

CITY OF SILVERTON
ORDINANCE
17-09

AN ORDINANCE OF THE SILVERTON CITY COUNCIL AMENDING SILVERTON MUNICIPAL CODE; TITLE 3, ADDING CHAPTER 3.10: IMPOSING A MOTOR VEHICLE FUEL TAX AND PROVIDING FOR ENFORCEMENT, ADMINISTRATION, AND COLLECTION OF THE TAX

WHEREAS, public highways, roads, and streets both in the City and those subject to City control are consistently in need of construction, reconstruction, improvement, repair, upkeep and maintenance, to promote ease of travel and commerce in and around the City; and

WHEREAS, the City's current revenue sources do not produce adequate funding to fund said construction, reconstruction, improvement, repair, upkeep, and maintenance; and

WHEREAS, the City wishes to enact a \$0.02 per gallon motor vehicle fuel license tax on all dealers to provide additional funds for said construction, reconstruction, improvement, repair, upkeep, maintenance, operation and use of public roads in the City consistent with the requirements of state law and the Oregon Constitution; and

WHEREAS, the monies generated by the proposed license tax will be dedicated to the construction, reconstruction, improvement, repair, maintenance, operation, and use of public highways, roads, and streets in the City as required by the Oregon Constitution.

NOW THEREFORE THE CITY OF SILVERTON ORDAINS AS FOLLOWS:

Section 1: The Silverton Municipal Code is amended to add the following Chapter 3.10 ("Motor Vehicle Fuel Tax"):

Chapter 3.10
MOTOR VEHICLE FUEL BUSINESS LICENSETAX

3.20.010 Definitions.

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

- A. "City" means the city of Silverton, Oregon.
- B. "Dealer" means any person who:

Imports or causes to be imported motor vehicle fuel for sale, use, or distribution in the City but "Dealer" does not include a person importing motor vehicle fuel into the City in

quantities of five hundred (500) gallons or less purchased from a dealer licensed under this Chapter if said dealer assumes liability for payment of the license tax to the City.

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storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or delivery into the fuel tanks of motor vehicles whether or not the service station, tank or storage facility is owned, operated or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

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

E. "Motor vehicle fuel" means and includes gasoline, diesel, and any other flammable or combustible gas or liquid by whatever name such gas or liquid is known or sold, usable as fuel for the operation of motor vehicles except gas or liquid for purposes other than the propulsion of motor vehicles.

F. "Person" includes every natural person, association, firm, partnership or corporation.

G. "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.

H. "Street" means every way, thoroughfare and place of whatever nature which is open for public use for vehicular travel under City jurisdiction and/or authority including the motor vehicle traveling lanes of all rights-of-way in the City as well as curbs, sidewalks and planting strips adjacent thereto.

3.20.020 Tax imposed.

A business license tax is imposed on every Dealer in the City which business license tax is in addition to the general business license fee required under Silverton Municipal Code Chapter 5.12. The tax imposed shall be paid monthly to the City or its duly authorized agent. The City may delegate to any entity or department of the City enforcement of any portion or all of this ordinance.

3.20.030 Amount and payment.

A. Every Dealer in the City whether in the Dealer's name, the name of another or the name of the Dealer's representative or agent is required to do the following:

1. Provide a statement (not later than the 25th of each month) to the City of all motor vehicle fuel sold, used, or distributed by the Dealer in the City as well as all such fuel sold, used, or distributed in the City by a purchaser for which sale, use, or distribution Dealer has assumed liability for the license tax during the preceding month.

2. Pay a license tax of two cents (\$0.02) per gallon of such motor vehicle fuel so sold, used, or distributed as shown by such statement and do so in the manner and within the time provided by this Chapter.

B. In lieu of claiming the refund of the tax provided in Section 3.20.180 or for any prior erroneous payment to the City of said tax by the Dealer, the Dealer may use said payment as a credit on the monthly statement and payment of the license tax.

3.20.040 License requirements.

No Dealer may sell, use or distribute any motor vehicle fuel until the Dealer has secured a Dealer's license from the City and do so in the manner as required by this Chapter.

3.20.050 License applications and issuance.

A. Every person becoming or remaining a Dealer in the city must first obtain a license authorizing said person to engage in business as a dealer.

