

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager

DATE: January 28, 2009 (B of T) Date: February 5, 2009

TITLE: Administrative Adjudication - Amending Title 9

SUBMITTED BY: Department of Community Development *DA*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development submits for your consideration an ordinance amending Title 9 of the Lombard Village Code in regard to the Administrative Adjudication of Municipal Code Violations for selected non-traffic violations.

Please place this item on the February 5, 2009 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X

Finance Director X

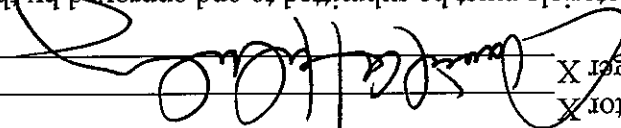
Village Manager X

Date

Date

Date

1/28/09



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 J. Heniff, AICP, Director of Community Development *WJH*

DATE: February 5, 2009

RE: Establishing Regulations to Prosecute Selected Village Codes through an Administrative Adjudication Process

As part of the goals set by the Village Board for the Community Development Department, staff has been researching and developing an alternative process for prosecuting selected violations of Village Code. Attached for consideration by the Village Board is an Ordinance establishing an Administrative Adjudication (AA) process for selected Village building, development and property maintenance codes.

BACKGROUND

Administrative Adjudication is a process by which violations of Village Code can be adjudicated at the Village Hall by a specially trained attorney (adjudicator) who presides over cases as would a judge in a courtroom. This adjudication process was introduced by the Police Department last year for selected parking violations. With the process in place, staff is looking to expand beyond traditional traffic complaints and add selected building and property maintenance complaints.

A number of local municipalities have implemented some level of AA as part of their code enforcement efforts, including but not limited to, Batavia, Glendale Heights, Lemont, Algonquin, Crystal Lake, Evanston and Oak Park.

While Code Enforcement strives to achieve compliance without court intervention, an average of five percent (5%) of all cases ends up being prosecuted in court. Implementing the AA process is not meant to supplant our current policies to work with affected property owners and tenants to achieve code compliance. Rather the program is intended to provide for an alternate adjudication process to achieve code compliance that benefits complainants, defendants and the Village.

Benefits

The benefits of this program include:

- **Timing** - In the current Circuit Court system, the Court determines when cases are scheduled to be heard. Through the AA process, the time period from which a violation is issued to consideration by the adjudicator is anticipated to be shorter. Once in the court system, the court is in control of scheduling and granting continuances. At best, a case is resolved in 30 days. Some cases can be in process for months. Long delays increase costs by requiring additional inspections, case review and court appearance time.

- **Staff time** - In the current Circuit Court system, most of the cases pertain to retail theft and traffic with interspersed municipal code violations. With AA, there would be less time spent waiting for the cases to be heard.
- **Prosecution Costs** - Deferring cases to AA would relieve some Village expenses as there would be no need for a prosecuting attorney.

- **Fines to the Village** - Unlike Circuit Court fines, which also include court costs, payments of fines would be directed to the Village.

- **Enhanced Review Process** - AA can include more time for the resident to present the case before the judge who is more familiar with Lombard codes.

- **Binding Decisions** - The resulting decisions from an adjudicator are final and binding. As with court findings, the findings made through AA are subject to review in the Circuit Court.

Limitations

While AA does provide the benefits noted above, staff also points out that the AA program does have limitations, as set forth in State Statute and as identified by Village Counsel, including:

- **Requiring an Appearance** - Adjudicators cannot require an appearance at a hearing. However, if the defendant does not appear, the adjudicator can find the individual(s) guilty and assess fines for the offense. Those who fail to appear and those cases not in compliance at the hearing can be fined up to \$750 per day.

- **Mandating Compliance** - While the adjudicator does have the ability to request compliance, if a party does not meet the terms of compliance, the Village would have to seek enforcement of the adjudicator's decision through the Circuit Court. Additionally, there is no provision for adjudicators to issue warrants for noncompliant individuals; the adjudicator can only impose fines and request compliance.

