

040383

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: August 10, 2004 (BOT) Date: August 19, 2004

TITLE: Local Prosecution of Driving While Under the Influence of Alcohol - Item for Discussion

SUBMITTED BY: Ray Byrne - Chief of Police

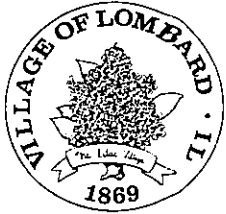
BACKGROUND/POLICY IMPLICATIONS:

The Police Department has researched the possibility of prosecuting the offense of Driving While Under the Influence of Alcohol (DUI) as a local offense. Attached please find a staff study analyzing the potential benefits of proceeding in this fashion. The Police Department is looking for direction from the Village Board as to the feasibility of proceeding in this fashion.

FISCAL IMPACT/FUNDING SOURCE:

Review (as necessary):
Finance Director X _____ Date _____
Village Manager X W. T. Lichter Date: 8/10/04

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

MEMORANDUM

Date: June 29, 2004

To: William T. Lichter
Village Manager

From: Ray Byrne
Chief of Police

Re: **Local Prosecution of Driving While Under the Influence of Alcohol (DUI) Cases**

Introduction

As you know, the police department has been asked to look at the feasibility of prosecuting the offense of Driving While Under the Influence of Alcohol (DUI) on a local level. Local prosecution of DUI's raises several issues, including the ability of a non-home rule community to prosecute these offenses, potential revenues to be obtained, public perception and safety, accountability, and most importantly, effectiveness.

Executive Summary

At my request, Lt. James Glennon conducted research on the local prosecution of DUI's. Lt. Glennon has submitted an excellent report and it is attached for your review. By way of an executive summary, I will try and highlight the main points that his research has found:

- The Village of Lombard, as a non-home rule community, does have the authority to prosecute DUI's on a local level.
- The Village of Lombard is likely to receive significantly increased revenues if it chooses to prosecute DUI's locally. Currently, Lombard receives approximately \$150 to \$400 in fine revenues for each DUI case. The amounts vary somewhat significantly and are impacted by the various costs that are assessed on each defendant. The Village of Lombard receives the "balance" of the fine monies after all other statutory obligations have been met. Under local prosecution, the Village would set a **minimum** fine (\$750.00), all of which the Village would receive.
- The Village will have to hire a law firm or a private attorney to prosecute all of the DUI cases. This could potentially be done on a flat fee basis or an hourly rate. Having an attorney that works directly for the police department does provide some benefits,

including accountability for performance, stability and familiarization with the police officers, and training opportunities.

- DuPage County State's Attorney Joseph Birkett has publicly announced his opposition to the local prosecution of DUI's. A letter outlining his concerns is attached to this report. State's Attorney Birkett lists among his concerns accountability, training and the compromising of tough prosecution by negotiating higher fines for less stringent penalties.
- Although the Lombard Police Department arrests approximately 300 drivers for DUI per year, not all of these cases can be prosecuted locally. Examples would include felony DUI's, arrests that are accompanied by criminal charges, prosecutions that require lab analysis of blood and urine, or those cases where repeat offenders should be prosecuted by the State. An estimate of local prosecutions should probably be about 250 per year.

Discussion of Issues

Some of the issues raised in Lt. Glennon's report require additional discussion. Although there is a conservative estimate of revenues projected in the report, it is worth noting that the revenue stream may not be realized for 1 – 3 years. It is not uncommon for a DUI case to take several months or even a year to be pled out or go to trial. Furthermore, most cases result in a period of court supervision for a year. Typically, defendants have that year to actually pay their fine, and this is sometimes accomplished with a payment plan. Assuming that the Village proceeds with local prosecution, we may not actually see tangible revenues for two years.

The Village of Lombard and the Lombard Police Department should not compromise public safety or aggressive enforcement with local prosecution of DUI's. We believe this can be accomplished by maintaining the same stance that the DuPage County State's Attorney's Office takes with offenders. While there is always room for negotiations in criminal cases, the Village does not have to negotiate to any great extent. The key difference is the minimum statutory fine of \$750.00. This minimum fine amount is likely to produce the increased revenues without any need to compromise our stance on DUI offenders. The Lombard Police Department would not agree to the rescission of statutory summary suspensions in exchange for higher fines. In conjunction with this, we would develop a series of guidelines that would disallow local prosecution in any cases where state prosecution is more appropriate.

