

ORDINANCE NO. _____

1 AN ORDINANCE amending Chapters 3.26, 3.28, and 3.30 of the Lincoln
2 Municipal Code relating to Car Rental, Hotel, and Restaurant Occupation Taxes, respectively, by
3 amending Sections 3.26.030, 3.28.030 and 3.30.030 to clarify the imposition of such taxes shall
4 begin on January 1, 2011; amending Sections 3.26.070, 3.28.070, and 3.30.070 to clarify the
5 penalty and interest assessed for non-payment or delinquent payment of such taxes; amending
6 Section 3.30.020 to amend the definitions of “drinking place” and “restaurant” to remove the
7 condition that the tax is imposed only on establishments open to the public; amending Section
8 3.30.040 to delete the provision that a person subject to the restaurant occupation tax may, upon
9 written application to and with the written consent of the City Finance Director, make reports
10 and remittances on a monthly basis; and repealing Sections 3.26.030, 3.26.070, 3.28.030,
11 3.28.070, 3.30.020, 3.30.030, 3.30.040, and 3.30.070 of the Lincoln Municipal Code as hitherto
12 existing.

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

14 Section 1. That Section 3.26.030 of the Lincoln Municipal Code be amended to
15 read as follows:

16 **3.26.030 Tax Imposed; Collection of Tax.**

17 ~~After~~ Beginning January 1, 2011, each person engaged in a car rental business shall pay
18 an occupation tax in the amount of four percent (4%) of the actual rental rates charged for each
19 vehicle rental contract made by that person within the city.

20 The tax imposed by this chapter may be shown as an add-on to the charge for renting a
21 vehicle and shall be collectible at the time the vehicle is furnished, regardless of when the charge

1 for the vehicle is paid. The car rental business operator shall remain responsible for payment of
2 all taxes imposed, whether or not the taxes are actually collected from the customers.

3 Section 2. That Section 3.26.070 of the Lincoln Municipal Code be amended to
4 read as follows:

5 **3.26.070 Failure to File Return; Delinquency; Assessment by City Finance Director.**

6 (a) If any person neglects or refuses to file a return or make payment of the taxes as
7 required by this chapter, the City Finance Director shall make an estimate, based upon such
8 information as may be reasonably available, of the amount of taxes due for the period or periods
9 for which the taxpayer is delinquent, and upon the basis of such estimated amount, compute and
10 assess in addition thereto ~~(1) a penalty equal to ten percent (10%) thereof, together with interest~~
11 on such delinquent taxes, at the rate of one percent (1%) per month, or fraction thereof from the
12 date when due and, when applicable, (2) a penalty equal to ten percent (10%) thereof. Any such
13 interest due may be compounded quarterly.

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

17 (c) Such estimate shall thereupon become an assessment, and such assessment shall
18 be final and due and payable from the taxpayer to the City Finance Director ten (10) days from
19 the date of service of the notice or the date of mailing by certified mail; however, within such ten
20 (10) day period the delinquent taxpayer may petition the City Finance Director for a revision or
21 modification of such assessment and shall, within such ten-day period, furnish the City Finance
22 Director the facts and correct figures showing the correct amount of such taxes.

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

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

1 Section 3. That Section 3.28.030 of the Lincoln Municipal Code be amended to
2 read as follows:

3 **3.28.030 Tax Imposed; Collection of Tax.**

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

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

11 Section 4. That Section 3.28.070 of the Lincoln Municipal Code be amended to
12 read as follows:

13 **3.28.070 Failure to File Return; Delinquency; Assessment by City Finance Director.**

14 (a) If any person neglects or refuses to file a return or make payment of the taxes as
15 required by this chapter, the City Finance Director shall make an estimate, based upon such
16 information as may be reasonably available, of the amount of taxes due for the period or periods
17 for which the taxpayer is delinquent, and upon the basis of such estimated amount, compute and
18 assess in addition thereto ~~(1) a penalty equal to ten percent (10%) thereof, together with interest~~
19 on such delinquent taxes, at the rate of one percent (1%) per month, or fraction thereof from the
20 date when due and, when applicable, (2) a penalty equal to ten percent (10%) thereof. Any such
21 interest due may be compounded quarterly.

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

25 (c) Such estimate shall thereupon become an assessment, and such assessment shall
26 be final and due and payable from the taxpayer to the City Finance Director ten (10) days from
27 the date of service of the notice or the date of mailing by certified mail; however, within such ten

1 (10) day period the delinquent taxpayer may petition the City Finance Director for a revision or
2 modification of such assessment and shall, within such ten-day period, furnish the City Finance
3 Director the facts and correct figures showing the correct amount of such taxes.

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

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

11 Section 5. That Section 3.26.070 of the Lincoln Municipal Code be amended to
12 read as follows:

13 **3.30.020 Definitions.**

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

17 (a) **Drinking place** shall mean any establishment offering ~~the public~~ on premises
18 consumption of food and/or beverages, alcoholic or non-alcoholic. Such businesses include, but
19 are not limited to, bars, taverns, night clubs, dance halls, restaurants, race tracks, and arenas.

20 (b) **Food** shall include all edible refreshment or nourishment, whether solid,
21 semi-solid, liquid or otherwise.

