

ORDINANCE NO. 22- _____

**AN ORDINANCE
IMPOSING A BUSINESS DISTRICT RETAILERS' OCCUPATION TAX
AND BUSINESS DISTRICT SERVICE OCCUPATION TAX
IN THE CITY OF NAPERVILLE, DUPAGE COUNTY, ILLINOIS
FOR THE HEINEN BUSINESS DISTRICT**

RECITALS

1. **WHEREAS**, the City of Naperville ("City"), is a home rule municipality in accordance with Article VII Section 6(a) of the Constitution of the State of Illinois of 1970, and is enacting this Ordinance pursuant to its home rule authority and the Illinois Business District Redevelopment Act 65 ILCS 5/11-74.3-1, *et seq.* (the "Act"); and
2. **WHEREAS**, Section 11-74.3-1(1) of the Act allows a municipality to determine that it is essential to the economic and social welfare of the municipality that business districts be developed, redeveloped, improved, maintained, and revitalized, that jobs and opportunity for employment be created within the municipality, and that, if blighting conditions are present, blighting conditions be eradicated by assuring opportunities for development or redevelopment, encouraging private investment, and attracting sound and stable business and commercial growth; and
3. **WHEREAS**, on September 20, 2022 the Mayor and City Council ("Corporate Authorities") approved an Ordinance 22-115 proposing the designation of a Business District in the City of Naperville, DuPage County, Illinois, and scheduled a public hearing (the "Public Hearing") for October 4, 2022 for the a proposed business district (to wit: the "Heinen Business District" or "District") to determine whether it should later be approved, whether the proposed business district should be designated as a business district pursuant to the Act, as required by 65 ILCS 5/11-74.3-2(a), and whether a "blighted area" finding and determination should be made with regard to the proposed business district pursuant to the Act; and
4. **WHEREAS**, on October 4, 2022, the Corporate Authorities opened, conducted, and concluded a Public Hearing with respect to the proposed Business District Plan for the Heinen Business District pursuant to proper public notice duly published on September 21, 2022 and September 23, 2022, in a newspaper of general circulation with the City in conformance with the Act and directed staff to prepare an ordinance to approve the Business District Plan and establish the Heinen Business District along with another ordinance to set forth the percentage of tax to be imposed; and

5. **WHEREAS**, on December 6, 2022, the Corporate Authorities approved Ordinance 22-_____ and established the designation of the proposed Business District, approved the City of Naperville Heinen Business District Plan (“BD Plan”), made the requisite finding of “blight” as required by the Act, and, found that it was in the best interests of the City that the Heinen Business District be designated as a “Business District” pursuant to the terms of the Act, specifically finding that:
- (i) there were no submissions of alternate proposals or bids for any proposed conveyance, lease, mortgage or other disposition by the City of land or rights in land owned by the City and located within the proposed Heinen Business District; and
 - (ii) the District is a “blighted area” as presented the BD Plan in relation thereto; and
 - (iii) all interested persons were given an opportunity to be heard in relation to the designation of the District as a business district, the approval of the BD Plan in relation thereto, and the “blighted area” finding and determination in relation thereto, and no interested persons sought to be heard in relation thereto; and
 - (iv) all persons desiring to submit written objections were given an opportunity to do so and to be heard on said objections; and
 - (v) the Corporate Authorities heard and determined all protests and objections; and
 - (vi) the District on the whole has not been subject to growth and development through investment by private enterprises and would not reasonably be anticipated to be developed or redeveloped without the adoption of the BD Plan, as set forth in the BD Plan; and
 - (vii) the BD Plan conforms to the Comprehensive Plan of the City; and
- all as required by the Act; and
6. **WHEREAS**, the District is generally bounded by Pembroke Park to the south, Pembroke Road to the west, Olesen Drive to the east, and E Chicago Avenue to the north. A legal description of the territory, list of permanent index numbers of parcels, and address ranges of property included in the District are set forth in **Exhibit A** attached hereto and made part hereof; and
7. **WHEREAS**, pursuant to the Act, municipalities that have approved a business district development or redevelopment plan and have elected to impose a tax by ordinance may impose a Business District Retailers’ Occupation and Service Occupation Tax on sales of general merchandise within the business district. The

tax may not be imposed on sales of items that will be titled or registered with an agency of state government or on qualifying food, drugs, and medical appliances; and