Some of the objections raised by State's Attorney Joe Birkett can be addressed. Mr. Birkett's office has always been a model of cooperation. To that end, we would work with Mr. Birkett's office to try and ensure that our local prosecutor received the same training that his assistant state's attorneys also receive.

Conclusion and Recommendation

The research surrounding this issue has raised several items that are debatable. Chief amongst them is the appropriateness of municipalities prosecuting this offense as opposed to the State's Attorney's Office. The concept of "policing for revenue" is not the philosophy of the Lombard Police Department, nor should it be. Nonetheless, if a municipality can demonstrate that it can effectively prosecute these or any other offenses, then there is certainly no harm in gaining additional revenue while that occurs. In fact, one might argue that it supports the concept of having criminal defendants pay for the costs of enforcement and prosecution.

The police department does not want to compromise public safety for revenue. However, we believe that we can develop strict and conservative guidelines that direct appropriate cases for state prosecution when necessary. Many other DuPage County communities have been prosecuting DUI's successfully for a number of years. Therefore, our recommendation is to proceed with the prosecution of DUI's locally, while carefully monitoring the program for success. If it does not work, or significant problems are encountered, there is nothing to do in order to revert back to state prosecution. The process is seamless.

Action Plan

Seek the advice and consent of the Village President and Board of Trustees to proceed with the local prosecution of DUI's.

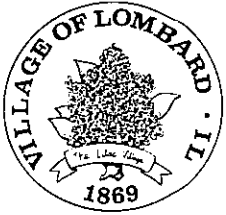
Adopt an ordinance authorizing arrests and prosecutions under the Lombard Village Code, with a minimum fine of \$750.00 for an offense.

Prepare a Request for Proposals (RFP) to be sent to law firms and private attorneys that are qualified to prosecute DUI's locally. Review the RFP responses and select firms/attorneys for interviews.

Upon selection of a prosecutor, develop guidelines for the implementation of prosecuting DUI's locally. Additionally, provide training to sworn personnel prior to actually charging defendants under a local ordinance.

If you would like any additional information, or should you have any questions, please do not hesitate to contact me.

cc: Command Staff



**STAFF STUDY
FEASIBILITY OF LOCAL PROSECUTION FOR DUI CASES**

LT. JIM GLENNON

June 16, 2004

I. The Problem: This memo is to serve as a summary of my research concerning the feasibility of the Village of Lombard enacting local DUI ordinances and prosecuting DUI arrests through the use of a private prosecutor.

During this investigation I spoke with, or reviewed opinions by, several private attorneys, police officials from other jurisdictions, Deputy Chief Dane Cuny, people in the Village's finance division, and State's Attorney Joe Birkett.

Two specific questions needed to be addressed.

1. Can we legally prosecute our own DUIs considering the Village of Lombard is not a home rule community?
2. Would there be financial, as well as practical, benefits to implementing a set of DUI ordinances and prosecuting the cases on a local level?

II. Assumptions:

- The Village of Lombard Police Department averages over 300 DUI arrests per/year.
- The police department will continue to make DUI arrests a priority and maintain an arrest rate that exceeds 300 annually.
- Over 90% of those arrested are convicted or given court supervision.
- The fines from these arrests and subsequent convictions are assessed by the courts and managed by the county clerk's office.
- Lombard receives no court costs or fees but it does receive 100% of the fines levied against DUI offenders.

III. Facts bearing on the problem:

1. **Legality of Local Prosecution.** According to attorney George Wagner of the law offices of Klein, Thorpe and Jenkins, Ltd. The Village of Lombard is within their legal right to enact a DUI ordinance and locally prosecute cases. His recommended proviso however, is that the DUI ordinance, as well as all pertinent local traffic laws be adopted to the specific state IVC provisions of Chapter 11. This would insure that the ordinances would not conflict with the state's IVC code. The Village would need to be aware that it could not adopt certain sections of the state code. For example, Aggravated DUI is a felony as well as third-time violators. Local municipalities can

not adopt and prosecute felony offenses. Mr. Wagner sent along, with his opinion, a sample ordinance (please find attached).

