

ORDINANCE NO. 444

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

The City of Creswell Ordains as Follows:

Section 1. Definitions.

As used in this Ordinance, unless the context requires otherwise, the following words and phrases shall mean:

(1) City. The City of Creswell.

(2) Dealer. Any person who:

(a) 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

(b) Produces, refines, manufactures or compounds motor vehicle fuels in the City for export or 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 license tax previously incurred.

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storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks of motor vehicles whether or not the service station, tank or storage facility is owned, operated or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

(4) Highway. Every street, road, way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel.

(5) Motor Vehicle. All vehicles, engines or machines, movable or immovable, operated or propelled by the use of motor vehicle fuel.

(6) Motor Vehicle Fuel. Includes gasoline, diesel, mogas, methanol and any other flammable or combustible gaseous, liquid, or solid substance, by whatever name such substance is known or sold, usable as fuel for the operation of motor vehicles except a substance, the chief use of

which, as determined by the Tax Administrator, is for purposes other than the propulsion of motor vehicles upon the highways.

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

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

(9) Tax Administrator. The City Administrator, the City Administrator's designee, or any person or entity with whom the City Administrator contracts to perform those duties.

Section 2. Tax Imposed.

A business license tax is hereby imposed on every dealer. This tax is in addition to any other business license fee imposed by City. 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.

Section 3. 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 \$.03 (three 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.

Section 4. License Requirements.

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

Section 5. License Applications and Issuance.

- (1) 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.

- (2) Applications for the license shall be made on forms prescribed, prepared and furnished by the Tax Administrator.
- (3) Applications shall be accompanied by a duly acknowledged certificate containing:
 - (a) The business name under which the applicant transacts business.
 - (b) The address of applicant's principal place of business and location of distributing stations in and within three miles of the City.
 - (c) 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.
- (4) If an application for a motor vehicle fuel dealer's 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, provided, however, that the Tax Administrator may refuse to issue such license if it finds that the applicant meets any of the conditions for refusal to issue a license under state law. A license issued hereunder is not assignable, and is valid only for the dealer in whose name it is issued.
- (5) The Tax Administrator shall retain all completed applications with an alphabetical index thereof, together with a record of all licensed dealers.

Section 6. Failure to Secure License.

- (1) If a dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and obtaining the license required by Section 5:
 - (a) 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 Section 10 with reference to delinquency in payment of the fee or by an action at law.

(2) 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.

Section 7. Suspension and Revocation of License.

The Tax Administrator may, to the extent permitted by law suspend, and upon 10 days written notice revoke the license of any dealer who fails to comply with any provision of this ordinance. The Tax Administrator shall mail, by certified mail addressed to the dealer at his/her last known address appearing in the files of the Tax Administrator, a notice of intent to cancel. The notice of revocation shall include the reason for cancellation.

Section 8. Cancellation of License.

(1) 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.

(2) 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.

Section 9. Remedies Cumulative.

Except as otherwise provided in Sections 10 and 11 of this Ordinance, the remedies provided in Sections 6 through 8 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this code.

Section 10. Payment of Tax and Delinquency.

(1) The license tax imposed by this ordinance shall be paid to the Tax Administrator on or before the 25th day of each month.

(2) Except as provided in subsections (3) and (4) of this section, if payment of the license tax is not paid as required by subsection (1) of this section, a penalty of 1 percent of such license tax shall be assessed and be immediately due and payable.

(3) Except as provided in subsection (4) 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 (2) of this section and shall be immediately due and payable.

(4) Penalties imposed by this section shall not apply if a penalty has been assessed and paid pursuant to Section 6 of this Ordinance. The Tax Administrator may for good cause shown waive any penalties assessed under this section.

(5) If any person fails to pay the license tax or any penalty provided for by this section, the tax 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.

(6) In the event any suit or action is instituted to collect the business license tax 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.

Section 11. 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.

Section 12. Failure to File Monthly Statement.

If a dealer fails to file any statement required by Section 11, 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.

Section 13. 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 thereunder and shall be serially numbered except where other sales invoice controls acceptable to the Tax Administrator are maintained.

Section 14. 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.

Section 15. 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.

Section 16. Exemption of Export Fuel.

(1) The license tax imposed by Section 2 of this Ordinance shall not be imposed on motor vehicle fuel:

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

(b) 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 in such detail as may be required.

(2) In support of any exemption from 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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/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.

Section 17. Sales to Armed Forces Exempted.

The license tax imposed by Sections 2 and 3 of this Ordinance 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 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.

Section 18. 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 Sections 2 and 3 of this Ordinance 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.

Section 19. Refunds.

Refunds will be made pursuant to applicable portions of Ordinance 319 of the Oregon Revised laws. Claim forms for refunds may be obtained from the Tax Administrator's office.

Section 20. 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 this ordinance. 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 12 percent per year from the date the original tax payment was due.

Section 21. Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax.

(1) 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.

(2) 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 10.

Section 22. 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.

Section 23. 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.

Section 24. 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 6 of this Ordinance.

Section 25. Use of Tax Revenues.

(1) For the purpose of this section, net revenue shall mean the revenue from the tax and penalties imposed by this ordinance remaining after providing for the cost of administration and any refunds and credits authorized herein.

(2) The net revenue shall be used only for the construction, reconstruction, improvement, repair, maintenance, operation, and use of public highways, roads and streets within the City.

Section 26. 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 27. Emergency Clause and Effective Date.

It is hereby adjudged and declared that this Ordinance is necessary for the preservation of the health, safety, welfare and financial integrity of City. For these reasons, an emergency is hereby declared to exist, and this Ordinance shall take full force and effect on July 1, 2007, and the tax and reporting obligations imposed hereby shall take effect on July 1, 2007.

Passed by the Council and approved by the Mayor this ____ day of _____, 2007.

Ron Petitti
Mayor

Layli Nichols
City Recorder