

ORDINANCE NO. _____

1 AN ORDINANCE amending Title 3 of the Lincoln Municipal Code relating
2 to Revenue and Finance by creating a new Chapter 3.26, Motor Vehicle Fuel Retailer
3 Occupation Tax, by adding a new section numbered 3.26.010 to provide definitions to
4 apply in the interpretation and enforcement of said occupation tax; adding a new section
5 numbered 3.26.020 levying and establishing said occupation tax; adding a new section
6 numbered 3.26.030 to require all motor vehicle fuel retailers selling fuel in the City of
7 Lincoln to secure a motor vehicle fuel retailer's license; adding a new section numbered
8 3.26.040 to provide for the license application and issuance procedure; adding a new
9 section numbered 3.26.050 to require every motor vehicle fuel retailer to file a monthly
10 report regarding the number of gallons of motor vehicle fuel sold during the preceding
11 month and to establish provisions relating to said report; adding a new section numbered
12 3.26.060 to establish requirements for the payment of said occupation tax and to provide
13 penalties relating thereto; adding a new section numbered Section 3.26.070 to provide
14 conditions for City examination of the books, accounts, records or monthly statements of
15 the motor vehicle fuel retailer; adding a new section numbered 3.26.080 to require claims
16 for refunds to be filed within three years of date of overpayment and to require notices of
17 the assessment of additional taxes to be made within three years from the date such
18 additional taxes became due; adding a new section numbered 3.26.090 to require motor
19 vehicle fuel retailers to retain records for a period of three years; adding a new section
20 numbered 3.26.100 to prescribe the use to be made of said occupation tax and to create

1 the Fuel Retailer Occupation Tax Fund; adding a new section numbered 3.26.110 to
2 provide for collection of said occupation tax by the City Attorney; adding a new section
3 numbered 3.26.120 to provide a process for appealing a denial, suspension or revocation
4 of a motor vehicle fuel retailer license; adding a new section numbered 3.26.130 to set
5 forth the requirements for serving notice under this new chapter; adding a new section
6 numbered 3.26.140 to provide that the Director of the Finance Department shall be
7 responsible for the administration of this ordinance; and adding a new section numbered
8 3.26.150 to provide for severability of this ordinance.

9 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

10 Section 1. That Title 3 of the Lincoln Municipal Code be amended by
11 adding a new section numbered 3.26.010 to read as follows:

12 **3.26.010 Definitions.**

13 The following definitions shall apply in the interpretation and enforcement of the
14 Occupation Tax on a Motor Vehicle Fuel Retailer:

15 **Department** shall mean the City of Lincoln Finance Department.

16 **Director** shall mean the Director of the City of Lincoln Finance Department or such
17 Director's authorized representative.

18 **Gallon** shall mean gross gallons measured without adjustment or correction for
19 temperature or barometric pressure

20 **Motor Vehicle Fuel Retailer** shall mean any person within the limits of the City of
21 Lincoln who acquires motor vehicle fuel from a supplier, distributor, wholesaler or

1 importer and sells said motor vehicle fuel to consumers or purchasers of such fuel for their
2 use or consumption of such fuel.

3 **Motor Vehicle Fuel** shall include all products and fuel commonly or commercially
4 known as gasoline, including casing head or natural gasoline, and shall include any other
5 liquid and such other volatile and inflammable liquids as may be produced, compounded,
6 or used for the purpose of propelling motor vehicles or as an ingredient in the manufacture
7 of such fuel. Agricultural ethyl alcohol blended with gasoline and produced for use as a
8 motor vehicle fuel, commonly or commercially known as an ethanol blend fuel, shall be
9 considered a motor vehicle fuel.

10 **Motor Vehicle** shall mean all vehicles, engines or machines operated or propelled
11 by the use of motor vehicle fuel.

12 **Person** shall mean any individual, partnership, limited liability company, company,
13 business or corporation within the limits of the City of Lincoln, Nebraska.