2. **Benefits of Local Prosecution.** The Lombard Police Department has been one of the most active enforcers of DUI violations in the state for more than ten years. The tickets issued and arrest charges are cited under the State's Illinois Vehicle Code. Writing these violations under the IVC gives the State's Attorney's office jurisdiction reference prosecution and the County Clerk's office jurisdiction in the remittance of fines and court costs.
- **Local Prosecuting Attorney's fees:** The general consensus among attorneys interested in prosecuting local DUI cases is that an average of **five - ten hours** per week would be billed to the Village of Lombard. However, these firms all have different philosophies concerning how to bill. Some attorneys charge straight fees for all hours worked. Others charge "prep-time" or office time at a lower rate. The number of actual trials would cost the Village more than general plea agreement sessions. The Lombard Police Department schedules one full court day per/week to deal with summary suspension hearings. Considering that an hourly rate for an attorney would be in the area of \$175.00 per/hour the average billing per/week could be as low as \$875.00 or as high as \$1,750.00 per/week. Factoring approximately 50 weeks of court the annual fees spent on the prosecuting attorney would be between **\$43,750.00 and \$87,500.00**. Obviously this is a wide average. I did not have the luxury of examining true bids.
 - **Court Assessed Fines, Costs, and Fees:** As mentioned, the Police Department averages about 300 DUIs per year on the low side. I spoke with several people concerning the amount of revenue these cases bring directly to the Village of Lombard. I learned that the municipalities that made the arrests receive **100% of the fines** levied against DUI drivers. In addition, each motorist convicted/granted supervision pays \$100.00 into a "police tech fund". This money goes directly to the police department and is to be used for programs / equipment designed to combat the DUI driver problem.

Determining exactly how much total money the Village actually receives directly from DUI cases was difficult. The fines for DUIs are not tracked separately from monies collected from other traffic and criminal cases. Eventually I found a manager at the County Clerk's office who averaged the fines and fees of approximately six DUI cases disposed of over the past few weeks. The total assessed fines, fees, and court costs levied in these particular cases averaged approximately \$1,000.00 - \$1,200.00. Of that amount the actual fines, however, only averaged between **\$150.00 - \$200.00**. From this particular group of six, the largest *fine* assessed was **\$400.00**. In contrast, I was told that in Naperville, Bloomingdale, and Elmhurst (all cities utilizing local prosecution) the DUI fines alone averaged over **\$1,000.00**. This is separate from the mentioned fees and costs. Apparently, since there are so many statutory fees and costs connected to DUI cases that require specific dollar amounts to be assessed against offenders, the

State's Attorney's office will use the flexibility of assigning *fin*es as a negotiation tool in plea agreements.

IV. Discussion:

Pros v. Cons of Local Prosecution

Pros

1. **Monetary Considerations:** In an effort to establish some type of estimate concerning revenue benefits for the Village of Lombard, I am using the following assumptions and approximations to determine possible annual net revenues.

250 DUI arrests found / pled guilty or granted court supervision and fined **\$800.00** each:

Average actual fines assessed -	\$800.00 per case.
Total annual fines collected -	\$200,000.00.
Total spent on private prosecutor -	\$60,000.00
Total possible net revenue -	\$140,000.00

This cost excludes overtime paid to officers in court because whether we prosecute locally or through the state the overtime would be the same.

If the average fine is approximately **\$1,000.00** per case, as it is in surrounding communities, the net revenue would obviously be significantly higher (**\$250,000.00** in fines – potential net revenue of **\$190,000.00**)

2. **Relationship with the prosecutor:** While the State's Attorney is devoted to aggressive DUI prosecutions, there are areas that could perhaps be improved upon with a local prosecutor. Potential areas of improvement include, but are not limited to, the following:

- a. **Better communication between local prosecutors and the LPD administration personnel:** It is impossible to estimate the number of times individual officers, as well as groups of officers, report to court after cases have been pled out. The ability of the Assistant State's Attorneys assigned to DUI cases to communicate with their office clerks about changes in case status is at times problematic. Because of this, our officers report to court and are regularly told the case pled out "hours ago." The amount of money spent on officers who report for **three and four hour minimums** could potentially be greatly reduced with local prosecutors who have a relationship with the police administration personnel.

