

ORDINANCE NO. 4532

Title: An Ordinance providing for the calling of a Special Election in the City of Albany, Oregon, on November 2, 1982, for the purpose of submitting to the legal voters of the City of Albany, Oregon, the question of adopting an ordinance which would impose a business license tax on motor vehicle fuel dealers, providing for the administration, enforcement, and collection of the tax, and declaring an emergency.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Special Election Called. The proposition set forth in Section 2 of this Ordinance shall be submitted in the manner prescribed in this Ordinance to the legal voters of the City of Albany at a Special Election to be held on the 2nd day of November, 1982. There is a state-wide General Election being held in the State of Oregon and in the City of Albany and as a part thereof on the 2nd day of November, 1982, this Special Election is called to be held concurrently therewith.

Section 2. Proposition to be Voted. At the election, there shall be submitted to the legal voters of the City of Albany, for their approval or rejection, the following proposition:

"Shall an Ordinance of the City of Albany be adopted which would provide for imposing a business license tax on motor vehicle fuel dealers in an amount of \$.01 per gallon of motor vehicle fuel sold within the City of Albany, providing for certain exemptions, providing that the tax shall be used only for reconstruction, construction, repair, maintenance and operation in use of public highways, roads, and streets within the City?"

Section 3. The entire Ordinance which is to be adopted as stated in Section 2 is as follows:

(Attached hereto as Exhibit is the Ordinance imposing a business license tax on motor vehicle fuel dealers, providing for administration, enforcement, and collection of the tax.)

Section 4. Designation of Polling Places, Poll Books, and Judges. The regular polling places designated by the County Clerk of Linn County in each voting precinct in the City of Albany are hereby designated as the polling places for the Special City Election. The poll books adopted by the County Clerk as the poll books for the state-wide General Election for the voting precincts in the City of Albany

are hereby adopted as the poll books for the Special City Election. The Judges and Clerks of Election appointed by the County Clerk of Linn County, Oregon, to serve at the state-wide General Election are designated as the Judges and Clerks for the Special City Election.

Section 5. Hours of Election. The polls for the Special City Election shall be open in each of the voting precincts at the same hours and shall be kept open until the same hours as the polls are opened and closed for the state-wide General Election to be held on the same date.

Section 6. Notice of Election. Notice of the election shall be given by publication twice in a newspaper of general circulation published in the City of Albany, Oregon, not more than twenty days nor less than ten days before the election. Notice of Election shall be posted for not less than twenty days before the election at three public places within the City. The Notice in the newspaper and those posted in the three public places shall be in substantially the following form:

"NOTICE OF SPECIAL ELECTION

On the 2nd day of November, 1982, the City of Albany, Linn County, Oregon, from 8:00 a.m. to 8:00 p.m., a Special Election will be held at which time the following measure shall be submitted to the voters for their approval:

Shall an Ordinance of the City of Albany be adopted which would provide for imposing a business license tax on motor vehicle fuel dealers in an amount of \$.01 per gallon of motor vehicle fuel sold within the City of Albany, providing for certain exemptions, providing that the tax shall be used only for reconstruction, construction, repair, maintenance, and operation in use of public highways, roads, and streets within the City?"

* * * * *

The City and County precincts within the City of Albany, Linn County, Oregon, shall have uniform boundaries and the same Election Boards. The polling places in the City of Albany for the Special City Election shall be the same polling places as provided by the County of Linn in the state-wide General Election to be held on the same day, that is November 2, 1982, and to such places as the Election Board may legally adjourn. The City Council, by ordinance, has adopted the identical officers appointed by the County Clerk of Linn County, Oregon, for the state-wide General Election as the Clerks and Judges of the Special City Election to serve in each of the polling places and the respective precincts to which they are appointed by the County Clerk.

WITNESS my hand and seal of the City of Albany this
_____ day of October, 1982.

City Recorder"

The City Recorder shall advertise and post or cause to be posted the Notice required by this Section. The Notice of the Election required to be given by this Ordinance shall constitute the only notice necessary and all ordinances and resolutions in conflict therewith shall not apply to the Notice as required to be given in this election.

