CITY OF PHOENIX
PHOENIX, OREGON

ORDINANCE NO. 970

AN ORDINANCE AMENDING THE PHOENIX MUNICIPAL CODE, BY REVISING SECTION 14.01.040 (b) OF THE MOTOR VEHICLE DIESEL FUEL TAX

RECITALS:

WHEREAS, the City of Phoenix has enacted an ordinance establishing a motor vehicle fuel tax; and

WHEREAS, the City of Phoenix determines it to be in the City's best interest to amend the ordinance at section 14.01.040, 1(b);

NOW THEREFORE, THE CITY OF PHOENIX ORDAINS AS FOLLOWS:

The following amends Phoenix Municipal Code: Chapter 14.01 MOTOR VEHICLE DIESEL FUEL TAX

14.01.010 Short Title. The provisions of this Chapter shall be known and may be cited as the "City of Phoenix Motor Vehicle Diesel Fuel Tax Ordinance".

14.01.015 Purpose. The purpose of the Motor Vehicle Diesel Fuel tax is to raise revenues necessary for the construction, reconstruction, improvement, repair, maintenance, operation and use of the public street system in the city.

14.01.020 Definitions. As used in this ordinance, unless the context requires otherwise:

"Dealer" means any person who:

(a) Imports or causes to be imported Motor Vehicle Diesel Fuel for sale, use or distribution in, and after the same reaches the city, but "Dealer" does not include any person who imports into the city Motor Vehicle Diesel Fuel in quantities of 500 gallons or less purchased from a supplier who is licensed as a dealer under this ordinance and who assumes liability for the payment of the applicable Motor Vehicle Diesel Fuel tax to the city; or

(b) Produces, refines, manufactures or compounds Motor Vehicle Diesel Fuels in the city for use, distribution or sale in the city; or

(c) Acquires in the city for sale, use or distribution in the city Motor Vehicle Diesel Fuel with respect to which there has been no Motor Vehicle Diesel Fuel tax previously incurred.

"Distribution" means, in addition to its ordinary meaning, the delivery of Motor Vehicle Diesel 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facility or series of tanks or storage facilities connected by pipelines, from which Motor Vehicle Diesel Fuel is withdrawn directly for sale or for delivery into the fuel tanks of motor vehicles whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer.

"Highway" means every way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel.

"Motor Vehicle" means all vehicles, engines or machines, movable or immovable, operated or propelled by the use of Motor Vehicle Diesel Fuel.

"Motor Vehicle Diesel Fuel" means and includes diesel fuel, by whatever name such as diesel fuel is known or sold, usable as fuel for the operation of motor vehicles, except gas or liquid, the chief use of which, as determined by the tax administrator, is for purposes other than the propulsion of motor vehicles upon the highways.

"Person" includes every natural person, association, firm, partnership, corporation, joint venture or other business entity

"Service Station" means and includes any place operated for the purpose of retailing and delivering Motor Vehicle Diesel Fuel into the fuel tanks of motor vehicles.

"Tax Administrator" means the city administrator, the city administrator's designee, or any person or entity with whom the city administrator contracts to perform those duties.

14.01.030 Tax Imposed. A Motor Vehicle Diesel Fuel tax is imposed on every dealer. The tax imposed shall be paid monthly to the tax administrator. The tax administrator is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection and administration of the Motor Vehicle Diesel Fuel tax, including all powers specified in ORS 319.010 to 319.430.

14.01.040 Amount and Payment.

1. In addition to any fees or taxes otherwise provided for by law, every dealer engaging in the dealer's own name, or in the name of others, or in the name of the dealer's representatives or agents in the city, in the sale, use or distribution of Motor Vehicle Diesel Fuel, shall:

(a) Not later than the 25th day of each calendar month, render a statement to the tax administrator or duly authorized agent of all Motor Vehicle Diesel Fuel sold, used or distributed by the dealer in the city as well as all such fuel sold, used or distributed in the city by a purchaser from the dealer upon which sale, use or distribution the dealer has assumed liability for the applicable Motor Vehicle Diesel Fuel tax during the preceding calendar month.

(b) Pay a Motor Vehicle Diesel Fuel tax computed on the basis of 2 cents per gallon of such Motor Vehicle Diesel Fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this ordinance.