14 Section 2. That Title 3 of the Lincoln Municipal Code be amended by
15 adding a new section numbered 3.26.020 to read as follows:

16 **3.26.020 Occupation Tax Generally; Amount; Reports.**

17 Commencing January 1, 2004, there is hereby levied upon every person engaged in
18 the business or occupation of operating as a Motor Vehicle Fuel Retailer within the limits
19 of the City of Lincoln an occupation tax for the purpose of raising revenue, as follows:

20 (a) Every Motor Vehicle Fuel Retailer in the City of Lincoln shall pay an
21 occupation tax computed on the basis of five cents (\$.05) per gallon of such motor vehicle

1 fuel sold within the City of Lincoln as shown by such statement in the manner and within
2 the time frame provided in this code.

3 (b) Every Motor Vehicle Fuel Retailer shall, not later than the 25th day of each
4 calendar month, render a statement to the Department on forms prescribed, prepared and
5 furnished by the Department. Said statement shall include a statement on the number of
6 gallons of motor vehicle fuel sold by the retailer and pay to the City of Lincoln an
7 occupation tax of five cents (\$.05) per gallon of such motor vehicle fuel sold upon which
8 the motor vehicle fuel retailer has liability for the applicable occupation tax during the
9 preceding calendar month.

10 (c) The motor vehicle fuel retailer occupation tax shall not be imposed
11 whenever it is prohibited by the Constitution or laws of the United States or the State of
12 Nebraska.

13 Section 3. That Title 3 of the Lincoln Municipal Code be amended by
14 adding a new section numbered 3.26.030 to read as follows:

15 **3.26.030 License Requirements.**

16 No motor vehicle fuel retailer shall sell any motor vehicle fuel in the City of Lincoln
17 until he or she has secured a motor vehicle fuel retailer's license as required herein.

18 Section 4. That Title 3 of the Lincoln Municipal Code be amended by
19 adding a new section numbered 3.26.040 to read as follows:

20 **3.26.040 License Application and Issuance.**

21 (a) Every person, before engaging in the occupation or business as a motor
22 vehicle fuel retailer within the City of Lincoln, shall file an application with the
23 Department. The application shall be filed upon a form prepared and furnished by the

1 Department. A separate license shall be applied for each retail location operated by the
2 same person. The application shall contain such information as the department deems
3 necessary and shall include but not be limited to providing on the application the
4 following information:

5 (1) The business name under which the retailer transacts business;

6 (2) The address of the applicant's principal place of business and location
7 of retail or service station within the City of Lincoln;

8 (3) The name and address of the managing agent, the names and
9 addresses of the several persons constituting the partnership or, if a corporation, the name
10 under which the corporation is authorized to transact business and the names and
11 addresses of its principal officers and registered agent.

12 (4) A copy of a current Nebraska state license as a Nebraska retailer or, if
13 applicable, a copy of a current Nebraska state license as wholesaler, distributor, importer
14 or exporter of motor vehicle fuel if also operating as a retailer in the State of Nebraska.

15 (b) If an application for a City motor vehicle fuel retailer's license is complete
16 and accepted for filing, the Director shall review the application and may issue a license in
17 such form as the Director may prescribe to transact business in the City of Lincoln. A
18 license issued hereunder is valid only for the retailer in whose name it is issued.

19 (c) The Director shall retain all completed applications together with a record of
20 all licensed City of Lincoln motor vehicle fuel retailers.

1 (d) If a motor vehicle fuel retailer sells motor vehicle fuel without first applying
2 for and obtaining the license required by this chapter, the occupation tax on all motor
3 vehicle fuel sold by that retailer shall be immediately due and payable.

4 (1) The Director shall proceed forthwith to determine, from as many
5 available sources as the Director determines reasonable, the amount of occupation tax due
6 and shall assess the retailer for the tax in the amount found due, together with a penalty of
7 forty percent of the tax, and shall provide a notice and order of such assessment and
8 penalty to the retailer.

9 (2) Any tax or penalty assessed pursuant to this section may be collected
10 in the same manner prescribed in Section 3.26.060 with reference to delinquency in the
11 payment of the occupation tax.

12 (e) The Director, upon written request of a motor vehicle fuel retailer, may
13 cancel a license issued to that retailer not later than thirty days after the written request,
14 after which the license shall no longer be effective.

