

070338

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

District

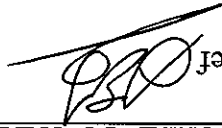
- Resolution or Ordinance (Blue)
- Recommendations of Boards, Commissions & Committees (Green)
- Other Business (Pink)

TO : PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE : May 14, 2007 **BOFT** June 7, 2007

SUBJECT: AN ORDINANCE AMENDING TITLE 11, CHAPTER 110 OF THE LOMBARD VILLAGE CODE IN REGARD TO CARNIVALS

SUBMITTED BY:  George E. Seagraves, Fire Chief

BACKGROUND/POLICY IMPLICATIONS:

The Ordinance amends the Temporary Event provisions of the Village Code (Sections 110.40 through 110.49) to make it clear that Carnivals are regulated by Section 110.60 of the Village Code, and not the Temporary Event provisions of the Village Code. In addition, the Ordinance makes it clear that a "circus" would be regulated under Section 110.60 of the Village Code relative to Carnivals.


Fiscal Impact/Funding Source: N/A

Review (as necessary):

Finance Director W. T. Lichter Date 5/22/07
Village Manager _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda distribution.



TO: William T. Lichter, Village Manager
FROM: George E. Seagraves 

DATE: May 14, 2007

RE: AN ORDINANCE AMENDING TITLE 11, CHAPTER 110 OF THE LOMBARD VILLAGE CODE IN REGARD TO CARNIVALS

Len Flood, Finance Director, Tom Bayer, Village Attorney, and I have met to review the permitting of carnivals and circuses. The attached ordinance from Attorney Bayer brings clarity in that carnivals and circuses are regulated by Section 110.60 of the Village Code and not the Temporary Event provisions of the Village Code. Section 110.40 is for Temporary Events such as sales events.

In addition to this basic clean-up I wanted to bring to the attention of the Board of Trustees the insurance and indemnification provisions of Sections 110.60 (D) (1) and (2) since, from time to time, carnival operators have raised concerns about those requirements. This is not new language and is an essential part of the carnival/circus permitting process.

The insurance required is \$1,000,000 of combined single limit per occurrence for Comprehensive General Liability and \$1,000,000 for automobile liability for vehicle operations relative to the carnival or fair. The insurance shall list the Village, and its officers, agents, and employees as additional insured and as certificate holder.

This has been problematic with some carnivals and often is resolved at the last minute but it is always resolved with no major problems.

The indemnification holds harmless, the Village, its officers, agents, and employees from any and all claims directly or indirectly arising from the permit granted. The Village shall have the right to defense of counsel of our choice. The applicant shall be solely liable for all cost of such defense.

The indemnification requirement was a significant issue for the carnival operator at last year's Sacred Heart German Festival although ultimately an accommodation was made. Despite carnival operator concerns about indemnifying the Village, staff recommends that the requirement remain unchanged because it provides important protection to the Village since an accident at a carnival could result in a significant liability. The Village could be sued because we allowed the carnival.

The Village would want to insure that it has able representation and that the costs to protect the Village would be borne by the applicant.

If the Board of Trustees has no issue with the insurance and indemnification requirements in Section 110.60 (D) (1) and (2) no further action is needed.

Based upon the Board's action, the applicants known to us will be notified so that they can inform their carnival operators. They will be informed that these requirements shall be met or the carnival will not be allowed to open. Additionally, they were informed that the carnival/circus clean-up amendment would be on the June 7, 2007 Agenda.



AN ORDINANCE AMENDING TITLE 11, CHAPTER 110 OF THE LOMBARD VILLAGE CODE IN REGARD TO CARNIVALS

ORDINANCE NO. _____

BE IT ORDAINED by the President and Board of Trustees of the Village

of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That Title 11, Chapter 110, Section 110.40 of the Lombard

Village Code is amended as follows:

1. The definitions of "CARNIVAL" and "CIRCUS," as contained therein, are hereby deleted.

2. The following shall be added to the definition of "TEMPORARY EVENT," at the end thereof:

" , other than a Carnival, as defined in and regulated by Section 110.60 of this Code."

3. The words "carnival" and "circus" are hereby deleted from the definition of "TEMPORARY OUTDOOR EVENT."

SECTION 2: That Title 11, Chapter 110, Section 110.49 of the Lombard

Village Code is amended by deleting subsection (C).

SECTION 3: That Title 11, Chapter 110, Section 110.99 of the Lombard

Village Code is amended by revising the reference therein to, "110.40," to read,

"Sections 110.40 through 110.49 of this Code."

SECTION 4: That Title 11, Chapter 110, Section 110.60(A) of the

Lombard Village Code is amended as follows:

1. The following definition shall be added thereto:

"Circus: An enterprise involving arenas, tents or other structures temporarily set up for sports, spectacles, variety shows, wild animal acts and/or performance by jugglers and clowns."

SECTION 5: That this Ordinance shall be in full force and effect from and

after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this ____ day of _____, 2007.

First reading waived by action of the Board of Trustees this ____ day of

_____, 2007.

Passed on second reading this ____ day of _____, 2007, pursuant

to a roll call vote as follows:

AYES:

NAYS:

ABSENT:

APPROVED by me this ____ day of _____, 2007.

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk

Published by me in pamphlet form this ____ day of _____, 2007.

Brigitte O'Brien, Village Clerk

2. The following shall be added to the definition of "Carnival," at the end thereof:

" , and/or a Circus."

3. The following shall be added to the definition of "Fair," at the end thereof:

" , and/or a Circus is operated."

AN ORDINANCE AMENDING TITLE 11, CHAPTER 110 OF THE LOMBARD VILLAGE CODE IN REGARD TO CARNIVALS, AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS AS FOLLOWS:

SECTION 1. That Title 11, Chapter 110 of the Lombard Village Code is hereby amended by adding a new Section 110.60 thereto, which shall read in its entirety as follows:

§110.60 CARNIVALS, AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS

The following regulations shall be applicable to Carnivals, Amusement Rides and Amusement Attractions:

(A) DEFINITIONS: As used in this Section, the following words and terms shall have the meaning as set forth below:

Amusement Attraction: An enclosed building or structure, including electrical equipment which is an integral part of the building or structure, through which people walk without the aid of any moving device, and which provides amusement, thrills or excitement at a Fair or Carnival.

Amusement Ride: Any mechanized device or combination of devices, including electrical equipment which is an integral part of the device or devices, which carries passengers along, around, over a fixed or restricted course for the primary purpose of giving its passengers amusement, pleasure, thrills or excitement, including, but not limited to, the following devices:

- (1) Any ski lift, rope tow or other device used to transport passengers;
- (2) Any dry slide over twenty (20) feet in height, alpine slide or toboggan slide;
- (3) Any tram, open car or combination of open car(s) or wagon(s) pulled by a tractor or other motorized device, which is not licensed by the Secretary of State, which may, but does not necessarily follow, a fixed or restricted course, and is used primarily for the purpose of giving its passengers amusement, pleasure, thrills or excitement, and for which an individual fee is charged or a donation accepted, with the exception of hayrides.

Carnival: An enterprise that offers amusement or entertainment to the public by means of one or more Amusement Attractions or Amusement Rides.

Fair: An enterprise principally devoted to the exhibition of products of agriculture or industry in connection with which Amusement Rides or Amusement Attractions are operated.

Operator: A person, or the agent of a person, who owns or controls or has the duty to control the operation of any Amusement Ride or an Amusement Attraction at a Carnival or Fair.

Local Not-For-Profit Organization: An organization, institution or its chapter, or governmental entity that has had a fixed place of operations within the Village for at least two (2) years and conducts business on a not-for-profit basis with no personal profit to anyone as a result of the operation.

Midway Arcade Games and Attractions: Such amusements, attractions, games, apparatus and attention getting devices as generally associated with and permitted as adjunct to a Carnival or Fair.

Food and Beverage Vending: Any and all facilities and equipment which vend and / or distribute food and / or beverage for public consumption.

Transient Living Quarters: Mobile homes, campers and other vehicles or trailers specifically designed with solid walls and roofs to provide independent personal sleeping and sanitation facilities.

Local Sponsoring Applicant: A local entity, including businesses, within the boundary of the Village that sponsor a Carnival or Fair in consort with the timing of a special or community wide event.

(B) PERMIT REQUIRED

(1) No Amusement Ride, Amusement Attraction, Midway Arcade, Games and Attractions, and / or Food and Beverage Vending shall be operated in conjunction with a Carnival or Fair in the Village, without first having been issued a permit from the State of Illinois' Director of Labor or the Du Page County Health Department, as this case may be, and without receiving a Village Carnival / Fair Permit from the Fire Chief or his/her designee, for the operation of such Carnival or Fair.

(2) No permit issued hereunder may be renewed, and no permit issued hereunder may be issued for a period of more than ten (10) calendar days, unless authorized by the President and Board of Trustees.

(3) Any permit issued hereunder may be revoked by the Fire Chief or his/her designee upon any finding by the Police Chief, Fire Marshal, Building Inspector, Electrical Inspector, Fire Inspector or other authorized Village Official that any provisions of this Section have been violated by the permittee or that any other ordinance of the Village or statute of the State of Illinois has been violated by the permittee. Upon the finding of any such violation, the Fire Chief or his/her designee shall cause written notice of the revocation, stating the reason therefore, to be served upon the permittee, his authorized agent, or the Operator of such Carnival or Fair. Immediately upon receipt of a written notice of revocation, the permittee shall cease all operations prohibited by said notice until the violation is corrected.

(4) Any permittee whose permit has been revoked or whose Amusement Attraction or Amusement Ride has been terminated may, upon receipt of written notice of revocation or termination, appeal for an immediate hearing with the Village Manager. If no such appeal is taken, as provided herein, the action of the Fire Chief or his/her designee is final.

(C) APPLICATION

(1) Application for such Carnival / Fair Permit shall be made to the Fire Chief or his/her designee, in writing, on a form provided by the Village. Said application shall contain pertinent Local Sponsoring Applicant and Operator information, the location of the Carnival or Fair, and the dates & hours of operation. The Local Sponsoring Applicant and Operator of such Carnival or Fair shall, as part of said application document, stipulate that no individual employees, independent contractors and/or employees of independent contractors is a "Child Sex Offender" as described by the State of Illinois Statute 720 ILCS 5/11-9.3[c](1) and as may similarly be applicable to and by other law enforcement jurisdictions throughout the United States. The Local Sponsoring Applicant(s) and / or Operator(s) may provide the Village of Lombard - Police Department's designee with a comprehensive list of all employees, independent contractors, employees of independent contractors and / or volunteer workers. Such list to incorporate the full name, date of birth, social security number, and permanent mailing address of each individual. The purpose of said list shall be to determine the background(s) and explicitly prohibit such individual(s) who is (are) "Child Sex Offender" as described by the State of Illinois Statutes 720 ILCS

5/11-9.3(c)(1) and as may similarly be applicable to and by other law enforcement jurisdictions throughout the United States; and, therein prohibit their employment and use at said Carnival(s) or Fair(s). It is herein stated to the Local Sponsoring Applicant(s) and Operator(s) of Carnivals and Fairs within the Village of Lombard that the State of Illinois Statutes 720 ILCS 5/11 -9 (et al) in pertinent part prohibits registered sex offenders from "...knowingly operating, managing, being employed by, volunteering at, being associated with, or knowingly being present at any facility providing programs or services...directed towards persons under the age of eighteen (18)...."; and, therefore Local Sponsoring Applicant(s) and Operator(s) compliance to this Statute is being emphasized and shall be rigidly enforced by the Village of Lombard.