In addition, local prosecutors would be more apt to assist in educating our personnel in writing of reports and preparing for trials. A relationship between the prosecutor and police supervisors would assist in establishing a progressive enforcement / prosecution program.

b. Experienced specialists prosecuting DUIs: It is imperative that part of the criteria for hiring a local prosecutor includes past DUI prosecution experience. If this is the case, the Village will have a specialist with specific goals and a level of expertise. The prosecutor's ability to obtain convictions from DUI trials and to consistently make plea deals that significantly fine DUI offenders under the spirit of the LPD philosophy is a win / win scenario.

Cons

State's Attorney Joe Birkett has expressed his "*strong objection*" to municipalities prosecuting DUI cases locally. His concerns include the following:

- a. Accountability. Birkett notes that his prosecutors are his responsibility and thus need to work with certain parameters.
- b. Local prosecutors lack supervision and familiarity with the workings of DUI prosecutions.
- c. Training is ongoing within Birkett's office with up-to-date information and legal techniques.
- d. The focus by local prosecutors is on high fines and not the rescission of driver's licenses on statutory summary suspensions. Birkett believes that deals are made where the offender will pay a high fine as a trade off for the summary suspensions being waived.

V. Conclusion:

It appears as though the Village of Lombard is within it's legal right to prosecute DUIs on a local level.

From a monetary and budgetary perspective the facts would leave one to conclude that local prosecution of DUIs is preferable over state prosecution.

From the perspective of aggressive prosecution the conclusion is less obvious. The key to success would be the selection of the prosecutor. The LPD philosophy of aggressively enforcing DUI laws and just as aggressively prosecuting those arrested for DUI must be the primary goal of the person prosecuting for the Village. Heavy fines are not contrary to that goal. Waiving summary suspensions may be. A compromise is very possible.

Finally there should be a determination concerning repeat offenders. Second time offenders are routinely prosecuted by local prosecutors, third time offenders are looking at felony charges under state statute. Those should be prosecuted by the state in order to dole out appropriate punishment to serious violators.

VI. Action Recommended: Begin the process of implementing the program with the caveat that it be a pilot program that would be evaluated after a specified period of time, perhaps one year. As has been pointed out, reverting back to the current system (prosecuting cases through the State's Attorney's office) if local prosecution proves unsuccessful, would require virtually no significant change by the LPD. We would simply start charging DUI violators under state statute.

*Same
Municipal DUI
file*



OFFICE OF THE STATE'S ATTORNEY
DuPAGE COUNTY, ILLINOIS

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STATE'S ATTORNEY

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COMPLAINTS)

November 26, 2003

Chief Ohlson
Villa Park Police Department
11 W. Home Avenue
Villa Park, IL 60181

Dear Chief Ohlson:

I am writing to express my strong objection to Villa Park City prosecution of DUI offenses under municipal ordinance. The DuPage County State's Attorney's Office prosecutes DUI cases with the appropriate balance of fairness to the offender and concern for the public interest in keeping unsafe drivers off the public roads. These prosecutors are required to undergo ongoing training in all facets of DUI prosecutions:

1. Trial techniques;
2. Evidentiary foundations for blood and breath results;
3. The law on search, seizure, arrest and confessions; and
4. Legislative developments

Most importantly, these prosecutors are supervised and I, as your State's Attorney, am responsible for their conduct.

DUI offenders in DuPage County who demonstrate an unwillingness or an inability to exercise the privilege of driving a motor vehicle in a safe manner should be prosecuted by the DuPage County State's Attorney's Office. Repeat offenders are a tremendous public safety risk and these types of cases must be handled by only the most experienced, supervised, competent and trained prosecutors available.

Attorneys who prosecute DUI cases on behalf of the municipalities one or two days a week are not as familiar with the issues which routinely arise as the DuPage County State's Attorney's Assistants. Many of these prosecutors are former Assistant State's Attorney's and they are fine lawyers, but the reality is they are part-timers who are not supervised.

