

050593

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: October 18, 2005 (BOT) Date: November 3, 2005

TITLE: An Ordinance Revising Section 130.01 of the Village Code

SUBMITTED BY: Ray Byrne, Chief of Police

BACKGROUND/POLICY IMPLICATIONS:

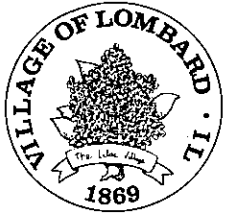
This ordinance will replace the antiquated language currently found in section 130.01 of the Village Code. The current language is apparently from the 1970's and needs to be updated to reflect current statutes and case law. A waiver of first reading is being requested to facilitate the implementation of the ordinance.

FISCAL IMPACT/FUNDING SOURCE: None

Review (as necessary):

Finance Director X _____ Date _____
Village Manager X W.T. Lichter _____ Date: 10/24/05

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.



LOMBARD POLICE DEPARTMENT

Date: October 18, 2005

To: William T. Lichter
Village Manager

From: Ray Byrne
Police Chief

**Re: Ordinance Amending Section 130.01 of the Village Code (Intoxication;
Begging)**

Attached to this correspondence is a proposed ordinance that would completely revise Section 130.01 of the Village Code. The current language in the Village Code is apparently from the 1970's and is very outdated. Most importantly, it does not reflect current state statutes or case law, particularly as it is applicable to intoxicated individuals.

As you know, the police department is often called to deal with intoxicated individuals in public places. In order to appropriately handle these situations, police officers often must make serious judgment calls as to how best to protect the public as well as the intoxicated individual. It is often a gray area that fluctuates between a medical condition and a case of disorderly conduct. The police department is of the opinion that this proposed ordinance would clarify the option of an arrest when it is appropriate and necessary.

Given these circumstances, and the outdated language in Section 130.01 of the Village Code, we did request that the Village Attorney review the current provision in light of recent statutes and case law. The Village Attorney's opinion is included for your review. The proposed language largely reflects the language found in the Alcoholism and Other Drug Abuse and Dependency Act (20 ILCS 301/25-15). I would request that this ordinance be sent to the Village Board for their review and approval. If you should have any questions, or would like additional information, please do not hesitate to contact me.

cc: Command Staff

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WRITER'S DIRECT DIAL
(312) 984-6468

WRITER'S E-MAIL
gawagner@ktjnet.com

August 4, 2005

Chief Raymond Byrne
Lombard Police Department
255 East Wilson Avenue
Lombard, Illinois 60148-3931

Re: Review of Village Code – Section 130.01 (Intoxication; Begging)

Dear Ray:

As requested, we have reviewed Village Code Section 130.01, which makes intoxication and solicitation of alms unlawful. Based upon that review, we recommend revisions as follows:

First, we understand your concerns in regard to the Police Department's handling of public intoxication cases, as outlined in your July 20, 2005, letter. In that regard, we suggest that the Department rely primarily on Section 25-15, "Emergency Treatment," of the Alcoholism and Other Drug Abuse and Dependency Act (the "Act"), 20 ILCS 301/25-15. § 25-15, which states as follows:

Emergency treatment. (a) An intoxicated person may come voluntarily to a treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and who may be a danger to himself or others may be assisted to his home, a treatment facility or other health facility either directly by the police or through an intermediary person.

(b) A person who appears to be unconscious or in immediate need of emergency medical services while in a public place and who shows symptoms of impairment brought on by alcoholism or other drug abuse or dependency may be taken into protective custody by the police and forthwith brought to an emergency medical service. A person who is otherwise incapacitated while in a public place and who shows symptoms of alcoholism or other drug abuse or dependency may be taken into custody and forthwith brought to a facility available for detoxification. The police in detaining the person shall take him into protective custody only, which shall not constitute an arrest. No entry or other record shall be made to indicate

Chief Raymond Byrne
August 4, 2005
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that the person has been arrested or charged with a crime. The detaining officer may take reasonable steps to protect himself from harm.

Pursuant to this statute, the Police Department may assist an individual to his home, a treatment facility or other health facility if he or she appears to be intoxicated in a public place and may be a danger to himself or others, though the individual's consent appears to be implied. On the other hand, if the individual appears to be unconscious or in immediate need of emergency medical services while in a public place and shows symptoms of impairment brought on by alcoholism or other drug abuse or dependency, the individual may be taken into protective custody by the Police Department and brought to an emergency medical service. In other cases of incapacity¹, the individual may be taken into protective custody by the Police Department and taken to a detox center. Protective custody is not considered an arrest, and such police action is only authorized in a public place.

