



City of Omaha  
Jim Suttle, Mayor

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### Law Department

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**Paul D. Kratz**  
City Attorney

Honorable President

and Members of the City Council,

The attached Ordinance is submitted at the request of Council President Mulligan and Councilmembers Gernandt, Jerram, Festersen, and Gray. The Ordinance imposes an occupation tax on persons engaged in selling tobacco products within Omaha.

Current ordinances and state law require persons who sell tobacco products to obtain a license and pay a state tax. This ordinance recognizes that these tobacco dealers comprise a distinct, regulated, occupation and that they derive economic benefit from their ability to engage in that occupation within the City. The ordinance further recognizes that the sales made by this occupational class have an adverse economic impact on the citizens of Omaha and the City's ability to serve its citizens and improve their lives. This occupation tax will provide additional revenue to offset this negative effect from the sale and use of tobacco products and will provide revenue for other city services.

The ordinance includes a sunset provision requiring the occupation tax to end after ten years.

The administration of this new occupation tax is modeled on the existing administration and collection process for the restaurant tax. Litigation challenging that restaurant tax confirmed the City's ability to measure an occupation by collecting a percentage of the revenue from the occupation's activity.

This occupation tax is authorized by Nebraska law and the revenue raised by the tax is expected to be within the range that can be collected without approval of the voters.

Respectfully submitted:

Thomas O. Mumgaard  
Deputy City Attorney

Amended by CC 115 No. 1280  
of 10-2-12 (te)

ORDINANCE NO. 39472

1 AN ORDINANCE to amend Chapter 12, Article VII, of the Omaha Municipal Code pertaining  
2 to the sale of tobacco products; to amend existing sections and create new sections  
3 imposing an occupation tax on persons engaged in the occupation of selling tobacco  
4 products as a tobacco dealer; to define such businesses; to establish requirements for  
5 collection and payment of the tax; and to provide an effective date hereof.

6 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

7 Section 1. Section 12-135 of the Omaha Municipal Code is hereby amended to read as  
8 follows:

9 **Sec. 12-135. - Findings and intent.**

10 (a) This city council hereby declares that it is the policy of the city to affirm  
11 the scientific evidence that the use of tobacco products is causally connected to many  
12 diseases and is dangerous to human health. It is the determination of this city council that  
13 prior legislation creating criminal penalties for the sale of tobacco products to persons  
14 under the age of 18 has proven to be an ineffectual vehicle in the prevention of sales of  
15 tobacco products to underage persons.

16 (b) This city council further finds that the diseases and health hazards causally  
17 connected to the use of tobacco products adversely affect the economic vitality of the  
18 city, its citizens, and taxpayers in many ways, including lost employment opportunities,  
19 decreased productivity and compensation, and increased expenses for medical care that  
20 take away discretionary spending that generates tax revenue and enhances the quality of  
21 life in the city. Many of these costs are borne by employers and result in reducing the  
22 city's attractiveness to new businesses and new job opportunities for the citizens. These  
23 adverse economic effects are unfairly carried by persons who receive no benefit from the  
24 sale of tobacco products while persons engaged in the sale of tobacco products receive an  
25 economic benefit without contributing a fair share to the costs to the city and its citizens.  
26 It is preferable that persons who engage in the occupation that benefits from the sale and  
27 use of tobacco products should bear a greater proportionate share of the adverse effects  
28 through an occupation tax that makes revenue available to the city for use in increasing  
29 economic and employment opportunities within the city. This determination is made  
30 with due recognition of the just, proper, and equitable distribution of tax burdens within  
31 the City.

32

1 Section 2. Section 12-136 of the Omaha Municipal Code is hereby amended to read as  
2 follows:

3 **Sec. 12-136. - Definitions.**

4 For the purpose of this article, the following terms, phrases, words and their  
5 derivations shall have the meaning given:

6 (1) *Administrator* means the person who is authorized to perform the duties and  
7 responsibilities described herein, and that person shall be either the planning director or  
8 the director's designee, who shall be an employee of the planning department.

