

ORDINANCE NO. 17-1630

AN ORDINANCE OF THE PEOPLE OF THE CITY OF CARSON, CALIFORNIA ADDING A NEW CHAPTER 3.5 TO ARTICLE VI OF THE CARSON MUNICIPAL CODE TO ESTABLISH AND IMPOSE A BUSINESS LICENSE TAX ON OPERATORS OF ANY FACILITY WHERE PETROLEUM OR PETROLEUM PRODUCTS ARE BLENDED, MIXED, PROCESSED, OR REFINED AND/OR ANY FACILITY THAT STORES PETROLEUM PRODUCTS

The People of the City of Carson, California do ordain as follows:

SECTION 1. This ordinance shall be known and may be cited as the City of Carson Oil Industry Business License Tax measure.

SECTION 2. A new Chapter 3.5 is added to Article VI of the Carson Municipal Code to read, in its entirety, as follows:

“CHAPTER 3.5 OIL INDUSTRY BUSINESS LICENSE TAX

63501 Title

This chapter shall be known as the “Oil Industry Business License Tax” of the city.

63502 Purpose

The purpose of this chapter is to impose a business license tax on persons engaged in the business of operating any facility where petroleum or petroleum products are blended, mixed, processed, or refined and/or any facility that stores petroleum products. It is an excise tax on the privilege of doing business in the City; it is not a property or sales tax. This chapter is enacted solely for the purpose of raising revenue for general municipal purposes. It is not intended to be regulatory. The payment of a business license tax required by this chapter, and its acceptance by the city, and the issuance of a tax certificate to any person shall not entitle the holder thereof to carry on any business unless he or she has complied with all of the requirements of this code and all other applicable laws, nor to carry on any business in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such business is in violation of any law.

63503 Definitions

For purposes of this chapter, the following terms shall have the following meanings:

“Business” shall mean all activities engaged in or caused to be engaged in within the city, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling or livelihood, or the activities of independent contractors, whether or not carried on for gain or profit, but shall not include: (1) the services rendered by an employee to his or her employer, or (2) the activities of one who manages residential real property that he or she owns.

“Blend” or “mix” shall mean mechanical mixing of petroleum or petroleum products. “Blend” or “mix” shall also include without limitation activities by which finished motor gasoline is further mixed with other motor gasoline blending components (including ethanol) or oxygenates, resulting in increased volumes of finished motor gasoline and/or changes in the formulation of finished motor gasoline (e.g., conventional motor gasoline mixed with MTBE to produce oxygenated motor gasoline).

“Director” shall mean the City of Carson’s Finance Director or the Director’s designee.

“Engage in the business” shall mean to commence, operate, manage or carry on a business and to exercise corporate or franchise powers, whether done as an owner or by means of one or more officers, agents, managers, employees, servants or otherwise, within the city, whether or not the business is operated from a fixed location and whether or not such location is within the city.

“Gross receipts” shall mean the total amount actually received or receivable in the course of business in a calendar year or calendar month from sales or the performance of acts or services for which charge is made or credit allowed. “Gross receipts” include without limitation cash receipts, credits allowed, property received in lieu of cash, and any other valuable consideration taken in exchange for goods, services or other valuable consideration.

“Oil Refinery” shall mean any industrial facility where petroleum or petroleum products are blended, mixed, processed or refined into other products.

“Operate” or “operating” shall mean activities involved in the day to day functions of the business conducted for the purpose of generating profits.

“Petroleum” is commonly known as, crude oil.

“Petroleum products” shall mean materials derived from petroleum. For the purposes of this chapter petroleum products are any product derived from hydrocarbons, including without limitation liquid petroleum gas (LPG), natural gas, gasoline, gas oil, jet fuel, diesel fuel, heavy fuels, lubricants, asphalt, bulk tar, petroleum coke, residuum, paraffins, naphtha, sulfur and petrochemicals, among others.

“Person” shall mean any natural or legal person including an individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, domestic or foreign corporation,

association, syndicate, society or any group of individuals acting collectively, whether mutual, cooperative, fraternal, nonprofit or otherwise.

“Tax” shall mean the business license tax imposed by this Chapter.

“Taxpayer” shall mean any person required to pay the tax imposed by this chapter.

“Tax Certificate” shall mean the certificate issued under Section 63507 to a taxpayer to evidence payment of the tax imposed by this chapter.