In the event that a subject is intoxicated in a public place, may be a danger to himself or others, and refuses to cooperate in being assisted to his home, a treatment facility or other health facility, the Police Department may rely upon a revised Section 130.01 of the Village Code. In that regard, the United States Supreme Court has upheld a conviction for public drunkenness in *Powell v. State of Texas*, 392 U.S. 514 (1968). However, Illinois law prohibits the adoption or enforcement of an ordinance that includes intoxication as the sole basis of the offense. Section 301/55-15 of the Alcoholism and Other Drug Abuse and Dependency Act (the "Act"), 20 ILCS 301/55-15, states as follows:

§ 55-15. Intoxication; local ordinances. No county, municipality or political subdivision may adopt or enforce any law that includes being intoxicated as the sole basis of the offense, nor interpret or apply any law to circumvent the provisions of this Section. However, nothing in this Section affects any law, ordinance, resolution or rule against driving under the influence of alcohol or other drugs, or any similar offense involving operation of a vehicle, aircraft, boat, machinery, or the use of firearms or other equipment. Nothing in this Section affects any law regarding the sale, purchase, use, possession or dispensing of drugs or alcohol at stated places, at stated times or by particular classes of persons.

Therefore, Section 130.01 of the Village Code must include the additional element of failing to cooperate in being assisted home or to a treatment facility, and the reference to "any private house or place" should be deleted so as to limit its effect to a public place. Therefore, we recommend that Section 130.01 be amended to delete the intoxication language and, instead, include the following:

¹ Incapacitated means that a person is unconscious or otherwise exhibits, by overt behavior or by extreme physical debilitation, an inability to care for his own needs or to recognize the obvious danger of his situation or to make rational decisions with respect to his need for treatment." 20 ILCS 301/1-10.

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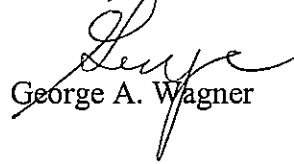
If any person appears in any public place and is manifestly under the influence of alcohol, narcotics or other drug to the degree that he may endanger himself or other persons or property and fails to cooperate with a police officer or other intermediary person in being assisted to his home, a treatment facility or other health facility, or annoys or disturbs other persons in his vicinity, he shall be guilty of disorderly conduct.

Second, we have reviewed Section 130.01 in regard to a ban on solicitation of alms. Such a provision is problematic in requiring the permission of the Village President, where no standards are provided. Further, there has been significant litigation involving ordinances that prohibit such solicitation, commonly referred to as panhandling. A New York statute that prohibited loitering in a public place for the purpose of begging, and actually prohibited begging in all public places, was found to be invalid. *Loper v. New York City Police Department*, 999 F.2d 699 (2nd Cir. 1993). However, a constitutional challenge to an Indianapolis panhandling ordinance that prohibited "aggressive panhandling," but permitted peaceful panhandling at certain times and in certain locations, was found to be valid. *Gresham v. Peterson*, 225 F.3d 899 (7th cir. 2000). Therefore, to be consistent with *Gresham*, we propose to amend Section 130.01 to prohibit begging or soliciting of funds on public ways in a harassing, threatening or abusive manner.

I hope that this letter addresses your concerns. If you have any questions, please call me at (312) 984-6468.

Sincerely,

KLEIN, THORPE & JENKINS, LTD.



George A. Wagner

Enclosure/

cc: Thomas P. Bayer, Village Attorney



LOMBARD POLICE DEPARTMENT



DATE: July 20, 2005

TO: Tom Bayer
Village Attorney

FROM: Ray Byrne
Chief of Police

SUBJECT: Village Code – Section 130.01 (Intoxication; Begging)

Attached to this correspondence, please find a copy of section 130.01 of the Lombard Village Code titled Intoxication; Begging. The Police Department was recently confronted with a situation that generated a great deal of healthy debate about this section of the Code. The main purpose of this correspondence is to request a review of this section to determine if, under present statutory and case law, this remains a viable enforcement tool for the police department.

Specifically, the issue might better be stated as: Can the police department charge a person under this section for simply being intoxicated? A very common scenario that often occurs will have the following factors:

- The police department responds to a report of an intoxicated subject, an ill subject, or a subject passed out
- The subject is in a public place such as a park or the Prairie Path
- The subject has not committed any criminal offenses, nor is there any evidence of criminal behavior
- The subject is evaluated by the Lombard Fire Department Paramedics
- After evaluation by the paramedics and the hospital, it is determined that the subject does not, for any medical reasons, need to be transported to the hospital
- The subject does not wish to go to the hospital and signs a waiver or refusal for the Fire Department
- The subject can, generally, function in terms of walking, talking and responding to questions
- There are clear signs of intoxication, often confirmed by a portable breath tester (PBT) which reveals a blood alcohol concentration of greater than .20

Police officers, confronted with the above circumstances, are often reluctant to simply let the subject travel on their way because of liability concerns if the subject is subsequently injured by falling or being struck by a vehicle. Yet, they cannot be detained for medical reasons, and outside of being intoxicated, they have not committed a criminal offense.

