

ORDINANCE NO. _____

1 AN ORDINANCE amending Title 3 of the Lincoln Municipal Code relating to
2 Revenue and Finance by adding a new Chapter 3.30 to provide for the levy of a restaurant
3 occupation tax; to establish definitions; to provide for administration, collections, returns,
4 delinquencies and recovery of unpaid amounts related to the tax; to determine how tax revenue will
5 be used; and to 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 3.30.010 to read as follows:

9 **3.30.010 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 drinking
12 places, businesses and restaurants, as herein defined, for the purpose of raising revenues. The
13 foregoing determination is made with due consideration of business in the City and the relation of
14 business to the municipal welfare, together with relation thereof to expenditures required by the
15 City, and with consideration of just, proper and equitable distribution of the tax burdens within the
16 City and other properly associated matters.

17 Section 2. That Title 3 of the Lincoln Municipal Code be amended by adding a new
18 section numbered 3.30.020 to read as follows:

19 **3.30.020 Definitions.**

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

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

4 (b) Food shall include all edible refreshment or nourishment, whether solid, semi-solid,
5 liquid or otherwise.

6 (c) Person shall mean any natural person, individual, partnership, association, organiza-
7 tion or corporation of any kind or character engaging in the business of operating a drinking place
8 or restaurant.

9 (d) Restaurant shall mean any place that is kept, used, maintained, advertised, or held
10 out to the public as a place where food is prepared and sold for immediate consumption on the
11 premises. It shall include the sales of food in a restaurant with facilities for consumption on the
12 premises even if the food and beverages are not actually consumed on the premises, including the
13 receipts from prepared “take out,” “drive through,” or “to go” food, and receipts from the sale of
14 food and beverages as a concession at a race track or arena. Restaurant includes, but is not limited
15 to, cafes, grills, bistros, delicatessens, coffee shops, bakeries, lunch counters, sandwich stands,
16 temporary stands, grocery stores, convenience stores, and supermarkets. The term includes a space
17 or area within a hotel, motel, bed and breakfast, boarding house, hospital, office building or
18 reception hall where food is sold or consumed if a separate charge is made for such food.

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

21 Section 3. That Title 3 of the Lincoln Municipal Code be amended by adding a new
22 section numbered 3.30.030 to read as follows:

23 **3.30.030 Tax Imposed; Collection of Tax.**

24 (a) On or after January 1, 2011 and in each calendar month thereafter there is hereby
25 imposed a restaurant and drinking place occupational tax upon each and every person operating a
26 drinking place or restaurant business within the City for any period of time during a calendar month.

1 The amount of such tax shall be two percent (2%) of all gross receipts for each calendar month
2 derived from the drinking places and restaurant businesses subject to this tax. Such tax shall be
3 imposed on the gross receipts resulting from the sales of food within the corporate limits of the City
4 which are subject to the sales and use tax imposed by Section 3.16.010 of the Lincoln Municipal
5 Code.

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

9 Section 4. That Title 3 of the Lincoln Municipal Code be amended by adding a new
10 section numbered 3.30.040 to read as follows:

11 **3.30.040 Return.**

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

21 (b) The City Finance Director may, by regulation, specify that taxpayers may make
22 reports and remittances monthly in lieu of quarterly. A person subject to the tax imposed herein may,
23 upon written application to and with the written consent of the City Finance Director, make reports
24 and remittances on a monthly basis. Such monthly reports shall be due on the 25th day of each
25 month and shall report the gross receipts and the amount due for such month immediately preceding

1 the month in which the reports and remittances are required. Whenever a taxpayer makes reports
2 and remittances monthly, such taxpayer shall be allowed an occupation tax credit of two percent
3 (2%) of the amount due.

4 Section 5. That Title 3 of the Lincoln Municipal Code be amended by adding a new
5 section numbered 3.30.050 to read as follows:

6 **3.30.050 Tax Cumulative.**

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

10 (b) Payment of the tax imposed by this chapter shall not relieve the person paying the
11 same from payment of any other tax now or hereafter imposed by contract or ordinance or by this
12 Code, including those imposed for any business or occupation he or she may carry on, unless so
13 provided therein. The occupational taxes imposed by this chapter shall be cumulative except where
14 otherwise specifically provided.

15 Section 6. That Title 3 of the Lincoln Municipal Code be amended by adding a new
16 section numbered 3.30.060 to read as follows:

17 **3.30.060 Use of Revenue.**

18 The two percent (2%) occupation tax imposed by this chapter, less any administrative
19 expenses, shall be used to fund any expenditures that the Joint Public Agency, created to manage
20 and operate the City arena, is lawfully authorized to make.