63504 Tax Certificate Required

A. Except as provided in section 62506, it shall be unlawful for any person to engage in the city in the business of operating an oil refinery or facility that stores petroleum products without first obtaining a tax certificate pursuant to this chapter.

B. The tax imposed under chapter 3 of article VI of this code shall not apply to the businesses subject to tax under this chapter but such businesses shall otherwise comply with that chapter as by, including without limitation, obtaining and displaying a business tax certificate.

63505 Oil Refinery and Petroleum Products Business License Tax

Except as provided in section 63506, every person engaged in the city in the business of operating an oil refinery or facility that stores petroleum products shall pay calendar quarterly business license tax of one-quarter of one percent (0.25%) of gross receipts of any such business conducted within the city.

63506 Exemptions

The following business activities are not subject to the provisions of this chapter:

A. Retail gasoline sales.

B. Storage of gasoline or other fuels for use by the business doing the storage to fuel vehicles operated by or for the benefit of that business.

63507 Issuance of Tax Certificate

A. A person subject to the tax imposed by this chapter shall submit a tax return each calendar quarter for a tax certificate on a form provided by the director. The tax return shall include sufficient information, including gross receipts information, to allow computation of the tax due, as well as any other information deemed necessary by the director for the administration of this chapter and calculation of the tax owed. The tax return shall also be accompanied by payment of all taxes, interest and penalties due under this chapter.

B. Tax returns shall be signed under penalty of perjury by one authorized to bind the taxpayer.

C. Upon confirmation that the tax return evidences compliance with this chapter, the director shall issue the taxpayer a tax certificate evidencing that compliance.

63508 Administration; Gann Limit Override

A. The director shall be responsible for issuing tax certificates pursuant to this chapter and otherwise for its administration and enforcement. The People of the City of Carson intend this chapter to be enforced consistently with article VI, chapter 3 of this code and any rule or regulation promulgated under that chapter except as expressly provided to the contrary in this chapter or a regulation adopted pursuant to this chapter.

B. Pursuant to California Constitution, article XIII B, the appropriation limit for the City is increased to the maximum extent over the maximum period of time allowed under law to allow the city to spend the revenues generated by the taxes and fee imposed by this chapter to fund city services and for other lawful purposes of the city.

63509 Tax Certificate Expiration; Renewal

Tax certificates shall expire at the end of each calendar quarter.

63510 Calculation of Initial Business License Tax

A taxpayer paying an initial business license tax under this chapter shall report on the tax return required by section 63507 any gross receipts the business received in the calendar quarter immediately prior to the date of the tax return to allow calculation of the tax imposed by this chapter.

63511 Calculation of Renewal Business License Tax

Upon expiration of a tax certificate issued under this chapter, the taxpayer shall report on the tax return required by section 63507 the gross receipts of the business during the previous calendar quarter to allow calculation of the tax imposed by this chapter.

63512 Tax Certificate Not Transferable—Duties Upon Transfer of Business

A. No tax certificate issued under this chapter may be transferred to any other person.

B. Whenever any person required to pay a tax pursuant to this chapter shall quit business or dispose of a business, any tax payable under this chapter shall be immediately due and payable.

C. Whenever any person required to pay a tax pursuant to this chapter transfers a business to another person, the transferor and transferee of the business shall be jointly and severally liable

for any tax, interest and penalties due from that business under this chapter. No tax certificate may issue to the transferee until such tax, interest and penalties are paid.

D. Successor and Assignee Responsibility

1. If any person, while liable for any amount under this chapter, sells, assigns or otherwise transfers half or more of a business subject to the tax imposed by this chapter, whether voluntarily or involuntarily; the person's successor, assignee or other transferee, or other person or entity obtaining ownership or control of the business ("transferee") shall pay that amount when due. A transferee shall notify the director of a transfer 30 days before the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business is made less than 30 days before the date of transfer, on the first day business day after the transfer.

2. A transferee shall be deemed to have satisfied an unpaid liability if the transferee complies with the requirements of California Revenue and Taxation Code Section 7283.5 and this section by withholding from the purchase price, for the benefit of the city, an amount sufficient to cover the liability, or by otherwise paying the liability and obtaining from the director a "Tax Clearance Certificate" showing that all outstanding liability has been paid through the date of transfer.

3. Within 90 days of receiving a written request from a transferee, the director may issue a "Tax Clearance Certificate" stating either the amount due as to the business under this chapter, or stating that there is no liability due for the business through a stated date. The director may also request financial records from the transferor to audit the amount due under this chapter. The director shall issue a tax clearance certificate within 30 days of completing the audit, stating any amount owed, unless the director determines the records provided for audit are insufficient to determine whether taxes, fees, penalties and/or interest are due and in what amounts. If so, the director may rely on available information to estimate any amount due and shall issue a tax clearance certificate stating that amount.