Section 7. Ballot Form. The following is the number and form which the question shall be permitted on the official ballot:

"Measure No. _____. Vote YES or NO. Mark an "x" in the square for the answer voted for. Referred to the people by the City Council. Ordinance adopting a \$.01 tax on motor vehicle fuels.

Shall an Ordinance of the City of Albany be adopted which would provide for imposing a business license tax on motor vehicle fuel dealers in an amount of \$.01 per gallon of motor vehicle fuel sold within the City of Albany, providing for certain exemptions, providing that the tax shall be used only for reconstruction, construction, repair, maintenance, and operation in use of public highways, roads, and streets within the City?

YES NO "

Section 8. Emergency Clause. It is necessary that this Ordinance become immediately effective in order to be placed upon the ballot at the November 2, 1982 election and it is in general interest, safety, and general welfare of the citizens of the City of Albany that this matter be disposed of at the earliest possible moment and an emergency is hereby declared to exist and this Ordinance shall become immediately effective upon its passage by the Council and approval by the Mayor.

PASSED BY THE COUNCIL: _____ September 1, 1982

APPROVED BY THE MAYOR: _____ September 1, 1982

EFFECTIVE DATE: _____ September 1, 1982



Mayor

ATTEST:



City Recorder

ORDINANCE NO. _____

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

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. This ordinance shall be known as the "City of Albany Fuel License Tax Ordinance".

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

(1) "Aircraft fuel" means any gasoline and any other inflammable or combustible gas or liquid by whatever name such 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 purposes other than the propulsion of aircraft.

(2) "City" means City of Albany, a municipal corporation of the State of Oregon.

(3) "Dealer" means any person who:

(a) Imports or causes to be imported 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 licensed as a dealer hereunder and who 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 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.

(4) "Distribution" means, 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.

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

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

(7) "Motor Vehicle Fuel" means and includes gasoline and any other flammable or combustible gas or liquid, by whatever name such gasoline, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles, except gas 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.

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

(9) "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.

Section 3. Tax Imposed. A business license tax is hereby imposed on every dealer. The tax imposed shall be paid monthly to the City. The City may delegate to any department of the City enforcement of any portion or all of this ordinance.

Section 4. Amount and Payment.

(1) Subject to subsections (2) and (3) of this section, in addition to any fees or taxes otherwise provided for 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:

(a) 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 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 one (1) 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.

(2) In lieu of claiming refund of the tax as provided in Section 21, or of any prior erroneous payment of license 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.

(3) The license 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. License Requirements. No dealer shall sell, use or distribute any motor vehicle fuel until he has secured a dealer's license as required herein.

Section 6. License Applications and Issuance.

(1) Every person, before becoming a dealer in motor vehicle fuel in this City, shall make an application to the City for a license authorizing such person to engage in business as a dealer.

(2) Applications for the license must be made on forms prescribed, prepared and furnished by the City.

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

(a) The business name under which the dealer is transacting business.

(b) 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.

(c) 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.

(4) The application for a motor vehicle fuel dealer's license having been accepted for filing, the City shall issue to the dealer a license in such form as the City may prescribe to transact business in the City. The license so issued is not assignable, and is valid only for the dealer in whose name issued.

(5) The City shall keep and file all applications with an alphabetical index thereof, together with a record of all licensed dealers.

Section 7. Failure to Secure License.

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

(2) 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 100 percent of the tax, and shall make its certificate of such assessment and penalty. 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.

(3) 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 License. The City shall revoke the license of any dealer refusing or neglecting to comply with any provision of this ordinance. The City shall mail by certified mail addressed to such dealer at his last known address appearing on the files of the City, 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 has not made good its default or delinquency.

Section 9. Cancellation of License.

(1) The City may, upon written request to a dealer cancel any license issued to such dealer, the cancellation to become effective 30 days from the date or receipt of the written request.

(2) If the City ascertains and finds that the person to whom a license has been issued is no longer engaged in the business of a dealer, the City may cancel the license of such dealer upon investigation, after 30 days' notice has been mailed to the last known address of the dealer.

