ORDINANCE NO. 469

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH PLAINS, OREGON, AMENDING THE NORTH PLAINS MUNICIPAL CODE BY ADDING CHAPTER 2.25; IMPOSING A MOTOR VEHICLE FUEL BUSINESS LICENSE TAX AND PROVIDING FOR ENFORCEMENT, ADMINISTRATION, AND COLLECTION OF THE TAX

WHEREAS, the 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 $0.03 per gallon motor vehicle fuel tax on all motor vehicle fuel dealers to provide additional funds for said construction, reconstruction, improvement, repair, upkeep, maintenance, operation and use of public highways, roads and streets in the City, and those subject to City control, consistent with the requirements of State law and the Oregon Constitution; and

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

Now, therefore:

THE CITY OF NORTH PLAINS ORDAINS AS FOLLOWS:

Section 1: Amendment. The North Plains Municipal Code is amended to add the following Chapter 2.25 (“Motor Vehicle Fuel Business License Tax”):

Chapter 2.25

MOTOR VEHICLE FUEL BUSINESS LICENSE TAX

2.25.010. Definitions.

As used in this Chapter, unless context requires otherwise, the following words and phrases mean:

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A. City. The city of North Plains, Oregon.

B. Dealer. Any person who:
   1) Imports or causes to be imported motor vehicle fuel for sale, use or distribution in the City;
   2) Produces, refines, manufactures or compounds motor vehicle fuel in the City for use, distribution or sale in the City; or
   3) 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.
   4) “Dealer” does not include any person who imports into the City motor vehicle fuel in quantities of 500 gallons or less purchased from a supplier who is licensed as a dealer hereunder if that dealer assumes liability for the payment of the applicable motor vehicle fuel tax to the City.

C. Distributor. 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.

D. Motor vehicle. All vehicles, engines or machines, moveable or immovable, operated or propelled by the use of motor vehicle fuel.

E. Motor vehicle fuel. Means and includes gasoline, diesel, and any other inflammable 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.

F. Person. 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.

2.25.020. Tax Imposed.

A motor vehicle fuel business license tax is hereby imposed on every dealer operating within the corporate limits of the City. The City motor vehicle fuel business license tax shall be paid monthly to the City or its authorized agent and is in addition to and not in lieu of the general Business License Fee imposed under Chapter 6.15.

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A. A person who is not a licensed dealer 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 dealer license in this City. If a person is not a licensed dealer or licensed motor vehicle fuel handler in the City and accepts or receives motor vehicle fuel, the purchaser shall be responsible for all taxes, interests and penalties prescribed herein.

B. A licensed dealer who accepts or receives motor vehicle fuel from a person who does not hold a valid dealer license in this City, shall pay the tax that would have otherwise been imposed upon the unlicensed dealer by this Chapter to the City, or its authorized agent, upon the sale, use or distribution of the motor vehicle fuel.

2.25.030. Amount and Payment.

A. In addition to any fees or taxes otherwise provided for by law, every dealer in the City engaging 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 or its authorized agent, of all motor vehicle fuel sold, used, or distributed by them 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 within the time provided in this Chapter; and

2) Pay a license tax on the basis of $0.03 per gallon of such motor vehicle fuel so sold, used, or distributed as shown by such statement in the manner and within the time provide in this Chapter.

B. The motor vehicle fuel business license tax shall not be imposed wherever it is prohibited by the Constitution, laws of the United States, or the State of Oregon.

2.25.040. License Requirements.

No dealer, shall sell, use, or distribute any motor vehicle fuel until they have secured a dealer license as required herein.

2.25.050. License Application and Issuance.

A. Every person becoming or remaining a dealer in motor vehicle fuel in this city must first make an application to the City or its duly authorized agent, and obtain a license authorizing such 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 or its duly authorized agent.

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

1) The business name under which the dealer is transacting business;

2) The address of the applicant’s principal place of business and location of distributing stations in and adjacent to the City;

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. Once an application has 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 or fuel handler in whose name it is issued.

E. The City will retain on file a copy of all submitted applications, as well as a record of all licenses issued, for a period not less than five years.

F. No fee shall be charged by the City for securing said license as described herein.

2.25.060. Failure to Secure License.

A. If any dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and securing the license required by Section 2.25.040, the motor vehicle fuel tax shall immediately be due and payable on account of all motor vehicle fuel so sold, distributed or used.

B. The City shall determine, from the best available sources, the amount of such business license tax due, and shall assess the tax in the amount found due, together with a penalty of 25% of the tax, as determined by the City Manager or the city’s duly authorized agent. In the event of any suit or proceeding to collect such tax or penalty or both, the assessment shall be prima facie evidence that the dealer therein named is indebted to the City in the amount of the tax and penalty stated.
C. Any tax or penalty so assessed may be collected in the manner prescribed in Section 2.25.100 with reference to delinquency in payment of the fee or by an action at law.

D. In the event any suit or action is instituted to enforce this Section, if the City is the prevailing party, 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.

2.25.070. 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 their last known address on file, a notice of intention to revoke. The notice shall give the reasons for the revocation. The revocation 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.

2.25.080. Cancelation of License.

A. The City or its authorized agent may upon written request of a dealer, cancel any license issued to such dealer. The cancellation shall take effect not later than 30 days after receipt of the written request, after which the license shall no longer be effective.