9 (2) *Place of business* means a place where tobacco products are sold at retail,  
10 including vending machines.

11 (3) *Responsible person* means any person, firm, association, company,  
12 partnership, or corporation or agent or employee of same who operates a store, stand,  
13 booth, concession or other place at which tobacco sales are made to purchasers. A  
14 responsible person as defined and applied herein must be an individual 18 years or older.

15 (4) *Tobacco dealer* shall mean any person engaging in the retail sale of tobacco  
16 products or keeping of tobacco products for retail sale who is subject to the licensing  
17 requirement of this article and/or the requirements of Neb. Rev. Stat. § 28-1420 through  
18 28-1424 (Reiss. 2008).

19 ~~(5)~~(4)*Tobacco products* shall mean (1) cigarettes, (2) cigars, (3) cheroots, (4)  
20 stogies, (5) periques, (6) granulated, plug cut, crimp cut, ready rubbed, and other smoking  
21 tobacco, (7) snuff, (8) snuff flour, (9) cavendish, (10) plug and twist tobacco, (11) fine  
22 cut and other chewing tobacco, (12) shorts, refuse scraps, clippings, cuttings, and  
23 sweepings of tobacco, (13) any nicotine delivery device providing for the ingestion of  
24 nicotine into the body, and (14) anything containing tobacco or any other kinds and forms  
25 of tobacco, prepared in such manner as to be suitable for either chewing, smoking in a  
26 pipe, chewing and smoking, or inhaling and snorting through the nose.

27 ~~(6)~~(5) *Vending machine* means any device or machine requiring the deposit  
28 of money or other things of value, including any such device or machine activated or  
29 operated by the vendor or by an employee or agent of the vendor.

30 ~~(7)~~(6) *Vendor-assisted access* means access to tobacco, tobacco products, or  
31 other nicotine delivery devices only with the direct assistance of the vendor or a vendor  
32 employee or agent, so that customers do not have direct access to take possession of  
33 tobacco, tobacco products or other nicotine delivery devices without direct assistance  
34 from the vendor or a vendor employee or agent.

1 Section 3. Chapter 12 of the Omaha Municipal Code is hereby amended to include new  
2 sections 12-146 and 12-147 reading as follows:

3 **Sec. 12-146. Tax imposed**

4  
5 (a) The City Council determines that persons engaged in activity as a tobacco  
6 dealer comprise a distinct occupation which is recognized through city and state  
7 regulation and licensing. It is appropriate that a tax be imposed on this occupation class  
8 for the purpose of raising revenue to support and further City activities and services.  
9

10 (b) On and after January 1, 2013, and in each calendar month thereafter, there is  
11 hereby imposed an occupational privilege tax upon each and every person conducting  
12 business as a tobacco dealer within the city for any period of time during a calendar  
13 month. The amount of the tax shall be three percent (3%) of all gross receipts derived  
14 from the sale of tobacco products and any pipe or other device intended for use in  
15 consuming tobacco products. For purposes of calculating this tax, the term “tobacco  
16 products” shall include any items within the definition provided by this article, except  
17 nicotine delivery devices providing for the ingestion of nicotine into the body, and all  
18 other cigarettes or tobacco products, if any, which are subject to the cigarette tax imposed  
19 by Neb. Rev. Stat. 77-2601, et seq. (Reiss. 2009), as amended, or the tax imposed by the  
20 Nebraska Tobacco Products Tax Act, Neb. Rev. Stat. 77-4001, et seq. (Reiss. 2009), as  
21 amended.

