

ORDINANCE NO. 4931

AN ORDINANCE ESTABLISHING ALBANY MUNICIPAL CODE CHAPTER 3.34, DIESEL FUEL TAX, WHICH IMPOSES A DIESEL FUEL TAX ON DIESEL FUEL DEALERS, PROVIDING FOR ADMINISTRATION, ENFORCEMENT AND COLLECTION OF THE TAX.

WHEREAS, the State of Oregon grants municipal authority to impose a diesel fuel tax as adopted in Article IX, Section 3a of the Oregon Constitution; and

WHEREAS, the diesel fuel tax revenue is exclusively for construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets, and bikeways; and

WHEREAS, the Albany City Council recognizes the need of street improvements and as such it has adopted and periodically updates a City Capital Improvement Program defining those municipal street projects targeted for improvement; and

WHEREAS, if old pavements are allowed to deteriorate and not brought back to their original strength by preventative maintenance and resurfacing, then reconstruction of these streets will be necessary at a future date, the cost of reconstruction is much higher; and

WHEREAS, the Albany City Council recognizes the need for a dedicated source of funding for those street projects.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Albany Municipal Code Chapter 3.34, Diesel Fuel Tax, is hereby established to read as follows:

Chapter 3.34

DIESEL FUEL TAX

Sections:

3.34.010	Definitions.
3.34.020	Tax imposed.
3.34.030	Amount and payment.
3.34.040	Licensee requirements.
3.34.050	License application and issuance.
3.34.060	Failure to secure license.
3.34.070	Revocation of license.
3.34.080	Cancellation of license.
3.34.090	Remedies cumulative.
3.34.100	Payment of tax and delinquency.
3.34.110	Monthly statement of dealer.
3.34.120	Failure to file monthly statement.
3.34.130	Billing purchasers.
3.34.140	Failure to provide invoice or delivery tag.
3.34.150	Exemption of export fuel.
3.34.160	Sales to armed forces exempted.
3.34.170	Fuel in vehicles coming into city not taxed.
3.34.180	Refunds.
3.34.190	Examinations and investigations.
3.34.200	Limitation on credit for refund of overpayment and on assessment of additional tax.

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3.34.160	Sales to armed forces exempted.
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3.34.180	Refunds.
3.34.190	Examinations and investigations.
3.34.200	Limitation on credit for refund of overpayment and on assessment of additional tax.

- 3.34.210 Examining books and accounts of carrier of diesel fuel.
- 3.34.220 Records to be kept by dealers.
- 3.34.230 Records to be kept three years.
- 3.34.240 Use of tax revenues.
- 3.34.250 Administration.
- 3.34.260 Separability.

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

(1) "Aircraft fuel" means any gasoline and 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) "Authorized Agent" any person or agency that has been given authority to implement a portion of this chapter.

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

(4) "Dealer" means any person who:

(a) Imports or causes to be imported diesel fuel for the sale, use or distribution in, and after the same reaches the city, but "dealer" does not include any person who imports into the city diesel 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 diesel fuel tax to the City; or

(b) Produces, refines, manufactures or compounds diesel 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 diesel fuels with respect to which there has been no city of Albany diesel fuel tax previously incurred; or

(d) Acquires title to or possession of diesel fuels in this city and exports the product out of this city.

(5) "Distribution" means, in addition to its ordinary meaning, the delivery of diesel 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 diesel 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.

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

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

(8) "Motor Vehicle Fuel" means diesel usable as fuel for the operation of motor vehicles.

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

(10) "Service Station" means and includes any place operated for the purpose of retailing and delivering diesel fuel into the fuel tanks of motor vehicles.

(11) "State" means the State of Oregon.

3.34.020 Tax imposed. A city of Albany diesel fuel tax is hereby imposed on every dealer operating within the corporate limits of Albany. The City of Albany diesel fuel tax imposed shall be paid monthly to the City or to its authorized agent.

(1) A person who is not a licensed dealer shall not accept or receive

diesel fuel in this city from a person who imports diesel fuel who does not hold a valid motor vehicle fuel dealers's license in this city. If a person is not a licensed dealer in this city and accepts or receives diesel fuel, the purchaser or receiver shall be responsible for all taxes, interests and penalties prescribed herein.

