City Council Introduction: **Monday**, August 6, 2012
Public Hearing: **Monday**, August 13, 2012, at **3:00** p.m.

Bill No. 12-99

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 12022,** by the Director of Planning at the request of the Lancaster County Board of Commissioners, to amend Title 27 of the Lincoln Municipal Code related to amusement licenses granted by the Lancaster County Board in the AG Agriculture District.

STAFF RECOMMENDATION: Approval

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 07/25/12
Administrative Action: 07/25/12

RECOMMENDATION: Approval (5-0: Weber, Esseks, Hove, Cornelius and Francis voting 'yes'; Gaylor Baird, Lust, Butcher and Sunderman absent).

FINDINGS OF FACT:

1. This is a request by the Director of Planning on behalf of the Lancaster County Board of Commissioners to amend Section 27.07.030 of the Lincoln Municipal Code to allow any use approved by the Lancaster County Board of Commissioners by the granting of an amusement license for such use as a permitted conditional use in the AG Agriculture District, provided said conditional use is limited to one event per calendar year

2. The staff recommendation of approval is based upon the "Analysis" as set forth on p.2-3, concluding that the proposed amendment to the City Zoning Ordinance will recognize the County Board's authority to grant amusement licenses in the AG Agriculture District in the City's zoning jurisdiction, provided that the amusement license is limited to one event per year. The staff presentation is found on p.5.

3. Testimony in support is found on p.6.

4. There was no testimony in opposition.

5. On July 25, 2012, the Planning Commission agreed with the staff recommendation and voted 5-0 to recommend approval (Gaylor Baird, Lust, Butcher and Sunderman absent).

FACTSHEET PREPARED BY: Jean L. Preister **DATE**: July 30, 2012

REVIEWED BY: Marvin Krout, Director of Planning **DATE**: July 30, 2012

REFERENCE NUMBER: FS\CC\2012\CZ12022 Text

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for July 25, 2012, PLANNING COMMISSION MEETING

PROJECT #: Change of Zone No. 12022 - Conditional Use, Amusement License

PROPOSAL: Text amendment to include approved amusement license uses as an approved conditional use in the AG Agricultural District. Amending 27.07.030 Agricultural District, Permitted Conditional Uses to add uses approved through the amusement license process by the Lancaster County Board of Commissioners, provided those uses are limited to one event per year.

CONCLUSION: This amendment will recognize in the zoning resolution the County Board's authority to grant amusement licenses, as long as they are limited to one event.

RECOMMENDATION: Approval

HISTORY:

Amusement Licenses may be granted by the County Board of Commissioners according to Nebraska Revised Statute 23-813 which states "No person, association, firm, or corporation shall conduct or operate any roadhouse, dance hall, carnival, show, amusement park, or other place of public amusement, outside the limits of any incorporated city or village in the State of Nebraska, without first having obtained a license from the county board of the county in which the same is to be operated."

In Lancaster County, Amusement License applications and renewals are forwarded to various County agencies for review and comment. Public hearings are advertized at least two weeks in advance. The Amusement License does not supercede zoning regulations which still must be followed.

The Lancaster County Zoning Resolution was amended in May, 2005, to include similar language (CZ #05027). This change was made in order to clarify the role of amusement licenses and to allow for infrequent uses in the County that did not conform with zoning of the AG Agricultural district.

ANALYSIS:

1. Amusement License applications have been required since the 1930s. The licenses are required for roadhouses, dance halls, carnivals, shows, amusement parks, or other places of public amusement, outside of any incorporated city or village. A roadhouse is further defined as "an inn or any other place where the public is invited to eat, drink, dance or participate in any combination of any two or more of these activities."

2. These licenses have been used to allow music festivals, carnivals, fund raisers and other public gatherings in the past. License applications are reviewed for health and sanitation, traffic, parking, seating, ingress and egress, and zoning.

3. This change was initiated by a request from the County Board after an issue with a recent Amusement License application for a swap meet fund raiser to be held in the three mile extraterritorial jurisdiction on property zoned AG Agricultural. This property had in the past

been granted an Amusement License for the same use, however the Building and Safety Department had been under the understanding that what was being held was a farm auction, which would be allowed as accessory to a farm.

4. The Amusement License process is separate from the zoning process. The granting of an amusement license does not allow the holder to operate outside what is allowed by zoning. In the AG Agricultural district, where the primary uses are agricultural, residential, public and utility in nature, uses such as outdoor public performances, carnivals, fairs and other public gatherings would not be allowed under the zoning ordinance.

5. Amusement License applications are reviewed by various County agencies including the Lancaster County Sheriff, Lincoln and Lancaster County Health Department, County Engineer, Building and Safety, County Attorney, and Planning Department, and, when appropriate, by the Lincoln Department of Public Works and Utilities and the Nebraska Department of Roads. The applications are reviewed as to health, safety and sanitation issues, traffic control, parking, ingress and egress, number of people, seating, any structures to be erected, and compliance with zoning. The County Board as part of their approval, can require any reasonable standards in order to ensure the safety and general order of participants and the public.

