

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

Resolution or Ordinance (Blue) X *Waiver of First Requested*
 X Recommendations of Boards, Commissions & Committees (Green)
Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES
FROM: David A. Hulseberg, Village Manager
DATE: July 21, 2009 (BOT) Date: August 20, 2009
TITLE: PC 09-16: Text Amendments to the Lombard Zoning Ordinance
SUBMITTED BY: Department of Community Development *DAL*

BACKGROUND/POLICY IMPLICATIONS:

Your Plan Commission transmits for your consideration its recommendation relative to the above-mentioned petition. The Village of Lombard is proposing text amendments to Section 155.223, Section 155.412 through Section 155.420 and Section 155.802 (and any other relevant sections for clarity) pertaining to live entertainment, in the following respects:

1. In addition to current General Provisions, add standards regulating live entertainment; and
2. In addition to current definitions, add a definition for "live entertainment".

The Plan Commission recommended approval of this petition.

Staff is requesting a waiver of first reading.

Please place this item on the August 20, 2009 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X *David A. Hulseberg* _____ Date 7/31/09

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.



MEMORANDUM

TO: David A. Hulseberg, Village Manager

FROM: William Heniff, AICP
Director of Community Development *WH*

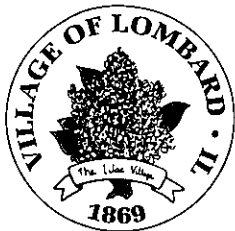
DATE: August 20, 2009

SUBJECT: PC 09-16; Text Amendments to the Lombard Zoning Ordinance

Attached please find the following items for Village Board consideration as part of the August 20, 2009 Village Board meeting:

1. Plan Commission referral letter;
2. IDRC report for PC 09-16;
3. An Ordinance granting approval of text amendments to the Zoning Ordinance relative to live entertainment.

The Plan Commission recommended approval of the text amendments. Staff is requesting a waiver of first reading.



VILLAGE OF LOMBARD

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Village President
William J. Mueller

Village Clerk
Brigitte O'Brien

Trustees
Greg Alan Gron, Dist. 1
Richard J. Tross, Dist. 2
Zachary C. Wilson, Dist. 3
Dana L. Moreau, Dist. 4
Laura A. Fitzpatrick, Dist. 5
William "Bill" Ware, Dist. 6

Village Manager
David A. Hulseberg

"Our shared Vision for Lombard is a community of excellence exemplified by its government working together with residents and businesses to create a distinctive sense of spirit and an outstanding quality of life."

"The Mission of the Village of Lombard is to provide superior and responsive governmental services to the people of Lombard."

August 20, 2009

Mr. William J. Mueller,
Village President, and
Board of Trustees
Village of Lombard

Subject: PC 09-16: Text Amendments to the Lombard Zoning Ordinance

Dear President and Trustees:

Your Plan Commission transmits for your consideration its recommendation regarding the above-referenced petition. The Village of Lombard is proposing text amendments to Section 155.223, Section 155.412 through Section 155.420 and Section 155.802 (and any other relevant sections for clarity) pertaining to live entertainment. Affidavit

After due notice and as required by law, the Plan Commission conducted a public hearing for this petition on June 15, 2009.

Chairperson Ryan asked if this petition will be presented by the Village. William Heniff, Director of Community Development replied, yes.

Chairperson Ryan then requested the staff report.

William Heniff presented the staff report indicating that it is being submitted to the public record in its entirety. This petition is a follow up from a previous workshop session relative to live entertainment. There has been an increased demand for the integration of live entertainment into new and existing businesses. There has also been an increased demand to address live entertainment in downtown Lombard, as suggested during the recent Downtown Visioning workshops.

The Zoning Ordinance presently permits live entertainment as a conditional use in the O, B3, B4 and B4A Districts, but only as part of a restaurant. As such, a restaurant establishment wishing to integrate a live entertainment component (karaoke, live music, etc.) is required to obtain conditional use approval through the public hearing process. Banquet halls, a type of restaurant, are already permitted to include live entertainment as an accessory use.

August 20, 2009

PC 09-16

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The proposed text amendments would allow live entertainment for applicable uses so long as the standards are met. Staff is proposing to add standards to live entertainment uses, which would regulate each live entertainment activity. Mainly, live entertainment would only be permitted as an accessory use to a permitted use or approved conditional use and would be required to meet all requirements of Village Code, including the liquor provisions.

He mentioned that the Zoning Ordinance does not currently include a definition for "live entertainment" which resulted in a subjective interpretation based upon a staff review. This text amendment will also provide better information to the public outlining the provisions which need to be met if desiring live entertainment associated with a business establishment.

