

Woodburn Ordinances

11-17

11-17.2

ORDINANCE NO. 2028

**AN ORDINANCE IMPOSING A MOTOR VEHICLE FUEL TAX ON MOTOR VEHICLE FUEL DEALERS, PROVIDING FOR ADMINISTRATION, ENFORCEMENT AND COLLECTION OF THE TAX, AND IMMEDIATELY REFERRING SAID ORDINANCE TO THE ELECTORS OF THE CITY OF WOODBURN.**

**THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1. TITLE:** This ordinance shall be known as the "City of Woodburn Motor Vehicle Fuel Tax Ordinance.

**Section 2. Definitions.** As used in this ordinance, unless the context requires otherwise:

(A) "Aircraft Fuel" means any gasoline and other inflammable or combustible gas or liquid by whatever name such as gasoline, gas or liquid is known or sold, usable as fuel for the operation of aircraft, except gas or liquid, the chief use of which, as determined by the City is for purposed other than the propulsion of aircraft.

(B) "Authorized Agent" any person or agency that has been given authority to implement a portion of this ordinance.

(C) "City" means City of Woodburn, a municipal corporation of the State of Oregon.

(D) "Dealer" means any person who:

(1) 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 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; 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 motor vehicle fuel tax previously incurred.

## Woodburn Ordinances

11-17.2

(E) "Motor Vehicle Fuel-Handler" means any person who acquires or handles motor vehicle fuel within the City through a storage tank facility with storage tank capacity that exceeds 500 gallons of motor vehicle fuel.

(F) "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storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks or motor vehicles whether or not the service station, tank or storage facility is owned, operated or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.

(G) "Highway" means every way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel.

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

(I) "Motor Vehicle Fuel" means and 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 City, is for purposes other than the propulsion of motor vehicles upon the highways. Propane fuel and motor vehicle fuel used exclusively as a structural heating source are excluded as a taxable motor vehicle fuel.

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

(K) "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.

(L) "State" means State of Oregon.

**Section 3. Tax Imposed.** A motor vehicle fuel tax is hereby imposed on every dealer operating within the corporate limits of Woodburn. The City of Woodburn motor vehicle fuel tax imposed shall be paid monthly to the City or to its authorized agent.

(A) A person who is not a permitted dealer or permitted motor vehicle fuel-handler 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

11-17.3

## Woodburn Ordinances

11-17.3

11-17.6

vehicle fuel-handler 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 fuel-handler who accepts or receives motor vehicle fuel from a person who does not hold a valid dealer or fuel-handler permit in this City, shall pay the tax imposed by this Ordinance to the City or its authorized agent, upon the sale, use or distribution of the motor vehicle fuel.

### **Section 4. Amount and Payment.**

(A) Subject to subsections (B) and (C) of this section, by law, every dealer engaging in his own name, or in the name of others, or in the name of his 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 or to its authorized agent, of all motor vehicle fuel sold, used or distributed by him 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.

(2) Pay a motor vehicle fuel tax computed on the basis of one (1.0) 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 ordinance.

(B) In lieu of claiming refund of the tax as provided in Section 20, 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 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.

**Section 5. Permit Requirements.** No dealer or fuel handler, shall sell, use or distribute any motor vehicle fuel until he has secured a dealer or fuel-handler permit as required herein.

### **Section 6. Permit Applications and Issuance.**

## Woodburn Ordinances

11-17.6

11-17.7

(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 fuel-handler.

(B) Applications for the permit must be made on forms prescribed, prepared and furnished by the City or its duly authorized agent.

(C) The applications shall be accompanied by a duly acknowledged certificate containing:

(1) The business name under which the dealer or fuel-handler 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) The application for a motor vehicle fuel dealer or fuel-handler permit having been accepted for filing, the City or its authorized agent, shall issue to the dealer or fuel-handler a permit in such form as the City or its duly authorized agent 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.

(F) No fee(s) shall be charged by the City for securing said permit as described herein.

### **Section 7. Failure to Secure Permit.**

(A) If any dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 6, the motor vehicle fuel tax shall immediately be due and payable on account of all motor vehicle fuel so sold, distributed or used.