8. **WHEREAS**, the Corporate Authorities having previously approved the designation of the District and BD Plan under the Act now desire to authorize the imposition within the District of certain taxes (the “Business District Retailers’ Occupation Tax” and “Business District Service Occupation Tax” as defined below, collectively the “Taxes”) pursuant to the Act, and to make such other findings as necessary pursuant to the Act; and
9. **WHEREAS**, the Taxes imposed pursuant to Section 2 below shall be for the exclusive and sole purpose of addressing stormwater improvements for District. The revenue generated from the taxes imposed may not be used for any other improvement, service, or activity.
10. **WHEREAS**, the Taxes shall be in full force and effect until the earlier of (i) payment of all Obligations in accordance with the BD Plan and the Agreement, or (ii) the Dissolution Date (as such term is defined in the Act) of the Business District, at which time, but in no event more than 23 years after the date of adoption of this Ordinance imposing taxes pursuant to subsection ten (10) of Section 11-74.3-3 of the Act, the City shall adopt an ordinance immediately rescinding the taxes imposed pursuant to subsection ten (10) of Section 11-74.3-3 of the Act.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL

OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in

exercise of its home rule authority that:

SECTION 1: Recitals incorporated. The foregoing Recitals are hereby incorporated in this Section 1 as though fully set forth herein.

SECTION 2: Tax imposed. A tax is hereby imposed upon all persons engaged in the business of selling tangible personal property, other than an item of tangible personal property titled or registered with an agency of this State's government, at retail within the Heinen Business District; at the rate of 0.5% of the gross receipts from such sales made in the course of such business while this Ordinance is in effect; and a tax is hereby imposed upon all persons engaged within the Heinen Business District; in the business

of making sales of service, at the rate of 0.5% of the selling price of all tangible personal property transferred by such serviceman as an incident to a sale of service. This “Business District Retailers’ Occupation Tax” and this “Business District Service Occupation Tax” may not be imposed on tangible personal property taxed at the rate of 1.0% under the Retailers' Occupation Tax Act and the Service Occupation Tax Act.

The imposition of these Business District Taxes is in accordance with and subject to the provisions of the Act subsections (b) and (c), respectively, of Section 11-74.3-6 of the Illinois Municipal Code (65 ILCS 5/11-74.3-6).

SECTION 3: Illinois Department of Revenue to Administer. The Taxes hereby imposed, and all civil penalties that may be assessed as an incident thereto, shall be collected and enforced by the Department of Revenue of the State of Illinois. The Department of Revenue shall have full power to administer and enforce the provisions of this Ordinance.

SECTION 4: Clerk to file Ordinance with Illinois Department of Revenue. The City Clerk is hereby directed to file a certified copy of this Ordinance with the Illinois Department of Revenue on or before April 1, 2023.

SECTION 5: Effective date. This Ordinance shall take effect on (i) the first day of July next following the adoption and filing of this Ordinance with the Department of Revenue, if filed on or before the preceding April 1, 2023.

SECTION 6: Repeal of conflicting provisions. All ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of the conflict, expressly repealed on the effective date of this Ordinance.

SECTION 7: Severability. If any provision of this Ordinance, or the application of

any provision of this Ordinance, is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this Ordinance or their application if they can be given effect without the unconstitutional or invalid provision or its application. Each unconstitutional or invalid provision is severable, unless otherwise provided by this Ordinance.

SECTION 8: City Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED by the Mayor and City Council of the City of Naperville, DuPage and Will Counties, Illinois, this 6th day of December 2022.

AYES:

NAYS:

ABSENT:

Pam Gallahue, Ph.D.
City Clerk

APPROVED this 7th day of December 2022.

Steve Chirico
Mayor

ATTESTED to and PUBLISHED by me this 7th
day of December 2022 in
pamphlet form.

Pam Gallahue, Ph.D.
City Clerk

Exhibit A
**Legal Description, Permanent Tax Index Numbers
and Street Location (Common Addresses) for the
Heinen Business District**

Legal Description of Proposed Area

Lot 1 in Eagle Crest Plaza Subdivision, being a Subdivision in the South 1/2 of Section 17, Township 38 North, Range 10, East of the Third Principal Meridian, according to the Plat thereof recorded July 16, 1974 as document R74-36120, in DuPage County, Illinois.

Common Address

1256 through 1290 East Chicago Avenue, Naperville, IL.

Approximate Size: 7.35 acres

PINs of Proposed Area

08-17-303-022