Staff shared their text amendment comments with the Chamber of Commerce and Lombard Town Centre requesting their input. Staff also conducted a survey of neighborhood municipalities, most of which allow live entertainment as conditional use or permitted use.

What staff is proposing as part of the text amendment would allow for live entertainment as an accessory function. Mr. Heniff then noted Page #5 of the staff report and referred to the seven provisions. He explained that live entertainment would be permitted as long as these standards are met, clearly as an accessory use. If you had a business activity with live entertainment as a principal use, it would not have to meet the provisions, but rather it would fall back to a theater use or some other use. There is a provision relative to the 25% gross floor area, which is consistent with the accessory use and activity. Mr. Heniff then went over the other provisions.

Staff would require a live entertainment application process for review and approval which would need to be achieved before the activity is started. He clarified that a permit would not be required but the process would be handled similarly to the valet parking text amendments whereby an application would be submitted outlining their plan and program. If they operate within the confines of the permit then it would use an accessory use.

Concluding, Mr. Heniff noted the live entertainment definition and mentioned for clarity that it does not include adult uses. Based upon comments received from the Plan Commission, staff is recommending approval.

Chairperson Ryan asked if anyone had any questions from the staff report.

Commissioner Nelson asked if the Taste of Lombard falls into this. Mr. Heniff stated that the Taste of Lombard would be considered a special event because it is not associated with the principal function of the property.

Chairperson Ryan then opened the meeting for public comment. There was no one to speak in favor or in opposition to the petition.

Chairperson Ryan then opened the meeting for comments among the Commissioners.

Commissioner Sweetser asked if any other of the Villages that staff looked at referred to animals. She asked if it was intentional that animals were omitted or maybe didn't come across it. Mr. Heniff stated that they didn't come across it. He stated that if it is an ancillary function, such as a seafood restaurant with an aquarium, we would consider those decorative elements. Mr. Heniff stated that staff may look at Health Department provisions for any animal issues. He also added that staff did not run across any uses whereby animals were the principal function.

Commissioner Olbrysh asked if adult uses are defined some place else in the Code. Mr. Heniff replied, yes.

Commissioner Cooper asked if there is any reference to days of the week or hours that this is allowed. Mr. Heniff responded by stating that because the uses are completely indoors, we do not require specific hours or days. If associated with a liquor license there will be sunset provisions as to how late you could serve liquor. Again, being indoors staff didn't see any special reason to place a limit on days or hours.

Commissioner Olbrysh referred again to the Taste of Lombard and asked if a special event permit would require that they follow certain standards. Mr. Heniff replied, yes. There is a special process with regulations pertaining to life safety which are more detailed than what the Code would have with regard to this proposal.

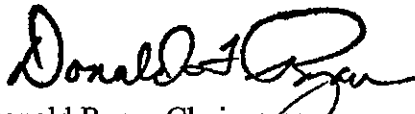
Commissioner Burke referred to provision #2 on page 4. He questioned if that meant that if there is a band, could they can only take up 25 percent of the restaurant or could the audience take up only 25 percent. Mr. Heniff replied that it would be the band or stage area associated with the activity. Commissioner Burke asked if they wanted to clarify that. Mr. Heniff asked if adding the word "performance" would help clarify. Commissioner Burke replied, yes.

After due consideration of the petition and the testimony presented, the Plan Commission found that the proposal complies with the standards required by the Lombard Zoning Ordinance and therefore moved that the Plan Commission find that the findings included as part of the Inter-departmental Review Report be the findings of the Plan Commission and therefore by a roll call vote of 6 to 0 recommends to the Corporate Authorities approval of **PC 09-16**.

After due consideration of the petition and the testimony presented, the Plan Commission found that the proposal complies with the standards required by the Lombard Zoning Ordinance; and, therefore, moved that the Plan Commission find that the findings included as part of the Inter-departmental Review Report be the findings of the Plan Commission and therefore, by a roll call vote of 6 to 0, recommends to the Corporate Authorities approval of the zoning actions associated with **PC 09-16**.

Respectfully,

VILLAGE OF LOMBARD

A handwritten signature in black ink, appearing to read "Donald Ryan". The signature is written in a cursive, flowing style with a large initial "D".