(2) A licensed dealer who accepts or receives diesel fuel from a person who does not hold a valid dealer license in this city, shall pay the tax imposed by this chapter to the City or its authorized agent, upon the sale, use or distribution of the diesel fuel.

3.34.030 Amount and payment. (1) Subject to subsections (2) and (3) 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 diesel fuel, shall:

(a) Not later than the 25th day of each calendar month, render a statement to the City or to its authorized agent, of all diesel fuel sold, used or distributed by him in the city as well as such fuel sold, used or distributed in the city by purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the applicable diesel fuel tax during the preceding calendar month.

(b) Pay a diesel fuel tax computed on the basis of 1-cent per gallon on such diesel fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this chapter. This tax to be effective January 1, 1991.

(2) In lieu of claiming a refund of the tax as provided in Section 3.34.180, or of any prior erroneous payment of diesel fuel tax made to the City by the dealer, the dealer may show such diesel fuel as a credit or deduction on the monthly statement and payment of tax.

(3) The diesel fuel tax shall not be imposed wherever it is prohibited by the Constitution or laws of the United States or of the State of Oregon.

3.34.040 Licensee requirements. No dealer shall sell, use or distribute any diesel fuel until he has secured a dealer license as required herein.

3.34.050 License application and issuance. (1) Every person, before becoming a dealer in diesel fuel in this city shall make an application to the City or its duly authorized agent, 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 or its duly authorized agent.

(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, as well as primary transport carrier.

(4) The application for a motor vehicle fuel dealer license having been accepted for filing, the City or its authorized agent, shall issue to the dealer a license in such form as the City or its duly authorized agent 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) No fee(s) shall be charged by the City for securing said license as

described herein.

3.34.060 Failure to secure license. (1) If any dealer sells, distributes or uses any diesel fuel without first filing the certificate and securing the license required by Section 3.34.050, the diesel fuel tax shall immediately be due and payable on account of all diesel 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 (100%) of the tax, and shall make its certificate of such assessment and penalty, determined by City Manager 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.

(3) Any tax or penalty so assessed may be collected in the manner prescribed in Section 3.34.100 which reference to delinquency in payment of the tax or by court action.

3.34.070 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 chapter. The City or its authorized agent shall mail by certified mail addressed to such dealer 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 has not made good its default or delinquency.

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

(2) If the City or its authorized agent 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 or its authorized agent may cancel the license of such dealer upon investigation after 30 days' notice has been mailed to the last known address of the dealer.

3.34.090 Remedies cumulative. Except as otherwise provided in Sections 3.34.100 and 3.34.120, the remedies provided in Sections 3.34.060, 3.34.070, and 3.34.080 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this chapter.

3.34.100 Payment of tax and delinquency. (1) The diesel fuel tax imposed by Sections 3.34.020 and 3.34.030 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 therefore.

(2) Except as provided in subsection (4) of this section, to any diesel fuel tax not paid as required by subsection (1) of this section, there shall be added a penalty of one (1%) of such diesel fuel 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 ten percent (10%) shall be paid in addition to the penalty provided for in subsection (2) of this section.

(4) 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 (2) and (3) of this section may be waived. Penalties imposed by this section shall not apply when the penalty provided in Section 3.34.060 has been assessed and paid.

(5) If any person fails to pay the diesel fuel tax or any penalty provided for by this chapter, the amount thereof shall be collected from such person for the use of the City. The City shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

(6) In the event any suit or action is instituted to collect the diesel fuel tax or any penalty provided for by this chapter, 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.

(7) 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.

3.34.110 Monthly statement of dealer. Every dealer in diesel fuel shall render to the City or its authorized agent, on or before the 25th 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 diesel fuel sold, distributed, used or stored by him during the preceding calendar month. The statement shall be signed by the license holder. All statements as required in this section are public records.

3.34.120 Failure to file monthly statement. If any dealer fails to file the report required by Section 3.34.110, the City or its authorized agent, shall proceed forthwith to determine from the best available sources the amount of diesel fuel sold, distributed, used or stored by such dealer 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 diesel fuel tax in the amount so determined, as pertaining to the reportable dealer, adding thereto a penalty of ten percent (10%) for failure to report. The penalty shall be cumulative to other penalties provided in this chapter. In any suit brought to enforce the rights of the City under this section, the above determination showing the amount of tax, penalties and costs unpaid by any dealer and that the same are due and unpaid to the City or its authorized agent is prima facie evidence of the facts as shown.

3.34.130 Billing purchasers. Bills shall be rendered to all purchasers of diesel fuel by dealers in diesel 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.

3.34.140 Failure to provide invoice or delivery tag. No person shall receive and accept any shipment of diesel 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 diesel fuel.

3.34.150 Exemption of export fuel. (1) The license tax imposed by Sections 3.34.020 and 3.34.030 shall not be imposed on diesel fuel:

- (a) Exported from the city by a dealer; or
- (b) Sold by a dealer in individual quantities of 500 gallons or

3less 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.

(2) Any diesel fuel carried from the City in the fuel tank of a motor vehicle shall not be considered as exported from the city.

(3) No person shall, through false statement, trick or device, or otherwise, obtain diesel fuel for export as to which the City diesel fuel tax has not been paid and fail to export the same, or any portion thereof, or cause the diesel fuel or any portion thereof not be exported, or divert or cause to be diverted the diesel 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 diesel fuel was originally purchased of his act.

(4) No dealer or other person shall conspire with any person to withhold from export, or divert from export or to return diesel fuel to the city for sale, use or distribution so as to avoid any of the fees imposed herein.

(5) In support of any exemption from taxes on account of sales of diesel 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 diesel fuel to which it applies only if accepted by the dealer in good faith.

3.34.160 Sales to armed forces exempted. The diesel fuel tax imposed by Sections 3.34.020 and 3.34.030 shall not be imposed on any diesel 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.

3.34.170 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 diesel 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 3.34.020 and 3.34.030 or complying with any of the provisions imposed upon dealers herein, but if the diesel fuel so brought into the city is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into the City shall be subject to all provisions herein applying to dealers.

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

3.34.190 Examination and investigations. The City, or its duly authorized agent, may make any examination of accounts, records, stocks, facilities and equipment of dealers, service stations and other persons engaged in storing, selling or distributing diesel fuel or other petroleum products within this city, and such other investigations as it considers necessary in carrying out the provisions of this chapter. If the examinations or investigations disclose that any reports of dealers or other persons theretofore filed with the City or its authorized agent pursuant to the requirements herein, have shown incorrectly the amount of gallons of diesel 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.

3.34.200 Limitation on credit for refund of overpayment and on assessment of additional tax. (1) Except as otherwise provided in this chapter, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three years after the date on which the overpayment was made to the City or to its authorized agent.

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

3.34.210 Examining books and accounts of carrier of diesel 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 diesel fuel operating within the City for the purpose of checking shipments or use of diesel fuel, detecting diversions thereof or evasion of taxes in enforcing the provisions of this chapter.

3.34.220 Records to be kept by dealers. Every dealer in diesel 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 diesel 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.

3.34.230 Records to be kept three years. Every dealer shall maintain and keep, for a period of three years, all records of diesel 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 or its authorized agent. In the event such records are not kept within the State of Oregon, the dealer shall reimburse the City or 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.

3.34.240 Use of tax revenues. (1) The City Manager shall be responsible for the disposition of the revenue from the tax imposed by this chapter in the manner provided by this section.

(2) For the purposes of this section, net revenue shall mean the revenue from the tax imposed by this chapter remaining after providing for the cost of administering the diesel fuel tax to motor vehicle fuel dealers and any refunds and credits authorized herein.

(3) 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 Albany.

3.34.250 Administration. The City Manager or his designate is responsible for administering this chapter. In addition, the City Manager may enter into an agreement with the Motor Vehicles Division of the Department of Transportation as an authorized agent for the implementation of this chapter.

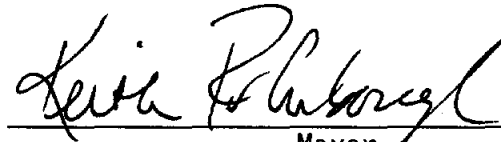
3.34.260 Separability. If any portion of this chapter is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of the chapter.

Section 2. Effective date of tax. The taxation imposed by this chapter shall commence January 1, 1991.

Passed by Council: October 10, 1990

Approved by Mayor: October 11, 1990

Effective Date: November 9, 1990



Mayor

ATTEST:



City Recorder