B. 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 as 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.

2.25.090. Remedies Cumulative.

Except as otherwise provided in Sections 2.25.100 and 2.25.120, the remedies provided in Sections 2.25.060, 2.25.070 and 2.25.080 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this Chapter.

2.25.100. Delinquency.

A. Except as provided in subsection (B) and (C) of this Section, if payment of the tax is not timely paid as required by this Chapter, a penalty of 10% of such license tax shall be assessed and be immediately due and payable.

B. Except as provided in subsection (C) of this Section, if the payment of the tax and penalty, if any, is not made on or before the 25th day of the next month
following that month in which payment is due, a further penalty of 25% of the tax shall be assessed. Said penalty shall be in addition to the penalty provided for in subsection (A) of this Section and shall be immediately due and payable.

C. Penalties imposed by this Section shall not apply if a penalty has been assessed and paid pursuant to Section 2.25.060.

D. The City Manager or designee may for good cause shown waive any penalties assessed under this Section.

E. 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 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.

F. In the event any suit or action is instituted to collect the tax, interest, or any penalty provided for by this Section, if the City is the prevailing party, 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.


Every motor vehicle fuel dealer shall provide to the City or its authorized agent on or before the 25th day of each month, on forms prescribed, prepared and furnished by the City or its authorized agent, a 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 dealer or its agent. All statements as required in this Section are public records.

2.25.120. Failure to File Monthly Statement.

If a dealer fails to file any statement required by Section 2.25.110, the City or its authorized agent shall determine (from as many available sources as the city or its authorized agent determines reasonable) the amount of motor vehicle fuel sold, distributed, used, or stored by such dealer for the period unreported, and such determination shall in any proceeding be deemed presumptive prima facie evidence of the amount of fuel sold, distributed, used, or stored. The City or its authorized agent immediately shall assess the motor vehicle fuel tax in the amount due determined, as pertaining to the reportable dealer, adding thereto a penalty of 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, any such determination showing the amount of tax, penalties, and costs unpaid by a dealer and that the same

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are due and unpaid to the city or its authorized agent is prima facie evidence of the facts as shown.

2.25.130. Billing Purchasers.

Bills shall be rendered to all purchasers of motor vehicle fuel by dealers. 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. The bills required hereunder may be the same as those required under ORS 319.210.

2.25.140. 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.

2.25.150. 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 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 conveyed, 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.


A. The tax imposed by Section 2.25.0020 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 500 gallons or less for export by the purchaser to an area, or areas outside the city in containers other than the fuel tank of a motor vehicle, but every dealer shall be required to report such exports and sales to the City in such detail as may be required.
B. 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.

C. No dealer or other person shall conspire with any person in any manner so as to avoid any fees imposed herein.

D. In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of 500 gallons or less for export by the purchaser, the dealer shall retain in his files for at least three years an export certificate executed by the purchaser in such form and containing such information as is prescribed by the City or its authorized agent. 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.

2.25.170. Sales to Armed Forces Exempted.

The tax imposed by Section 2.25.020 is exempted 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.

2.25.180. Fuels 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, and in another container no larger than five gallons in volume, motor vehicle fuel for their own use only and for the purpose of operating such motor vehicle without securing a license or paying the tax required under this Chapter or complying with any of the provisions imposed upon dealers herein.

2.25.190. Refunds.

Refunds will be made pursuant to ORS 319.280 to 319.320.

2.25.200. 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 motor vehicle fuel within the 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 motor vehicle 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.

2.25.210. 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 (3) years from the date upon which such additional taxes become due.

2.25.220. 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 or its authorized agent 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 or its authorized agent.

2.25.230. Records to be Kept Three Years.

Every dealer shall maintain and keep, for a period of three (3) 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 or its authorized agent. In the event such records are not kept, the dealer shall reimburse the City or its 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.

2.25.240. Use of Tax Revenues.

A. The City Manager or designee 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 administrating the motor vehicle fuel tax to motor vehicle fuel dealers and any refunds and

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credits authorized herein. The program administration costs of revenue collection and accounting activities shall not exceed 10.5% for the first year and 10% thereafter, of annual tax revenues.

C. The net revenue shall be used only for the activities related to the construction, reconstruction, improvement, repair, and maintenance of public highways, roads and streets within the City which are subject to City control.

2.25.250. Administration.

The City Manager or designee is responsible for administering this Chapter. In addition, the City Manager or designee may enter into an agreement with the Oregon Department of Transportation as an authorized agent for the implementation of certain sections of this Chapter.

2.25.260. 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.

2.25.270. 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, makes, renders, signs or verifies any false or fraudulent statement, commits an offense which constitutes a violation of this Chapter punishable in accordance with the general penalty provisions of Chapter 4.05.

Section 2: Tax Effective Date. The tax imposed by this Ordinance shall take effect on the date specified by resolution of the City Council, but in no event earlier than January 1, 2021.

Section 3. 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 any remaining portions of this Ordinance.

ADOPTED by the North Plains City Council this 3rd day of August, 2020.
CITY OF NORTH PLAINS, OREGON

By: ______________________________________
Teri Lenahan, Mayor

ATTEST:

By: ______________________________________
Lori Lesmeister, City Recorder