


090142

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

District: All

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

TO : PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Huliseberg, Village Manager 

DATE : March 24, 2009 **B of T:** April 2, 2009

SUBJECT: An Ordinance Amending Chapter 74 of Title 7 of the Lombard Village Code in Regard to an Automated Traffic Law Enforcement System

SUBMITTED BY: Raymond J. Byrne, Chief of Police

BACKGROUND/POLICY IMPLICATIONS:

This ordinance makes several changes to Chapter 74 of the Village Code which governs our automated traffic law enforcement system (red light photo enforcement). These amendments provide consistency between State law, the violation notices issued by RedSpeed and Chapter 73 of the Village Code governing our administrative adjudication process. The proposed amendments are relatively minor and are summarized in a memorandum from Village Attorney George Wagner of Klein, Thorpe & Jenkins. A waiver of first reading is requested in order to accommodate the actual live date of the red light photo enforcement program.

Fiscal Impact/Funding Source:

Review (as necessary):

Finance Director _____
Village Manager _____
Date 3/25/09 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.

- 73.03(D)(6): violation notice requirements – 1) deleted request of a hearing since a hearing is provided automatically; 2) replaced with payment instructions.
- 73.03(D)(9): violation notice requirements - deletes requirement for violation notice to be checked and returned; requires notarized statement and documentation to be filed within 14 days, as you do now.
- 73.05(A)(5)(h): deletes time constraints for appeal, as appeal notice included in Notice of Determination of Liability and Findings, Decision and Order.
- 73.05(B): limits petition to set aside to finding of liability upon failure to appear at second hearing.
- 73.06: clarifies when a petition to set aside can be filed - excludes determinations of liability after hearing or petition to set aside denial

I. Ordinance for Administrative Adjudication of Vehicular Regulation Violations:

The following is a summary of the proposed amendments:

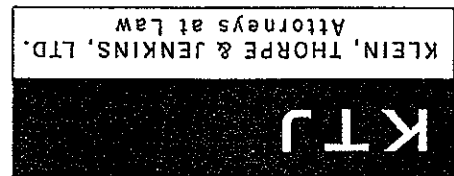
Enclosed are the Ordinances amending Chapters 73 and 74. The proposed amendments to Chapter 73 include some minor clean up, as well as modifications to conform to your present procedures. The proposed amendments to Chapter 74 include clarification of several provisions for simplification and conformity with RedSpeed's notices.

As you know, we have been working with RedSpeed Illinois to revise their notices for the Automated Traffic Law Enforcement System, i.e., the red light enforcement program, to insure that those notices comply with State law, 625 ILCS 5/11-208.3 and 5/11-208.6, and Chapter 74 of the Village Code, which authorizes the Automated Traffic Law Enforcement System. In so doing, it has also been necessary to review Chapter 73, which applies to the Administrative Adjudication of vehicular regulations, as the Automated Traffic Law Enforcement System is subject to the hearing process under Chapter 73. As a result, we have determined that Chapters 73 and 74 needed some minor revisions.

Re: Amendments to Chapter 73 of the Village Code, Administrative Adjudication of Vehicular Regulation Violations, and Chapter 74 of the Village Code, Automated Traffic Law Enforcement System.

To: Chief Ray Byrne
 From: George Wagner
 Date: March 23, 2009

MEMORANDUM



20 N. Wacker Drive, Ste 1660
 Chicago, Illinois 60606-2903
 T 312 984 6400 F 312 984 6444
 gwagner@ktjlaw.com

15010 S. Ravinia Avenue, Ste 10
 Orland Park, Illinois 60462-5353
 T 708 349 3888 F 708 349 1506
 www.ktjlaw.com

cc: Deputy Chief Dane Cunny
Deputy Chief Pat Rollins
Thomas P. Bayer, Village Attorney

Enclosures

I appreciate Deputy Chief Rollins' assistance during my review. Please let me know if you have any questions.

The proposed amendments to the Ordinance for Automated Traffic Law Enforcement System, Chapter 74, provide consistency with State law, 625 ILCS 5/11-208.3 and 5/11-208.6, RedSpeed's notices and Chapter 73. Those amendments clarify when determinations of liability occur and the types of notices to be sent. They also clarify the petition to set aside process and the contest by-mail procedure.

II. Ordinance for Automated Traffic Law Enforcement System:

- 73.07: clarifies when a determination becomes final: 1) following failure to pay the fine after an in-person or by mail hearing, and 2) following denial of a petition to set aside
- 73.08: any persons can contest by mail as you now do.
- 73.08(A) and (B): deletes requirement that violation notice be returned; requires notarized statement and documentation to be filed within 14 days, as you do now.
- 73.08(C) and (D): deletes filing requirement as provided in (A) and (B) above.
- 73.08(E): clarifies that hearing officer enters Findings Decision and Order upon adjudication by mail, which is a final decision.
- 73.08(G): deletes opportunity for review upon a determination of liability by mail, as such review is only required for failure to appear.
- The term "operator" and "hang-on" or "hang-on violation notice" are deleted. The original statute was limited to parking and standing violations using hang-on citations, and later applied to compliance violations, which permits personal service.

AN ORDINANCE AMENDING CHAPTER 74 OF TITLE 7 REGARDING AN AUTOMATED TRAFFIC LAW ENFORCEMENT SYSTEM

BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That Title 7, Chapter 74 of the Lombard Village Code is amended, as follows:

1. Sub-subsection 74.05(C)(12) of Section 74.05, "Violation Notice", shall be amended by deleting the phrase "in court" to be and read as follows:

12. a statement that the person may elect to proceed by paying the fine or challenging the charge by mail or by administrative hearing.

2. A new Sub-subsection 74.05(C)(14) shall be inserted into Section 74.05, "Violation Notice", to be and read as follows:

14. the signature of the person issuing the notice in the form of an identification number.

