

**ORDINANCE NO. 1971**

(An ordinance adding Chapter 3.36—Motor Vehicle Fuel Tax, to the Hood River Municipal Code)

CODIFIED  
BY *JM*  
Date *1/2010*

WHEREAS, Streets and roads are critical City facilities and assets;

WHEREAS, the City receives funding for construction, maintenance and operation of the streets and roads from various sources, the primary source being federal timber replacement revenues passed through to the City by the County and the State Highway Fund;

WHEREAS, there has been no increase in the state gas tax rate since 1993, which has had the effect of freezing revenues from the State Highway Fund;

WHEREAS, the effects of inflation have decreased the purchasing power of road fund dollars;

WHEREAS, the County will no longer be receiving and able to share the federal timber revenue replacement fund with the City, creating a budgetary gap in the City's road fund, effective for the fiscal year 2009-2010;

WHEREAS, the County may or may not adopt a local gas tax to bridge the County's budgetary gap for streets and roads;

WHEREAS, the City's street and road fund is in need of immediate funding for the fiscal year beginning July 1, 2009, and the gas tax imposed by this ordinance would provide the necessary funding.

NOW, THEREFORE, THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

**Section 1. Chapter 3.36 – Hood River Motor Vehicle Fuel Tax is added to the Hood River Municipal Code as follows:**

- 3.36.010 Title
- 3.36.020 Definitions
- 3.36.030 Tax Imposed
- 3.36.040 Amount and Payment
- 3.36.050 Permit Requirements
- 3.36.060 Permit Applications and Issuance
- 3.36.070 Failure to Secure Permit
- 3.36.080 Revocation of Permit
- 3.36.090 Cancellation of Permit
- 3.36.100 Remedies Cumulative
- 3.36.110 Payment of Tax and Delinquency
- 3.36.120 Monthly Statement of Dealer
- 3.36.130 Failure to File Monthly Statement

3.36.140	<u>Billing Purchasers</u>
3.36.150	<u>Failure to Provide Invoice or Delivery Tag</u>
3.36.160	<u>Transporting Motor Vehicle Fuel in Bulk</u>
3.36.170	<u>Exemption of Export Fuel</u>
3.36.180	<u>Sales to Armed Forces Exempted</u>
3.36.190	<u>Fuel in Vehicles Coming Into City Not Taxed</u>
3.36.200	<u>Refunds</u>
3.36.210	<u>Examination and Investigations</u>
3.36.220	<u>Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax</u>
3.36.230	<u>Examining Books and Accounts of Carrier Motor Vehicle Fuel</u>
3.36.240	<u>Records to be Kept by Dealers and Fuel Handler</u>
3.36.250	<u>Records to be Kept Three Years</u>
3.36.260	<u>Use of Tax Revenues</u>
3.36.270	<u>Administration</u>

3.36.010 Title: This chapter may be referred to as the "City of Hood River Motor Vehicle Fuel Tax Ordinance."

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

"City" means the City of Hood River, or any authorized agent of the City authorized to perform the duties of the City under this chapter.

"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 500 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.

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

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

"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.

"State" means State of Oregon.

3.36.030 Tax Imposed. A motor vehicle fuel tax is hereby imposed on every dealer operating within the corporate limits of the City. All dealers shall pay the motor vehicle fuel tax monthly as directed by the City.

A. A person who is not a permitted dealer shall not accept or receive motor vehicle fuel in the City from a person who supplies or imports motor vehicle fuel who does not hold a valid motor vehicle fuel dealer permit in the City. If a person is not a permitted dealer under this chapter and accepts or receives motor vehicle fuel, the purchaser and receiver shall be responsible for all taxes, interests and penalties prescribed herein.

B. A permitted dealer who accepts or receives motor vehicle fuel from a person who does not hold a valid dealer 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.

3.36.040 Amount and Payment.

A. Subject to subsections B and C of this section, in addition to any fees or taxes otherwise provided 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:

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 the dealer 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.

2. Pay a motor vehicle fuel tax computed on the basis of three cents (\$.03) 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 chapter.

B. In lieu of claiming refund of the tax as provided in 3.36.200, 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 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.

3.36.050 Permit Requirements. No dealer shall sell, use, or distribute any motor vehicle fuel until the dealer has secured a dealer permit as required herein.

3.36.060 Permit Applications and Issuance.

A. Every person, before becoming a dealer in motor vehicle fuel in this City shall make an application to the City, for a permit authorizing the person to engage in business as a dealer.

B. Applications for the permit must be made on forms prescribed, prepared and furnished by the City.

C. Applications shall be accompanied by a duly acknowledged certificate containing:

1. The business name under which the dealer is transacting business in the City;
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; and
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. If the permit application is complete and accepted for filing, the City shall issue to the dealer 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 in whose name issued.

E. The City Recorder's Office shall keep on file a copy of all applications and/or permits.

F. The City may charge a fee for the application, the amount of which is set by resolution of the City Council.

13.36.070 Failure to Secure Permit.

A. If a dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and securing the permit required by this chapter, the motor vehicle fuel tax shall immediately be due and payable on account of all motor vehicle fuel sold, distributed or used.

B. The City shall proceed forthwith to determine, from the best available sources, the amount of the 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.

C. Any tax or penalty so assessed may be collected in the manner prescribed in 3.36.110 with reference to delinquency in payment of the tax or by any action at law.