(2) No application shall be accepted without a Local Sponsoring Applicant as herein defined and listed on said application form.

(D) GENERAL REQUIREMENTS

(1) **Insurance:** The applicant and Operator shall furnish evidence, with the application, that a public liability and insurance policy shall be in force and effect at the time such Carnival or Fair is to be open to or maintained for public access. Said insurance policy shall maintain limits no less than set forth below and shall list the Village and its officers, agents and employees as additional insured and as certificate holder:

(a) Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury or death, personal injury and property damage.

(b) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage on any Operator owned and / or hired and / or non-owned motor vehicles engaged in operations relative to the Carnival or Fair.

The policies are to contain, or be endorsed to contain, the following provisions for General Liability and Automobile Liability Coverages:

(c) The Village, its officers, agents and employees are to be covered as insured with respects; liability arising out of activities performed by or on behalf of the applicant; products and service of the applicant; premises owned, leased or used by the applicant; or automobiles owned, leased, hired or borrowed by the applicant. The coverage shall contain no special limitations on the scope of protection afforded to the Village, its officers, agents, or employees.

(d) The applicant's insurance coverage shall be primary insurance with respect to the Village, its officers, agents or employees. Any insurance or self-insurance maintained by the Village, its officers, agents or employees shall be excess of applicants insurance and shall not contribute with it.

(e) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the Village, or its officers, agents or employees.

(f) Coverage shall state that applicant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) **Indemnification:** The applicant and Operator shall agree upon receipt of a permit issued pursuant to this Section to indemnify, defend and hold harmless the Village, its officers, agents and employees, from any and all claims, lawsuits or other liabilities directly or indirectly arising from, in consequence of or in reference to the permit granted. In connection with any such claims, lawsuits or liabilities, the Village, and its officers, agents and employees shall have the right to defense of counsel of their choice. The applicant shall be solely liable for all costs of such defense and for all expenses, fees, judgments, settlements and all other costs arising out of such claims, lawsuits or liabilities.

(3) **Bond:** The applicant or Operator, prior to the issuance of any permit hereunder, shall deposit with the Village Treasurer a cash bond in the sum of \$500.00 for an event of seven (7) days or less, or \$1,000.00 for an event of more than seven (7) days, to ensure that no damage will be done to the street, sewers, trees or adjoining property and that no dirt, paper, litter or other debris will be permitted to remain upon the streets, adjoining property, or the site of the Carnival or Fair. Such cash bond shall be returned to the applicant upon confirmation by the Fire Chief that all conditions of this Section shall have been complied with upon the termination and vacation of the Carnival or Fair.

(4) **Child Sex Offender Prohibition:** No permit required by this Section 110.50 (C) shall be issued to an Operator in the event that a check of the employees, independent contractors and employees of independent contractors listed by the Operator, as required by Section 110.50 (C) above, reveals that one (1) or more of said listed individuals is a "child sex offender" as defined by 720 ILCS 5/11-9.3(c)(1).

(E) INSPECTION REQUIRED

(1) An Amusement Ride or Amusement Attraction shall be inspected by the Fire Chief or his/her designee, and thereafter may be periodically reinspected throughout the duration of the Carnival or Fair.

(2) If, after inspection, the Carnival or Fair is found to comply with the regulations of this Section, as well as comply with all other applicable Village Codes and Ordinances, the Fire Chief or his/her designee shall issue a permit for the operation of the Carnival or Fair.

(3) If, after inspection, an Amusement Ride or Amusement Attraction is found to be in violation of the rules and standards set forth by the State of Illinois' Carnival and Amusement Rides Safety Act 430 ILCS 85/2-1 et seq., or the currently adopted Village of Lombard Building Codes, including but not limited to the National Electric Code and the Fire Prevention Codes, the Fire Chief or his/her designee may order and post any Amusement Ride or Amusement Attraction with a Stop Operation Order Notice. Operation shall not resume until such violative condition(s) are corrected to comply with such rule(s) and standard(s).

