

ORDINANCE NO. 2010-08-070

AN ORDINANCE AMENDING CHAPTER 22 OF THE URBANA CITY CODE TO ESTABLISH A MOTOR FUEL TAX WITHIN THE CITY OF URBANA

WHEREAS, the City of Urbana ("City") is an Illinois home rule unit of local government under the Illinois Constitution, 1970, Article VII, Section 6; and

WHEREAS, as an Illinois home rule unit of local government, the City may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health and safety and to tax; and

WHEREAS, the Mayor and City Council find that the best interests of the City are served by adopting a tax upon the retail purchase of motor fuel within the City.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

Urbana City Code Chapter 22, "Taxation," is hereby amended by adding the following Article thereto:

ARTICLE III.

LOCAL MOTOR FUEL TAX

Sec. 22-30. Definitions.

For the purposes of this article, the following definitions shall apply:

Motor fuel means all volatile and inflammable liquid produced, blended, or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles.

Person means any natural person, trustee, court-appointed representative, syndicate, association, limited liability company, partnership, firm, club, company, corporation, business trust, institution, agency, contractor, supplier, vendor,

vendee, operator, user or owners, or any officer, agents, employees, or other representative, acting either for himself or for any other person in any capacity, or any other entity recognized by law as the subject of rights and duties. The masculine, feminine, singular, or plural is included in any and all circumstances.

Retail gasoline dealer means any person who engages in the business of selling motor fuel in the city, to a purchaser for use or consumption, and not for resale in any form.

Sale, resale, or selling means any transfer of ownership or possession, or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever for a valuable consideration.

Sec. 22-31. Tax imposed.

(a)

- (1) There is levied and imposed upon the purchase of each gallon of motor fuel, or fraction thereof, sold at retail within the corporate limits of the city, irrespective of the unit of measure in which it is actually sold, a tax at the rate of two cents (\$0.02) per gallon from and after October 1, 2010.
- (2) Effective July 1, 2011, the tax imposed under this subsection shall be increased by four-tenths of one cent (\$0.004). On July 1 of each year thereafter, until and including July 1, 2013, the tax rate in effect in the preceding year shall be increased by four-tenths of one cent (\$0.004). Each increase shall be automatic unless the city council by ordinance foregoes or waives an increase prior to said July 1 date. Beginning in the year 2014, the annual increase, if any, shall be determined by the city council in conjunction with a review of the annual adjustment of city fees.
- (3) The tax herein levied shall be paid in addition to any and all other taxes and charges. The tax herein imposed is not based on the selling or purchase price or gross receipts from the sale or purchase of motor fuel.

(b) The ultimate incident of and liability for payment of the tax is to be borne by the retail purchaser of motor fuel. Nothing in this subchapter shall be construed to impose a tax

upon the occupation of persons engaged in the retail sale of motor fuel.

(c) It shall be the duty of every retail gasoline dealer to secure the tax from the purchaser at the time the dealer collects the purchase price for the motor fuel and to pay over the tax to the Finance Department, as provided in this subchapter.

Sec. 22-32. Tax and return transmittal.

(a) Every retail gasoline dealer shall transmit to the finance department for receipt by the department, no later than the 25th day of each calendar month, a sum of money equal to the amount of motor fuel tax imposed by this article and collected for the preceding calendar month, accompanied by a return upon forms supplied by the finance department, indicating the gross gallons of motor fuel sold for the preceding calendar month, and such other information as the department may require for enforcement of this article.

(b) In case any person who is required under this article to file a tax return with the city fails to file the return and pay the tax when and as required by this article, such person shall pay to the city, in addition to the amount of tax required to be transmitted, a penalty of two (2) percent per month, or part thereof, from the day of delinquency.

(c) Any officer, employee, partner, member or manager of any entity which is an owner subject to the provisions of this article, and who has the control, supervision or responsibility for collecting tax proceeds, filing returns, and transmitting collected tax proceeds of the tax imposed by this article, and who willfully fails to file such return or transmit to the city any tax proceeds so collected, shall be personally liable for any such amounts collected, including interest and penalties thereon, if after proper proceedings for the collection of such amounts such entity is unable to pay such amounts to the city, and the personal liability of such officer, employee, partner, member or manager, as provided in this article, shall survive dissolution of the entity. For purposes of this article, a person willfully fails to act if he takes any conscious and voluntary action intending not to perform any of the entity's duties hereunder, including but not limited to the utilizing of tax proceeds collected under this article to pay any other obligations of the entity.

(d) As compensation for services rendered in the collection and prompt payment of this tax, the person filing the tax return may retain an amount equal to 1% of the tax due.

(e) Any payment which is returned because of insufficient funds may result in the finance department requiring that all future payments be made by cashier's check or money order.

Sec. 22-33. Records; inspection.

(a) Every retail gasoline dealer shall keep complete and accurate records, including a daily sheet showing the gross gallons of motor fuel sold for each day, and the amount of motor fuel tax collected for each day.

(b) For the purpose of administering and enforcing this subchapter, the finance department shall have the right to inspect all books, records and reports of retail gasoline dealers and bulk users during their normal business hours.

Sec. 22-34. Motor fuel tax funds.

The finance department shall deposit the proceeds of the motor fuel tax imposed by this article, including penalties, into a separate fund designated as the "Street Maintenance and Road Safety Improvement Fund." During the annual budget process, the list of projects to be financed by this fund shall be approved by the city council.

Sec. 22-35. Collection.

Whenever any person shall fail to file any return or pay any tax as provided in this article, the city attorney shall, upon the request of the city comptroller, bring or cause to be brought an action to enforce the filing of such return or payment of such tax on behalf of the city in any court of competent jurisdiction. Any judgment entered thereon shall include the city's reasonable attorney's fees and costs of litigation.

Sec. 22-36. Penalty.

(a) The penalties provided herein shall be in addition to and may be imposed in conjunction with any other penalty or action taken or which may be taken against the person.

(b) Any person found guilty of violating any provision of this article, upon conviction thereof, shall be punished by a fine of

not less than \$50 nor more than \$750 and shall also be ordered to pay all of the costs and fees incurred by the city in prosecuting the violation, which shall include but shall not be limited to the costs of an administrative adjudication proceeding or court proceeding and reasonable attorney's fees. A separate and distinct offense shall be regarded as committed each day on which a person shall continue any such violation.

Section 2.

Those sections, paragraphs, and provisions of the Urbana City Code that are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Urbana City Code other than those expressly set forth as amended or repealed in this Ordinance. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

Section 3.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4.

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____,
_____.

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor