

Introduced by: Council Members Therrien, Kun, and Rogers
Finance Committee Review: February 18, March 3,
June 23, July 21, and August 4, 2020
Introduced: June 29, 2020

ORDINANCE NO. 6137, AS AMENDED

AN ORDINANCE AMENDING FAIRBANKS GENERAL CODE CHAPTER 74, TAXATION, BY ADDING A NEW ARTICLE VII, GASOLINE EXCISE TAX

WHEREAS, the Charter for the City of Fairbanks contains a tax cap which allows the City to raise the cap amount each year to account for inflation, new construction, and voter approved additional services; and

WHEREAS, the original tax cap was changed years ago which created a "cap within the cap" making it very difficult to collect any increases that are otherwise allowed each year; and

WHEREAS, the implementation of an excise tax only on gasoline sold within the city limits will allow the City to collect increases allowed under the tax cap; and

WHEREAS, if the revenues generated by the gasoline excise tax exceed the amount allowed by the Tax Cap formula, then the mill rate will be reduced as required by the Charter.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

Section 1. Fairbanks General Code Chapter 74, Taxation, is hereby amended by adding a new Article VII, Gasoline Excise Tax, as follows:

ARTICLE VII. GASOLINE EXCISE TAX

Sec. 74-300. Definitions.

The following words, terms, and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Any words, terms, and phrases not defined in this section will have the meaning given in AS 43.40.100 or regulations adopted by the state to implement its motor fuel tax pursuant to AS 43.40:

Certificate of registration means the certificate issued by the chief financial officer under section 74-302.

Certificate of use means the certificate provided to the State of Alaska Department of Revenue, Tax Division, that is obtained by the dealer from a

gasoline purchaser at the time of the first sale or transfer of the gasoline to that purchaser stating the gasoline that has been or will be purchased or received is not intended for use as taxable gasoline.

Chief Financial Officer means the chief financial officer of the City of Fairbanks or designee.

City means the City of Fairbanks.

Common storage tank means a storage tank serving taxable and exempt uses, or multiple taxable uses to which various tax rates apply.

Direct-buying retailer means a person who is engaged in the sale of gasoline at retail in the city and who brings, or causes to be brought, gasoline into the city.

Distributor means a person who:

- (1) Brings gasoline, or has gasoline brought, or causes it to be brought, into the city and who sells or distributes gasoline to others for resale in the city; or
- (2) Ships or transports gasoline to a retailer in the city for sale by the retailer; and
- (3) Includes qualified dealers.

Department means the Finance Department of the city.

Export means the transport of gasoline as cargo out of the city by or for the seller or purchaser and intended for use or resale outside city limits.

Gasoline means a liquid substance refined, compounded, or produced primarily for the purpose of use in an engine. This does not include aviation fuel or diesel fuel.

Official use means use by a federal, state, or local government agency but does not include: (1) consumption by a contractor who purchases gasoline either for its own account or as the agent of a governmental agency for use in the performance of a contract with that agency; (2) use in a private vehicle; or (3) sales of gasoline.

Person includes an individual, company, partnership, limited liability partnership, joint venture, joint agreement, limited liability company, association (mutual or otherwise), corporation, estate, trust, business trust, receiver, trustee, syndicate, a direct buying retailer, distributor, or any combination acting as a unit.

Qualified dealer means a person who refines, imports, manufactures, produces, compounds, or wholesales gasoline.

Retailer means a person in the city who is engaged in the business of selling gasoline at retail.

Tax means the gasoline excise tax as levied under this article.

Wholesale price means the established price for which a distributor sells gasoline to a retailer.

Sec. 74-301. Imposition of excise tax on gasoline.

(a) The city hereby levies an excise tax on the distribution of gasoline brought into the city in the amount of five cents per gallon.

(b) It is the intent and purpose of this article to provide for the collection of the excise tax from the person who brings, or causes to be brought, gasoline into the city. The excise tax is levied when:

- (1) A person brings, or causes to be brought, gasoline into the city from outside the city for sale; or
- (2) A person ships or transports gasoline to a retailer in the city for sale by a retailer.

Sec. 74-301.1. Exemptions; no deferral for mixed purchases.

(a) The following transactions are exempt from the tax levied by Sec. 74-301.

- (1) gasoline that is sold or transferred between distributors;
- (2) gasoline that is sold or transferred to a person obtaining gasoline with a valid certificate of use;
- (3) gasoline that is exported outside City limits;
- (4) gasoline that is purchased for use by federal, state, or local government agencies, unless the gasoline is purchased for the purpose of resale; and
- (5) loss of volume of gasoline that occurs during handling, transportation, and storage, including loss of volume due to temperature changes of gasoline.

(b) The election to defer payment of gasoline tax provided by the state to certain persons pursuant to 15 AAC 40.320 for sales or transfers for mixed uses is not provided by the city. A sale or transfer of gasoline for mixed use purposes to a common storage tank will be fully taxed, and after resale or

use for an exempt purpose the purchaser may apply for a credit with appropriate documentation in accordance with sections 74-303.3.

Sec. 74-301.2. Due date; delinquency.

The obligation for the payment of the tax is upon the distributor. All taxes imposed by this article shall become a liability to the distributor at the time of sale and are delinquent if not paid when due.

Sec. 74-302. Registration and certification.

(a) All persons subject to this article must possess a current certificate of registration for the purpose of remitting the tax under this article, prior to commencing business or opening additional places of business.

(b) All persons requiring a certificate of registration under (a) of this section must first possess a valid state motor fuel distribution license issued in accordance with AS 43.40.100(3) and 15 AAC 40.600.

(c) Upon receipt of a properly executed application for the certificate of registration, on a form prescribed by the chief financial officer, the chief financial officer will issue without charge a certificate of registration. The certificate of registration shall bear the name of the distributor and the address of the registered place of business. The certificate must be prominently displayed at the place of business named on the certificate.

(d) The certificate of registration is neither assignable nor transferable. The distributor shall immediately surrender the certificate to the chief financial officer if the distributor ceases to do business at the location named on the certificate, or if the distributor otherwise sells, assigns, transfers, conveys, or abandons the distributor's business to any person or any other entity. When there is change of address for the distributor's place of business, a new certificate of registration is required bearing the same registration number but showing the new location address.

(e) A distributor must submit a new updated application as prescribed by the chief financial officer upon any change in form of ownership, business name, or contact information. The chief financial officer, after receipt of the updated application, shall then determine whether a new certificate of registration should be issued. If a new certificate of registration is issued, the distributor must first surrender the prior certificate of registration to the chief financial officer before taking possession of the new certificate.

(f) The chief financial officer may revoke a certificate of registration if a person fails to comply with any of the provisions of this article. A distributor

may not engage in any activities covered by this article while the certificate of registration is revoked.

(g) Any distributor who violates any requirement of this section is subject to the penalties provided under this article. The city is entitled to injunctive relief to prevent the distributor from engaging in activities covered under this article until the distributor complies with the requirements of this section.

Sec. 74-303. Tax return; transmittal; and payment of taxes due.

(a) On or before the 15th day of each calendar month, the distributor shall file with the chief financial officer a tax return and remit payment for the preceding month upon forms furnished by the city for each place of business. The tax return shall state the wholesale value of the gasoline sold by the distributor during the preceding calendar month and other information which the chief financial officer requires. If a distributor ceases to sell gasoline, the distributor shall immediately file with the chief financial officer a return for the period ending with the cessation.

(b) Every distributor holding a certificate of registration in the city shall sign and transmit the return together with applicable taxes to the city on or before the proper date.

(c) A return shall be filed by every distributor possessing a current certificate of registration, even if the distributor has not engaged in taxable transactions during the reporting period.

(d) All returns must be received by the city clerk's office no later than 4:00 p.m. on the 15th day of the month following tax collection. Postmarks will not be considered.

Sec. 74-303.1. Estimated tax.

If the city is unable to ascertain the tax due to be remitted by a distributor by reason of the failure of the distributor to keep accurate books, allow inspection, failure to file a return or falsification of records, the city may make an estimate of the tax due based on any available evidence. Notice of the city's estimate of taxes due shall be mailed to the distributor. Unless the distributor files an accurate monthly report covering the time period subject to the city's estimate or files an appeal within 30 days of the mailing of the city's estimate, the city's estimate shall become final for the purpose of determining the distributor's tax liability.

Sec. 75-303.2. Administrative appeals.

(a) A distributor may appeal to the city mayor any estimated tax, penalties, costs fees, or other decision under this article made by the chief financial officer. Any appeal must be filed within 30 days after the notice of any decision is mailed to the distributor. The failure to appeal a decision of the chief financial officer renders the decision final.

(b) The appeal must state the legal and factual basis for the appeal and include all written evidence relevant to the appeal within the appellant's possession. If the appeal raises relevant questions of fact, the city mayor or designee shall conduct a hearing. At the hearing, the parties shall have the right to present testimony and cross-examine witnesses. The mayor or designee shall then issue a written or recorded decision that includes findings of fact.

(c) An administrative appeal decision by the city mayor is a final decision that shall be enforced under this article unless stayed by court order or by agreement of the city and appellant. The city mayor's final decision may be appealed to superior court in the fourth judicial district as provided by state law.

Sec. 74-303.3. Presumption; credit.

(a) Every wholesale sale of gasoline which is made within the city, unless explicitly exempted by this article or a subsequent ordinance, shall be presumed to be subject to the tax imposed under this article in any action to enforce the provisions of this article.

(b) A credit shall be allowed for taxes erroneously paid under protest. Such credit shall be made by the chief financial officer after receipt and review of documentation and amended return supporting such request. Upon receipt of such documentation, the chief financial officer shall examine the documentation and shall submit the decision in writing within 15 days.

Sec. 74-303.4. Tax returns; confidential information.

(a) All returns filed with the city for the purpose of complying with the terms of this article and all data obtained from such returns are declared to be confidential, and such returns and data obtained from such returns shall be kept from inspection of all persons except the chief financial officer and the city attorney; nevertheless, upon the advice of the city attorney, the chief financial officer may present to the finance committee or city council in private sessions assembled, any return or data obtained from such returns.

(b) It is unlawful for any city employee to publicly divulge to another any financial information obtained from any return filed with the city or from any data obtained from any such returns unless authorized by a distributor or unless the other person receiving such information is permitted to view such returns under the terms of this article.

(c) It shall be the duty of the chief financial officer to safely keep the returns referred to in this article and all data taken from such returns secure from public inspection and secure from all private inspection except as provided in the article. The chief financial officer may, after six years from the date any such return has been filed, destroy the return.

(d) The use of such returns in a criminal or civil action brought to enforce the terms of this article against any person shall not be deemed a violation of this article. The city in the prosecution of any such action may allege, prove, and produce any return theretofore filed by and in behalf of the defendant, including any data obtained from such return, other provisions of this article to the contrary notwithstanding.

(e) Nothing contained in this article shall be construed to prohibit the delivery to a person or their duly authorized representative a copy of any return or report filed by them, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and their items.

Sec. 74-304. Recordkeeping duty; investigation.

(a) A distributor under this article shall keep a complete and accurate record of all gasoline manufactured, purchased, or acquired. The records, except in the case of a manufacturer, must include:

- (1) A written statement containing the name and address of the seller and the purchaser;
- (2) The date of delivery;
- (3) The quantity of gasoline;
- (4) The trade name and brand; and
- (5) The price paid for each brand of gasoline purchased. The distributor shall keep such other records as the director prescribes. All statements and records required by this section shall be preserved for six years and shall be offered for inspection upon demand by the city.

(b) A distributor may not issue or accept a written statement that falsely indicates the name of the customer, the type of merchandise, the price, the discounts, or the terms of sale.

(c) Where an invoice is given or accepted by a distributor:

- (1) A statement that makes the invoice a false record of the transaction may not be inserted in the invoice; and
- (2) A statement that should be included in the invoice may not be omitted from the invoice if the invoice does not reflect the transaction involved without the statement.

(d) In addition to all other record keeping requirements under this article, a distributor shall maintain all written and electronic records relating to any gasoline purchased, manufactured, acquired, or sold which is covered under this article, for a period of six years after such transaction, including but not limited to:

1. All local, state, and federal tax reports and forms;
2. All accounting records;
3. All purchase and sales invoices; and
4. All documentary evidence supporting any exemption provided under this article.

(e) Upon reasonable notice, a distributor shall make all records and materials specified in subsections (a) and (d) of this section available for the chief financial officer's or authorized representative's inspection during customary business hours.

(f) The chief financial officer may conduct random audits of distributor's monthly tax returns by examining any of the records and materials specified in subsections (a) and (d) of this section and other data deemed necessary.