D. In the event any suit or action is instituted to enforce this section, if the City is the prevailing part, the City is entitled to recover reasonably attorney fees at trial and upon appeal, in addition to all other sums provided by law.

3.36.080 Revocation of Permit. The City shall revoke the permit of any dealer or fuel-handler refusing or neglecting to comply with any provision of this chapter. The City shall mail by certified mail addressed to such dealer at their 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.

3.36.090 Cancellation of Permit.

A. The City may, upon written request of a dealer, cancel any permit issued to the dealer. The City shall, upon approving the dealer's cancellation request, cancel the permit effective not later than 30 days from the date of receipt of the written request.

B. If the City determines that the person to whom a permit has been issued is no longer engaged in the business of a dealer, the City may cancel the permit after 30 days' notice has been mailed to the last known address of the dealer.

3.36.100 Remedies Cumulative. Except as otherwise provided in sections 3.36.110 and .130, the remedies provided above are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this chapter or code.

3.36.110 Payment of Tax and Delinquency.

A. The motor vehicle fuel tax imposed by this chapter shall be paid on or before the 25th day of each month. Payment shall be made to the City, or as otherwise directed by the City.

B. Except as provided in subsection D, if the tax is not paid as required by subsection A, a penalty of one percent (1.0%) of the tax owed shall be assessed and immediately due and payable.

C. Except as provided in subsection D, if the tax and penalty required by subsection B 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 (10.0%) shall be paid in addition to the penalty provided for in subsection B.

D. If the City determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the City may waive the penalties provided by subsections B and C of this section. Penalties imposed by this section shall not apply when the penalty provided in Section 3.36.070 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. In the event any suit or action is instituted to collect the motor vehicle fuel tax or any penalty provided for by this ordinance, 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.

G. No dealer who collects from any person the tax provided herein shall knowingly and willfully fail to report and pay the same to the City as required by this chapter.

3.36.120 Monthly Statement of Dealer. Every dealer in motor vehicle fuel shall provide 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 the dealer during the preceding calendar month. The statement shall be signed by the permit holder. All statements submitted pursuant to this section are public records.

3.36.130 Failure to File Monthly Statement. If any dealer fails to file the report required by Section 3.36.120, the City shall proceed forthwith to determine from the best available sources the amount of motor vehicle fuel sold, distributed, or used by the dealer for the period unreported, and such determination shall be prima facie evidence of the amount of fuel sold, distributed, or used. The City shall immediately assess the dealer for the motor vehicle fuel 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 code. 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 is prima facie evidence of the facts as shown.

3.36.140 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 to the City are maintained. The bills required hereunder may be the same as those required under ORS 319.210.

3.36.150 Failure to Provide Invoice or Delivery Tag. No person shall receive and accept motor vehicle fuel from any dealer, or pay for the same, or sell or offer the shipment for sale, unless the motor vehicle fuel 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.

3.36.160 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 or consignee, if any, of the same. The person hauling such motor vehicle fuel shall at the request of any officer authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

3.36.170 Exemption of Export Fuel.

A. The motor vehicle fuel tax imposed by this chapter does not apply to motor vehicle fuel:

1. Exported from the City by a dealer; or
2. Sold by a dealer for export outside the City by the purchaser 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 the dealer'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 filing of the certificate.

C. Any motor vehicle fuel carried from the City in the fuel tank of a motor vehicle is not considered 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 their 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 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.

3.36.180 Sales to Armed Forces Exempted. The motor vehicle fuel tax imposed by this chapter does not apply to 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.

3.36.190 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 their own use only and for the purpose of operating the motor vehicle without securing a license or paying the tax provided in this chapter, 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.

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

3.36.210 Examination and Investigations. The City 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 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 by its examinations or investigations.

3.36.220 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 years after the date on which the overpayment was made to the City.

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.



3.36.230 Examining Books and Accounts of Carrier 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 evasion of taxes in enforcing the provisions of this chapter.

3.36.240 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 purchases, and shall at all times during the business hours of the day be subject to inspection by the City.

3.36.250 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 the 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 the records. The amount of such expenses shall be assessed in addition to the tax imposed hereunder.

3.36.260 Use of Tax Revenues.

A. For the purposes of this section, net revenue means the revenue from the tax and penalties imposed by this chapter remaining after providing for the cost of administration and any refunds and credits authorized herein.

B. The net revenue shall be used only for the construction, reconstruction, improvement, repair, maintenance, operation and use of City public right of way, as that term is defined in Chapter 13.52.

3.36.270 Administration. The City Manager is responsible for administering this chapter. The City Manager may enter into an agreement with the Oregon Department of Transportation as an authorized agent for the implementation and administration of this chapter.

**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 no earlier than July 1, 2009.

**Section 3. Sunset Provision.** This ordinance shall automatically terminate and the City shall cease to impose and collect the tax provided by this ordinance if Hood River County adopts a motor vehicle fuel tax ordinance applicable to the City and agrees, by written agreement with the City, to allocate a portion of the County's motor vehicle fuel tax net revenues to the City in an amount acceptable to the City Council. The termination date shall be as specified in the agreement between the City and County.

**Section 4. Severability.** If any portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Read for the first time: May 20<sup>th</sup>, 2009.

Read for the second time and passed: May 26<sup>th</sup>, 2009, to become effective thirty days hence.

Signed May 26<sup>th</sup>, 2009.



Arthur Babitz, Mayor

ATTEST:



Jennifer McKenzie, City Recorder