22 (c) **Person** shall mean any natural person, individual, partnership, association,
23 organization or corporation of any kind or character engaging in the business of operating a
24 drinking place or restaurant.

25 (d) **Restaurant** shall mean any place that is kept, used, maintained, or advertised, ~~or~~
26 ~~held out to the public~~ as a place where food is prepared and sold for immediate consumption on
27 the premises. It shall include the sales of food in a restaurant with facilities for consumption on
28 the premises even if the food and beverages are not actually consumed on the premises,
29 including the receipts from prepared “take out,” “drive through,” or “to go” food, and receipts
30 from the sale of food and beverages as a concession at a race track or arena. Restaurant includes,

1 but is not limited to, cafes, grills, bistros, delicatessens, coffee shops, bakeries, lunch counters,
2 sandwich stands, temporary stands, grocery stores, convenience stores, and supermarkets. The
3 term includes a space or area within a hotel, motel, bed and breakfast, boarding house, hospital,
4 office building or reception hall where food is sold or consumed if a separate charge is made for
5 such food.

6 (e) **Taxpayer** shall mean any person engaged in the business of operating a drinking
7 place or restaurant as herein defined who is required to pay the tax herein imposed.

8 Section 6. That Section 3.30.030 of the Lincoln Municipal Code be amended to
9 read as follows:

10 **3.30.030 Tax Imposed; Collection of Tax.**

11 (a) ~~On or after~~Beginning January 1, 2011 and in each calendar month thereafter there
12 is hereby imposed a restaurant and drinking place occupational tax upon each and every person
13 operating a drinking place or restaurant business within the City for any period of time during a
14 calendar month. The amount of such tax shall be two percent (2%) of all gross receipts for each
15 calendar month derived from the drinking places and restaurant businesses subject to this tax.
16 Such tax shall be imposed on the gross receipts resulting from the sales of food within the
17 corporate limits of the City which are subject to the sales and use tax imposed by Section
18 3.16.010 of the Lincoln Municipal Code.

19 (b) The person engaged in operating a drinking place or restaurant business may
20 itemize the tax levied on a bill, receipt, or other invoice to the purchaser, but each person
21 engaged in such business shall remain liable for the tax imposed by this chapter.

22 Section 7. That Section 3.30.040 of the Lincoln Municipal Code be amended to
23 read as follows:

1 **3.30.040 Return.**

2 (a) Each and every person engaged in the business of operating a drinking place or
3 restaurant business within the City for the calendar month beginning January 2011, and for each
4 and every three-month period thereafter, shall prepare and file, on or before the 25th day of
5 April, July, October, and January of each year on a form prescribed and furnished by the City
6 Finance Director, a return for the taxable three-month period, and at the same time pay to the
7 City the tax herein imposed. The return shall be verified and sworn to by the officer in charge of
8 the business. The return shall be considered filed on time if mailed in an envelope properly
9 addressed to the City Finance Director, postage prepaid and postmarked before midnight of the
10 25th of the appropriate month.

11 (b) The City Finance Director may, by regulation, specify that taxpayers may make
12 reports and remittances monthly in lieu of quarterly. ~~A person subject to the tax imposed herein~~
13 ~~may, upon written application to and with the written consent of the City Finance Director, make~~
14 ~~reports and remittances on a monthly basis.~~ Such monthly reports shall be due on the 25th day of
15 each month and shall report the gross receipts and the amount due for such month immediately
16 preceding the month in which the reports and remittances are required. Whenever a taxpayer
17 makes reports and remittances monthly, such taxpayer shall be allowed an occupation tax credit
18 of two percent (2%) of the amount due.

19 Section 8. That Section 3.30.070 of the Lincoln Municipal Code be amended to
20 read as follows:

21 **3.30.070 Failure to File Return; Delinquency; Assessment by City Finance Director.**

22 (a) If any person neglects or refuses to file a return or make payment of the taxes as
23 required by this chapter, the City Finance Director shall make an estimate, based upon such
24 information as may be reasonably available, of the amount of taxes due for the period or periods
25 for which the taxpayer is delinquent, and upon the basis of such estimated amount, compute and
26 assess in addition thereto (1) ~~a penalty equal to ten percent (10%) thereof, together with interest~~
27 on such delinquent taxes, at the rate of one percent (1%) per month, or fraction thereof from the

1 date when due and, when applicable, (2) a penalty equal to ten percent (10%) thereof. Any such
2 interest due may be compounded quarterly.

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

6 (c) Such estimate shall thereupon become an assessment, and such assessment shall
7 be final and due and payable from the taxpayer to the City Finance Director ten (10) days from
8 the date of service of the notice or the date of mailing by certified mail; however, within such ten
9 (10) day period the delinquent taxpayer may petition the City Finance Director for a revision or
10 modification of such assessment and shall, within such ten-day period, furnish the City Finance
11 Director the facts and correct figures showing the correct amount of such taxes.

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

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

19 Section 9. That Sections 3.26.030, 3.26.070, 3.28.030, 3.28.070, 3.30.020,
20 3.30.030, 3.30.040, and 3.30.070 of the Lincoln Municipal Code as hitherto existing be and the
21 same are hereby repealed.

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

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ____ day of _____, 2010:

Mayor