

ORDINANCE NO. 883

AN ORDINANCE ENACTING THE SCAPPOOSE MUNICIPAL CODE CHAPTER 3.26 TO ENACT A FUEL TAX OF 3 CENTS PER GALLON FOR STREET AND SIDEWALK IMPROVEMENTS, REPAIR AND MAINTENANCE

WHEREAS, ORS 319.950 authorizes the City to enact or amend an ordinance taxing fuel for motor vehicles after submitting the proposed tax to the electors of the local government for their approval; and

WHEREAS, the City Council of Scappoose wishes to amend the Municipal Code to enact a motor vehicle fuel tax of 3 Cents per gallon for street improvements repairs and maintenance;

NOW, THEREFORE, THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

SECTION 1: Amends Title 3 with the addition of Chapter 3.26 of the Scappoose Municipal Code to read as follows:

Chapter 3.26 – MOTOR VEHICLE FUEL TAX

3.26.010 – Short title.

This chapter shall be known as the “Motor Vehicle Fuel Tax Ordinance.”

3.26.020 – Definitions

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

“City” means City of Scappoose and any person, agency, or other entity authorized by the city to act as its agent related to administration of the motor vehicle fuel tax ordinance or collection of the motor vehicle fuel tax.

“Dealer” means any person who:

- A. Supplies or imports motor vehicle fuel for sale, use, or distribution in, and after the same reaches the city, but “dealer” does not include any person who imports into the city motor vehicle fuel in quantities of five hundred gallons or less purchased from a supplier who is permitted as a dealer hereunder and who assumes liability for the payment of the applicable motor vehicle fuel tax to the city;
- 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 motor vehicle fuel tax previously incurred.

"Distributor" means, in addition to its ordinary meaning, the deliverer of motor vehicle fuel by a dealer to any service station or into any tank, storage facility, or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or

for delivery into the fuel tanks or motor vehicles whether or not the service station, tank, or storage facility is owned, operated, or controlled by the dealer.

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

"Motor vehicle fuel" means and includes gasoline, diesel, and any other flammable or combustible gas or liquid, by whatever name that gasoline, gas, or liquid is known or sold, usable as fuel for the operation of motor vehicles. Propane fuel and motor vehicle fuel used exclusively as a structural heating source are excluded as a taxable motor vehicle fuel.

"Motor vehicle fuelhandler" means any person who acquires or handles motor vehicle fuel within the city through a storage tank facility with storage tank capacity that exceeds five hundred (500) gallons of motor vehicle fuel.

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

"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.

3.26.030 – Tax imposed

As of 12:01 a.m. on January 1, 2020, motor vehicle fuel tax is imposed on every dealer operating within the corporate limits of Scappoose. The City of Scappoose motor vehicle fuel tax imposed shall be paid monthly to the city.

- A. A person who is not a permitted dealer or permitted motor vehicle fuelhandler shall not accept or receive motor vehicle fuel in this city from a person who supplies or imports motor vehicle fuel who does not hold a valid motor vehicle fuel dealers permit in this city. If a person is not a permitted dealer or permitted motor vehicle fuelhandler in this city and accepts or receives motor vehicle fuel, the purchaser or receiver shall be responsible for all taxes, interests and penalties prescribed herein.
- B. A permitted dealer or fuelhandler who accepts or receives motor vehicle fuel from a person who does not hold a valid dealer or fuelhandler permit in this city, shall pay the tax imposed by this chapter to the city, upon the sale, use, or distribution of the motor vehicle fuel.

