

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE PROVIDING FOR THE LEVY OF A RETAIL BUSINESS OCCUPATION TAX; ESTABLISHING DEFINITIONS; PROVIDING FOR THE ADMINISTRATION, COLLECTIONS, RETURNS, DELINQUENCIES AND RECOVERY OF UNPAID AMOUNTS RELATED TO SUCH OCCUPATION TAX; SPECIFYING HOW SUCH TAX REVENUE WILL BE USED; PROVIDING A SUNSET PROVISION FOR THE TAX; AND RELATED MATTERS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LINCOLN, NEBRASKA AS FOLLOWS:**

**Section 1. Findings and Determinations.** The City Council of the City of Lincoln, Nebraska (the "City") hereby finds and determines as follows:

(a) Pursuant to Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended (the "Act"), the City has prepared and adopted the Northwest Corridors Redevelopment Plan, which, in part, (1) provides for the development of the West Haymarket Sports Park, a mixed use sports fields and commercial project (the "**WHSP Redevelopment Project**"). The sports fields portion of the WHSP Redevelopment Project is located in the Redevelopment Project Area as legally described on **Exhibit "A"** and shown on **Exhibit "B"** which exhibits are attached hereto and incorporated herein by reference and (2) designates the Redevelopment Project Area as an "enhanced employment area" as defined in Section 18-2103(22), Reissue Revised Statutes of Nebraska, as amended (the "**Enhanced Employment Area**").

(b) Pursuant to Section 18-2142.02, Reissue Revised Statutes of Nebraska, as amended, the City is authorized to levy and collect a general business occupation tax upon the businesses and users of space within the Enhanced Employment Area for the purpose of paying all or any part of the costs and expenses of the Redevelopment Project within the Enhanced Employment Area.

1 (c) It is necessary, desirable, advisable and in the best interests of the City that a general  
2 business occupation tax be imposed within the Enhanced Employment Area as provided by the Act  
3 for the purpose set forth in Section 1(b).

4 **Section 2. Definitions.** As used in this Ordinance, the following words and phrases shall  
5 have the meanings ascribed to them in this Section 2, except where the context clearly indicates or  
6 requires a different meaning:

7 (a) **"Person"** means any natural person, individual, partnership, association, organization  
8 or corporation of any kind or character engaging in the business of operating a Retail Business.

9 (b) **"Retail Business"** means any activity engaged in by any Person or caused to be  
10 engaged in by such Person in which products or services are sold, leased or rented for any purposes  
11 other than for resale, sublease or subrent.

12 (c) **"Taxpayer"** shall mean any Person engaged in the business of operating a Retail  
13 Business as herein defined who is required to pay the tax herein imposed.

14 **Section 3. Tax Imposed; Collection of Tax.**

15 (a) On or after March 1, 2015, and in each calendar month thereafter, there is hereby  
16 imposed a retail business occupation tax upon each and every Person operating a Retail Business  
17 within the Enhanced Employment Area for any period of time during a calendar month. The amount  
18 of such tax shall be two percent (2%) of all gross receipts for each calendar month derived from the  
19 retail businesses subject to this tax. Such tax shall be imposed on the gross receipts resulting from  
20 the sale, lease or rental of any products or services within the Enhanced Employment Area, except  
21 that such tax shall not be imposed on any transaction which is subject to tax under Sections 53-160,  
22 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax  
23 under Section 77-2704.24, Reissue Revised Statutes of Nebraska, as amended from time to time.  
24 This tax is not limited to sale, lease or rental of products or services subject to sales tax under  
25 Sections 77-2701.04 to 77-2717 Reissue Revised Statutes of Nebraska, as amended from time to

1 time, and specifically includes a tax on the gross receipts from the sale of admissions to recreational  
2 events and the sale, use, or other consumption of amounts charged to participate in a youth sports  
3 event, youth sports league, or youth competitive educational activity. For the purposes of this  
4 subsection (a):

5 (1) Competitive educational activity means a tournament or a single competition  
6 that occurs over a limited period of time annually or intermittently where the participants  
7 engage in a competitive educational activity;

8 (2) Sports event means a tournament or a single competition that occurs over a  
9 limited period of time annually or intermittently where the participants engage in a sport;

10 (3) Sports league means an organized series of sports competitions taking place over  
11 several weeks or months between teams or individuals that are members of the league; and

12 (4) Youth sports event, youth sports league, or youth competitive educational  
13 activity means an event, league, or activity that is restricted to participants who are less than  
14 nineteen years of age.

15 (b) The Person engaged in operating a Retail Business may itemize the tax levied on a bill,  
16 receipt, or other invoice to the purchaser, but each Person engaged in such business shall remain  
17 liable for the tax imposed by this Ordinance.