- **Compliance Defense** - The State Statutes governing AA provide a Compliance Defense for certain types of cases. If the property is in compliance by the time the case comes before the adjudicator, the adjudicator would be unable to render a guilty verdict, assess a fine or even costs, despite the Village's costs to achieve compliance. For reference

purposes, a review of the code enforcement cases brought to Circuit Court in 2008 found 66% were in compliance by court time and 31% failed to appear.

For cases involving violations or actions created by a tenant rather than the property owner, an owner can claim tenant responsibility as an acceptable defense. In these cases, staff may be obligated to bring these cases through the traditional Circuit Court process.

- **Full-Time Status** – State Statutes require that cases only be brought forward by a full-time building official. While most of our code enforcement staff are part-time employees, those employees would continue to work with the parties to identify the issues and achieve compliance. If this does not result in compliance, the Code Enforcement Coordinator would bring the case forward for prosecution.

Circuit Court Option

Unlike home-rule communities that have implemented AA, the Village's non-home-rule status limits our ability to fully prosecute all cases in this manner. While some cases may be promptly and efficiently dispatched by the AA process, the option to take cases to the Circuit Court will need to be maintained. For example, State Statute allows only the building owner and not the tenant to be cited for cases involving weeds, litter, inactive vehicles, and nuisances through AA. However, Village staff retains the ability to determine the appropriate venue for prosecuting complaints based upon the nature of the complaint.

Implementation

Should the Board adopt the attached Ordinance, staff will begin to fully implement the AA system for selected code violations. The associated software to be purchased and utilized for the program will cost approximately \$15,000. The consultant noted that the set up and configuration of the program to suit our needs will take approximately one month. The Village's adjudicator will be able to hear such cases in March, after his requisite training period is completed.

ACTION REQUESTED

Please place this item on the February 5, 2009 Village Board Agenda for consideration. Staff recommends that the Village Board adopt an Ordinance establishing an Administrative Adjudication system for selected non-traffic violations.

This Chapter is adopted pursuant to Division 2.2 of Article I of the Illinois Municipal Code (65 ILCS 5/1-2.2-1 et seq.) and Division 31.1 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-31.1-1 et seq.) in their current forms and as they may be amended from time to time for adjudication of municipal ordinance violations, including Building Code violations, to the extent permitted by the Illinois constitution.

100.01 Adoption:

CHAPTER 100: ORDINANCE ENFORCEMENT THROUGH ADMINISTRATIVE ADJUDICATION OF MUNICIPAL CODE VIOLATIONS

Section 1: Title 9 of the Lombard Village Code is hereby amended by adding the following new Chapter 100 thereto which shall read in its entirety as follows:

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

WHEREAS, the Village President and Board of Trustees of the Village believe that instituting a system of administrative adjudication to adjudicate contested matters with respect to the aforementioned violations will facilitate prompt and just resolution of disputes.

WHEREAS, the Village, pursuant to 65 ILCS 5/11-31.1-1 et seq. of the Illinois Municipal Code, may enact a system of administrative adjudication to adjudicate violations of regulations related to Village ordinance, law, housing or building code or zoning ordinance that establishes construction, plumbing, heating, electrical, fire prevention, sanitation or other health and safety standards that are applicable to structures in the Village or any Village ordinance that requires, after notice, the cutting of weeds, the removal of garbage and debris, the removal of inoperable vehicles or the abatement of nuisances from private property; and

WHEREAS, the Village of Lombard (hereinafter, the "Village"), pursuant to 65 ILCS 5/1-2.2-1 et seq. of the Illinois Municipal Code, may enact a system of administrative adjudication to adjudicate violations of its municipal ordinances, except for building code violations enforceable under 65 ILCS 5/11-31.1-1 et seq. and offenses under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles and except for any reportable offenses under Section 6-204 of the Illinois Vehicle Code; and

AN ORDINANCE AMENDING TITLE 9 OF THE LOMBARD VILLAGE CODE IN REGARD TO THE ADMINISTRATIVE ADJUDICATION OF MUNICIPAL CODE VIOLATIONS

ORDINANCE NO. _____

100.02 Purpose:

It has been determined to be in the best interests of the Village of Lombard to provide a method for fairly and efficiently enforcing the Village's municipal ordinances, including the Building Code, as may be allowed by law through the administrative adjudication of such violations, and establishing fines and penalties and authority for collection of unpaid fines and penalties.

100.03 Definitions:

As used in this Chapter, words or terms shall have the following meanings unless the context or usage clearly indicates that another meaning is intended:

Building Code means any Village ordinance, law, housing or building code or zoning ordinance that establishes construction, plumbing, heating, electrical, fire prevention, sanitation or other health and safety standards that are applicable to structures in the Village or any Village ordinance that requires, after notice, the cutting of weeds, the removal of garbage and debris, the removal of inoperable vehicles or the abatement of nuisances from private property.

Building Inspector means a full-time state, county or municipal employee, whose duties include the inspection or examination of structures or property in a municipality to determine if zoning or other code violations exist.

Code means, unless the context requires otherwise, any Village code or ordinance, including any Building Code violation, as defined in this Section, except for any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles and except for a reportable offense under Section 6-204 of the Illinois Vehicle Code (625 ILCS 5/6-204), and also excepting any Village code or ordinance adjudicated under Chapter 73 of this Code pursuant to 625 ILCS 5/11-208.3(a).

Hearing Officer means a Village employee or an officer or agent of the Village, other than a Building Inspector or law enforcement officer, whose duty it is to:

- A. Preside at an administrative hearing called to determine whether or not a Code violation exists;
- B. Hear testimony and accept evidence from the Building Inspector, law enforcement officer, code enforcement officer or other individual specifically authorized to issue a Code violation notice, the structure/property owner and all interested parties relevant to the existence of a Code violation;
- C. Preserve and authenticate the transcript and record of the hearing and all exhibits and evidence introduced at the hearing; and
- D. Issue and sign a written finding, decision and order stating whether a Code violation exists.

Property Owner means the legal or beneficial owner of a structure.

1. The name and address of the party violating the ordinance, if known, or the property owner for a Building Code Violation;
2. The type and nature of the violation;
3. The date and time the violation was observed;
4. The names of the witnesses of the violation; and

A. When a Building Inspector finds a Building Code Violation to exist, or a police officer, code enforcement officer or other individual specifically authorized by any Village official or Village department to issue a Code violation notice finds a Code violation, other than a Building Code Violation, to exist, he or she shall note the violation on a multiple copy violation notice and report form that shall include but shall not be limited to:

100.08 Code Enforcement Procedures:

This Chapter does not preclude the Village from using other methods to enforce the provisions of its Municipal Code, including its Building Code.

100.07 Hearing Procedures Not Exclusive:

- A. The function of the Ordinance Enforcement Department is to expedite the prosecution and correction of Code violations in the manner set forth herein.
- B. The Ordinance Enforcement Department may adjudicate any Code violation, as defined herein.

100.06 Function and Jurisdiction:

There is hereby established the Ordinance Enforcement Department, an executive department of Village government, which shall function as a Code hearing department pursuant to the system of administrative adjudication described in this Chapter.

100.05 Establishment of Code Hearing Department:

- A. Instruction on the rules of procedure of the hearing that they will conduct;
- B. Orientation to each subject area of the Code violations that they will administer;
- C. Observation of administrative hearings; and
- D. Participation in hypothetical cases, including rules on evidence and issuing final orders.
- E. Every Hearing Officer must be an attorney licensed to practice law in the State of Illinois for at least 3 years.

Prior to conducting proceedings under this Chapter, Hearing Officers shall successfully complete a formal training program that includes the following:

100.04 Hearing Officer Qualifications:

5. In the case of a Building Code violation, the address of the property where the violation is observed.

B. The violation report form shall be forwarded to the Ordinance Enforcement Department where a docket number shall be stamped on all copies of the report and a hearing date shall be noted in the blank spaces provided for that purpose on the form.