3.26.040 – Amount and payment

- A. Subject to subsections B through D of this section, by law, every dealer engaging in his or her own name, or in the name of others, or in the name of his or her representatives or agents in the city, in the sale, use, or distribution of motor vehicle fuel, shall:
 - 1. Not later than the 25th day of each calendar month, render a statement to the city, of all motor vehicle fuel sold, used, or distributed by him or 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 motor vehicle fuel tax during the preceding calendar month; and

2. Pay a motor vehicle fuel tax, computed on the basis specified in subsection C of this section, 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 chapter.
- B. In lieu of claiming refund of the tax as provided in Section 3.26.200, or of any prior erroneous payment of motor vehicle fuel tax made to the city by the dealer, the dealer may show such motor vehicle fuel as a credit or deduction on the monthly statement and payment of tax.
- C. The amount of tax under subsection A(2) of this section is determined by the date such motor vehicle fuel is sold, used, or distributed by the person responsible for paying the tax. The date of such sale, use, or distribution shall be recorded in the statements that persons must file under this chapter, and the amount of tax will be calculated and owed as follows:
 1. The tax on motor vehicle fuel sold, used, or distributed on or after January 1, 2020 is \$0.03 cent per gallon of fuel.
- D. The motor vehicle fuel tax shall not be imposed wherever it is prohibited by the Constitution or laws of the United States or of the State of Oregon.

3.26.050 – Permit required.

After January 30, 2020, no dealer or fuel handler, shall sell, use, or distribute any motor vehicle fuel until he or she has secured a dealer or fuelhandler permit as required herein.

3.26.060 – Permit application and issuance.

- A. Every person, before becoming a dealer or fuelhandler in motor vehicle fuel in this city, shall make an application to the city or its duly authorized agent, for a permit authorizing such person to engage in business as a dealer or fuelhandler.
- B. Applications for the permit must be made on forms prescribed, prepared, and furnished by the city.
- C. Each application must include a certificate, signed by the applicant, that contains the following information:
 1. The business name under which the dealer or fuelhandler is transacting business;
 2. The place of business and location of distributing stations in the city and in areas adjacent to the city limits in the State of Oregon;
 3. The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership, and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.
- D. An application for a motor vehicle fuel dealer or fuelhandler permit having been accepted for filing, the city shall issue to the dealer or fuelhandler a permit in such form as the city may prescribe to transact business in the city. The permit so issued is not assignable, and is valid only for the dealer or fuel handler in whose name issued.
- E. The city recorder shall keep on file a copy of all applications and/or permits.
- F. The city will not charge a fee for seeking and obtaining the permit required by this section.

3.26.070 – Failure to secure permit.

- A. After January 30, 2020, if any dealer sells, distributes, or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.26.060, the motor vehicle fuel tax shall immediately be due and payable on account of all motor vehicle fuel sold, distributed, or used on or after January 1, 2020.
- B. The city shall proceed forthwith to determine, from the best available sources, the amount of such tax, and it shall assess the tax in the amount found due, together with a penalty of two hundred percent of the tax, and shall make its certificate of such assessment and penalty, determined by city manager or designee. In any suit or proceeding to collect such tax or penalty or both, the certificate is prima facie evidence that the dealer therein named is indebted to the city in the amount of the tax and penalty therein stated.
- C. Any fuelhandler who sells, handles, stores, distributes, or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.26.060, shall be assessed a penalty of two hundred fifty dollars unless modified by Subsection 3.26.270.A in the city manager's determination. In any suit or proceeding to collect such penalty, the certificate is prima facie evidence that the fuelhandler therein named is indebted to the city in the amount of the penalty therein stated.
- D. Any tax or penalty so assessed may be collected in the manner prescribed in Section 3.26.110 with reference to delinquency in payment of the tax, or by court action.

3.26.080 – Revocation of permit.

The city shall revoke the permit of any dealer or fuelhandler refusing or neglecting to comply with any provision of this chapter. The city shall mail by certified mail addressed to such dealer or fuelhandler at this or her 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 ten days from the mailing of the notice the dealer or fuelhandler has not cured or remedied its default or delinquency.

3.26.090 – Cancellation of permit.

- A. The city may, upon written request of a dealer or fuelhandler, cancel any permit issued to such dealer or fuelhandler, the cancellation to become effective thirty days from the date of receipt of the written request.
- B. If the city ascertains and finds that the person to whom a permit has been issued is no longer engaged in the business of a dealer or fuelhandler, the city may cancel the permit of such dealer or fuelhandler upon investigation after thirty days' notice has been mailed to the most recent mailing address of the dealer or fuelhandler furnished to the City by the dealer or fuelhandler.

3.26.100 – Remedies cumulative.