B. Applications for the license must be made on forms prescribed, prepared and furnished by the City which forms shall, include at a minimum the following:

1. The business name under which the applicant is to transact business;
2. The address of applicant's principal place of business and location(s) of distributing stations in the City;
3. The name and address of the managing agent, the names and addresses of the 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.

C. Once the application is complete and accepted for filing, City will issue the person a Dealer's license to transact business in the City which license is not assignable and is valid only for the Dealer in whose name it is issued.

D. The City will retain all completed applications together with a record of all licensed Dealers for a minimum of five years.

3.20.060 Failure to secure license.

A. If a person fails to secure a license prior to becoming or remaining a Dealer in the city, the tax imposed by the terms of 3.20.030 on all motor vehicle fuel sold, distributed or used by that person is immediately due and payable to the City.

B. The City will determine (from as many reliable and available sources as it deems reasonable) the amount of any license tax due and assess the person for said amount together

with a civil penalty of twenty-five (25) percent of said tax amount. In the event of an action by the City to collect the tax or penalty or both, the assessment is prima facie evidence the person is indebted to the city in the amount of the tax and penalty stated.

3.20.070 Cancellation of license.

A. The City may upon written request of a Dealer, cancel a license issued that Dealer. Upon approving the dealer's request for cancellation, the City will set a date not later than thirty (30) days after receipt of said request canceling the license.

B. The city may, after thirty (30) days' notice has been mailed to the last known address of the dealer, cancel the Dealer's license upon finding by the City Manager that the Dealer is no longer engaged in the business.

3.20.080 Payment of tax and delinquency penalties.

A. The license tax imposed by this Chapter must be paid on or before the 25th day of each month.

B. Except as provided in subsections C and D of this section 3.20.080, if payment of the tax is not timely paid, a penalty of ten (10) percent of the license tax may be assessed by the City which penalty and license tax shall then be immediately due and payable.

C. Except as provided in subsection 3.20.080 (D), if 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 was due, City may impose a further penalty of twenty-five (25) percent which penalty will be in addition to the penalty provided for in 3.20.080(B) and immediately due and payable.

D. Penalties imposed by this section do not apply if a penalty is assessed under Section 3.20.060.

E. The city manager may waive any penalties assessed under this section.

3.20.090 Failure to file monthly statement.

If a Dealer fails to file the statement required by Section 3.20.030, the City will determine (from as many available sources as City determines reasonable) the amount of motor vehicle fuel sold, distributed, or used by that Dealer for the unreported period and such determination shall be deemed presumptive prima facie evidence of the amount of fuel sold, distributed, or used. City will immediately assess the Dealer for the license tax upon the amount determined and a penalty of ten (10) percent thereof.

3.20.100 Exemption of export fuel.

A. The license tax imposed by Section 3.20.020 of this Chapter will 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 five hundred (500) gallons or more 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 is required to report such exports and sales to the city.

B. Any motor vehicle fuel carried from the City in the fuel tank of a motor vehicle will not be considered as exported from the city.

C. In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of five hundred (500) gallons or more for export by the purchaser, the Dealer must retain in the Dealer's files for at least two years an export certificate executed by the purchaser in such form and containing such information as required by the city. This certificate is prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith.

3.20.110 Sales to Armed Forces exempted.

The license tax imposed by Sections 3.20.020 and 3.20.035 is exempted on any motor vehicle fuel sold to the armed forces of the United States but every Dealer is required to report such sales to the City. A certificate by an authorized armed forces officer may be accepted by the Dealer as proof that the sale is exempt from the license tax.

3.20.120 Fuel in vehicles coming into city not taxed.

Any person coming into the City in a motor vehicle may transport in the vehicle fuel tank or 5 gallon or less container, motor vehicle fuel for the person's own use for operating that motor vehicle without securing a license or paying the tax imposed by this Chapter.

3.20.130 Fuel sold or delivered to Dealers.

A. A Dealer selling or delivering motor vehicle fuel to Dealers in the City is not required to pay a license tax unless the selling dealer has assumed liability for the payment of the license tax to the city.

B. The Dealer in making monthly statements to the city as required by Section 3.20.030, must show separately the number of gallons of motor vehicle fuel sold.