21 Section 7. That Title 3 of the Lincoln Municipal Code be amended by adding a new
22 section numbered 3.30.070 to read as follows:

23 **3.30.070 Failure to File Return; Delinquency; Assessment by City Finance Director.**

24 (a) If any person neglects or refuses to file a return or make payment of the taxes as
25 required by this chapter, the City Finance Director shall make an estimate, based upon such
26 information as may be reasonably available, of the amount of taxes due for the period or periods for

1 which the taxpayer is delinquent, and upon the basis of such estimated amount, compute and assess
2 in addition thereto a penalty equal to ten percent (10%) thereof, together with interest on such
3 delinquent taxes, at the rate of one percent (1%) per month, or fraction thereof from the date when
4 due. Any such interest due may be compounded quarterly.

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

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

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

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

20 Section 8. That Title 3 of the Lincoln Municipal Code be amended by adding a new
21 section numbered 3.30.080 to read as follows:

22 **3.30.080 Administration of Chapter; Miscellaneous Provisions.**

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

1 **(b) All notices required to be given to the taxpayer under the provisions of this chapter**
2 **shall be in writing. Notices shall be mailed by registered or certified mail, postage prepaid, return**
3 **receipt requested, to the taxpayer at his or her last known address.**

4 **(c) It shall be the duty of every taxpayer to keep and preserve suitable records and other**
5 **books or accounts as may be necessary to determine the amount of tax for which he/she is liable**
6 **hereunder.**

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

10 **(2) It shall be the duty of every such taxpayer to keep and preserve for a period**
11 **of four (4) years all such books, invoices and other records, which shall be open for examination at**
12 **any time by the City Finance Director or his or her duly designated persons. If such person keeps**
13 **or maintains his books, invoices, accounts or other records, or any thereof, outside of the state, upon**
14 **demand of the City Finance Director he/she shall make the same available at a suitable place within**
15 **the City, to be designated by the City Finance Director, for examination, inspection and audit by the**
16 **City Finance Director or his or her duly authorized persons. The taxpayer shall reimburse the City**
17 **for the reasonable costs of the examination, inspection and audit if the City Finance Director**
18 **determines that the taxpayer paid ninety percent or less of the tax owing for the period of the**
19 **examination.**

20 **(3) The City Finance Director, in his or her discretion, may make, permit or cause**
21 **to be made the examination, inspection or audit of books, invoices, accounts or other records so kept**
22 **or maintained by such person outside of the state at the place where same are kept or maintained or**
23 **at any place outside the state where the same may be made available, provided such person shall**
24 **have entered into a binding agreement with the City to reimburse it for all costs and expenses**
25 **incurred by it in order to have such examination, inspection or audit made in such place.**

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

5 Section 9. That Title 3 of the Lincoln Municipal Code be amended by adding a new
6 section numbered 3.30.090 to read as follows:

7 **3.30.090 Recovery of Unpaid Tax by Action at Law.**

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

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

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

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

19 Section 10. That Title 3 of the Lincoln Municipal Code be amended by adding a
20 new section numbered 3.30.100 to read as follows:

21 **3.30.100 Suspension or Revocation of Licenses for Failure to Pay Tax; Hearing.**

22 If the Mayor or the Mayor's designee, after holding a hearing, shall find that any person has
23 willfully evaded payment or collection and remittance of the tax imposed by this chapter, such
24 official may suspend or revoke any City license, permit or other approval held by such tax evader.
25 Said person shall have an opportunity to be heard at such hearing to be held not less than seven (7)
26 days after notice is given of the time and place of the hearing to be held, addressed to the last known

1 place of business of such person. Pending the notice, hearing and finding, any license, permit or
2 other approval issued by the City to the person may be temporarily suspended. No suspension or
3 revocation hereunder shall release or discharge the person from civil liability for the payment or
4 collection and remittance of the tax, nor from prosecution for such offense.

5 Section 11. That Title 3 of the Lincoln Municipal Code be amended by adding a
6 new section numbered 3.30.110 to read as follows:

7 **3.30.110 Sunset Provision.**

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

12 Section 12. That Sections 1 through 11 of this ordinance shall be codified in the
13 Lincoln Municipal Code as Chapter 3.30 entitled “Restaurant Occupation Tax.”

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

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2010:

Mayor