

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

1 AN ORDINANCE amending Title 3 of the Lincoln Municipal Code relating to  
2 Revenue and Finance by adding a new Chapter 3.28 to provide for the levy of a hotel occupation tax;  
3 to establish definitions; to provide for administration, collections, returns, delinquencies and  
4 recovery of unpaid amounts related to the tax; to determine how tax revenue will be used; and to  
5 provide a sunset provision for the tax.

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

7 Section 1. That Title 3 of the Lincoln Municipal Code be amended by adding a new  
8 section numbered 3.28.010 to read as follows:

9 **3.28.010 Purpose.**

10 Pursuant to the authority of Nebraska Revised Statute R.R.S. 1943, Section 15-203, the City  
11 Council finds, determines and declares that it is appropriate that a tax be imposed on all hotels as  
12 herein defined for the purpose of raising revenues. The foregoing determination is made with due  
13 consideration of business in the City and the relation of business to the municipal welfare, together  
14 with relation thereof, to expenditures required by the City, and with consideration of just, proper and  
15 equitable distribution of the tax burdens within the City and other properly associated matters.

16 Section 2. That Title 3 of the Lincoln Municipal Code be amended by adding a new  
17 section numbered 3.28.020 to read as follows:

18 **3.28.020 Definitions.**

19 As used in this chapter, the following words and phrases shall have the meanings ascribed  
20 to them in this section, except where the context clearly indicates or requires a different meaning:

21 (a) **Hotel** shall mean any facility, offering at least three rooms for occupancy, in which  
22 the public may, for consideration, obtain sleeping accommodations in any space ordinarily used for

1 accommodations. The term shall include hotels, motels, tourist hotels, campgrounds, courts, lodging  
2 houses, inns and nonprofit hotels; but “hotel” shall not be defined so as to include hospitals,  
3 sanitariums, nursing homes, chronic care centers, or dormitories or facilities operated by an  
4 educational institution and regularly used to house students.

5 (b) **Occupied Room** shall mean any space ordinarily used for sleeping accommodations  
6 and for which any occupant has, for consideration, obtained the use or possession, or the right to use  
7 or possess, for a period not to exceed thirty (30) contiguous days. The term shall include camping  
8 space, trailer space or recreational vehicle space. The term does not include a function room such  
9 as a ballroom, banquet room, reception room, or meeting room, provided it is not used as temporary  
10 sleeping accommodations, nor for complimentary or other sleeping accommodations for which no  
11 consideration is charged or for sleeping accommodations for which the consideration is paid by a  
12 person not subject to the sales and use tax imposed by the Nebraska Revenue Act of 1967.

13 (c) **Person** shall mean any natural person, individual, partnership, association,  
14 organization or corporation of any kind or character engaging in the business of operating a hotel.

15 (d) **Taxpayer** shall mean any person engaged in the hotel business herein defined who  
16 is required to pay the tax herein imposed.

17 (e) **Total consideration charged for occupancy** shall mean any and all charges that are  
18 subject to the lodging tax under the Nebraska Visitors Developments Act, Neb. Rev. Stat. § 81-1245  
19 et seq.

20 Section 3. That Title 3 of the Lincoln Municipal Code be amended by adding a new  
21 section numbered 3.28.030 to read as follows:

22 **3.28.030 Tax Imposed; Collection of Tax.**

23 After January 1, 2011, each person engaged in the business of operating a hotel in the City  
24 shall pay an occupation tax in the amount of four percent (4%) of the total consideration charged  
25 for occupancy per occupied room per night.

1           The tax imposed by this chapter may be shown as an add-on to the charge for occupancy of  
2 the rooms and shall be collectible at the time the lodging is furnished, regardless of when the charge  
3 for the occupancy is paid. The hotel operator shall remain responsible for payment of all taxes  
4 imposed, whether or not the taxes are actually collected from the guests.

5           Section 4. That Title 3 of the Lincoln Municipal Code be amended by adding a new  
6 section numbered 3.28.040 to read as follows:

7 **3.28.040        Return.**

8           Each and every person engaged in the business of operating a hotel within the City for the  
9 calendar month beginning January 2011, and for each and every calendar month thereafter, shall  
10 prepare and file, on or before the 25th of the month following on a form prescribed and furnished  
11 by the City Finance Director, a return for the taxable calendar month, and at the same time pay to  
12 the City the tax herein imposed. The return shall be verified and sworn to by the officer in charge  
13 of the business. The return shall be considered filed on time if mailed in an envelope properly  
14 addressed to the City Finance Director, postage prepaid and postmarked before midnight of the 25th  
15 of the appropriate month.

16           Section 5. That Title 3 of the Lincoln Municipal Code be amended by adding a new  
17 section numbered 3.28.050 to read as follows:

18 **3.28.050        Tax Cumulative.**

19           (a)   The levy of the tax under this chapter is in addition to all other fees, taxes, excises  
20 and licenses levied and imposed under any contract or any other provisions of this Code or  
21 ordinances of the City, in addition to any fee, tax, excise or license imposed by the state.