Except as otherwise provided in Sections 3.26.110 and 3.26.130, the remedies provided in Sections 3.26.070, 3.26.080, and 3.26.090 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this chapter.

3.26.110 – Payment of tax and delinquency.

- A. The motor vehicle fuel tax imposed by Sections 3.26.030 and 3.26.040 shall be paid on or before the twenty-fifth day of each month to the city which, upon request, shall receipt the dealer, or fuelhandler therefor.
- B. Except as provided in subsection D of this section, to any motor vehicle fuel tax not paid as required by subsection A of this section, there shall be added a penalty of one percent of such motor vehicle fuel tax.
- C. Except as provided in subsection D of this section, if the tax and penalty required by subsection B of this section are not received on, or before the close of business on the last day of the month in which the payment is due, a further penalty of ten percent shall be paid in addition to the penalty provided for in subsection B of this section.
- D. If the city determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by subsections B and C of this section may be waived. Penalties imposed by this section shall not apply when the penalty provided in Section 3.26.070 has been assessed and paid.
- E. If any person fails to pay the motor vehicle 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.
- F. If the city institutes any suit or action to collect the motor vehicle fuel tax, or any penalty provided for by this chapter, the city may recover from the person sued reasonable attorney's fees at trial, or upon appeal of such suit, or action, in addition to all other sums provided by law.
- G. The city has a cause of action to collect any tax or penalty unpaid pursuant this chapter. The city may collect any tax or penalty in one or more demands, actions, or suits. The city may collect any such sum in any procedure or form of action available to it, including but not limited to the action embodied in this paragraph, actions for collecting amounts due, including due under agreements, or as a penalty in an ordinance violation proceeding.
- H. No dealer who collects from any person the tax provided for herein, shall knowingly or intentionally fail to report and pay the same to the city, as required herein.

3.26.120 – Monthly statement of dealer and fuelhandler.

Unless modified by Subsection 3.26.270.B, every dealer and fuelhandler in motor vehicle fuel shall render to the city, on or before the twenty-fifth 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, used, or stored by him or her during the preceding calendar month. The statement shall be signed by the permit holder. All statements as required in this section are public records.

3.26.130 – Failure to file monthly statement.

If any dealer, or fuelhandler fails to file the report required by Section 3.26.120, the city shall proceed forthwith to determine from the best available sources the amount of motor vehicle fuel sold, distributed, used, or stored by such dealer or fuelhandler 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 immediately shall assess the motor vehicle fuel tax in the amount so determined, as pertaining to the reportable dealer, adding thereto a penalty of ten percent for failure to report. Fuelhandlers failing to file a monthly statement of motor vehicle fuel shall be assessed a penalty of fifty dollars. 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, any such determination showing the amount of tax, penalties, and costs unpaid by any dealer, or fuelhandler and that the same are due and unpaid to the city is prima facie evidence of the facts as shown.

3.26.140 – 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.

3.26.150 – 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.

3.26.160 – Transportation 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 streets of the city with such conveyance, have and possess during the entire time of such hauling or transporting of 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 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.

3.26.170 – Exemption of export fuel.

- A. The license tax imposed by Sections 3.26.030 and 3.26.040 shall not be imposed on motor vehicle fuel that is:
 - 1. Exported from the city by a dealer; or
 - 2. Sold by a dealer in individual quantities of five hundred 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.
- B. In support of any exemption from motor vehicle fuel taxes claimed under this section other than in the case of stock transfers, or deliveries in a person's 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 may be required. 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.

- C. Any motor vehicle fuel carried from the city in the fuel tank of a motor vehicle shall not be considered as exported from the city.
- D. No person shall, through false statement, trick, or device, or otherwise, obtain motor vehicle fuel for export as to which the city motor vehicle fuel tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or divert, or cause to be diverted the motor vehicle fuel or any portion thereof to be used, distributed, or sold in the city, and fail to notify the city and the dealer from whom the motor vehicle fuel was originally purchased of his or her act.
- E. No dealer or other person shall conspire with any person to withhold from export, or divert from export, or to return motor vehicle fuel to the city for sale or use, so as to avoid any of the fees imposed herein.
- F. In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of five hundred gallons or less for export by the purchaser, the dealer shall retain in his or 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 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.