## Woodburn Ordinances

11-17-7

11-17.9

(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 200 percent of the tax, and shall make its certificate of such assessment and penalty, determined by City Administrator or the City's duly authorized agent. 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 fuel-handler who sells, handles, stores, distributes, or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 6, shall be assessed a penalty of \$250.00 unless modified by Section 27, Subsection "a", determined by the City Administrator or the City's duly authorized agent. In any suit or proceeding to collect such penalty, the certificate is prima facie evidence that the fuel-handler 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 11 with reference to delinquency in payment of the tax or by Court action.

**Section 8. Revocation of Permit.** The City or its authorized agent shall revoke the permit of any dealer or fuel-handler 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 fuel-handler 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.

### **Section 9. Cancellation of Permit.**

(A) The City or its authorized agent may, upon written request of a dealer or fuel-handler cancel any permit issued to such dealer or fuel-handler, the cancellation to become effective 30 days from the date of receipt of the written request.

(B) If the City or its authorized agent ascertains and finds that the person to whom a permit has been issued is no longer engaged in the business of a dealer or fuel-handler, the City or its authorized agent may cancel the permit of such dealer or fuel-handler upon investigation after 30 days' notice has been mailed to the last known address of the dealer or fuel handler.

## Woodburn Ordinances

11-17-10

11-17.11

**Section 10. Remedies Cumulative.** Except as otherwise provided in Sections 11 and 13, the remedies provided in Sections 7, 8, and 9 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this Ordinance.

### **Section 11. Payment of Tax and Delinquency.**

(A) The motor vehicle fuel tax imposed by Sections 3 and 4 shall be paid on or before the 25th day of each month to the City or its authorized agent which, upon request, shall receipt the dealer or fuel-handler 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 (1.0%) 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 (10.0%) shall be paid in addition to the penalty provided for in subsection (B) of this Section.

(D) If the City or its authorized agent, 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 7 has been assessed and paid.

(E) If any person fails to pay the motor vehicle fuel tax or any penalty provided for by this Ordinance, 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) In the event any suit or action is instituted to collect the motor vehicle fuel tax or any penalty provided for by this ordinance, 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.

(G) No dealer who collects from any person the tax provided for herein, shall knowingly and willfully fail to report and pay the same to the City or its authorized agent, as required herein.

## Woodburn Ordinances

11-17.12

11-17.16

**Section 12. Monthly Statement of Dealer and Fuel-Handler.** Unless modified by Section 27 Subsection "b" every dealer and fuel-handler in motor vehicle fuel shall render to the City or its authorized agent, on or before the 25th day of each month, on forms prescribed, prepared and furnished by the City or its authorized agent, a signed statement of the number of gallons of motor vehicle fuel sold, distributed, used or stored by him during the preceding calendar month. The statement shall be signed by the permit holder. All statements as required in this section are public records.

**Section 13. Failure to File Monthly Statement.** If any dealer or fuel-handler fails to file the report required by Section 12, the City or its authorized agent, 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 fuel-handler 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 or its authorized agent, immediately shall assess the motor vehicle fuel tax in the amount so determined, as pertaining to the reportable dealer, adding thereto a penalty of 10 percent for failure to report. Fuel-handlers failing to file a monthly statement of motor vehicle fuel shall be assessed a penalty of \$50.00. The penalty shall be cumulative to other penalties provided in this Ordinance. In any suit brought to enforce the rights of the City under this section, the above determination showing the amount of tax, penalties and costs unpaid by any dealer or fuel-handler and that the same are due and unpaid to the City or its authorized agent is prima facie evidence of the facts as shown.

**Section 14. 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 or its authorized agent the different products shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the City or its authorized agent are maintained. The bills required hereunder may be the same as those required under ORS 319.210.

**Section 15. Failure to Provide Invoice or Delivery Tag.** 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.

**Section 16. 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 his hauling or transporting such motor

## Woodburn Ordinances

11-17.16

11-17.17

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 the City to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

### **Section 17. Exemption of Export Fuel.**

(A) The license tax imposed by Sections 3 and 4 shall not be imposed on motor vehicle fuel:

(1) Exported from the City by a dealer; or

(2) Sold by a dealer in individual quantities of 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 or its authorized agent 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 his own equipment, every dealer must execute and file with the City or its authorized agent an export certificate in such form as shall be prescribed, prepared and furnished by the City or its authorized agent, 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 or its authorized agent 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 or its authorized agent 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.

