

080/41

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. Hulseberg, Village Manager *John*

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

SUBJECT: An Ordinance Amending Chapter 73 of Title 7 of the Lombard Village Code in Regard to the Administrative Adjudication of Vehicular Regulation Violations

SUBMITTED BY: Raymond J. Byrne, Chief of Police

BACKGROUND/POLICY IMPLICATIONS:

This ordinance makes several amendments to Chapter 73 of the Village Code which governs our administrative adjudication process. The amendments are necessary in order to accommodate the hearing process as it relates to the red light photo enforcement system. 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

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



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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 73 OF TITLE 7 REGARDING ADMINISTRATIVE ADJUDICATION OF VEHICULAR REGULATION VIOLATIONS

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 73, of the Lombard Village Code is amended, as follows:

follows:

1. Section 73.03, Procedures, shall be amended as follows:

a. The text of Sub-Subsection (D)(6) shall be deleted in its entirety and the following

inserted in its place:

(6) A section entitled "Payment Instructions", explaining the method for payment by mail, in-person and through the internet, if so provided.

b. The text of Sub-Subsection (D)(9) shall be deleted in its entirety and the following

inserted in its place:

(9) A section entitled, "Request for Hearing – Non-Appearance", which clearly sets forth that any person may appear at the initial administrative hearing to contest the validity of the vehicular regulation violation notice without appearing by filing a notarized statement, 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 fourteen (14) days after service of the Violation Notice. The notice may also provide for the notarized statement and supporting documentation to be sent to the Administrator over the internet at the email address provided in the notice.

2. Section 73.05, Additional Notices, shall be amended as follows:

a. The last sentence of Sub-subsection (A)(5)(h) shall be deleted in its entirety and Sub-

Subsection (A)(5)(h) shall be and read as follows:

h. A statement that upon the occurrence of a determination of vehicular regulation violation liability and the exhaustion of, or the failure to exhaust, available administrative and/or judicial procedures for review, any unpaid fine or penalty will constitute a debt due and owing the Village.

b. Subsection B shall be deleted in its entirety and a new Subsection B inserted in its place,

to be and read as follows:

(B) Upon failure of the registered owner or lessee to appear at both the initial and second

hearing, a notice of determination of vehicular regulation violation liability shall be entered and sent, detailing the rights of the owner or lessee of the "cited vehicle" to petition for the determination of liability to be set aside on the grounds provided in Section 73.06 of this Code, and to file for judicial review pursuant to Section 73.10 of this Code.

3. The introductory paragraph of Section 73.06, Administrative Review, shall be deleted and the following inserted in its place:

A petition to set aside a determination of vehicular regulation violation liability (other than a determination of liability pursuant to an in-person or non-appearance hearing) may be filed by a person owing an unpaid fine or penalty in the manner and subject to the restrictions and grounds hereinafter set forth:

4. The text of Subsection (A) of Section 73.07, Final Determination of Liability, shall be deleted in its entirety and replaced with the following:

(A) Following the failure to pay the fine or penalty after an in-person or non-appearance hearing, and determination of vehicular regulation violation liability by the hearing officer.

(B) Following the denial of a petition to set aside a Determination of Liability. The remaining Subsection to be relettered alphabetically.

5. Section 73.08, Non-Appearance Procedures, shall be amended as follows:

a. The introductory sentence of Section 73.08 shall be deleted and the following inserted in its place:

Persons who have been served with a vehicular regulation violation notice may contest the alleged vehicular regulation violation on its merits in-person at an administrative hearing, or may contest the validity without personally appearing at a hearing by:

b. Subsections A and B shall be deleted in their entirety and replaced with the following:

(A) 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 fourteen (14) days after service of the violation notice.

(B) In the event that the vehicular regulation violation notice states that the violation notice may be contested through the internet, the notarized statement and supporting documentation required in Subsection A above shall be sent to the email address provided on the notice within fourteen (14) days after the service of the vehicular regulation violation notice.

b. Subsections (C) and (D) shall be deleted in their entirety

c. Subsection (E) shall be deleted and the following inserted in its place:

(E) The hearing officer will enter a Findings, Decision and Order upon adjudication of the facts set forth in the notarized statement of facts and the facts contained in the vehicular regulation 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.

c. Subsection (G) shall be deleted in its entirety with the remaining Subsection relettered accordingly.

6. The term "operator" shall be deleted from the following Subsections: 73.04(A), 73.04(B), 73.04(G), 73.05(A), 73.05(A)(1), 73.05(A)(5)(e), 73.06((C)(1), 73.06(D)(1), 73.06(D)(2), 73.06(E).

7. The phrase "Hang-on" shall be deleted from the title of Section 73.03(D) to be and read "Violation Notice" and the phrase "(hang-on violation notice)" shall be deleted from the following Subsections: 73.03(D), 73.04(B), 73.05(A).

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