3. Section 74.09, "Determinations Of Liability", shall be deleted in its entirety and a new Section 74.09 inserted, to be and read as follows:

Section 74.09, Determinations Of Liability.

A determination of Automated Traffic Law Violation liability shall occur following failure to pay the fine or penalty, or to contest the alleged violation within twenty-one (21) days of the Notice of Violation. Where a person fails to appear at a hearing to contest the alleged violation in the time and manner specified in a prior mailed notice, the Hearing Officer will enter Findings, Decision and Order's determination of Automated Traffic Law Violation Liability shall become final: (a) upon denial of a timely petition to set aside that determination, or (b) upon expiration of the period for filing such a petition without a filing having been made. If a person appears at a hearing and is found liable or contests the Violation by mail and is found liable, the Hearing Officer will enter Findings, Decision and Order, which is a final determination of Automated Traffic Law Violation Liability that is a final, appealable order.

3. The text of Section 74.10, "Notice of Determinations of Liability", is deleted and the following inserted in its place, to be and read as follows:

A Notice of Determination of Liability or Findings, Decision and Order shall be sent following a determination of Automated Traffic Law Violation Liability. Except as provided below, the Notice and the Order will state that the owner can petition the Village to set aside the determination of liability before it becomes final under Section 74.12 of

Persons who receive Violation Notices may contest the merits of the alleged Automated

following inserted in its place:

6. The text of Section 74.15, "Non-Appeal Procedures", is deleted in its entirety and the

such a Determination of Liability. If more than fourteen (14) days has expired and a petition to set aside has not been filed, where permitted, the Determination of Liability shall become final and a person owing an unpaid fine or penalty must file for judicial review pursuant to Illinois Administrative Review Law in order to appeal such a Determination of Liability. If a petition to set aside is denied, the hearing officer shall enter a Findings, Decision and Order to that effect, which shall be a final, appealable decision, and a person owing an unpaid fine or penalty must file for judicial review pursuant to the Administrative Review Law in order to appeal

merits for that violation. A person owing an unpaid fine or penalty for an Automated Traffic Law Violation (other than a determination of liability pursuant to an in-person or non-appearance hearing) may file a petition to set aside a determination of such liability within fourteen (14) days of a Notice of Determination of Liability or Findings, Decision and Order. Such a petition shall be filed by sending the same, together with any documentation in support thereof, to the Administrator by certified mail, return receipt requested, or by personal delivery to the Administrator. The grounds for such a petition shall be limited to: (a) the person not having been the owner or lessee of the cited vehicle on the date the Violation Notice was issued, (b) the person having already paid the fine or penalty for the violation in question; or (c) excusable failure to appear at or request a new date for a hearing. The hearing officer shall act on those petitions timely filed and render a decision thereon within fourteen (14) days of the date filed. In the event that such a petition is granted upon a showing of just cause, and the subject determination of Automated Traffic Law Violation liability is thereby set aside, the registered owner shall be provided with a hearing on the merits for that violation.

Section 74.12 Administrative Review.

following inserted in its place:

5. The text of Section 74.12, "Administrative Review", shall be deleted in its entirety and the

Vehicle Code. 2. A warning that a failure to pay the fine and penalty due and owing the Village may result in the Village's filing a complaint in the Circuit Court to have the unpaid fine or penalty rendered a judgment in accordance with Section 11-208.3(f) of the Illinois

amended by deleting the phrase "within fourteen (14) days", to be and read as follows:

4. Subsection 2 of Section 74.11, Notice of Final Determination of Liability, shall be

the right to judicial review. this Chapter and that a late fee of \$100.00 will be due unless a petition is filed or the fine paid within fourteen (14) days of the Notice. In the event that the determination of liability was the result of an in-person or non-appearance hearing, or following the denial of a petition to set aside, the Order will only state that a late fee of \$100.00 will be due unless the fine is paid within fourteen (14) days of the Order. The Notice and Order will explain

Traffic Law Violation without attending a hearing by filing a notarized statement contesting the vehicular regulation violation notice, together with the citation number, name and address of the owner, reasons why a finding of liability should not be entered, and any supporting documentation, with the Administrator within twenty-one (21) days after service of the Violation Notice. Such a statement shall set forth the reasons why a finding of liability should not be entered. The Hearing Officer will enter a Finding, Decision and Order upon adjudication of the facts set forth in the notarized statement of facts and the facts contained in the Violation Notice. The hearing officer's determination of liability shall become a final determination of automated traffic law violation liability that is a final, appealable order.

5. Section 74.16, "Penalties", shall be amended by deleting the text contained therein and inserting in its place the following:

Section 74.16, "Penalties":
The owner (or lessee) of a motor vehicle is subject to a penalty of one hundred dollars (\$100.00) per Automated Traffic Law Violation. In the event that such penalty is not paid within fourteen (14) days after service of a Notice of Determination of Liability or Findings, Decision and Order, an additional one hundred dollar (\$100.00) late payment penalty shall be imposed. A penalty shall not apply if the driver of the motor vehicle received a Uniform Traffic Citation from a police officer at the time of the violation

SECTION 2: All prior ordinances and resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION 3: This Ordinance shall be in full force and effect ten days from and after the date of its passage, approval and publication as provided by law. If any portion of this Ordinance is held to be invalid, then that portion shall be stricken from this Ordinance and the remaining portions of this Ordinance shall continue in full force and effect to the extent possible.

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, pursuant to a roll call vote as follows:

AYES:

NAYS:

ABSENT:

APPROVED by me this _____ day of _____, 2009.

William J. Mueller

Village President

ATTEST:

Brigitte O'Brien
Village Clerk

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

Brigitte O'Brien
Village Clerk