2. In lieu of claiming refund of the tax as provided in Section 14.01.210, or of any prior erroneous payment of Motor Vehicle Diesel Fuel tax made to the city by the dealer, the dealer may show such Motor Vehicle Diesel Fuel as a credit or deduction on the monthly statement and payment of tax.

3. The Motor Vehicle Diesel Fuel tax shall not be imposed wherever it is prohibited by the Constitution of laws of the United States or of the State of Oregon.

14.01.050 Permit Requirements. No dealer shall sell, use or distribute any Motor Vehicle Diesel Fuel until the dealer has secured a dealer's permit as required in this chapter.

14.01.060 Permit Applications and Issuance.

1. Every person, before becoming a dealer in Motor Vehicle Diesel Fuel in this city, shall make an application to the tax administrator for a permit authorizing such person to engage in business as a dealer.

2. Applications for the permit must be made on forms prescribed, prepared and furnished by the tax administrator.

3. The applications shall be accompanied by a duly acknowledged certificate containing:

(a) The business name under which the dealer is transacting business.

(b) The address of the applicant's principal place of business and location of distributing stations in the city.

(c) 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.

4. If an application for a Motor Vehicle Diesel Fuel dealer's permit is complete and has been accepted for filing, the tax administrator shall issue to the dealer a permit in such form as the tax administrator may prescribe to transact business in the city. The permit so issued is not assignable, and is valid only for the dealer in whose name it is issued.

5. The tax administrator shall keep and file all applications with an alphabetical index, together with a record of all permitted dealers.

14.01.070 Failure to Secure Permit.

1. If any dealer sells, distributes or uses any Motor Vehicle Diesel Fuel without first filing the certificate and securing the permit required by Section 14.01.060, the Motor Vehicle Diesel Fuel tax shall immediately be due and payable on account of all Motor Vehicle Diesel Fuel so sold, distributed or used.

2. The tax administrator shall proceed forthwith to determine, from as many available sources as the tax administrator determines reasonable, the amount of tax due, and shall assess the tax in the amount found due, together with a penalty of 100% of the tax, and shall make a certificate of such assessment and penalty. In any suit or proceeding to collect such tax or penalty or both, the certificate shall be prima facie evidence that such dealer is indebted to the city in the amount of the tax and penalty stated.

3. Any tax or penalty so assessed may be collected in the manner prescribed in section 14.01.110 with reference to delinquency in payment of the tax or by action at law.

4. 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 other sums provided by law.

14.01.080 Revocation of Permit. The tax administrator may revoke the permit of any dealer who fails to comply with any provision of sections 14.01.020 to 14.01.270. The tax administrator shall mail by certified mail addressed to such dealer at the dealer's last known address appearing on the files of the tax administrator, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation 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.

14.01.090 Cancellation of Permit.

1. The tax administrator may, upon written request of a dealer, cancel a permit issued to the dealer. The tax administrator shall, upon approving the dealer's request for cancellation, set a date not later than 30 days after receipt of the written

request, after which the permit shall no longer be effective.

2. The tax administrator may, after 30 days' notice has been mailed to the last known address of the dealer, cancel the permit of the dealer upon finding that the dealer is no longer engaged in the business of a dealer.

14.01.100 Remedies Cumulative. Except as otherwise provided in Sections 14.01.11O and 14.01.130, the remedies provided in Sections 14.01.070, 14.01.080 and 14.01.090 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this code.

14.01.110 Payment of Tax and Delinquency.

1. The Motor Vehicle Diesel Fuel tax imposed by sections 14.01.030 and 14.01.040 shall be paid to the tax administrator on or before the 25th day of each month.

2. Except as provided in subsections (3) and (4) of this section, if payment of the Motor Vehicle Diesel Fuel tax is not paid as required by subsection (1) of this Section, a penalty of one percent of such Motor Vehicle Diesel Fuel tax shall be assessed and be immediately due and payable.

3. Except as provided in subsection (4) of this section, if payment of the tax and penalty, if any, is not made on or before the 1st day of the next month following that month in which payment is due, a further penalty of 10 percent of the tax shall be assessed. Said penalty shall be in addition to the penalty provided for in subsection (2) of this section, and shall be immediately due and payable.

4. Penalties imposed by this section shall not apply if a penalty has been assessed and paid pursuant to section 14.01.070. The tax administrator may for good cause shown waive any penalties assessed under this section.