Donald Ryan, Chairperson
Lombard Plan Commission

c. Petitioner
Lombard Plan Commission

VILLAGE OF LOMBARD
INTER-DEPARTMENTAL REVIEW GROUP REPORT

TO: Lombard Plan Commission

HEARING DATE: June 15, 2009

FROM: Department of
Community Development

PREPARED BY: Michael S. Toth
Planner I

TITLE

PC 09-16; Text Amendments to the Lombard Zoning Ordinance: The Village of Lombard is proposing text amendments to Section 155.223, Section 155.412 through Section 155.420 and Section 155.802 (and any other relevant sections for clarity) pertaining to live entertainment, in the following respects:

1. In addition to current General Provisions, add standards regulating live entertainment; and,
2. In addition to current definitions, add a definition for "live entertainment".

GENERAL INFORMATION

Petitioner: Village of Lombard
255 E. Wilson Ave
Lombard, IL 60148

ANALYSIS

DESCRIPTION

There has been an increased demand for the integration of live entertainment into new and existing businesses. There has also been an increased demand to address live entertainment in downtown Lombard, as suggested during the recent Downtown Visioning workshops. As such, Village staff conducted an initial analysis of live entertainment in accordance with the Lombard Zoning Ordinance and surrounding municipalities. Based upon the result of the land use analysis and positive feedback from the Plan Commission, the Village is proposing text amendments to the Lombard Zoning Ordinance with respect to live entertainment.

INTER-DEPARTMENTAL REVIEW COMMENTS

PUBLIC WORKS

The Department of Public Works has no comments on the petition.

PRIVATE ENGINEERING SERVICES

The Private Engineering Services Division of Community Development has no comments.

BUILDING & FIRE

The Fire Department/Bureau of Inspectional Services has reviewed the proposed changes and offers the following comments. It should be noted that the comments below are general requirements that would be reviewed as part of any building permit application and/or live entertainment activity.

1. The area designated for the entertainment shall meet all building and electrical codes in terms of any stage construction, scenery, curtains and electrical/power requirements.
2. All fire codes need to be met, including no pyrotechnic displays, proper exiting requirements, maximum capacity occupancy loads, etc.

PLANNING

The Zoning Ordinance presently permits live entertainment as a conditional use in the O, B3, B4 and B4A Districts, but only as part of a restaurant. As such, a restaurant establishment wishing to integrate a live entertainment component (karaoke, live music, etc.) is required to obtain conditional use approval through the public hearing process. Banquet halls, a type of restaurant, are already permitted to include live entertainment as an accessory use.

To provide clarity, the proposed text amendments would allow live entertainment for applicable uses, as long as the standards are met. Staff is proposing to add standards to live entertainment uses, which would regulate each live entertainment activity. Mainly, live entertainment would only be permitted as an accessory use to a permitted use or approved conditional use and would be required to meet all requirements of Village Code, including the liquor provisions. Under the proposed standards, an application would be required so that staff would have the opportunity to review the plans and ensure that they are in accordance with all seven standards.

Also, the Zoning Ordinance does not currently include a definition for "live entertainment". In order to provide clarity to the Zoning Ordinance, a definition of live entertainment would be added as part of the proposed text amendments.

Plan Commission Workshop

Staff conducted a workshop on this issue during the May 18, 2009 Plan Commission meeting. The intent of the workshop was to gather the thoughts and recommendations of the Plan Commission relative to the proposed live entertainment text amendments. The only comments raised by the Commissioners were questions related to the practical application of the proposed amendments, but collectively, the Plan Commissioners supported the proposed changes. It should be noted following the Plan Commission workshop, staff shared the proposed amendments with the Lombard Area Chamber of Commerce and the Lombard Town Centre for their input. All responses from their members were positive.

Neighboring Municipalities

For reference purposes, staff completed an analysis of surrounding communities to understand how they regulate live entertainment. The following chart depicts how those surrounding communities regulate live entertainment as a use.

Municipality	Permitted	CU/SU	Comments
Downers Grove	X		Permitted as an accessory use to restaurants and bars.
Carol Stream	X		No restrictions.
Glendale Heights	X		Regulated by a permit which requires staff review and approval by the Board. No public hearing required.
Lisle	X		No restrictions.
Oak Brook	X	X	Permitted as an accessory use to restaurants and bars in the B-3 & O districts only. Special Use in other districts.
Oak Brook Terrace	X	X	Permitted. However, if a restaurant was required to receive a Special Use (for bar), an amendment to that original Special Use is required.
Wheaton	X		Permitted in Zoning Ordinance, however, it's regulated through other codes i.e. liquor license provisions.
Hinsdale		X	Special Use only as an accessory use to restaurants and bars.
Addison	X		No restrictions.
Elmhurst	X	X	Permitted (1 district) or Conditional Use (4 districts) as an accessory to restaurants.
Glen Ellyn		X	Conditional Use as an accessory to restaurants.
Villa Park	X	X	Conditional Use as an accessory to juice bars, otherwise permitted indoors.
Westmont	X		Permitted through liquor license process.
Wood Dale		X	Conditional Use as an accessory to restaurants/hotels.