C. The hearing date shall not be less than thirty (30) nor more than forty (40) days after the violation is reported.

D. One copy of the violation report form shall be maintained in the files of the Ordinance Enforcement Department and shall be part of the record of hearing.

E. One copy of the report form shall be returned to the Building Inspector issuing the report form or the individual representing the Village in the case to prepare evidence of the Code violation for presentation at the hearing on the date indicated.

F. One copy of the report form shall be served by first class mail to the defendant (the property owner for Building Code Violations) along with a summons commanding the defendant to appear at the hearing.

G. In the case of a Building Code violation only, if the Village ordinance requires property owners to register, service may be made on the owner by mailing the report and summons to the property owner's address registered with the Village.

H. In the case of a Building Code violation only, if the name of the property owner cannot be ascertained or if service on the owner cannot be made by mail, service may be made on the owner by posting or mailing a copy of the violation report form on the front door of the structure where the violation is found, not less than 20 days before the hearing is scheduled.

100.09 Retaliation Against Occupants Prohibited:

In the case of a Building Code violation only, no action for eviction, abatement of a nuisance, forcible entry and detainer or other similar proceeding shall be threatened or instituted against an occupant of a dwelling solely because such occupant agrees to testify or testifies at a Building Code violation hearing.

100.10 Subpoenas:

At any time prior to the hearing date, the Hearing Officer assigned to hear the case may, at the request of either party, direct witnesses to appear and give testimony at the hearing.

100.11 Representation at Code Hearings:

The case for the Village may be presented by an attorney designated by the Village or by any other Village employee, but shall not be presented by an employee of the Ordinance

Enforcement Department. The case for the defendant may be presented by the defendant, his or her attorney, or any other agent or representative of the defendant.

100.12 Continuances:

No continuances shall be authorized by the Hearing Officer in proceedings under this Chapter except when absolutely necessary to protect the rights of the defendant. Lack of preparation shall not be grounds for a continuance. Any continuance authorized by a Hearing Officer under this Section shall not exceed 25 days.

100.13 Hearing:

At the hearing, the Hearing Officer shall preside, hear testimony and accept any evidence relevant to the existence or nonexistence of a Code violation.

100.14 Evidence:

With regard to testimony heard and evidence presented, the strict rules of evidence applicable to judicial proceedings shall not apply to hearings authorized by this Chapter.

100.15 Defenses to Building Code Violations:

In the case of a Building Code violation only, it shall be a defense if the owner, his or her attorney, or any other agent or representative proves to the Hearing Officer's satisfaction that:

A. The Building Code violation alleged does not in fact exist, or at the time of the hearing the violation has been remedied or removed;

B. The Building Code violation has been caused by the current property occupants and that in spite of reasonable attempts by the property owner to maintain the dwelling free of such violations, the current occupants continue to cause the Building Code violations; or

C. An occupant or resident of the dwelling has refused entry by the owner or his or her agent to all or a part of the dwelling for the purpose of correcting the Building Code violation.

100.16 Default:

A. If the defendant or his or her attorney or designee fails to appear on the dates set for the hearing, the Hearing Officer may find the defendant in default and shall proceed with the hearing and accept evidence relevant to the existence of a Code violation.

B. Upon finding the defendant in default, the Ordinance Enforcement Department shall send or cause to be sent notices by first class mail, postage prepaid to the defendant who was sent notice of the ordinance violation. Service of notices sent in accordance herewith shall be complete as of the date of deposit in the United States mail.

100.17 Findings, Decision And Order:

A. At the conclusion of the hearing, the Hearing Officer shall make a determination on the basis of the evidence presented at the hearing as to whether or not a Code violation exists.