5. If any person fails to pay the Motor Vehicle Diesel Fuel tax or any penalty provided for by this section, the tax and/or penalty shall be collected from that person for the use of the city. The tax administrator shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

6. In the event any suit or action is instituted to collect the Motor Vehicle Diesel Fuel tax 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 other sums provided by law.

7. No dealer who collects from any person the tax provided for in this chapter shall knowingly and willfully fail to report and pay the same to the City as required in this ordinance.

14.01.120 Monthly Statement of Dealer. Every dealer in Motor Vehicle Diesel Fuel shall provide to the tax administrator on or before the 25th day of each month, on forms prescribed, prepared and furnished by the tax administrator, a statement of the number of gallons of Motor Vehicle Diesel Fuel sold, distributed or used by the dealer during the preceding calendar month. The statement shall be signed by the dealer or the dealer's agent. All statements filed with the City, as required in this section, are public records.

14.01.130 Failure to File Monthly Statements. If a dealer fails to file any statement required by Section 14.01.120, the tax administrator shall proceed forthwith to determine from as many available sources as the tax administrator determines to be reasonable the amount of Motor Vehicle Diesel Fuel sold, distributed or used by such dealer for the period unreported, and such determination shall in any proceeding be prima facie evidence of the amount of such fuel sold, distributed or used. The tax administrator shall immediately assess the dealer for the Motor Vehicle Diesel Fuel tax upon the amount determined, adding thereto a penalty of ten percent of the tax. The penalty shall be cumulative to other penalties provided in this code.

14.01.140 Billing Purchasers. Dealers in Motor Vehicle Diesel Fuels shall render bills to all purchasers of Motor Vehicle Diesel Fuel. The bills shall separately state and describe the different products sold or shipped and shall be serially numbered except where other sales invoice controls acceptable to the tax administrator are maintained.

14.01.150 Failure to Provide Invoice or Delivery Tag. No person shall receive and accept Motor Vehicle Diesel Fuel from any dealer, or pay for the same, or sell or offer the Motor Vehicle Diesel Fuel for sale, unless the Motor Vehicle Diesel Fuel is accompanied by an invoice or delivery tag showing the date upon which Motor Vehicle Diesel Fuel was delivered, purchased or sold, and the name of the dealer in Motor Vehicle Diesel Fuel.

14.01.160 Transporting Motor Vehicle Diesel Fuel in Bulk. Every person operating any conveyance for the purpose of hauling, transporting or delivering Motor Vehicle Diesel Fuel in bulk shall, before entering upon the public highways of the city with such conveyance, have and possess during the entire time of the hauling or transporting of such Motor Vehicle Diesel Fuel, an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The person hauling such Motor Vehicle Diesel Fuel shall at the request of any officer authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

14.01.170 Exemption of Export Fuel.

1. The Motor Vehicle Diesel Fuel tax imposed by sections 14.01.030 and 14.01.040 shall not be imposed on Motor Vehicle Diesel Fuel:

(a) Exported from the city by a dealer; or

(b) 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.

2. In support of any exemption from Motor Vehicle Diesel Fuel taxes claimed under this section other than in the case of stock transfers or deliveries in the dealer's own equipment, every dealer must execute and file with the tax administrator an export certificate in such form as shall be prescribed, prepared and furnished by the tax administrator, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the Motor Vehicle Diesel Fuel has been exported from the city, and giving such details with reference to such shipment as the tax administrator may require. The tax administrator may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The tax administrator may, in a case where tax administrator believes no useful purpose would be served by filing of an export certificate, waive the filing of the certificate.

3. Any Motor Vehicle Diesel Fuel carried from the city in the fuel tank of a motor vehicle shall not be considered as exported from the city.

4. No person shall, through false statement, trick or device, or otherwise, obtain Motor Vehicle Diesel Fuel for export as to which the city tax has not been paid and fail to export the same, or any portion, or cause the Motor Vehicle Diesel Fuel or any portion not to be exported, or divert or cause to be diverted the Motor Vehicle Diesel Fuel or any portion to be used, distributed or sold in the city and fail to notify the tax administrator and the dealer from whom the Motor Vehicle Diesel Fuel was originally purchased of such person's act.

5. No dealer or other person shall conspire with any person to withhold from export, or divert from export or to return Motor Vehicle Diesel Fuel to the city for sale or use so as to avoid any of the fees imposed under this ordinance.

