

Public Hearing: December 9, 2013

## **F A C T S H E E T**

**TITLE:** Repealing LMC Chapters 5.14, 5.22, 5.30, 5.32, 5.46, and 5.52

**SPONSOR:** City Clerk

**OPPONENTS:**

**OTHER DEPARTMENTS AFFECTED:**

**STAFF RECOMMENDATION:**

**APPLICANT:** City Clerk

### **REASON FOR LEGISLATION:**

AN ORDINANCE repealing Lincoln Municipal Code Chapter 5.14, Bowling Centers; Chapter 5.22, Fire Sales and Going-out-of-business Sales; Chapter 5.30, Miniature Golf; Chapter 5.32, Carnivals; Chapter 5.46, Skating Rinks; and Chapter 5.52, Teenage Clubs. as these chapters are obsolete or rarely used.

## **D I S C U S S I O N**

SEE ATTACHED

**POLICY OR PROGRAM CHANGE:**

**COST OF TOTAL PROJECT:**

**SOURCE OF FUNDS:**

**CITY:**

**NON CITY:**

**BENEFIT COST:**

**FACT SHEET PREPARED BY:** Rod Confer, City Attorney

**REVIEWED BY:**

## MEMORANDUM

To: Denise Pearce  
From: Rod Confer  
Re: Clerk's suggestions to repeal LMC licensing chapters  
Date: October 25, 2013

This memo is written to examine suggestions from City Clerk Teresa Meyer that certain chapters of the Lincoln Municipal Code ("LMC") that contain licensing requirements are rarely used and could be repealed. The Mayor asked whether any detrimental effects might redound from repealing any of these provisions.

In an August 15 e-mail Teresa stated that the following licensing provisions are rarely used and could probably be repealed:

1. Carnivals: Ch. 5.32
2. Bowling Centers: Ch. 5.14
3. Skating Rinks: Ch. 5.46
4. Fire Sales / Going Out of Business Sales: Ch. 5.22
5. Miniature Golf: Ch. 5.30
6. Teenage Clubs: Ch. 5.52

**Carnivals: Ch. 5.32:** This chapter was passed in 1992 and requires the carnival operator to apply for a permit and pay a \$5 fee. The Clerk's office gets about two applications a year. Upon issuing the permit the clerk notifies the Health Department so it can enforce the noise ordinance in § 8.24.090. There is no provision in the ordinance for inspecting safety of the rides, although I believe the City has that authority under its general police powers. Under the ordinance the Health Director can suspend the carnival if the noise ordinance is violated, until the problem is corrected. The City's noise ordinance gives the Health Director that authority independently of the carnival ordinance, however. The ordinance also prohibits carnivals in residential neighborhoods. If I am reading the zoning use ordinances in LMC Ch. 27.06 correctly, the zoning laws wouldn't permit carnivals in these neighborhoods even without the carnival ordinance.

It therefore appears that the only benefit provided by the carnivals chapter is the payment of permit fees of \$10 annually, and notification of the Health Department by the Clerk when a permit is issued. The other regulations in the ordinance are unnecessary because they are also authorized in other sections of the Code.

**Bowling Centers: Ch. 5.46:** This chapter and the chapters regulating skating rinks and miniature golf all originated in Ordinance 3489, passed in 1936. The Clerk issues two of bowling center permits every year. Public bowling alleys certified by the American Bowling Congress or a similar body are required to obtain annual permits, for a fee of \$5. They are also required to pay an occupation tax of \$5 for each "land" used, which should probably read "lane." The ordinance seems to make this a one-time fee rather than an annual fee. Applications are provided to the Health Department, Fire and Rescue and Building & Safety to determine whether the facility is in compliance with applicable ordinances and to the Police Department to determine fitness of the applicant.

The Bowling Center chapter also includes several provisions for Teen night events. A permit fee of \$5 is required for each teen night. These provisions require attendees to be at least 13 years old and set

closing time at midnight, although the Council can waive that requirement. The ordinance otherwise requires the bowling center to obey the law, which it would be required to do without the bowling center ordinance.

I don't really see any value to these ordinances. The teen night ordinance might set some useful requirements for that type of event, but I am not aware of any bowling center having teen nights.

**Skating Rinks: Ch. 5.46:** These sections require a \$50 permit fee and the Clerk issues two a year. The application is referred to the Health Department, LF&R and Building and Safety to determine whether the facility complies with those ordinances. The ordinance makes it unlawful to sell liquor in a skating rink.

These ordinances don't appear to have much value, except for prohibiting liquor sales at skating rinks.

**Fire Sales / Going Out of Business Sales: Ch. 5.22:** This chapter makes it illegal to falsely represent that a sale is a fire sale or going out of business sale and requires a permit of \$15. Teresa didn't recall issuing any permits under this section but when J. Lee Booksellers went out of business in about 2009 I recall they did obtain a permit.

The fee is for the purpose of defraying the cost of determining whether the sale is legitimate. The applicant is required to file an inventory and a description of the fire or other circumstances.

These ordinances would seem to have little value. It is doubtful that someone intent on defrauding the public would apply for a permit, or if they did that the ordinance would dissuade or inhibit them from carrying out the sale under false pretenses. I doubt that the City would follow up to insure that the sale is in fact premised on a fire or going out of business as claimed.

**Miniature Golf: Ch. 5.30:** This ordinance requires a \$5 annual fee to run a miniature golf course. The Clerk issues two permits a year. A \$5 annual occupation tax is also levied and a \$5 construction permit is also required from Building and Safety to construct the course. The ordinance requires a closing time of 11:30 p.m., prohibits location within 300 feet of a church, requires toilets, and otherwise just contains provisions requiring the golf course to follow other ordinances (no fighting, no drunkenness, no gambling, etc.)

Repeal of this ordinance would not make much difference to the City.

**Teenage Clubs: Ch. 5.52:** These ordinances were originally enacted in 1965. Teresa could not recall any permits ever being issued. Attendance at the club is limited to club members, and there is a minimum age of 16. Persons over 21 are not allowed unless they are chaperons or sponsors. The University, schools, churches, lodges and fraternal societies, labor unions, veterans' organizations and clubs that maintain living quarters are exempted. Permits cost \$25 annually. The application for permit must include fairly extensive information, and the application is forwarded to the Health Department, LF&R, Building & Safety and the Police Department to insure the proposed location is safe and suitable and the applicant and those associated with operation are of good character. Most of the restrictions on the club operations are covered by other ordinances (no alcohol sales, no tobacco sales, etc.)

This ordinance appears to be unnecessary, since no permits have been granted within recent memory; this was apparently an idea that never took off. In addition, most of the restrictions appear to be covered by other ordinances anyway.