(g) For the purpose of ascertaining the correctness of a return or for the purpose of determining the amount of tax due, the chief financial officer or mayor may hold investigations and hearings concerning any matters covered by this article and may examine any relevant books, papers, records or memoranda of any such person, and may require the attendance of such person, or any officer or employee of such person. The mayor shall have the power to administer oaths to such persons. The mayor shall issue all formal subpoenas to compel attendance or to require production of relevant books, papers, records, or memoranda.

(h) All subpoenas issued under the terms of this article may be served by any person. The fees of witnesses for attendance and trial shall be the same as the fees of witnesses before the superior court, such fees to be paid when the witness is excused from further attendance. When a witness is subpoenaed at the instance of any party to any such proceeding, the mayor may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned.

In such case the mayor may, at his discretion, require a deposit to cover the cost of such service and witness fees. A subpoena issued shall be served in the same manner as a subpoena issued out of a court of record.

(i) The superior court, upon the application of the city, is empowered to compel obedience to such subpoena and compel the attendance of witnesses, the production of relevant books, papers, records or memoranda in the same manner and extent as witnesses may be compelled to obey the subpoenas and order of the court. For purposes of this section, the term "witness," in addition to any person covered under the terms of this article, shall include any person or entity with knowledge or information relevant to sales made under this article.

(j) The mayor, or any party in an investigation or hearing before the mayor, may cause the deposition of witnesses residing within or outside the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of this state, and to that end compel the attendance of witnesses and the production of relevant books, papers, records, or memoranda.

Sec. 74-305. Unlawful possession or sale.

A person who offers to sell or dispose of gasoline to others for the purpose of resale without being registered to do so is considered to have possession of gasoline as a distributor and is personally liable for the tax, plus a penalty of 25 percent.

Sec. 74-305.1. Recovery of taxes.

(a) Taxes due but not paid may be recovered by the city by an action at law against the distributor. Gasoline excise tax returns shall be prima facie proof of taxes not transmitted.

(b) In addition to any other remedies and administrative procedures provided under this article, the city may file a civil action against any distributor for recovery of any tax, unremitted tax, penalties, interest, costs, and fees, that have not been paid or remitted when due.

(c) Any person who holds an ownership interest in a distributor, or any other person who is an agent of the distributor, is personally liable for all taxes, penalties, and interest due from such distributor under this article.

Sec. 74-305.2. Tax lien.

(a) Any tax, unremitted tax, penalties, interest, costs and fees that this article requires a distributor to pay or remit shall constitute a lien in favor of

the city upon all assets, earnings, revenue, and property of the distributor. This lien arises when any such payment or remittance is not made when due and continues until the payment or remittance is fully satisfied through execution, foreclosure sale, or any other legal means. This lien is not valid as against a mortgagee, pledge, purchaser, or judgment creditor until notice of the lien is recorded in the office of the district recorder for the fourth judicial district.

(b) When recorded, a lien authorized under this section has priority over all other liens except those for property taxes and special assessments and all liens perfected before the recording of the excise tax lien for amounts actually advanced before the recording of the excise tax lien and mechanics' and materialmen's liens which have been recorded before the recording of the excise tax lien. Upon such filing, the lien is superior to all other liens except as otherwise provided by state or federal law.

Sec. 74-305.3. Foreclosure.

(a) Delinquent gasoline excise tax liens on real property may be enforced by foreclosure.

(b) Tax liens shall be foreclosed in the manner provided for in sections 58-49 through 58-61.

Section 74-305.4. Interest rate; administrative costs.

(a) A simple interest rate of 1.25 percent per month, or a lesser rate if required by state law, will accrue on all unremitted taxes, not including penalty and administrative fees, from the original due date provided under this section until remitted in full.

(b) In addition to any other penalties imposed under this article, a distributor shall pay any administrative fees, outside collection agency fees, attorney fees, and other costs and fees incurred by the city or its agent(s) in connection with any collection, or attempted collection, from the seller of any unremitted tax, unpaid interest, or unpaid penalties due under this article.

(c) The city will apply a distributor's payment in the following order: first to any unpaid administrative fees, outside collection agency fees, attorney fees, and other collection costs and fees; second to any unpaid penalties; third to any unpaid interest that has accrued on unremitted taxes; and fourth, to the principal of any unremitted taxes.

Section 74-306. Penalties for violations.