63513 Tax Payments Due; Delinquency

A. Tax payments required by this chapter shall be due and payable on the first day of the calendar quarter and shall become delinquent thirty days thereafter and the penalties of section 63514 shall then attach.

B. Every new business subject to this chapter shall file a tax return and pay any tax due prior to the first day of operation, and the tax shall become delinquent ninety days thereafter and the penalties of section 63514 shall then attach.

63514 Penalties for Delinquency

A. Upon a taxpayer's failure to pay the entire tax when due, the director shall add a penalty of fifteen percent of the tax, or unpaid portion thereof, on the first day of each month following the date the tax was due; provided, however, no penalty shall be assessed in excess of fifty percent of the tax due. For the purposes of this Part 6, a payment made by mail shall be deemed received on the date shown on a postage cancellation stamp imprinted on the envelope in which

the payment is received, or if payment is made by means other than U.S. Mail, payment shall be deemed received on the date the payment is stamped "received" by the director.

B. On the first day of the month following the date on which the maximum penalty provided for in subsection (A), above, has accrued, interest at the rate of one percent per month shall begin to accrue. Interest shall accrue at this rate on the amount of the unpaid tax and penalties, for each month or portion of a month until the tax and penalties are paid.

63515 Refunds

No tax, penalty or interest shall be refunded unless it is determined by the director that it has been paid in error, computed incorrectly, overpaid, or collected illegally. No refund shall be made unless a request is received in writing by the director within one year of the payment of the tax, interest or penalty to be refunded.

63516 Audits and Adjustments

A. Any person engaged in a business subject to the tax imposed by this chapter shall maintain and preserve, for a period of at least four years, suitable records as may be necessary to determine the amount of the tax due under this chapter and shall, upon request of the director, provide the necessary records to substantiate the tax paid or due for such business. If upon audit of such records, the director determines the tax imposed by this chapter has not been paid in full, the director shall notify the taxpayer of the balance due, including any accrued penalties and interest. Such amount shall be paid within thirty days after notice is issued by the director.

B. If an audit reveals an underpayment of 2% or greater, the taxpayer shall reimburse the city for the full reasonable costs incurred by the city in conducting the audit and enforcing this Ordinance, including all legal fees and payment for necessary consultants to conduct the audit.

C. If an audit reveals an overpayment, the director shall notify the taxpayer of the amount overpaid. Unless the taxpayer in writing requests a refund of the overpayment within thirty days after notice is issued by the director, the overpayment shall be applied as a credit against the next tax due.

D. If an audit reveals an underpayment of one hundred dollars (\$100.00) or less, the director shall take no action to collect the underpayment. The director may adjust this figure for inflation on January 1st of each year using the consumer price index for all urban consumers for the Los Angeles-Riverside-Orange County Metropolitan Statistical Area or any successor to that index.

E. Rather than request information and conduct an audit, the director may request that a taxpayer file a corrected tax return. If such a tax return is filed and the director is satisfied with its accuracy, the existence of any underpayment or overpayment under this chapter shall be determined with reference to that corrected tax return. If a taxpayer fails to file a corrected tax

return or if the director is not satisfied with a corrected tax return, the director may conduct an audit under subsection (A), above.

63517 Notice

Any notice to a taxpayer under this chapter shall be sufficient if deposited with postage prepaid in the United States Mail and addressed to the address provided on the taxpayer's most recent tax return unless a change of address notice has been received, in which case notice is sufficient if mailed to the most recent address of which the director has been informed.

63518 Apportionment Guidelines and Other Rules and Regulations

A. The director, in consultation with the city attorney, and subject to the approval of the city manager, may promulgate guidelines for the apportionment of the gross receipts of businesses which operate both inside and outside the city to assist taxpayers in calculating the portion of their activities subject to the tax imposed by this chapter. The director, in consultation with the city attorney, and subject to the approval of the city manager, may adopt any other rules, guidelines or regulations necessary or desirable for the enforcement of this chapter.

B. The director shall give notice of such regulations in the manner required for ordinances of the city council and such regulations will take effect when that notice is given unless the director specifies a later date.

