ORDINANCE NO. 1984

AN ORDINANCE ESTABLISHING A BUSINESS LICENSE TAX ON MOTOR VEHICLE FUEL DEALERS, PROVIDING FOR ADMINISTRATION, ENFORCEMENT AND COLLECTION OF THE TAX

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1.

Section 3.10 is added to the Newport Municipal Code to read as follows:

CHAPTER 3.10 MOTOR VEHICLE FUEL TAX

3.10.010 Definitions

The following definitions apply to this chapter.

A. City. The City of Newport, Oregon.

B. Dealer. Any person who:

1. Imports or causes to be imported motor vehicle fuel for sale, use or distribution in the City, but "dealer" does not include any person who imports into the City motor vehicle fuel in quantities of 500 gallons or less purchased from a supplier who is licensed as a dealer hereunder if that dealer assumes liability for the payment of the applicable license tax to the City; or

2. Produces, refines, manufactures or compounds motor vehicle fuels in the city for use, distribution or sale in the City; or

3. Acquires in the city for sale, use or distribution in the city motor vehicle fuels with respect to which there has been no license tax previously incurred.

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storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks of motor vehicles whether or not the service station, tank or storage facility is owned, operated or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

D. Highway. Every way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel.

E. Motor Vehicle. All vehicles, engines or machines, movable or immovable, operated or propelled by the use of motor vehicle fuel that operates on highways, roadways and streets.

F. Motor Vehicle Fuel. Includes gasoline, diesel, mogas, methanol and any other flammable or combustible gas or liquid, by whatever name such gasoline, diesel, mogas, methanol, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles, except gas, diesel, mogas, methanol or liquid, the chief use of which, as determined by the tax administrator, is for purposes other than the propulsion of motor vehicles upon the highways roadways and streets.

G. Person. Includes every natural person, association, firm, partnership, corporation, joint venture or other business entity.

H. Service Station. Any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

I. Tax Administrator. The city manager, the city manager's designee, or any person or entity with whom the city manager contracts to perform those duties.

J. Weight Receipt. A receipt issued by the Oregon Department of Transportation, stating the combined weight of each self-propelled or motor-driven vehicle.

3.10.020 Tax Imposed

The following applies to taxes imposed.

A. A business license tax is hereby imposed on every dealer. The tax imposed shall be paid monthly to the tax administrator. The tax administrator is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection and administration of the business license tax, including all powers specified in ORS 319.010 to 319.430.

3.10.030 Amount and Payment

In addition to any fees or taxes otherwise provided for by law, every dealer engaging in the city in the sale, use or distribution of motor vehicle fuel, shall:

A. Not later than the 25th day of each calendar month, render a statement to the tax administrator on forms prescribed, prepared and furnished by the tax administrator of all motor vehicle fuel sold, used or distributed by him/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 license tax during the preceding calendar month.

B. Pay a license tax computed on the basis of:

1. $.01 (one cent) per gallon 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 code, plus

2. beginning June 1st and ending October 31st of each year, an additional $.02 (two cents) per gallon 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 code.

C. On or before May 1st of each year, the license tax computed pursuant to 3.10.030 (B) (1) or 3.10.030 (B) (2) may be increased or decreased after a public hearing and a vote of approval by City the Council, but in no case shall any increase or decrease to 3.10.030 (B) (1) or 3.10.030 (B) (2) exceed $.02 (two cents) per gallon per year.

3.10.040 License Requirements

No dealer shall sell, use or distribute any motor vehicle fuel until he/she has secured a dealer's business license as required herein.

3.10.050 License. Applications and Issuance

A. Every person, before becoming a dealer in motor vehicle fuel in this city, shall make application to the tax administrator for a license authorizing such person to engage in business as a dealer.

B. Applications for the business license shall be made on forms prescribed, prepared and furnished by the tax administrator.

C. Applications shall be accompanied by a duly acknowledged certificate containing:

1. The business name under which the applicant transacts business.

2. The address of applicant's principal place of business and location of distributing stations in and within three miles of the city.

3. The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership or, if a corporation, the name under which the corporation is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.

D. If an application for a dealer for a business license is complete and accepted for filing, the tax administrator shall issue to the dealer a license in such form as the tax administrator may prescribe to transact business in the city. A license issued hereunder is not assignable, and is valid only for the dealer in whose name it is issued.

E. The tax administrator shall retain all completed applications with an alphabetical index thereof, together with a record of all licensed dealers.

3.10.060 Failure to Secure License

A. If a dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and obtaining the license required by Section 3.10.050 of this ordinance, the license tax on all motor vehicle fuel sold, distributed or used by that dealer shall be immediately due and payable.

B. The tax administrator shall proceed forthwith to determine, from as many available sources as the tax administrator determines reasonable, the amount of tax due, shall assess the dealer for the tax in the amount found due, together with a penalty of 100 percent of the tax, and shall make its certificate of such assessment and penalty. In any suit or proceeding to collect the tax or penalty or both, the certificate shall be prima facie evidence that the dealer therein named is indebted to the city in the amount of the tax and penalty stated.