18 **Section 4. Return.** Each and every Person engaged in the operation of a Retail Business  
19 within the Enhanced Employment Area for the calendar month beginning March 1, 2015, and for  
20 each and every month thereafter, shall prepare and file, on or before the 25th day of the following  
21 month thereafter on a form prescribed and furnished by the City Finance Director, a return for such  
22 month, and at the same time pay to the City the tax herein imposed. The return shall be verified and  
23 sworn to by the officer in charge of the business. The return shall be considered filed on time if  
24 mailed in an envelope properly addressed to the City Finance Director, postage prepaid and  
25 postmarked before midnight of the 25th of the appropriate month.

1           **Section 5. Tax Cumulative.**

2           (a) The levy of the tax under this Ordinance is in addition to all other fees, taxes, excises  
3 and licenses levied and imposed under any contract or any other ordinances of the City, in addition  
4 to any fee, tax, excise or license imposed by the state.

5           (b) Payment of the tax imposed by this Ordinance shall not relieve the Person paying the  
6 same from payment of any other tax now or hereafter imposed by contract or ordinance or by this  
7 Ordinance, including those imposed for any business or occupation he or she may carry on, unless  
8 so provided therein. The occupational taxes imposed by this Ordinance shall be cumulative except  
9 where otherwise specifically provided.

10           **Section 6. Use of Revenue.** The two percent (2%) occupation tax imposed by this  
11 Ordinance, less any administrative expenses, shall be used to fund any expenditures that the City  
12 is lawfully authorized to make in connection with the Redevelopment Project as permitted by the  
13 Act.

14           **Section 7. Failure to File Return; Delinquency; Assessment by City Finance Director.**

15           (a) If any Person neglects or refuses to file a return or make payment of the taxes as  
16 required by this Ordinance, the City Finance Director shall make an estimate, based upon such  
17 information as may be reasonably available, of the amount of taxes due for the period or periods for  
18 which the Taxpayer is delinquent, and upon the basis of such estimated amount, compute and assess  
19 in addition thereto interest on such delinquent taxes, at the rate of one percent (1.00%) per month,  
20 or fraction thereof from the date when due and, when applicable, a penalty equal to ten percent  
21 (10.00%) thereof. Any such interest due may be compounded quarterly.

22           (b) The City Finance Director shall give the delinquent Taxpayer written notice of such  
23 estimated taxes, penalty, and interest, which notice must be served personally or by certified mail.

24           (c) Such estimate shall thereupon become an assessment, and such assessment shall be  
25 final and due and payable from the Taxpayer to the City Finance Director ten (10) days from the

1 date of service of the notice or the date of mailing by certified mail; however, within such ten (10)  
2 day period the delinquent Taxpayer may petition the City Finance Director for a revision or  
3 modification of such assessment and shall, within such ten-day period, furnish the City Finance  
4 Director the facts and correct figures showing the correct amount of such taxes.

5 (d) Such petition shall be in writing, and the facts and figures submitted shall be submitted  
6 in writing and shall be given under oath of the Taxpayer.

7 (e) The City Finance Director may then modify such assessment in accordance with the  
8 facts which he or she deems correct. Such adjusted assessment shall be made in writing, and notice  
9 thereof shall be mailed to the Taxpayer within ten (10) days; and all such decisions shall become  
10 final upon the expiration of thirty (30) days from the date of service, unless proceedings are  
11 commenced within that time for appeal in the District Court.

12 **Section 8. Administration; Miscellaneous Provisions.**

13 (a) The administration of the provisions of this Ordinance are hereby vested in the City  
14 Finance Director, or his designee, who shall prescribe forms in conformity with this Ordinance for  
15 the making of returns, for the ascertainment, assessment and collection of the tax imposed  
16 hereunder, and for the proper administration and enforcement hereof.

17 (b) All notices required to be given to the Taxpayer under the provisions of this Ordinance  
18 shall be in writing. Notices shall be mailed by registered or certified mail, postage prepaid, return  
19 receipt requested, to the Taxpayer at his or her last known address.

20 (c) It shall be the duty of every Taxpayer to keep and preserve suitable records and other  
21 books or accounts as may be necessary to determine the amount of tax for which he/she is liable  
22 hereunder.

23 (1) Records of the gross receipts by which this tax is measured shall be kept separate  
24 and apart from the records of other sales or receipts in order to facilitate the examination of  
25 books and records as necessary for the collection of this tax.