3.20.140 Examinations and investigations.

The City or its authorized agents may make an examination of accounts, records, stocks, facilities and equipment of Dealers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel within the City. The City may make other investigations it considers necessary in carrying out the provisions of this Chapter. If the examination discloses that reports of dealers or other persons have shown incorrectly the amount of motor vehicle fuel distributed or the tax accruing, City may make changes in subsequent reports and payments of such Dealers or others or may make adjustments as necessary to correct the errors disclosed subject to the limitations found in 3.20.150..

3.20.150 Limitation on credit for or refund of overpayment and on assessment of additional tax.

A. Except as otherwise provided in this Chapter, any credit for a Dealer's overpayment of the license tax taken on a subsequent return or any claim for refund of tax erroneously overpaid must be taken or filed by the Dealer within three (3) years of the date on which the overpayment was received by the City.

B. Except in the case of a fraudulent report or failure to make a report, every notice of additional tax proposed to be assessed under this Chapter will be served on a Dealer subject to this Chapter within three (3) years of the date such additional license taxes became due and include the penalty provided in Section 3.20.080.

3.20.160 Examining books and accounts of carrier of motor vehicle fuel.

The City or its authorized agents may examine at any time during normal business hours the books and accounts of any carrier of motor vehicle fuel operating within the city for enforcing the provisions of this chapter.

3.20.170 Confidentiality.

The City shall protect the confidential business operations or similar information obtained to implement this chapter; provided that nothing in this section shall be construed to prevent:

A. The disclosure to, or the examination of records and equipment by, another city official, employee or agent for collection of license taxes for the sole purpose of administering or enforcing any provisions of this chapter, or collecting license tax imposed under this chapter.

B. The disclosure of information as to any paid license tax, any unpaid license tax or amount of license tax required to be collected, or interest, and penalties; provided, however, that the City approves each such disclosure and that the City may refuse to make any disclosure referred to in this subsection when the public interest would suffer thereby.

C. The disclosure of the names and addresses of any Dealer.

D. The disclosure of general statistics regarding license taxes collected or business done in the City.

E. The disclosure of information in accordance with the public records law.

3.20.180 Records to be kept by dealers.

Every Dealer must keep a record in such manner required by the City of all purchases, invoices, bills of lading, receipts, sales and distribution of motor vehicle fuel for not less than three years. The records must include copies of all invoices or bills of all such sales. All records described in this section 3.20.170 are subject to inspection by the City or its authorized agents during the Dealer's normal business hours.

3.20.190 Use of tax revenues.

A. The City Manager or their designee is responsible for the disposition of the revenue from the tax and penalties imposed by this Chapter.

B. For the purpose of this section, "net revenue" is revenue remaining from the tax and penalties imposed by this Chapter after providing for the cost of administration and such refunds and credits authorized by this Chapter 3.20.

C. The net revenue must be used for the planning, financing, design, construction, maintenance, repair, operation and the use of City streets

3.20.200 Enforcement

In the event any person subject to the terms of this Chapter fails, refuses or neglects to comply with the terms thereof, the City may, in addition to the imposition of the license tax, assessments, and penalties provided herein seek such legal or equitable relief in a court of competent jurisdiction to effect compliance with the terms of this Chapter and shall, in the event it is the prevailing party, be awarded its costs, disbursements, and attorneys' and other expert fees.

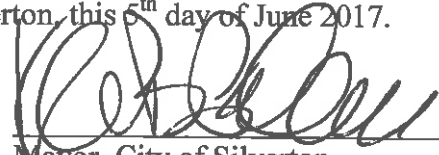
3.20.210 Violation – Penalty.

Any Dealer who fails or refuses to furnish any information required in this chapter or by the City, or, with intent to defeat or evade the determination of any amount due under this chapter, shall make, render, sign or verify any false or fraudulent statement, commits an offense which constitutes a violation of this chapter punishable in accordance with the general penalty provisions of SMC [1.08.010](#).

Section 2: Tax Effective Date. The tax imposed by this chapter shall take effect on the date specified in a resolution of the City Council, but in no event earlier than January 1, 2018.

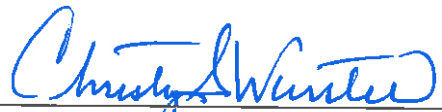
Section 3: Severability. If any portion of Chapter 3.20 is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Ordinance adopted by the City Council of the City of Silverton, this 5th day of June 2017.



Mayor, City of Silverton
Kyle Palmer

ATTEST



City Manager/Recorder, City of Silverton
Christy S. Wurster