63519 Gross Receipts Confidential

Information concerning gross receipts or other data furnished to or secured by the city pursuant to this chapter shall be confidential, shall not be subject to public inspection, and shall not be made available to anyone who is not charged with the administration of this chapter. It shall not be a violation this chapter to report the city's receipts under this chapter in aggregate.

63520 Violations

It is a violation of this chapter, punishable as a misdemeanor, to knowingly or intentionally misrepresent to any officer or employee of the city any material fact, relative to any tax imposed under the provisions of this chapter. Notwithstanding the foregoing, any provision of this section may be enforced by any action at law or equity or by any other remedy authorized by this code.

63521 Delinquent Tax Constitutes Debt to the City

A tax, fee, penalty, or interest imposed pursuant to this chapter shall be deemed a debt to the city. An action may be commenced in any court of competent jurisdiction in the name of the city for the amount of such debt.

63522 Remedies Cumulative

The conviction and punishment of any person for failure to comply with this chapter shall not relieve such person from paying any tax, fee, penalty, or interest due and unpaid at the time of such conviction, nor shall payment prevent prosecution of a violation of this chapter. All

remedies shall be cumulative, and the use of one or more remedies by the city to enforce this chapter shall not bar the use of any other remedy.

63523 Appeals

A. Initiation – Contents of Notice of Appeal. Any person may appeal any decision of the director made under this chapter to the city manager within fifteen (15) days of the decision. Any such appeal shall be made by filing it with the city clerk and any such appeal shall be in writing and shall include the following:

1. The name and address of appellant;
2. The matter being appealed;
3. A statement of the grounds of appeal.

B. Notice of Deficiency.

If the City Clerk finds a notice of appeal to be deficient, the city clerk shall deliver or mail or cause to be mailed to the appellant by certified mail addressed to the appellant at the address of the appellant shown on the notice of appeal, a notice of deficiency specifying the particulars in which the notice of appeal is deficient. If such deficiency is corrected by the appellant within seven (7) days after mailing of a notice of deficiency by filing with the city clerk a sufficient amendment to the notice of appeal, the notice of appeal shall be deemed to be withdrawn.

C. City Manager Decision.

Within sixty (60) days after the timely filing of an appeal pursuant to this section, the city manager or a hearing officer appointed by the city manager shall allow an opportunity for submission of argument and evidence in writing or orally and then determine whether and to what extent to grant or deny the appeal. A hearing officer's decision shall constitute a recommendation to the city manager. The city manager's decision shall be final as to the city, but subject to judicial review pursuant to Code of Civil Procedure section 1094.5.

F. Notice of Decision.

The city manager shall cause notice of his or her decision to be given to the appellant. Such notice shall be given in the manner required by paragraph B. of this section for a notice of deficiency. Any amount found to be due shall be immediately due and payable upon the service of notice.

63524 Amendments to this Chapter

The city council of the city shall have the authority to amend this chapter by ordinance, provided the amount of the tax imposed by this chapter is not "increased" as that term is defined by section 53750, subdivision (h) of the Government Code.

63525 Construction

It is the intent of the People of the City of Carson that the tax imposed by this chapter be limited to the taxing power of the City and not to tax activity outside the tax jurisdiction of the City or to disfavor inter-city or inter-state commerce. It shall be construed in light of that intent.

63526 Severability

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of the chapter. The People of the city hereby declare that they would have adopted this chapter and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases, or portions be declared invalid or unconstitutional.”

SECTION 3. CITY COUNCIL AUTHORITY TO AMEND. The People of the City of Carson hereby authorize the Carson City Council to amend this ordinance without further vote of the People in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

SECTION 5. CEQA. This measure to be submitted to the voters adopts a general tax to fund any lawful purpose of the City. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment. Therefore, under CEQA Guidelines section 15060, review under CEQA is not required.

SECTION 6. EFFECTIVE DATE. This Ordinance relates to the levying and collecting of the City’s petroleum business license tax and shall not take effect, pursuant to Elections Code section 9217, 10 days after the certification of its approval by the majority of the voters voting at the special municipal election to be held on November 7, 2017.

SECTION 7. CERTIFICATION; PUBLICATION. Upon approval by the voters, the City Clerk shall execute this Ordinance below to certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

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It is hereby certified that this Ordinance was duly adopted by the voters at the November 7, 2017 General Municipal Election and took effect 10 days following adoption of a resolution declaring the results of the election at a regular meeting of the City Council held on _____ by the following vote:

AYES:

NOES:

ABSENT:

Donesia L. Gause, CMC, City Clerk
City of Carson