The officers, relying on section 130.01, are taking the subject into custody which generally allows for an adequate amount of time for the subject to sober up. All of the above circumstances assume we have made every effort to call someone to pick the subject up or drive them home if possible.

I would appreciate your review of the existing ordinance provision as it relates to the scenario I have described. There is a great deal of difference of opinion within the department itself that any clarification you can provide would be of valuable assistance. While this situation does not happen every day, it repeats itself with enough frequency that we would like to be more uniform in our approach. Please feel free to contact me with any questions.

CHAPTER 130: OFFENSES AGAINST PUBLIC PEACE AND SAFETY

Section

- 130.01 Intoxication; begging
- 130.02 Disorderly conduct
- 130.03 Drinking of alcoholic liquor on public property
- 130.04 Drinking of alcoholic liquor in quasi-public parking areas within the Village
- 130.05 Assault

Curfew for Minors

- 130.10 Curfew for minors under 17
- 130.11 Responsibility of parents
- 130.12 School Curfew

Dangerous Weapons

- 130.20 Possession of dangerous weapons
- 130.21 Firing of dangerous weapons
- 130.22 Sale of dangerous weapons
- 130.23 Exceptions
- 130.24 Forfeiture of weapons
- 130.25 Disposition of confiscated weapons
- 130.26 Unlawful use of weapons; exceptions

Firearms and Explosives

- 130.30 Discharge of firearms prohibited; exceptions
- 130.31 Discharge of cartridges and fireworks prohibited
- 130.32 Discharge of cannons or artillery prohibited
- 130.33 Selling firearms to minors unlawful
- 130.34 Carrying loaded firearms prohibited
- 130.35 Setting explosives on railroad tracks
- 130.36 Exemption for Holders of Nuisance Wildlife Control Permits

- 130.99 Penalty

§ 130.01 INTOXICATION; BEGGING.

If any person is drunk or is in a state of intoxication on any highway, street, thoroughfare, or public place within the village or in any private house or place, to the annoyance of any citizen or person, or solicits alms from any person without written permission from the President of the village, he is guilty of a misdemeanor.
(’70 Code, § 9.04.010)

§ 130.02 DISORDERLY CONDUCT.

(A) Any person who makes, aids, or assists in making any improper noise, riot or disturbance, breach of peace, or diversion, or uses threatening or abusive language toward any person tending to the breach of the peace, or who engages in fighting or in any physical altercation or in riotous conduct so as to endanger the life, limb, health or property in the streets or elsewhere in the Village is guilty of disorderly conduct.

(B) Any person who knowingly transmits in any manner to any peace officer, public officer or public employee a report to the effect that an offense has been committed, knowing at the time of such transmission that there is no reasonable grounds for believing that such an offense has been committed is guilty of disorderly conduct.

(’70 Code, § 9.04.030, Ord. 3862, passed 5/19/94; Ord. 4235, passed 10/17/96).

§ 130.03 DRINKING OF ALCOHOLIC LIQUOR ON PUBLIC PROPERTY.

(A) It shall be unlawful for any person to drink alcoholic liquor as defined by § 112.02 on any village owned property, the public street, public right-of-way, in or about any vehicle or structure located on said public property.

(B) The prohibition in division (A) of drinking alcoholic beverages shall not apply to any individual or

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 13 OF THE VILLAGE CODE IN REGARD TO
PUBLIC INTOXICATION AND SOLICITATION

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

SECTION 1: That Title 9, Chapter 130, Section 130.01, of the Lombard Village Code is
amended to read in its entirety as follows:

If any person begs or solicits funds on the public ways in a harassing, threatening or
abusive manner, or appears in any public place and is manifestly under the influence
of alcohol, narcotics or other drug to the degree that he may endanger himself or
other persons or property and fails to cooperate with a police officer or other
intermediary person in being assisted to his home, a treatment facility or other health
facility, or annoys or disturbs other persons in his vicinity, he shall be guilty of
disorderly conduct.

SECTION 2: That this Ordinance shall be in full force and effect from and after its
adoption, approval and publication in pamphlet form as provided by law.

Passed on first reading this ____ day of _____, 2005.

First reading waived by action of the Board of Trustees this ____ day of _____, 2005.

Passed on second reading this ____ day of _____, 2005, pursuant to a roll call
vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

Approved by me this ____ day of _____, 2005.

William J. Mueller
Village President

ATTEST:

Brigitte O'Brien, Village Clerk

PUBLISHED by me in pamphlet form this ____ day of _____, 2005.

Brigitte O'Brien, Village Clerk