15 (f) The Director may after thirty days notice has been mailed to the last known
16 address of the retailer, cancel the license of the motor vehicle fuel retailer upon finding
17 that the retailer is no longer engaged in the business of a retailer.

18 Section 5. That Title 3 of the Lincoln Municipal Code be amended by
19 adding a new section numbered 3.26.050 to read as follows:

20 **3.26.050 Monthly Statement of Retailer.**

21 (a) Every motor vehicle fuel retailer shall file to the Department on or before the
22 25th day of each month, on forms prescribed, prepared and furnished by the Department,

1 a statement which will include but not be limited to reportage of the number of gallons of
2 motor vehicle fuel sold by the retailer during the preceding calendar month. The statement
3 shall be signed by the retailer or the retailer's agent or authorized representative declaring
4 that the statements contained therein are true and are made under penalties of perjury,
5 which declaration have the same force and effect as a verification of the statement and
6 shall be in lieu of such verification. Such statement shall be entitled to be received in
7 evidence in a court of competent jurisdiction and shall be prima facie evidence of the facts
8 therein stated. The statement shall be considered filed on time if mailed in an envelope
9 properly addressed to the Department, postage prepaid, and postmarked before midnight
10 of the final filing date. If the final filing date falls on a Saturday, Sunday or legal holiday as
11 defined by state law, the next secular or business day is the final filing date.

12 (b) The Director may require the report to be made electronically and shall
13 prescribe the formats or procedure for electronic filing. The Director may adopt and
14 promulgate rules and regulations to allow such reports to be filed electronically.

15 (c) If a retailer fails to file the statement required under Section 3.26.050, the
16 Director shall proceed to determine from as many available sources as the Director
17 determines reasonable, the amount of motor vehicle fuel sold by such retailer for the
18 period unreported. The Director shall immediately assess the retailer for the occupation
19 tax upon the amount determined adding thereto a penalty of ten percent of the tax for
20 failure to filing the monthly statement. The penalty shall be cumulative to other penalties
21 provided in this code.

1 (d) If a retailer knowingly files a false statement, the penalty shall be equal to
2 fifty percent of the tax paid, which penalty shall be in addition to all other penalties
3 provided by this chapter.

4 (e) The Director may, for good cause shown, waive any penalties assessed
5 under this section.

6 Section 6. That Title 3 of the Lincoln Municipal Code be amended by
7 adding a new section numbered 3.26.060 to read as follows:

8 **3.26.060 Payment of Occupation Tax and Delinquency.**

9 (a) The occupation tax imposed by Chapter 3.26 shall be paid to the
10 Department on or before the 25th day of each month and shall be due at the same time the
11 monthly statement in Section 3.26.050 is required to be filed. The Director may require
12 the payment of the occupation tax or any refunds authorized to be made by electronic
13 funds transfer and shall prescribe the formats or procedures for such a transfer. The
14 Director may adopt and promulgate rules and regulations to allow for the tax payment and
15 refunds to be made electronically.

16 (b) If payment of the occupation tax is not paid as required in subsection (a)
17 above, a penalty of one percent of such occupation tax shall be assessed and be
18 immediately due and payable.

19 (c) If the payment of the occupation tax and penalty required by (b) is not made
20 on or before the first day of the next month following that month in which payment is due,
21 a further penalty of ten percent of the occupation tax shall be assessed. Said penalty shall

1 be in addition to the penalty provided for in subsection (b) of this section and shall be
2 immediately due and payable.

3 (d) Penalties imposed by this section shall not apply if a penalty has been
4 assessed and paid pursuant to Section 3.26.040.

5 (e) The Director may, for good cause shown, waive any penalties assessed
6 under this section.