(4) A reinspection of the Amusement Ride or Amusement Attraction, following repair, shall be done within one (1) business day of notification that the repair was made. Only the Fire Chief or his/her designee may remove, deface or cover a Stop Operation Order sticker after it has been applied to any Amusement Ride or Amusement Attraction.

(5) All Midway Arcade Games and Attractions operated in conjunction with the Carnival or Fair shall be subject to inspections as provided for by the Village of Lombard local ordinance(s) and provision(s) of the State of Illinois. The Police Chief or his/her designee(s) shall conduct such inspection(s) to ensure equitable amusement is afforded in the operations of said Midway Arcade Games and Attractions as operated at the Carnival or Fair.

(F) DAILY INSPECTIONS BY THE OPERATOR

- (1) The Amusement Rides and Amusement Attractions shall be inspected and tested on each day they are intended to be used. A trained attendant shall make this inspection and the results of these daily inspections shall be recorded on industry approved forms. Completed inspection forms shall be certified by the Operator and kept on file by the Operator for one (1) calendar year. These inspection records shall be made available to the Fire Chief or his/her designee throughout the duration of the Carnival or Fair.
- (2) The inspection and testing of the Amusement Rides and Amusement Attractions shall include the operation of control devices, speed limiting devices, brakes, anti-roll back dogs and other equipment provided for safety. The Amusement Ride shall be operated through a minimum of one ride sequence when inspected and tested.

(G) FEES

- (1) The applicant, at the time of filing an application, shall pay to the Village Treasurer a fee or fees at the rate of One Hundred Fifty and NO/100 Dollars (\$150.00) for the first fifteen (15) Amusement Rides, Amusement Attractions, Midway Arcade Games and Attractions and/or Food and Beverage Vending locations plus Ten and NO/100 Dollars (\$10.00) for each additional Amusement Ride, Amusement Attraction, Midway Arcade Games and Attractions and/or Food and Beverage Vending locations over fifteen (15), per calendar day during which the Carnival or Fair is to be maintained and operated.
- (2) A Local Not-For-Profit organization as defined herein serving as the Local Sponsoring Applicant relative to the Carnival or Fair shall not be subject to the fees herein stated.
- (3) Following one reinspection, a fee of \$70.00 per item subject to reinspection shall be paid to the Village Treasurer or to the Fire Chief or his/her designee, if the Village Hall is not open. A written receipt shall be provided. A Local Not-For-Profit Organization serving as the Local Sponsoring Applicant shall not be exempt from this reinspection fee. The Operator or said Local Not-For-Profit Organization shall be required to make said payments upon and at the time of such reinspections.

(H) OPERATOR REQUIREMENTS

- No Amusement Ride or Amusement Attraction shall be operated for public use at a Carnival or Fair without an attendant or assistant. The attendant and/or assistant shall be an employee of the Operator or an independent contractor that has been hired by, and is under the control of, the Operator. Additionally:
- (1) All ride attendants or assistants shall be at least sixteen (16) years of age;
- (2) The attendants or assistants shall operate no more than one (1) Amusement Ride or Amusement Attraction at any given time, even if automatic timing devices are used to control the time cycle of the Amusement Ride or Amusement Attraction;
- (3) The attendant or assistant shall be trained in the proper use and operation of the Amusement Ride or Amusement Attraction as provided for in ASTM F770-82 (1982) and ASTM F853-83 (1983);
- (4) The attendant or assistant shall ensure that all passenger safety devices are in place around patrons before starting operations of the Amusement Ride or Amusement Attraction;
- (5) The attendant or assistant shall be within arms length of the controls which operate the Amusement Ride or Amusement Attraction when the Ride or Amusement Attraction is in use;
- (6) The attendant or assistant shall not operate any Amusement Ride or Amusement Attraction while under the influence of alcohol or any drug or combination thereof;