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.

(1) The license tax imposed by Sections 3 and 4 shall be paid on or before the 25th day of each month to the City which, upon request, shall receipt the dealer therefor.

(2) Except as provided in subsection (4) of this Section, to any license tax not paid as required by subsection (1) of this Section, there shall be added a penalty of one percent of such license tax.

(3) Except as provided in subsection (4) of this Section, if the tax and penalty required by subsection (2) 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 10 percent shall be paid in addition to the penalty provided for in subsection (2) of this Section.

(4) If the City determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by subsections (2) and (3) of this Section shall be waived. Penalties imposed by this Section shall not apply when the penalty provided in Section 7 has been assessed.

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

(6) 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 as required herein.

Section 12. Monthly Statement of Dealer. Every dealer 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 or used by him during the preceding calendar month. The statement shall be signed by the licensee. All statements filed with the City, as required in this section, are public records.

Section 13. Failure to File Monthly Statement. If any dealer, except one subject to Section 7, fails to file the report required by Section 12, the City shall proceed forthwith to determine from the best available source the amount of motor vehicle fuel sold, distributed or used by such dealer for the period unreported, and such determination shall be prima facie evidence of the amount of such fuel sold, distributed or used. The City immediately shall assess the license tax in the amount so determined, adding thereto a penalty of 10 percent for failure to report. 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 certificate of the City showing the amount of tax, penalties and costs unpaid by any dealer and that the same are due and unpaid to the City 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 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.

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 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 and 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.

(1) The license tax imposed by Sections 3 and 4 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 his 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 the City may require. 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.

(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 City and the dealer from whom the motor vehicle fuel was originally purchased of his 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 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. 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 license 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 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 Section 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 the provision herein applying to dealers.

Section 20. Exemptions Based on Weight. The license tax imposed by Sections 3 and 4 do not apply to vehicles or fuels used therein when the vehicles are subject to, and report and pay, the tax for the use of Oregon highways based upon the combined weight of the vehicle in accordance with the weight group rates prescribed in ORS 767.815 to 767.825.

Section 21. Fuel Sold or Delivered to Dealers.

(1) A dealer selling or delivering motor vehicle fuel to dealers is not required to pay a license tax thereon.

(2) The dealer in rendering monthly statements to the City as required by Sections 4 and 12 shall show separately the number of gallons of motor vehicle fuel sold or delivered to dealers.

Section 22. Refunds. Refunds will be made pursuant to applicable state and federal laws. Claim forms for refunds may be obtained from the Finance Director's office.

Section 23. Examinations and Investigations. The City, or its 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 City pursuant to the requirements herein, have shown incorrectly the amount of gallonage 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 disclosed by its examinations or investigation.

Section 24. Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax.

(1) 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.

(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 ordinance shall be served on dealers within three years from the date upon which such additional taxes become due.

Section 25. Examining Books and Accounts of Carrier of Motor Vehicle Fuel. The City or its duly authorized agents 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 26. 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 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 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 27. 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 City. In the event such records are not kept within the State of Oregon, the dealer shall reimburse the City for all travel, lodging, and related expenses incurred by the City in examining such records. The amount of such expenses shall be an additional tax imposed hereunder.

Section 28. Use of Tax Revenues.

(1) The City Manager and his designated representatives shall be responsible for the disposition of the revenue from the tax imposed by this ordinance in the manner provided by this section.

(2) 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 administration and any refunds and credits authorized herein.

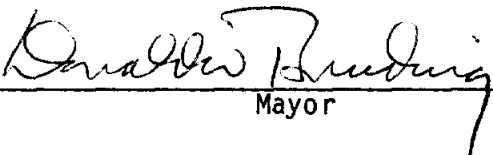
(3) The net revenue shall be used only for the reconstruction, construction, repair, maintenance, operation and use of public highways, roads and streets within the City of Albany. The net revenue received by the City shall be credited to the City Street Fund for the purposes provided herein.

Section 29. 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.

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____



Mayor

ATTEST:

City Recorder