B. The determination shall be in writing and shall be designated as findings, decision and order.

C. The findings, decision and order shall include:

1. The Hearing Officer's findings of fact;
2. A decision as to whether or not a Code violation exists based upon the findings of fact;
3. An order that states the sanction, which may include an order to correct the violation, or dismisses the case if a violation is not proved;
4. In the case of a Code violation other than a Building Code violation, if a violation is proved, a monetary sanction shall not exceed the amount provided for in Section 1-2-1 of the Municipal Code (65 ILCS 5/1-2-1), currently \$750.00; and
5. In the case of a Building Code violation, if a violation is proved, the order may impose the sanctions that are provided in the Building Code for the violation proved.

D. A copy of any findings, decisions, or orders shall be served on the defendant within five (5) days after it is issued.

E. Service shall be via first class mail.

F. Payment of any penalty or fine and the disposition of any fine money shall be in the manner as set forth in the Village Code.

100.18 Order and Sanction Attach to Property:

In the case of a Building Code violation only, the order to correct a Building Code violation and the sanctions imposed by the Village as the result of a finding of a Building Code violation under this Chapter shall attach to the property as well as to the property owner so that a finding of a Building Code violation against an owner cannot be avoided by conveying or transferring the property to another owner. Any subsequent transferee or owner of property takes subject to the findings, decision and order of a Hearing Officer under this Chapter.

100.19 Administrative Review:

The findings, decision and order of the Hearing Officer shall be subject to review in the Circuit Court of DuPage County. The provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and the rules adopted pursuant thereto shall apply to and govern every action for the judicial review of the findings, decisions, and order of a Hearing Officer under this Chapter.

100.20 Judgment On Findings, Decision And Order:

A. Any fine, other sanction, or costs imposed, or part of any fine, other sanction or costs imposed, remaining unpaid after the exhaustion of, or the failure to exhaust, judicial review procedures under the Administrative Review Law (735 ILCS 5/3-101 et seq.) shall be a debt due and owing the Village and, as such, may be collected in accordance with applicable law.

B. After expiration of the period within which judicial review may be sought for a final determination of the Code violation under the Administrative Review Law (735 ILCS 5/3-101 et seq.), the Village may commence a proceeding in the Circuit Court of DuPage County for the purpose of obtaining a judgment on the findings, decision and order. Nothing in this Section shall prevent the Village from consolidating multiple findings, decisions, and orders against a person in such a proceeding.

C. Upon commencement of an action to obtain a judgment on the findings, decision and order, the Village shall file a certified copy of the findings, decision, and order, which shall be accompanied by a certification that recites facts sufficient to show that the findings, decision, and order was issued in accordance with this Chapter and the applicable municipal ordinances.

D. Service of the summons and a copy of the petition may be by any method provided for in Section 2-203 of the Code of Civil Procedure (735 ILCS 5/2-203), or by certified mail, return receipt requested, provided that the total amount of fines, other sanctions, and costs imposed by the findings, decision, and order does not exceed \$2,500.00.

E. If the court is satisfied that the findings, decision and order was entered in accordance with the requirements of this Section and the applicable Village ordinances and that the defendant had an opportunity for a hearing under this Section and for judicial review as provided in this Section:

1. The court shall render judgment in favor of the Village and against the defendant for the amount indicated in the findings, decision, and order, plus costs. The judgment shall have the same effect and may be enforced in the same manner as other judgments for the recovery of money.
2. The court may also issue any other orders and injunctions that are requested by the Village to enforce the order of the Hearing Officer to correct a Code violation.

100.21 Impact On Other Administrative Adjudication Systems:

This Chapter shall not affect the validity of systems of administrative adjudication authorized by State law and adopted by the Village.

Section 2: Any and all Ordinances, section or subsections of Ordinances in conflict herewith are hereby repealed.

Brigitte O'Brien
Village Clerk

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

Brigitte O'Brien
Village Clerk

ATTEST:

William J. Mueller
Village President

APPROVED by me this _____ day of _____, 2009.

AYES:
NAYS:
ABSENT:

roll call vote as follows:

Passed on second reading this _____ day of _____, 2009, pursuant to a

_____, 2009.

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

Passed on first reading this _____ day of _____, 2009.

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.