22 (c) A tobacco dealer may itemize the tax levied on a bill, receipt, or other  
23 invoice provided to the purchaser but each person engaged in the occupation shall remain  
24 liable for the tax imposed by this article.  
25

26 (d) The tax imposed by this article is for revenue purposes to support the  
27 government of the City and its activities. The levy of the tax under this article is in  
28 addition to all other fees, taxes, excises, and licenses levied and imposed under any  
29 contract or any other provisions of this Code or ordinances of the City and in addition to  
30 any fee, tax, excise, or license imposed by the state. Payment of the tax shall not relieve  
31 the person paying it from paying any other tax now or hereafter imposed, including those  
32 imposed for any business or occupation carried on along with the sale of tobacco  
33 products, unless otherwise provided therein. The occupation tax imposed by this article  
34 shall be cumulative except where otherwise specifically provided.  
35

36 (e) The occupation tax imposed by this section shall terminate on December  
37 31, 2022.  
38

39 **Sec. 12-147. Return and Administration.**  
40

1           (a) Each and every person engaged as a tobacco dealer within the City for any  
2 period of time shall prepare and file with the Director a return for the taxable period and  
3 at the same time pay to the director of the Finance Department (herein referred to as  
4 “Director”) the tax herein imposed. The return shall be on a form prescribed by the  
5 Director and, unless otherwise directed to be paid quarterly, shall be filed on or before the  
6 last day of the month following receipt of any amount used as the measure of this tax.  
7

8           (b) The Director may allow for quarterly reports and payments in lieu of  
9 monthly reports and payments. In addition, a person subject to the tax may apply for and  
10 receive the Director’s written consent to make reports and remittances on a quarterly  
11 basis in lieu of monthly, taking into consideration the amount of tax due and the nature of  
12 the business conducted. Quarterly reports shall be due on the 15<sup>th</sup> day of April, July,  
13 October, and January of each year and shall report the gross receipts and the amount due  
14 for the immediately preceding three (3) calendar months.  
15

16           (c) As reimbursement for the cost of paying the tax, a tobacco dealer may  
17 deduct and withhold from the taxes otherwise due and paid two percent (2%) of the  
18 amount paid to the Director.  
19

20           (d) If any person neglects or refuses to make a return or payment of the taxes  
21 as required by this article, the Director may proceed to collect the tax as provided by law.  
22 In addition, the Director may make an estimate, based upon such information as may be  
23 reasonably available, of the amount of the tax due for the period or periods for which the  
24 taxpayer is delinquent, and, upon the basis of such estimated amount, assess the tax and,  
25 in addition thereto, a penalty equal to ten percent thereof, together with interest on such  
26 delinquent taxes at the rate of one percent per month, or fraction thereof, from the date  
27 when due. The Director shall give the delinquent tobacco dealer written notice of such  
28 estimated taxes, penalty and interest. The estimate shall be an assessment, and such  
29 assessment shall be final and due and payable ten days from the date of service of the  
30 notice; however, within such ten-day period the delinquent tobacco dealer may petition  
31 the Director for a revision or modification of such assessment and shall, within such ten-  
32 day period, furnish the Director the facts and correct figures showing the correct amount  
33 of such taxes. Such petition and the facts and figures submitted shall be submitted in  
34 writing and shall be given under oath. The Director may modify the assessment in  
35 accordance with the facts which he deems correct and give written notice of the adjusted  
36 assessment. All such decisions shall become final upon the expiration of 30 days from  
37 the date of service unless proceedings are commenced within that time for appeal in the  
38 district court of Douglas County, Nebraska, as may be provided by law.  
39

40           (e) The Director is authorized to administer the provisions of this article and  
41 prescribe forms and reasonable rules and regulations for making of returns, for  
42 ascertaining, assessing, and collecting the tax, and for the proper administration and

1 enforcement hereof. The Director shall have power to administer oaths. Duties of the  
2 Director may be performed by any deputy or other person designated by the Director.

3  
4 (f) It shall be the duty of every person subject to the tax imposed by this  
5 article to keep and preserve suitable records and other such books or accounts as may be  
6 necessary to determine the amount of tax for which he is liable hereunder. Records of the  
7 gross revenue by which the tax is measured shall be kept separate and apart from the  
8 records of other sales or receipts in order to facilitate the examination of books and  
9 records as necessary for the collection of this tax. Records shall be kept and preserved  
10 for a period of three years and all such books, invoices and other records shall be open for  
11 examination at any time by the Director at a suitable place within the state.