3.26.180 – Sales to armed forces exempted.

The motor vehicle fuel tax imposed by Sections 3.26.030 and 3.26.040 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.

3.26.190 – 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 or her own use only and for the purpose of operating such motor vehicle, without securing a license or paying the tax provided in Sections 3.26.030 and 3.26.040, or complying with any of the provisions imposed upon dealers herein. But if the motor vehicle fuel so brought into the city is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into the city shall be subject to all provisions herein applying to dealers.

3.26.200 – Refunds.

Refunds will be made pursuant to ORS 319.280 to 319.320.

3.26.210 – Examination and investigations.

The city may examine accounts, records, stocks, facilities, and equipment of dealers, Fuelhandlers, service stations, and other persons engaged in storing, selling, or distributing motor vehicle fuel or other petroleum products within this city, and such other investigations as it considers necessary in carrying out the provisions of this chapter. 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 gallons 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 revealed by its examinations or investigations.

3.26.220 – 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 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 (3) years after the date on which the overpayment was made to the city or to its authorized agent.
- B. Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this chapter shall be served on dealers within three years from the date upon which such additional taxes become due.

3.26.230 – Examining books and accounts of carrier of motor vehicle fuel.

The city 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 detecting evasion of taxes in enforcing the provisions of this chapter.

3.26.240 – Records to be kept by dealers and fuel handlers.

Every dealer and fuelhandler 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 purchases, and shall at all times during the business hours of the day be subject to inspection by the city.

3.26.250 – Records to be kept three years.

Every dealer and fuelhandler shall maintain and keep, for a period of three years, all records of motor vehicle fuel used, sold, and distributed within the city by such dealer or fuel handler, together with stock records, invoices, bills of lading, and other pertinent papers as may be required by the city. 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 in examining such records. The amount of such expenses shall be an additional tax imposed hereunder.

3.26.260 – Use of tax revenues.

- A. 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.
- B. For the purposes of this section, "net revenue" means the revenue from the tax imposed by this chapter remaining after providing for the cost of administering the motor vehicle fuel tax to motor vehicle fuel dealers and any refunds and credits authorized herein. The program administration costs of revenue collection and accounting activities shall not exceed ten and one-half percent for the first year, and ten percent thereafter, of annual tax revenues.
- C. The net revenue shall be used only for maintenance activities standing alone or embodied within projects to construct, reconstruct, improve, repair, and maintain public highways, roads, and streets and sidewalks within the city, with a focus on pavement preservation projects.
- D. The city shall account for program costs, revenues, and expenditures, within the street fund established under this chapter.

3.26.270 – Administration.

- A. The city manager or designee is responsible for administering this chapter.
- B. The city manager may enter into an agreement with the Oregon Department of Transportation as an authorized agent for the implementation certain sections of this chapter. If the Department of Transportation is chosen as an authorized agent of the city, then the modifications out shall apply:
 - 1. The fuelhandler's penalty of subsection 3.26.070.C shall be reduced to one hundred dollars. If the department determines that the failure to obtain the permit was due to reasonable cause and without any intent to avoid obtaining a permit, then the penalty provided in Section 3.26.070 and this section may be waived.
 - 2. The fuelhandler's monthly reporting requirements of Section 3.26.120 and 3.26.130 shall be waived.

SECTION 2: This ordinance shall be effective upon certification by the County Elections Official that is has received voter approval at an election conducted on November 5, 2019.

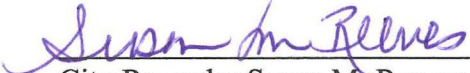
SECTION 3: This ordinance shall remain in effect for a period of ten years, after it first becomes effective under SECTION 2 of this Ordinance, unless reauthorized by Scappoose electors for a longer duration.

PASSED: By unanimous vote of all council members present after being read by number and title only, this 12th day of August, 2019.

APPROVED: By Scappoose City Council this 5th day of August 2019.



Mayor Scott Burge



City Recorder Susan M. Reeves

Approved as to form:



City Attorney Peter Watts