22           (b)   Payment of the tax imposed by this chapter shall not relieve the person paying the  
23 same from payment of any other tax now or hereafter imposed by contract or ordinance or by this  
24 Code, including those imposed for any business or occupation he or she may carry on, unless so

1 provided therein. The occupational taxes imposed by this chapter shall be cumulative except where  
2 otherwise specifically provided.

3 Section 6. That Title 3 of the Lincoln Municipal Code be amended by adding a new  
4 section numbered 3.28.060 to read as follows:

5 **3.28.060 Use of Revenue.**

6 The four percent (4%) occupation tax imposed by this chapter, less any administrative  
7 expenses, shall be used to fund any expenditures that the Joint Public Agency, created to manage  
8 and operate the City arena, is lawfully authorized to make.

9 Section 7. That Title 3 of the Lincoln Municipal Code be amended by adding a new  
10 section numbered 3.28.070 to read as follows:

11 **3.28.070 Failure to File Return; Delinquency; Assessment by City Finance Director.**

12 (a) If any person neglects or refuses to file a return or make payment of the taxes as  
13 required by this chapter, the City Finance Director shall make an estimate, based upon such  
14 information as may be reasonably available, of the amount of taxes due for the period or periods for  
15 which the taxpayer is delinquent, and upon the basis of such estimated amount, compute and assess  
16 in addition thereto a penalty equal to ten percent (10%) thereof, together with interest on such  
17 delinquent taxes, at the rate of one percent (1%) per month, or fraction thereof from the date when  
18 due. Any such interest due may be compounded quarterly.

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

21 (c) Such estimate shall thereupon become an assessment, and such assessment shall be  
22 final and due and payable from the taxpayer to the City Finance Director ten (10) days from the date  
23 of service of the notice or the date of mailing by certified mail; however, within such ten (10) day  
24 period the delinquent taxpayer may petition the City Finance Director for a revision or modification

1 of such assessment and shall, within such ten-day period, furnish the City Finance Director the facts  
2 and correct figures showing the correct amount of such taxes.

3 (d) Such petition shall be in writing, and the facts and figures submitted shall be  
4 submitted in writing and shall be given under oath of the taxpayer.

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

10 Section 8. That Title 3 of the Lincoln Municipal Code be amended by adding a new  
11 section numbered 3.28.080 to read as follows:

12 **3.28.080 Administration of Chapter; Miscellaneous Provisions.**

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

17 (b) All notices required to be given to the taxpayer under the provisions of this chapter  
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 revenue by which this tax is measured shall be kept  
24 separate and apart from the records of other sales or receipts in order to facilitate the examination  
25 of 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  
2 of four (4) years all such books, invoices and other records, which shall be open for examination at  
3 any time by the City Finance Director or his or her duly designated persons. If such person keeps  
4 or maintains his books, invoices, accounts or other records, or any thereof, outside of the state, upon  
5 demand of the City Finance Director he/she shall make the same available at a suitable place within  
6 the City, to be designated by the City Finance Director, for examination, inspection and audit by the  
7 City Finance Director or his or her duly authorized persons. The taxpayer shall reimburse the City  
8 for the reasonable costs of the examination, inspection and audit if the City Finance Director  
9 determines that the taxpayer paid ninety percent or less of the tax owing for the period of the  
10 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 so kept  
13 or maintained by such person outside of the state at the place where same are kept or maintained or  
14 at any place outside the state where the same may be made available, provided such person shall  
15 have entered into a binding agreement with the City to reimburse it for all costs and expenses  
16 incurred by it in order to have such examination, inspection or audit made in such place.

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

21           Section 9. That Title 3 of the Lincoln Municipal Code be amended by adding a new  
22 section numbered 3.28.090 to read as follows:

23 **3.28.090       Recovery of Unpaid Tax by Action at Law.**

24           (a)     The City Finance Director may also treat any such taxes, penalties or interest due and  
25 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 **chapter and this remedy shall be in addition to all other existing remedies, or remedies provided in**  
9 **this chapter.**

10           Section 10. That Title 3 of the Lincoln Municipal Code be amended by adding a  
11 new section numbered 3.28.100 to read as follows:

12 **3.28.100 Suspension or Revocation of Licenses for Failure to Pay Tax; Hearing.**

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

22           Section 11. That Title 3 of the Lincoln Municipal Code be amended by adding a  
23 new section numbered 3.28.110 to read as follows:

1 **3.28.110** **Sunset Provision.**

2 The occupation tax imposed by this chapter shall terminate and collection of the tax shall  
3 cease upon the Joint Public Agency, created to manage and operate the City arena, meeting all of  
4 its financing obligations related to the costs and other lawful expenditures of the arena and  
5 associated improvements.

6 Section 12. That Sections 1 through 11 of this ordinance shall be codified in the  
7 Lincoln Municipal Code as Chapter 3.28 entitled “Hotel Occupation Tax.”

8 Section 13. That this ordinance shall take effect and be in force from and after its  
9 passage and publication in one issue of a daily or weekly newspaper of general circulation in the  
10 City according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_ day of \_\_\_\_\_, 2010:  
\_\_\_\_\_  
Mayor