12  
13 (g) For the purpose of ascertaining the correctness of a return, or for  
14 determining the amount of tax due from any person, the Director may hold investigations  
15 and hearings concerning any matters covered by this article; and may examine any  
16 relevant books, papers, records or memoranda of any such person; and may require the  
17 attendance of such person, or any officer or employee of such person, or of any person  
18 having knowledge thereof; and may take testimony and require proof for his information.

19  
20 (h) Whenever any tobacco dealer sells his place of business or quits engaging  
21 in the sale of tobacco products any tax payable under this article shall become  
22 immediately due and payable and a report shall be made within thirty days.

23  
24 (i) The tax imposed by this article, together with any interest and penalties  
25 and the costs of collection which may be incurred, shall be and, until paid, remain a first  
26 and prior lien, except as otherwise provided by constitution or statute, superior to all  
27 other liens, on all the merchandise, furniture and fixtures, tools and equipment of the  
28 taxpayer within the city, and may be foreclosed by any method allowed by law.

29  
30 (j) The Director may treat any taxes, penalties, or interest due and unpaid as a  
31 debt due the City recoverable as permitted by law. The submitted return or the  
32 assessment made by the Director shall be prima facie proof of the amount due. The  
33 recovery of debts due under this article shall be in addition to all other existing remedies,  
34 or remedies. The Director is authorized to waive, for good cause shown, any penalty  
35 assessed in this article. Any interest imposed in excess of six percent (6%) per annum  
36 shall be deemed a penalty.

37  
38 Section 4. Section 12-135, as heretofore existing, is hereby repealed.

39 Section 5. This ordinance shall be in full force and take effect fifteen days from and after  
40 the date of its passage.

ORDINANCE NO. 39472  
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INTRODUCED BY COUNCILMEMBER

Thomas Mulligan

APPROVED BY:

Jim Sattler 10/9/2012  
MAYOR OF THE CITY OF OMAHA DATE

PASSED OCT - 2 2012 as amended

ATTEST: 5-2 Nays: Thompson, Stothert

Buster Brown 10/9/12  
CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

Thomas J. Paul 10-2-12  
DEPUTY CITY ATTORNEY DATE

ORDINANCE NO. 39472

1280

**AN ORDINANCE** to amend Chapter 12, Article VII, of the Omaha Municipal Code pertaining to the sale of tobacco products; to amend existing sections and create new sections imposing an occupation tax on persons engaged in the occupation of selling tobacco products as a tobacco dealer; to define such businesses; to establish requirements for collection and payment of the tax; and to provide an effective date hereof.

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49 ✓

Passed as amended 5-2  
years: Festerson, Bernardt, Gray,  
Teram, Mulligan,  
Nays: Thompson, Stothert

*E. Brown*  
Motion by Stothert to lay over 5  
4 weeks to 10/10/12. Seconded by  
Thompson lost 2-5

years: Thompson, Stothert,  
Nays: Festerson, Bernardt, Gray,  
Teram, Mulligan

Amendment "A" - read  
Amendment requested by Council  
member Teram to Amendment "A"

Approved - 5-2  
years: Festerson, Bernardt, Gray,

Teram, Mulligan,  
Nays: Thompson, Stothert

Amendment "A" - Approved as  
amended 5-2

years: Festerson, Bernardt, Gray,  
Teram, Mulligan  
Nays: Thompson, Stothert

**PRESENTED TO COUNCIL**

1st Reading SEP 18 2012 - hearing  
9-15-12

Hearing SEP 25 2012 - over to  
public

Final Reading OCT - 2 2012

Ordinance read  
Amendment requested by Council  
member Stothert - withdrawn  
approve 10-5 2-5

years: Thompson, Stothert **BUSTER BROWN**  
Nays: Festerson, Bernardt, City Clerk  
Gray, Teram, Mulligan

**PUBLICATIONS**

**PUBLICATION OF HEARING**

Date \_\_\_\_\_

**PUBLICATION OF ORDINANCE**

Date \_\_\_\_\_