6. A public hearing is set as part of the application review process. This public hearing is advertised for two consecutive weeks. In addition, the applicant is required to notify property owners within 500 feet of the perimeter of the permit area regarding the nature of the event, dates and times of the event and the date of the public hearing. The applicant is also responsible for contacting the local fire protection district, or State Fire Marshal when that is not possible, to review fire safety issues.

7. This change would limit Amusement Licenses as conditional uses to a single event per year. An “event” typically means a single day, but could be a few, meaning 3 to 5, consecutive days. An “event” is not intended to include non-consecutive days or activities that occur over weeks or months.

8. Uses which can be allowed through the Amusement License process, but which do not conform to the zoning regulations, are not currently allowed. This change would allow the use which the County Board approves as part of an Amusement License as long as no more than one event in a calendar year is approved. The Amusement License review process will provide event and site specific review of each application.

Proposed Language:

27.07 AG Agricultural

27.07.030 Permitted Conditional Uses

Notwithstanding any provisions to the contrary above, any use that the Lancaster County Board of Commissioners has approved by the granting of an amusement license for such use shall be allowed as a permitted conditional use in the AG Agricultural District, provided said conditional use is limited to one event per calendar year.

Prepared by:

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July 12, 2012

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CHANGE OF ZONE NO. 12022

PUBLIC HEARING BEFORE PLANNING COMMISSION: July 25, 2012

Members present: Esseks, Hove, Weber, Francis and Cornelius; Gaylor Baird, Lust, Sunderman and Butcher absent.

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff presentation: **Steve Henrichsen of Planning staff** advised that this application comes from the Lancaster County Board, which is charged with reviewing amusement licenses that are outside any incorporated community in Lancaster County. Typically, it is a once-a-year type of event. The amusement license application is sent to county agencies for review to determine any concerns about traffic, water, sanitation, etc. The events might include, for example, a running race, fund raiser, etc.

Henrichsen explained that the amusement license event that brought about this text amendment was a swap meet for a church being held on another site, thus requiring conformance with the zoning. Previously, these amusement licenses had not been routed to Building & Safety or Planning for review, and they have recently begun to do so. This is one where the applicant was in the city's zoning jurisdiction and there is nothing in the city regulations to allow this kind of event. That is the reason for this text amendment, which allows one event per calendar year, with consecutive days if the event is more than one day. In other words, one event is meant to be an event that has a number of days and is generally a short period. The staff believes that it is appropriate to make this provision in the city zoning jurisdiction. It is not the primary use on the property – it is just for a once-a-year type of event.

Francis asked for clarification that this came about because the city didn't have something that mirrored the county's regulations. Who is responsible in the 3-mile area? Henrichsen stated that because it is outside of the city limits, the amusement license is still the responsibility of the County Board. The other part is conformance with the zoning. When inside the 3-mile but outside of the city limits, the County grants the amusement license, but the City Council has to grant the zoning authority. This text amendment will take care of that.

Weber did not understand that it would be limited to one event per year. Henrichsen clarified that there is the opportunity to get a multiple amount of amusement licenses, but this text amendment is saying that in terms of zoning, you would only be allowed one per year on your property when the event is not related to the property. For example, a church might go forward and hold several fund raisers on their property - each one requiring an amusement license. Since the fund raiser is accessory to the church, it conforms with the zoning. The application in question is primarily a farm doing a fund-raiser to help a church, but it is not accessory to their use as a farm or private residence. Thus they have to have this text amendment and it will limit them to one event per year.

Support

1. Janice Hauser, 11505 N. 14th Street, testified in support. She has received an amusement license permit for three years for the church to hold a swap meet at her property on 40 acres. She estimated that around 200-250 people come to her home. She has two driveways. The property is flagged and signed. No one is allowed to park on North 14th Street. She has never had any incidents. She is a member of Raymond United Methodist Church and has promoted this event.

2. Dan Warren, 1411 N. 37th Street, testified in support. He is interested in sponsoring mountain bike race events on the south side of Saltillo Road. He spent $1200 on insurance to get the amusement license, only to find out that it fell within dual jurisdiction and the County did not have the authority to grant the amusement license because he was in violation of the city zoning. He would like to continue with the mountain bike race and do an event that supports the Lincoln bike community.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: July 25, 2012

Weber moved approval, seconded by Francis.

Francis suggested that this is a housekeeping matter to make sure the jurisdiction is equal between the city and county.

Motion for approval carried 5-0: Esseks, Hove, Weber, Francis and Cornelius voting 'yes'; Gaylor Baird, Lust, Sunderman and Butcher absent. This is a recommendation to the City Council.