C. Any tax or penalty assessed pursuant to this section may be collected in the manner prescribed in this ordinance with reference to delinquency in payment of the fee or by an action at law.

D. In the event any suit or action is instituted to enforce this section, if the City is the prevailing party, the City shall be entitled to 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.

3.10.070 Revocation of License

The City or its authorized agent shall revoke the license of any dealer refusing or neglecting to comply with any provision of this ordinance. The City or its authorized agent shall mail by certified mail addressed to such dealer or at his 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 10 days from the mailing of the notice the dealer or fuel-handler has not made good its default or delinquency.

3.10.080 Cancellation of License

A. The tax administrator may, upon written request of a dealer, cancel a license issued to that dealer. The tax administrator shall, upon approving the dealer's request for cancellation, set a date not later than 30 days after receipt of the written request, after which the license shall no longer be effective.

B. The tax administrator may, after 30 days' notice has been mailed to the last known address of the dealer, cancel the license of dealer upon finding that the dealer is no longer engaged in the business of a dealer.

3.10.090 Remedies Cumulative

The remedies provided in this Ordinance are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this code.

3.10.100 Payment of Tax and Delinquency

A. The business license tax imposed by Sections 3.10.020 to 3.10.050 of this chapter shall be paid to the tax administrator on or before the 25th day of each month.

B. Except as provided in subsections (C) and (E) of this section, if payment of the license tax is not paid as required by subsection (A) of this section, a penalty of 1 percent of such license tax shall be assessed and be immediately due and payable.

C. Except as provided in subsection (E) of this section, if the payment of the tax and penalty, if any, is not made on or before the 1st day of the next month following that month in which payment is due, a further penalty of 10 percent of the tax shall be assessed. Said penalty shall be in addition to the penalty provided for in subsection (B) of this section and shall be immediately due and payable.

D. If the license tax imposed by Sections 3.10.020 to 3.10.050 of this code is not paid as required by subsection (A) of this section, interest shall be charged at the rate of .0329 percent per day until the tax, interest and penalties have been paid in full.

E. Penalties imposed by this section shall not apply if a penalty has been assessed and paid pursuant to Section 3.10.060. The tax administrator may for good cause shown waive any penalties assessed under this section.

F. If any person fails to pay the license tax, interest, or any penalty provided for by this section, the tax, interest, and/or penalty shall be collected from that person for the use of the city. The tax administrator shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

G. In the event any suit or action is instituted to collect the business license tax, interest, or any penalty provided for by this section, if the City is the prevailing party, the City shall be entitled to 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.

3.10.110 Monthly Statement of Dealer

Every dealer in motor vehicle fuel shall provide to the tax administrator on or before the 25th day of each month, on forms prescribed, prepared and furnished by the tax administrator, a statement of the number of gallons of motor vehicle fuel sold, distributed or used by the dealer during the preceding calendar month. The statement shall be signed by the dealer or the dealer's agent.

3.10.120 Failure to File Monthly Statement

If a dealer fails to file any statement required by Section 3.10.110, the tax administrator shall proceed forthwith to determine from as many available sources as the tax administrator determines reasonable the amount of motor vehicle fuel sold distributed or used by such dealer for the period unreported, and such determination shall in any proceeding be prima facie evidence of the amount of fuel sold, distributed or used. The tax administrator shall immediately assess the dealer for the license tax upon the amount determined, adding thereto a penalty of 10 percent of the tax. The penalty shall be cumulative to other penalties provided in this code.

3.10.130 Billing Purchasers

Dealers in motor vehicle fuel shall render bills to all purchasers of motor vehicle fuel. The bills shall separately state and describe the different products sold or shipped there under and shall be serially numbered except where other sales invoice controls acceptable to the tax administrator are maintained.

3.10.140 Failure to Provide Invoice or Delivery Tag

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

3.10.150 Transporting 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 highways of the city with such conveyance, have and possess during the entire time of the hauling or transporting of such 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, if any, of the same. The person hauling such motor vehicle fuel shall, at the request of any officer authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

3.10.160 Exemption of Export Fuel

A. The license tax imposed by Section 3.10.020 shall not be imposed on motor vehicle fuel:

   1. Exported from the city by a dealer; or

   2. Sold by a dealer 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 business license taxes claimed under this section other than in the case of stock transfers or deliveries in the dealer's own equipment, every dealer must execute and file with the tax administrator an export certificate in such form as shall be prescribed, prepared and furnished by the tax administrator, 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 the tax administrator may require. The tax administrator 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 tax administrator may, in a case where the tax administrator believes no useful purpose would be served by filing of an export certificate, waive the filing of 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.

D. No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle fuel for export as to which the City 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 tax administrator and the dealer from whom the motor vehicle fuel was originally purchased of his/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 for export by the purchaser, the dealer shall retain in his/her files for at least three years, an export certificate executed by the purchaser in such form and containing such information as is prescribed by the tax administrator. 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.