(a) *Failure to file or remit.* A distributor having taxable transactions under this article in the city and who thereafter fails to file a gasoline tax return or remit the collected tax as required by this article shall incur a civil penalty of \$100.00 if the return or the tax is received later than the last day of the month in which it is due and shall incur a civil penalty of \$1,000.00 if the return or the tax is received later than the last day of the next month following the month in which it was due.

(b) *Non-retention of records.* A distributor who does not provide required records upon request as listed in section 74-304 shall incur a civil penalty of \$1,000.00.

(c) *False statements.* Any person who makes any false statement to the chief financial officer or mayor which is material in determining whether a transaction is taxable under this article is guilty of a misdemeanor and shall be punished as provided in section 1-15.

(d) *Certificate of registration.* Any person and any officer of a corporate distributor failing to file a certificate of registration or failing to furnish the data required in connection with such certificate or failing to display or surrender the certificate of registration as required by this article, or attempting to assign or transfer such certificate shall be guilty of a misdemeanor and shall be punished as provided in section 1-15.

(e) *Penalty.* Any person who violates any of the provisions of this article shall be guilty of a misdemeanor and shall be punishable as provided in section 1-15. A separate offense shall be deemed committed upon each day of a continuing violation.

Sec. 74-307. Collection policy.

It shall be the policy of the city that delinquent taxes shall be promptly collected without offset, compromise, or time extensions for payment.

Sec. 74-308. Rules and regulations.

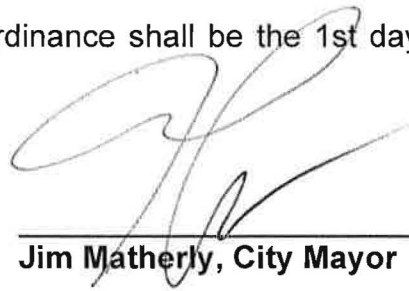
(a) The mayor is empowered to enact rules and regulations to implement the tax levied under this article.

(b) The chief financial officer shall take all lawful and necessary actions to administer this article including, but not limited to, adopting and revising procedures, fees, and written guidelines for the determination of the taxability of transactions.

(c) The chief financial officer may also take other lawful actions to administer this article including, but not limited to, issuing written determinations, upon request, of the taxability of transactions and contracting services for collection of delinquent accounts.

(d) With the approval of the chief financial officer, the finance department staff shall prepare, implement, and revise forms for the administration of this article.

Section 2. That the effective date of this Ordinance shall be the 1st day of **October 2020** ~~January 2021~~.

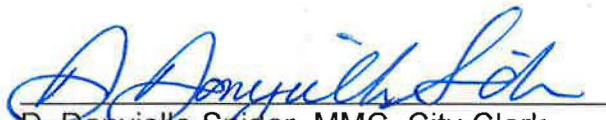


Jim Matherly, City Mayor


AYES: Rogers, Kun, Gibson, Therrien
NAYS: Cleworth, Pruhs
ABSENT: None
ADOPTED: August 10, 2020

ATTEST:

APPROVED AS TO FORM:



D. Danyelle Sneider, MMC, City Clerk



Paul J. Ewers, City Attorney

CITY OF FAIRBANKS
FISCAL NOTE

I. REQUEST:

Ordinance or Resolution No: 6137

Abbreviated Title: GASOLINE EXCISE TAX

Department(s): ALL DEPARTMENTS

Does the adoption of this ordinance or resolution authorize:

1) additional costs beyond the current adopted budget? Yes _____ No X

2) additional support or maintenance costs? Yes _____ No X

If yes, what is the estimate? _____

3) additional positions beyond the current adopted budget? Yes _____ No X

If yes, how many positions? _____

If yes, type of positions? _____ (F - Full Time, P - Part Time, T - Temporary)

II. FINANCIAL DETAIL:

PROJECTS:	TOTAL
GENERAL FUND EXPENDITURES	\$500,000
TOTAL	\$500,000

FUNDING SOURCE:	TOTAL
GENERAL FUND REVENUE - GASOLINE EXCISE TAX	\$500,000
TOTAL	\$500,000

The ordinance would levy an excise tax on the distribution of gasoline brought into the City in the amount of five cents per gallon beginning January 1, 2021. The obligation for the payment of the tax is upon the distributor.

Reviewed by Finance Department: Initial mb Date 6/24/2020