered as exported from the City.

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- D. No person shall, through false statement, trick, or device, or otherwise, obtain motor vehicle fuel for export as to which the City motor vehicle fuel tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or divert, or cause to be diverted the motor vehicle fuel or any portion thereof to be used, distributed, or sold in the City, and fail to notify the City and the dealer from whom the motor vehicle fuel was originally purchased of his or her act.
- E. No dealer or other person shall conspire with any person to withhold from export, or divert from export, or to return motor vehicle fuel to the City for sale or use, so as to avoid any of the fees imposed herein.
- F. In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of five hundred (500) gallons or less for export by the purchaser, the dealer shall retain in his or her files for at least three (3) years an export certificate executed by the purchaser in such form and containing such information as is prescribed by the City. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith.

3.07.180 Sales to armed forces exempted

The motor vehicle fuel tax imposed by Sections 3.07.030 and 3.07.040 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States for use in ships, aircraft, or for export from the City; but every dealer shall be required to report such sales to the City, in such detail as may be required. A certificate by an authorized officer of such Armed Forces shall be accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate.

3.07.190 Fuel in vehicles coming into city not taxed

Any person coming into the City in a motor vehicle may transport in the fuel tank of such vehicle motor vehicle fuel for his or her own use only and for the purpose of operating such motor vehicle, without securing a license or paying the tax provided in sections 3.07.030 and 3.07.040, or complying with any of the provisions imposed upon dealers herein. But if the motor vehicle fuel so brought into the City is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into the City shall be subject to all provisions herein applying to dealers.

3.07.200 Refunds

Refunds will be made pursuant to ORS. 319.280 to 319.320.

3.07.210 Examination and investigations

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The City may examine accounts, records, stocks, facilities, and equipment of dealers, fuelhandlers, service stations, and other persons engaged in storing, selling, or distributing motor vehicle fuel or other petroleum products within this City, and such other investigations as it considers necessary in carrying out the provisions of this chapter. If the examinations or investigations disclose that any reports of dealers or other persons theretofore filed with the City pursuant to the requirements herein, have shown incorrectly the amount of gallons of motor vehicle fuel distributed or the tax accruing thereon, the City may make such changes in subsequent reports and payments of such dealers or other persons, or may make such refunds, as may be necessary to correct the errors revealed by its examinations or investigations.

3.07.220 Limitation on credit for or refund of overpayment and on assessment of additional tax

- A. Except as otherwise provided in this chapter, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three (3) years after the date on which the overpayment was made to the City or to its authorized agent.
- B. Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this chapter shall be served on dealers within three (3) years from the date upon which such additional taxes become due.

3.07.230 Examining books and accounts of carrier of motor vehicle fuel

The City may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within the City for the purpose of checking shipments or use of motor vehicle fuel, detecting diversions thereof, or detecting evasion of taxes in enforcing the provisions of this chapter.

3.07.240 Records to be kept by dealers and fuel handlers

Every dealer and fuelhandler in motor vehicle fuel shall keep a record in such form as may be prescribed by the City of all purchases, receipts, sales, and distribution of motor vehicle fuel. The records shall include copies of all invoices or bills of all such sales and purchases, and shall at all times during the business hours of the day be subject to inspection by the City.

3.07.250 Records to be kept three (3) years

Every dealer and fuelhandler shall maintain and keep, for a period of three (3) years, all records of motor vehicle fuel used, sold, and distributed within the City by such dealer or fuel handler, together with stock records, invoices, bills of lading, and other pertinent papers as may be required by the City. In the event such records are not kept within the

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State of Oregon, the dealer shall reimburse the City for all travel, lodging, and related expenses incurred in examining such records. The amount of such expenses shall be an additional tax imposed hereunder.

3.07.260 Use of tax revenues

- A. The City Manager shall be responsible for the disposition of the revenue from the tax imposed by this chapter in the manner provided by this section.
- B. For the purposes of this section, "net revenue" means the revenue from the tax imposed by this chapter remaining after providing for the cost of administering the motor vehicle fuel tax to motor vehicle fuel dealers and any refunds and credits authorized herein. The program administration costs of revenue collection and accounting activities shall not exceed ten and one-half percent (10.5%) for the first year, and ten percent (10%) thereafter, of annual tax revenues.
- C. The net revenue shall be used only for maintenance activities standing alone or embodied within projects to construct, reconstruct, improve, repair, and maintain public highways, roads, and streets within the City, with a focus on pavement preservation projects.
- D. Any use of net revenue must be documented in a writing that shows the following information:
 - 1. The amount of net revenue estimated or actually used;
 - 2. The goods or services acquired with the net revenue; and
 - 3. If goods or services are acquired with both net revenue and other money, a statement identifying the proportion of net revenue relative to the other money used to achieve the purpose.
- E. The City Council will, by resolution, adopt a public reporting system to track revenues and program expenditures which are documented in subsection D of this section and to make such information available to the public.
- F. The city shall account for program costs, revenues, and expenditures, within the street fund established under chapter 12.05.

3.07.270 Administration

- A. The City Manager or designee is responsible for administering this chapter.
- B. The City Manager may enter into an agreement with the Oregon Department of Transportation as an authorized agent for the implementation of certain sections of this chapter. If the Department of Transportation is chosen as an authorized agent of the City, then the modifications outlined below shall apply:


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1. The fuelhandler's penalty of subsection 3.07.070.C shall be reduced to one hundred dollars (\$100.00). If the Department determines that the failure to obtain the permit was due to reasonable cause and without any intent to avoid obtaining a permit, then the penalty provided in section 3.07.070 and this section may be waived.
2. The fuelhandler's monthly reporting requirements of Section 3.07.120 and 3.07.130 shall be waived.

Section 2. Section 1 of this Ordinance does not take effect unless Measure 26-168 is approved by the people according to elections results published by Multnomah County for the election held in the City on November 3, 2015. If Measure 26-168 is so approved, then this ordinance takes effect on December 31, 2015.

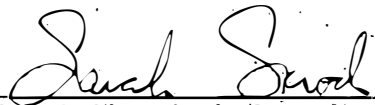
Section 3. If Measure 26-168 is not approved by the people according to the election results published by Multnomah County for the election held in the City on November 3, 2015, then this Ordinance is repealed.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Doug Daoust, Mayor

Date 10/15/15



Sarah Skroch, Acting City Recorder
Adopted: October 13, 2015