Each of the 14 communities surveyed permitted live entertainment as a permitted or conditional use. Whether on its own merit or as an accessory to a restaurant or other use, in 11 out of the 14 communities, live entertainment is considered a permitted use. In the three communities where live entertainment is classified solely as a conditional use, live entertainment could only be done as a conditional use as an adjunct to a restaurant, which is how Lombard currently regulates the use.

Proposed Changes

The chart below illustrates the proposed changes to the Lombard Zoning Ordinance with respect to live entertainment. As previously discussed, live entertainment was once only considered as part of a restaurant, but will now stand on its own merit and be considered a permitted use in the O, I and B1 - B5A zoning districts in conjunction with another permitted or approved conditional use. Any new additions and/or changes are underlined while any information that is to be removed is marked with a strikethrough.

Land Use	Zoning District								
	O	I	B1	B2	B3	B4	B4A	B5	B5A
Live Entertainment	P*	P*	P*	P*	P*	P*	P*	P*	P*
Restaurant w/Live Entertainment	€				€	€	€		

*Subject to Section 155.223

Standards for Text Amendments

For any change to the Zoning Ordinance, the standards for text amendments must be affirmed. The standards and the petitioner's and staff comments are noted below:

1. *The degree to which the proposed amendment has general applicability within the Village at large and not intended to benefit specific property;*

The proposed amendments would be uniformly applied to all commercial, industrial and office zoning districts within the Village. In addition, it would not be tied to a specific use.

2. *The consistency of the proposed amendment with the objectives of this ordinance and the intent of the applicable zoning district regulations;*

The Zoning Ordinance is staff's tool to manage the different land use objectives. The proposed text amendments would allow staff greater regulatory flexibility to oversee live entertainment issues. Once only permissible through conditional use approval as part of a restaurant, staff would now have the administrative authority to directly regulate live entertainment uses on their own merit. The Standards for Live Entertainment would provide staff with the specific language to regulate each case.

3. *The degree to which the proposed amendment would create nonconformity;*

The proposed amendment would not create any non-conforming situations. In fact, any non-conformity that once existed may now be in compliance. The approval of each case would depend on whether or not the Standards for Live Entertainment were met.

4. *The degree to which the proposed amendment would make this ordinance more permissive;*

The proposed amendments would make the ordinance more permissive as live entertainment can currently only be done in conjunction with a restaurant establishment, which would still require conditional use approval through the public hearing process. The proposed text amendments would allow live entertainment for all applicable uses, as long as the standards are met. Staff is proposing to add standards to live entertainment uses, which would regulate each live entertainment case on its own merit. Mainly, live entertainment would only be permitted as an accessory use to a permitted use or approved conditional use and would be required to meet all requirements of Village Code

5. *The consistency of the proposed amendment with the Comprehensive Plan;*

Staff believes that the proposed text amendments are consistent with the Comprehensive Plan. The amendment is intended to ensure that various land uses described in the Ordinance are operating in a manner consistent with the Plan.

6. *The degree to which the proposed amendment is consistent with village policy as established in previous rulings on petitions involving similar circumstances.*

The Village has a history of amending its Zoning Ordinance to address evolving circumstances presented by petition or to clarify the intent of the Ordinance provisions. The proposed amendments are consistent with established Village policy in this regard.

PROPOSED TEXT AMENDMENTS

The proposed text amendments to the Lombard Zoning Ordinance are listed below. Any new additions and/or changes are underlined while any information that is to be removed is marked with a strikethrough.

SECTION 155.223 LIVE ENTERTAINMENT

All live entertainment activities shall comply with all of the following standards and requirements:

(1) The live entertainment activity shall clearly be an accessory use to either a permitted or an approved conditional use.

(2) The total area used for the live entertainment shall not exceed 25% of the gross floor area of the business.

(3) All live entertainment activities conducted on site shall be conducted within the confines of the building.

(4) No toxic, explosive, flammable, or other hazardous materials; as defined by the BOCA Basic Fire Prevention Code as adopted in the Building Code of the Village of Lombard shall be used for any live entertainment purposes.

(5) All live entertainment activities shall fully comply with all other provisions of Village Code.

(6) Any business serving alcoholic beverages shall be required to meet the full provisions of Chapter 112 of Village Code, which regulates Alcoholic Beverages.