3.10.170 Sales to Armed Forces Exempted

The license tax imposed by Section 3.10.020 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States, including the U. S. Coast Guard and the Oregon National Guard, for use in ships, aircraft or for export from the city; but every dealer shall be required to report such sales to the tax administrator 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.

3.10.180 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/her own use only and for the purpose of operating such motor vehicle without securing a license or paying the tax provided in Section 3.10.020 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 the provisions herein applying to dealers.

3.10.190 Refunds

A. Refunds of tax on motor vehicle fuel will be made pursuant to any refund provisions of Chapter 319 of the Oregon Revised Statutes, including but not limited to ORS 319.280 and 319.831. Claim forms for refunds may be obtained from the Tax Administrator's office.

B. A holder of a weight receipt that certifies to the City that the motor vehicle fuel upon which the tax was imposed will be used only for fueling vehicles subject to the State of Oregon's weight-mile tax, may apply for a refund of 80 percent of the tax imposed by Section 3.10.020 on motor vehicle fuel purchased in bulk for distribution at the weight receipt holder's facility located within the City. This subsection applies only to motor vehicle fuel purchased by the weight receipt holder on or after February 23, 2005.

C. All claims for refund under subsection (B) of this section shall be filed within 15 months of the date that the fuel was purchased and may not be filed more frequently than quarterly. The minimum claim for refund filed under subsection (B) of this section shall be not less than $25.00.

3.10.200 Examinations and Investigations

The tax administrator, or duly authorized agents, may make any examination of accounts, records, stocks, facilities and equipment of dealers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel or other petroleum product or products within this City, and such other investigations as it considers necessary in carrying out the provisions of Sections 3.10.020 through 3.10.050. If the examinations or investigations disclose that any reports of dealers or other persons theretofore filed with the tax administrator pursuant to the requirements herein, have shown incorrectly the amount of gallonage of motor vehicle fuel distributed or the tax accruing thereon, the tax administrator 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 disclosed by its examinations or investigation. The dealer shall reimburse the City for the reasonable costs of the examination or

investigation if the action discloses that the dealer paid 95 percent or less of the tax owing for the period of the examination or investigation. In the event that such an examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate of .0329 percent per day from the date the original tax payment was due.

3.10.210 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax

A. Except as otherwise provided in this code, 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 years after the date on which the overpayment was made to the City.

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 code shall be served on dealers within three years from the date upon which such additional taxes become due, and shall be subject to penalty as provided in Section 3.10.100.

3.10.220 Examining Books and Accounts of Carrier of Motor Vehicle Fuel

The tax administrator or duly authorized agents of the tax administrator 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 enforcing the provisions of this code.

3.10.230 Records to be Kept by Dealers

Every dealer in motor vehicle fuel shall keep a record in such form as may be prescribed by the tax administrator 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 shall at all times during the business hours of the day be subject to inspection by the tax administrator or authorized officers or agents of the tax administrator.

3.10.240 Records to be Kept Three Years

Every dealer shall maintain and keep, for a period of three years, all records of motor vehicle fuel used, sold and distributed within the City by such dealer, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the tax administrator. In the event such records are not kept within the state of Oregon, the dealer shall reimburse the tax administrator for all travel, lodging, and related expenses incurred by the tax administrator in examining such records. The amount of such expenses shall be assessed in addition to the tax imposed by Section 3.10.020.

3.10.250 Use of Tax Revenues

A. For the purpose of this section, net revenue shall mean the revenue from the tax and penalties imposed under this chapter remaining after providing for the cost of administration and any refunds and credits authorized herein.

B. The net revenue shall be used exclusively for services and materials associated with the design, construction, reconstruction, improvement and repair of roads, streets, bike and pedestrian pathways and other multi-model transportation systems for which the City owns, operates and maintains, desires to own, operate or maintain, is contractually or legally obligated to operate and maintain, or for which the City has accepted responsibility under intergovernmental agreement. Net revenues shall be not used for City administration costs, City fuel tax administration costs or City personnel costs. Specific projects that are fully or partially funded with revenues received under this Chapter shall be identified and approved by the City Council as a part of the City's annual budget process.

3.10.260 When Tax Shall Take Effect

The tax imposed pursuant to Section 3.10.020 shall take effect October 1, 2009 and only after the Tax Administrator has developed the necessary forms and documents to administer the tax. The Tax Administrator shall declare when the tax shall take effect, and give not less than 15 days notice of the date before the tax may take effect. The Tax Administrator's decision as to the effective date of the tax and the type of notice to provide shall be final and not subject to preview.

3.10.270 Severability

If any portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 2. Effect Date of Ordinance. This Ordinance shall become effective September 3, 2009.

Section 3. Termination Clause. Beginning July 2015 and every two years thereafter, the City Council shall hold a public hearing to consider the discontinuance of this Chapter.

Adopted By The City Council This Third Day Of August, 2009.

Approved By The Mayor This Third Day Of August, 2009.

William D. Bain, Mayor

Margaret M. Hawker, City Recorder