

ORDINANCE NO. 19481

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 term  
3 includes a space or area within a hotel, motel, bed and breakfast, boarding house, hospital, office  
4 building or reception hall where food is sold or consumed if a separate charge is made for such food.

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

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

9 **3.30.030 Tax Imposed; Collection of Tax.**

10 (a) ~~On or after~~Beginning January 1, 2011 at 4:00 a.m., and in each calendar month  
11 thereafter there is hereby imposed a restaurant and drinking place occupational tax upon each and  
12 every person operating a drinking place or restaurant business within the City for any period of time  
13 during a calendar month. The amount of such tax shall be two percent (2%) of all gross receipts for  
14 each calendar month derived from the drinking places and restaurant businesses subject to this tax.  
15 Such tax shall be imposed on the gross receipts resulting from the sales of food within the corporate  
16 limits of the City which are subject to the sales and use tax imposed by Section 3.16.010 of the Lincoln  
17 Municipal Code.

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

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

AMENDED 12/13/10

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.

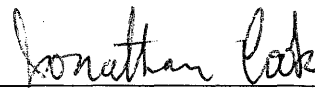
14 (e) The City Finance Director may then modify such assessment in accordance with  
15 the facts which he or she deems correct. Such adjusted assessment shall be made in writing, and  
16 notice thereof shall be mailed to the taxpayer within ten (10) days; and all such decisions shall  
17 become final 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.


See further Council Proceedings on  
next page.

Introduced by:



AYES: Camp, Carroll, Cook,  
Emery, Hornung, Snyder, Spatz;  
NAYS: None.

Approved as to Form & Legality:

  
City Attorney

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

\_\_\_\_\_  
Mayor

10-150.act

12/13/10 Council Proceedings:

COOK Moved to amend Bill No. 10-150 on page 5, line 11, after "January 1, 2011" insert at 4:00 a.m.

Seconded by Carroll & carried by the following vote: AYES: Camp, Carroll, Cook, Emery, Hornung, Snyder, Spatz, NAYS: None.