(7) Each live entertainment applicant shall submit to the Village a live entertainment application for review and approval. No live entertainment shall operate prior to the approval of the Village.

SECTION 155.802 RULES AND DEFINITIONS

LIVE ENTERTAINMENT is any performance, musical act, (including karaoke), theatrical act (including stand-up comedy), play, revue, dance act, song and dance act, disc jockey, or any combination of these, or similar activity performed live by one or more persons, whether or not done for compensation, and whether or not admission is charged and is clearly an accessory use to either a permitted or an approved conditional use. Live entertainment does not include adult uses.

~~RESTAURANT, INCLUDING LIVE ENTERTAINMENT~~

FINDINGS AND RECOMMENDATIONS

Based on the above findings, the Inter-Departmental Review Committee recommends that the petition as presented does meet the standards set forth in the Zoning Ordinance and recommends that Plan Commission make the following motion recommending **approval** of this petition:

Lombard Plan Commission

Re: PC 09-16

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Based on the submitted petition and the testimony presented, the requested text amendments **comply** with the standards required by the Lombard Zoning Ordinance; and, therefore, I move that the Plan Commission accept the findings and recommendations of the Inter-Departmental Report as the findings of the Plan Commission and I recommend to the Corporate Authorities **approval** of PC 09-16.

Inter-Departmental Review Group Report Approved By:



William Heniff, AICP

Director of Community Development

ORDINANCE NO. _____

**AN ORDINANCE APPROVING TEXT AMENDMENTS
TO THE LOMBARD ZONING ORDINANCE
TITLE 15, CHAPTER 155 OF THE CODE OF LOMBARD, ILLINOIS**

WHEREAS, the Village of Lombard maintains a Code of Ordinances, which is found in the Code of Lombard, Illinois; and,

WHEREAS, Title 15, Chapter 155 of the Code of Lombard, Illinois includes provisions regulating the public rights of way within the Village; and,

WHEREAS, the Board of Trustees deems it reasonable to periodically review said Code and make necessary changes pertaining to said Code; and

WHEREAS, the Village deems it to be necessary and appropriate to establish reasonable regulations pertaining to live entertainment within the Village; and

WHEREAS, the regulations set forth herein are intended to meet the Village goal of ensuring that the regulation of live entertainment provides for the health, safety and welfare of the general public.

NOW THEREFORE, 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 15, Chapter 155, Section 200, of the Code of Lombard, Illinois is hereby amended to read in part, as follows:

SECTION 155.223 LIVE ENTERTAINMENT

All live entertainment activities shall comply with all of the following standards and requirements:

(1) The live entertainment activity shall clearly be an accessory use to either a permitted or an approved conditional use.

(2) The performance area used for the live entertainment shall not exceed 25% of the gross floor area of the business.

(3) All live entertainment activities conducted on site shall be conducted within the confines of the building.

(4) No toxic, explosive, flammable, or other hazardous materials; as defined by the BOCA Basic Fire Prevention Code as adopted in the Building Code of the Village of Lombard shall be used for any live entertainment purposes.

(5) All live entertainment activities shall fully comply with all other provisions of Village Code.

(6) Any business serving alcoholic beverages shall be required to meet the full provisions of Chapter 112 of Village Code, which regulates Alcoholic Beverages.

(7) Each live entertainment applicant shall submit to the Village a live entertainment application for review and approval. No live entertainment shall operate prior to the approval of the Village.

SECTION 2: That Title 15, Chapter 155, Section 802, of the Code of Lombard, Illinois is hereby amended to read in part, as follows:

SECTION 155.802 RULES AND DEFINITIONS

LIVE ENTERTAINMENT is any performance, musical act, (including karaoke), theatrical act (including stand-up comedy), play, revue, dance act, song and dance act, disc jockey, or any combination of these, or similar activity performed live by one or more persons, whether or not done for compensation, and whether or not admission is charged and is clearly an accessory use to either a permitted or an approved conditional use. Live entertainment does not include adult uses.

RESTAURANT, INCLUDING LIVE ENTERTAINMENT

SECTION 3: 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 _____, 2009.

First reading waived by action of the Board of Trustees this ____ day of _____, 2009.

Passed on second reading this ____ day of _____, 2009.

Ayes: _____

Nays: _____

Absent: _____

Ordinance No. _____
Re: Live Entertainment
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Approved by me this _____ day of _____, 2009.

William J. Mueller, Village President

ATTEST:

Bridget O'Brien, Village Clerk

Published by me in pamphlet form this _____ day of _____, 2009.

Bridget O'Brien, Village Clerk