(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 or its authorized agent and the dealer from whom the motor

## Woodburn Ordinances

11-17.17

11-17.21

vehicle fuel was originally purchased of his 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 500 gallons or less for export by the purchaser, the dealer shall retain in his 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 City or its authorized agent. 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.

### **Section 18. Sales to Armed Forces Exempted.**

The motor vehicle fuel tax imposed by Sections 3 and 4 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 or its authorized agent, 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.

**Section 19. 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 own use only and for the purpose of operating such motor vehicle without securing a license or paying the tax provided in Sections 3 and 4, 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.

**Section 20. Refunds.** Refunds will be made pursuant to ORS. 319.280 to 319.320.

**Section 21. Examination and Investigations.** The City, or its duly authorized agent, may make any examination of accounts, records, stocks, facilities and equipment of dealers, fuel-handlers, 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 ordinance. If the examinations or investigations disclose that any

## Woodburn Ordinances

11-17.21

11-17.25

reports of dealers or other persons theretofore filed with the City or its authorized agent pursuant to the requirements herein, have shown incorrectly the amount of gallons of motor vehicle fuel distributed or the tax accruing thereon, the City or its authorized agent 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 by its examinations or investigations.

### **Section 22. Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax.**

(A) Except as otherwise provided in this ordinance, 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 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 ordinance shall be served on dealers within three years from the date upon which such additional taxes become due.

**Section 23. Examining Books and Accounts of Carrier Motor Vehicle Fuel.** The City or its duly authorized agent 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 evasion of taxes in enforcing the provisions of this ordinance.

**Section 24. Records to be Kept by Dealers and Fuel Handler.** Every dealer and fuel-handler in motor vehicle fuel shall keep a record in such form as may be prescribed by the City or its authorized agent 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 or its authorized officers or agents.

**Section 25. Records to be Kept Three Years.** Every dealer and fuel-handler 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 or fuel handler, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the City or its authorized agent. In the event such records are not kept within the State of Oregon, the dealer shall reimburse the City or

## Woodburn Ordinances

11-17.25

11-17.29

its duly authorized agents for all travel, lodging, and related expenses incurred in examining such records. The amount of such expenses shall be an additional tax imposed hereunder.

### **Section 26. Use of Tax Revenues.**

(A) The City Administrator shall be responsible for the disposition of the revenue from the tax imposed by this ordinance in the manner provided by this section.

(B) For the purposes of this section, net revenue shall mean the revenue from the tax imposed by this ordinance 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 10.5% for the first year, and 10% thereafter, of annual tax revenues.

(C) The net revenue shall be used only for the activities related to the construction, reconstruction, improvement, repair, maintenance of public highways, roads and streets within the City of Woodburn.

**Section 27. Administration.** The City Administrator or his designate is responsible for administering this ordinance. In addition, the City Administrator may enter into an agreement with the Motor Vehicle Division of the Department of Transportation as an authorized agent for the implementation of certain sections of this ordinance. If the Motor Vehicles Division is chosen as an authorized agent of the City, then the modifications outlined below shall apply:

(a) The fuel handler's penalty of Section 7 Subsection "c" shall be reduced to \$100.00. And if the Division 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 7 and this Subsection may be waived.

(b) The fuel handler's monthly reporting requirements of Section 12 and 13 shall be waived.

**Section 28. Separability.** 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 29. Voter Referral.** This ordinance shall be referred to the electors of the City of Woodburn at the September 19, 1989, special election. A copy of the ballot measure for this referral is attached hereto and by this reference incorporated

## Woodburn Ordinances

11-17.29

11-17.31

herein.

**Section 30. Emergency Clause for Voter Referral.** An emergency is declared to exist in regard to the referral of this matter to the voters and Section 29 of this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

**Section 31. Effective Date for Remainder of Ordinance.** Excepting Section 29 regarding voter referral, the taxation imposed by this ordinance shall commence November 1, 1989, upon approval of a majority of the electors of the City of Woodburn at the special election of September 19, 1989.

Passed by the Council and approved by the Mayor August 14, 1989.