- (7) The attendant or assistant shall ensure that no one is permitted on an Amusement Ride or Amusement Attraction while carrying any food, beverage, package, lighted cigarette or such other items that can endanger the riders or spectators;
- (8) No Carnival or Fair shall have operating hours other than in compliance with the following: a public starting time of noon; a ticket selling time beyond 10:30 P.M.; and a public ending time beyond 11:00 P.M.; except for Fridays, Saturdays and days preceding recognized State Holidays on which the ticket selling time and public ending time may be extended one (1) hour; and
- (9) The Operator and the Local Sponsoring Applicant shall not permit Transient Living Quarters on the Carnival or Fair site or adjacent property under the control of the Local Sponsoring Applicant. Additionally, no overnight stays of any kind shall be allowed on the Carnival or Fair site or on adjacent property under the control of the Local Sponsoring Applicant.
- (10) Operator and/or the Local Sponsoring Applicant shall provide restrooms for the Carnival or Fair. The requirement for restrooms may be met by fixed site facilities available to workers and the public or portable restroom facilities (porta-potties) and hand wash stations associated with the event as long as they are open to all attending or working at the Carnival or Fair. Restroom facilities and hand wash stations for Carnivals and Fairs shall be provided based upon the following schedule:

Number of Amusement Rides & Attractions	Male Restroom Facilities	Female Restroom Facilities	Hand wash Stations
1 - 10	1	1	1
11 - 15	2	2	2
16 - 20	2	3	2
21 - 30	3	4	3

Over 30 - one (1) additional male restroom facility, one (1) additional female restroom facility and one (1) additional hand wash station for every five (5) additional Amusement Rides and Amusement Attractions or portion thereof over thirty (30) total. One of each of the restroom facilities has to be handicapped accessible.

- (11) The Operator and/or the Local Sponsoring Applicant of a Carnival or Fair shall provide an adequate number of refuse containers. The refuse containers shall be emptied at appropriate intervals to prevent overflowing. The Operator and/or Local Sponsoring Applicant shall make arrangements with the Village's authorized waste hauler to dispose of the waste.
- (12) The Operator or the Local Sponsoring Applicant of a Carnival or Fair shall be required to provide security personnel in adequate numbers to ensure the safety of all patrons and workers, taking into consideration the expected attendance and the geographical size of the Carnival or Fair. At no time shall less than two (2) security personnel be present upon the premises of the Carnival or Fair.

(I) ATTACHMENTS

A copy of this Section 110.50 and all forms shall be provided at no charge to anyone requesting an Application Form for a permit to operate a Carnival or Fair within the Village of Lombard.

(J) PENALTY

A person, firm or corporation violating any provision of this Section shall be fined not less than One Hundred and 00/100 Dollars (\$100.00) nor more than Seven Hundred Fifty and 00/100 (\$750.00) for each offense; and a separate offense shall be deemed committed on each day on which a violation occurs or continues.

SECTION 2: That this Ordinance shall be in full force and effect from and after its passage, approval and

publication in pamphlet form as provided by law.

Passed on first reading this 17th day of April 2003.

First reading waived by action of the Board of trustees this _____ day of _____, 2003.

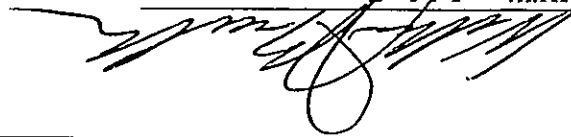
Passed on second reading this 1st day of May 2003, pursuant to a roll call vote as follows:

AYES: Trustees Tross, Koenig, Sebby, Soderstrom

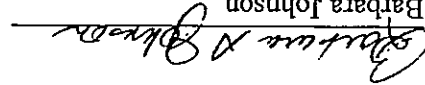
NAYS: Trustees Florey and Destephano

ABSENT: None

APPROVED by me this 1st day of May 2003.


William J. Mueller
Village President

ATTEST:


Barbara Johnson
Deputy Village Clerk

Published by me in pamphlet form this 7th day of May 2003.