6. In support of any exemption from taxes on account of sales of Motor Vehicle Diesel Fuel in individual quantities of 500 gallons or less for export by the purchaser, the dealer shall retain in the dealer's 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 tax administrator. This certificate shall be prima facie evidence of

the exportation of the Motor Vehicle Diesel Fuel to which it applies only if accepted by the dealer in good faith.

14.01.175 Sales to Armed Forces Exempted. The license tax imposed by sections 14.01.030 and 14.01.040 shall not be imposed on any Motor Vehicle Diesel 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 tax administrator 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.

14.01.190 Fuel in Vehicle Coming into City Not Taxed. Any person coming into the city in a motor vehicle may transport in the fuel tank of such vehicle, Motor Vehicle Diesel Fuel for such person's own use only and for the purpose of operating such motor vehicle without securing a permit or paying the tax provided in Sections 14.01.030 and 14.01.040, or complying with any of the provisions imposed upon dealers under this ordinance, but if the Motor Vehicle Diesel Fuel so brought into the city is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing fuel into the city shall be subject to all the provisions herein applying to dealers.

14.01.200 Fuel Sold or Delivered to Dealers

1. A dealer selling or delivering Motor Vehicle Diesel Fuel to dealers is not required to pay a Motor Vehicle Diesel Fuel tax on such fuel.

2. The dealer in rendering monthly statements to the city as required by Sections 14.01.040 and 14.01.120 shall show separately the number of gallons of Motor Vehicle Diesel Fuel sold or delivered to dealers.

14.01.210 Refunds. Refunds will be made pursuant to ORS 319.280 to 319.320. Claim forms for refunds may be obtained from the tax administrator's office.

14.01.220 Examination and Investigations. The tax administrator, or duly authorized agents, 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 Diesel Fuel or other petroleum product or products within this city, and such other investigations as it considers necessary in carrying out the provisions of sections 14.01.020 through 14.01.270. If the examinations or investigations disclose that any reports of dealers or other persons theretofore filed with the tax administrator pursuant to the requirements of this ordinance, have shown incorrectly the amount of gallonage or Motor Vehicle Diesel Fuel distributed or the tax accruing on the fuel, the tax administrator 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 disclosed by its examinations or investigations. The dealer shall reimburse the city for reasonable costs of the

examination or investigation if the action disclosed that the dealer paid 95 percent or less of the tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the city, such additional payment shall be subject to interest at the rate of 18 percent per year from the date the original tax payment was due.

14.01.230 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax.

1. Except as otherwise provided in this ordinance, 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 years after the date on which the overpayment was made to the city.

2. 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 ordinance shall be served on dealers within three years from the date upon which such additional taxes become due, and shall be subject to penalty as provided in section 14.01.110.

14.01.240 Examining Books and Accounts of Carrier of Motor Vehicle Fuel The tax administrator or duly authorized agents may at any time during normal business hours examine the books and accounts of any carrier of Motor Vehicle Diesel Fuel operating within the City for the purpose of enforcing the provisions of this ordinance.

14.01.250 Records to be Kept by Dealers. Every dealer in Motor Vehicle Diesel Fuel shall keep a record in such form as may be prescribed by the tax administrator of all purchases, receipts, sales and distribution of Motor Vehicle Diesel Fuel. The records shall include copies of all invoices or bills of all such sales and shall at all times during the business hours of the day be subject to inspection by the tax administrator or authorized officers or agents of the tax administrator.

14.01.260 Records to be Kept Three Years. Every dealer shall maintain and keep, for a period of three years, all records of Motor Vehicle Diesel 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 tax administrator. In the event such records are not kept within the state of Oregon, the dealer shall reimburse the tax administrator for all travel, lodging, and related expenses incurred by the tax administrator in examining such records. The amount of such expenses shall be an additional tax imposed by section 14.01.030.

14.01.370 Use of Tax Revenues.

1. For the purposes of this section, net revenue shall mean the revenue from the tax imposed by sections 14.01.020 through 14.01.270 remaining after providing for

the cost of administration and any refunds and credits authorized under this ordinance.

2. The net revenue shall be used only for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads and streets within the city.

Effective Date: This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council and signed by me in authentication of thereof on this 7th day of December, 2015.

Jeff Bellah, Mayor

ATTEST:

Janette Boothe, City Recorder

Approved as to form:

City Attorney