7 Section 7. That Title 3 of the Lincoln Municipal Code be amended by
8 adding a new section numbered 3.26.070 to read as follows:

9 **3.26.070 Statements; Examinations and Investigations.**

10 (a) The Director or duly authorized agents may, at any time during normal
11 business hours, make any examination of any books, accounts, records or monthly
12 statements required by the City as it considers necessary in carrying out the provisions of
13 this chapter. If the examinations or investigations disclose that any statements filed by a
14 motor vehicle fuel retailer with the Department have shown incorrectly the amount of
15 gallorage of motor vehicle fuel sold or the tax accrued thereon, the Director shall,
16 pursuant to an order of reassessment, notify the motor vehicle fuel retailer of the amount of
17 the deficiency determined or the Director may make such refunds, as may be necessary, to
18 correct the errors disclosed by its examination or investigation. In the event that such an
19 examination or investigation results in an assessment by and an additional payment due to
20 the City because of underpayment, such additional payment shall be due to the City within
21 thirty days after reassessment subject to interest from the date of such underpayment, at the
22 rate then earned by the City on its Fuel Retailer Occupation Tax Fund. Any amounts

1 overpaid by the motor vehicle fuel retailer shall be refunded by the City to the retailer
2 within thirty days after the City's assessment with interest from the date of such
3 overpayment at the rate earned by the City on its Fuel Retailer Occupation Tax Fund.

4 (b) The motor vehicle fuel retailer shall reimburse the City for the reasonable
5 costs for the examination and investigation if the action discloses that the retailer paid
6 ninety percent or less of the tax owing for the period of the examination or investigation.

7 (c) An appeal of such overpayment or underpayment assessment may be
8 appealed by the aggrieved party to the Director pursuant to Section 3.26.120(c).

9 Section 8. That Title 3 of the Lincoln Municipal Code be amended by
10 adding a new section numbered 3.26.080 to read as follows:

11 **3.26.080 Limitation on Claim for Refund of Overpayment and on Assessment**
12 **of Additional Tax.**

13 (a) Any claim for refund of the occupation tax erroneously overpaid by a motor
14 vehicle fuel retailer must be filed with the Director within three years after the date on
15 which the overpayment was made to the City.

16 (b) Except in the case of a fraudulent report or neglect to make a report, every
17 order and notice of additional tax proposed to be assessed shall be served on a motor
18 vehicle fuel retailer within three years from the date upon which such additional taxes
19 become due.

20 Section 9. That Title 3 of the Lincoln Municipal Code be amended by
21 adding a new section numbered 3.26.090 to read as follows:

1 **3.26.090** **Records to be Kept Three Years.**

2 Every motor vehicle fuel retailer shall keep a record in such form as the Director
3 may prescribe of all sales of motor vehicle fuel. The records shall include copies of all
4 invoices of such sales and shall at all times during the business hours of the day be subject
5 to inspection by the Director or authorized agents of the Director.

6 Section 10. That Title 3 of the Lincoln Municipal Code be amended by
7 adding a new section numbered 3.26.100 to read as follows:

8 **3.26.100** **Use of Revenues; Fund Created.**

9 (1) For the purpose of this section, net revenue shall mean the revenue derived
10 from the payment of the occupation tax and penalties imposed by this chapter remaining
11 after providing for the cost of administration and any refunds and credits authorized herein.

12 (2) The Fuel Retailer Occupation Tax Fund is hereby created and net revenue
13 derived from the payment of the occupation tax pursuant to this chapter shall be credited
14 to such fund. All net revenue credited to this fund shall be used only for the purpose of
15 designing, acquiring certain land rights, constructing, reconstructing, improving, extending,
16 installing and completing the grading, paving, curbing, guttering, and other related and
17 incidental improvements to the City's streets, avenues, and other public ways, or parts
18 thereof, or for the amortization of bonded indebtedness issued for such purposes.

19 The definition of constructing as used in this section shall include
20 supervising, designing, inspection, actual building and expenses, including the cost of
21 acquiring right-of-way, incidental to the construction of a street, road, alley, public way, or
22 parts thereof.

1 Section 11. That Title 3 of the Lincoln Municipal Code be amended by
2 adding a new section numbered 3.26.110 to read as follows:

3 **3.26.110 City Attorney; Enforce Collection.**

4 The City Attorney may bring suit in the name of the City against any person for the
5 amount of such tax levied pursuant to this chapter upon the failure of such person to pay
6 the same as herein provided, whenever the City Attorney is so directed by the Director.