1           (2) It shall be the duty of every such Taxpayer to keep and preserve for a period of  
2 four (4) years all such books, invoices and other records, which shall be open for  
3 examination at any time by the City Finance Director or his or her duly designated persons.  
4 If such Person keeps or maintains books, invoices, accounts or other records, or any portion  
5 thereof, outside of the state, upon demand of the City Finance Director he/she shall make the  
6 same available at a suitable place within the City, to be designated by the City Finance  
7 Director, for examination, inspection and audit by the City Finance Director or his or her  
8 duly authorized persons. The Taxpayer shall reimburse the City for the reasonable costs of  
9 the examination, inspection and audit if the City Finance Director determines that the  
10 Taxpayer paid ninety percent or less of the tax owing for the period of the examination.

11           (3) The City Finance Director, in his or her discretion, may make, permit or cause  
12 to be made the examination, inspection or audit of books, invoices, accounts or other records  
13 so kept or maintained by such Person outside of the state at the place where same are kept  
14 or maintained or at any place outside the state where the same may be made available,  
15 provided such Person shall have entered into a binding agreement with the City to reimburse  
16 it for all costs and expenses incurred by it in order to have such examination, inspection or  
17 audit made in such place.

18           (d) For the purpose of ascertaining the correctness of a return, or for the purpose of  
19 determining the amount of tax due from any Person, the City Finance Director or his or her duly  
20 authorized persons, may conduct investigations concerning any matters covered by this Ordinance;  
21 and may examine any relevant books, papers, records or memoranda of any such Person.

22           **Section 9. Recovery of Unpaid Tax by Action at Law.**

23           (a) The City Finance Director may also treat any such taxes, penalties or interest due and  
24 unpaid as a debt due the City.

1 (b) In case of failure to pay the taxes, or any portion thereof, or any penalty or interest  
2 thereon when due, the City may recover at law the amount of such taxes, penalties and interest in  
3 any court of Lancaster County, Nebraska or of the county wherein the Taxpayer resides or has its  
4 principal place of business having jurisdiction of the amounts sought to be collected.

5 (c) The return of the Taxpayer or the assessment made by the City Finance Director, as  
6 herein provided, shall be prima facie proof of the amount due.

7 (d) The City Attorney may commence an action for the recovery of taxes due under this  
8 Ordinance and this remedy shall be in addition to all other existing remedies, or remedies provided  
9 in this Ordinance.

10 **Section 10. Suspension or Revocation of Licenses for Failure to Pay Tax; Hearing.** If  
11 the Mayor or the Mayor's designee, after holding a hearing, shall find that any Person has willfully  
12 evaded payment or collection and remittance of the tax imposed by this Ordinance, such official may  
13 suspend or revoke any City license, permit or other approval held by such tax evader. Such Person  
14 shall have an opportunity to be heard at such hearing to be held not less than seven (7) days after  
15 notice is given of the time and place of the hearing to be held, addressed to the last known place of  
16 business of such Person. Pending the notice, hearing and finding, any license, permit or other  
17 approval issued by the City to the Person may be temporarily suspended. No suspension or  
18 revocation hereunder shall release or discharge the Person from civil liability for the payment or  
19 collection and remittance of the tax, nor from prosecution for such offense.

20 **Section 11. Sunset Provision.** The occupation tax imposed by this Ordinance shall  
21 terminate and collection of the tax shall cease no later than the earlier of February 28, 2035, or upon  
22 payment in full of all indebtedness issued by the City pursuant to the provisions of Section 18-2124,  
23 Reissue Revised Statutes of Nebraska, for which such occupation tax receipts have been pledged.

24 **Section 12. Conflicts.** All ordinances, resolutions or orders, or parts thereof in conflict with  
25 the provisions of this Ordinance are to the extent of such conflict hereby repealed.

1           **Section 13. Severability.** If any section, paragraph, clause or provision of this Ordinance  
2 shall for any reason be held to be invalid, the invalidity of the remainder hereof shall not be affected  
3 thereby.

4           **Section 14. Headings of Sections Not Controlling.** The headings of sections of this  
5 Ordinance are set forth herein for convenience of reference only and shall not affect the construction  
6 or interpretation of this Ordinance or any section hereof.

7           **Section 15. Effective Date.** Pursuant to Article VII, Section 7 of the City Charter, this  
8 ordinance shall be posted on the official bulletin board of the City, located on the wall across from  
9 the City Clerk’s office at 555 S. 10th Street, in lieu of and in place of newspaper publication with  
10 notice of passage and such posting to be given by publication one time in the official newspaper by  
11 the City Clerk. This ordinance shall take effect and be in force from and after its passage and  
12 publication as herein and in the City Charter provided.

Introduced by:  
\_\_\_\_\_

Approved as to Form & Legality:  
  
\_\_\_\_\_  
City Attorney

Approved this ___ day of _____, 2014:  _____ Mayor
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