7 Section 12. That Title 3 of the Lincoln Municipal Code be amended by
8 adding a new section numbered 3.26.120 to read as follows:

9 **3.26.120 Appeals.**

10 (a) Any application for issuance of a license under this chapter may be denied
11 by the Director if the application is incomplete, or if the application does not comply with
12 all requirements of this chapter and other applicable laws. Any license issued under this
13 chapter shall be subject to revocation or suspension by the Director for violation by the
14 licensee of any of the provisions of this chapter or for violations of any of the provisions or
15 conditions of the license or for failure to pay any required occupation tax imposed by this
16 chapter. Such order shall not become effective until the expiration of the time for appeal.
17 Pending the determination of such appeal by the Director, the operation of any order of
18 suspension or revocation shall be stayed.

19 (b) The Director may suspend any license for a specified period of time not
20 exceeding thirty days when a condition constituting a violation of the provisions of this
21 chapter exists for which a licensee must take corrective action. The order of suspension
22 shall specify the period of suspension and the corrective action to be taken by the licensee

1 and shall be served upon the licensee as provided in Section 3.26.130. The Director may
2 revoke the license of any licensee when such licensee had failed, after the period of
3 suspension has expired, to take the required corrective action, or in any case where, in the
4 opinion of the Director, revocation and not suspension is warranted in the first instance.

5 (c) Any person aggrieved by an order of suspension, revocation, reassessment of
6 tax, or denial of any license application issued under the provisions of this chapter may,
7 within fifteen days of the receipt of written notice of the entry of such order, appeal to the
8 Director for a hearing. The Director shall notify the licensee or applicant, hereinafter
9 referred to as appellant, in writing of the date, time and place of hearing before the
10 Director, which date shall be no later than ten days from the filing of the appeal. The
11 appeal hearing shall not be conducted according to the technical rules relating to evidence
12 and witnesses, but the appellant shall have the right to:

13 (1) Call and examine witnesses on any matter relevant to the issues of the
14 hearing;

15 (2) Introduce documentary and physical evidence;

16 (3) Cross examine opposing witnesses on any matter relevant to the
17 issues of the hearing; and

18 (4) Rebut opposing evidence.

19 (d) The Director shall review all information provided by the appellant. After
20 the appeal hearing, the Director shall make written findings of fact and, based upon such
21 findings, shall sustain, modify or rescind the original order. A written report of the
22 Director's findings shall be furnished to the appellant within ten days from the date that the

1 appeal hearing is closed. The decision of the Director shall be final and binding upon the
2 City and upon the appellant, and may be appealed as provided by state law but such
3 decision shall not be stayed unless so ordered by the District Court.

4 Section 13. That Title 3 of the Lincoln Municipal Code be amended by
5 adding a new section numbered 3.26.130 to read as follows:

6 **3.26.130 Notices.**

7 All notices by the Director required in this chapter shall be personally delivered or
8 mailed by registered or certified mail, return receipt requested, to the address of the
9 licensee or applicant as shown on the records of the Department.

10 Section 14. That Title 3 of the Lincoln Municipal Code be amended by
11 adding a new section numbered 3.26.140 to read as follows:

12 **3.26.140 Administration.**

13 The City Finance Department and/or the Director of the City Finance Department is
14 responsible for administering this chapter.

15 Section 15. That Title 3 of the Lincoln Municipal Code be amended by
16 adding a new section numbered 3.26.150 to read as follows:

17 **3.26.150 Severability.**

18 If any portion of this chapter is for any reason held invalid or unconstitutional by a
19 court of competent jurisdiction, such portion shall be deemed a separate, distinct and
20 independent provision and such holding shall not affect the validity of the remaining
21 portions of this chapter.

1 Section 16. That Sections 1 through 15 of this ordinance shall be codified in
2 the Lincoln Municipal Code as "Chapter 3.26, Motor Vehicle Fuel Retailer Occupation
3 Tax."

4 Section 17. That this ordinance shall take effect and be in force from and
5 after its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2003:

Mayor