The DuPage County State's Attorney's Office has a long-term commitment to the enforcement of DUI prosecutions. Our office has been responsible for passing more DUI laws than any other office in Illinois. We have been recognized by national DUI prevention groups such as AAIM and MADD. The DuPage County State's Attorney's Office staff have been selected by the Illinois State Police to help draft the Rules and Regulations for Blood, Breath and Urine Collection used by every officer in DUI arrests across the State of Illinois. Prosecutors here teach and train other prosecutors both within the office and at nationally recognized facilities in the state.

In addition to our wealth of knowledge of the laws and continuing training, we directly supervise the assistants covering the cases. These attorneys are accountable to a supervisor who is present in court on a daily basis. The supervisor daily reviews changes in DUI laws and is sought out by the Judiciary to answer questions as they arise.

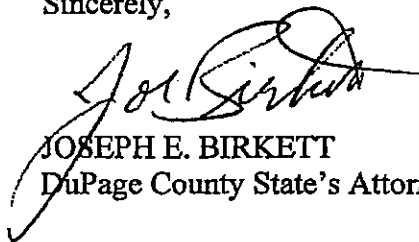
Furthermore, while the data is unscientific, the DuPage County State's Attorney's Office handles cases with far more consistency than individual city prosecutors. The numbers show a greater percentage of city prosecutions being resolved with a higher fine and a rescission of the statutory summary suspension than cases prosecuted by the state.

Recognizing the very real budgetary issues facing municipalities today, I would propose a more appropriate action by the municipalities is to sponsor a bill which would provide for a larger percentage of fines and costs being payable to the arresting municipality under existing State Prosecution of DUI Violations of the Vehicle Code.

I trust this information will be considered by you as you revisit the notion of municipal prosecution of DUI offenses.

If I or my staff can be of any assistance to you, please do not hesitate to contact me.

Sincerely,



JOSEPH E. BIRKETT
DuPage County State's Attorney

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WRITER'S DIRECT DIAL

WRITER'S E-MAIL

(312) 984-6468

gawagner@ktinet.com

November 26, 2003

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

Re: Local Ordinance Prohibiting Driving Under the Influence

Dear Chief Byrne: 

Per your request, we have researched your inquiry regarding the Village's ability, as a non-home rule municipality, to prosecute the offense of Driving Under the Influence (DUI) on a local ordinance ("DUI Ordinance"). Based upon the following analysis, it is our opinion that such an ordinance would be valid and enforceable. Therefore, we are enclosing a draft ordinance to allow such prosecution.

The Court in *Village of Mundelein v. Hartnett*, 117 Ill. App. 3d 1011 (2nd Dist. 1983) reviewed a DUI ordinance adopted by a non-home rule municipality. The Court declared that ordinance to be invalid, but only because it failed to comply with the penalty requirements of Section 11-501(c), 625 ILCS 5/11-501(c). *Village of Mundelein* requires DUI ordinances to incorporate the full range of penalties set forth in the Illinois Vehicle Code (I.V.C.), treating the violation as a Class A misdemeanor.

The Village's non-home rule status was not at issue in *Village of Mundelein*, but the Court noted that "(m)unicipalities derive their authority for enacting drunk driving legislation from section 11-208(a)(15) of the Vehicle Code (Ill. Rev. Stat. 1983, ch. 95 ½, par. 11-208(a)(15) recodified as 625 ILCS 5/11-208(a)(15), which states that municipalities may adopt 'such other traffic regulations as are specifically authorized by this Code.'" *Village of Mundelein*, 117 Ill. App. 3d at 1015. In addition, we noted that the IVC's DUI-related sections specifically refer to "or a similar provision of a local ordinance," (625 ILCS 5/11-501, 501.1, 501.2, 501.4, 501.4-1, 501.5, 501.6, and 501.8), which presents a strong argument that any municipality can enact a DUI ordinance. Therefore, it is our opinion that a non-home rule municipality's DUI ordinance would be valid if it is consistent with the provisions of the IVC.

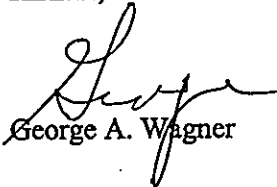
You will notice that the draft ordinance incorporates the IVC's DUI-related provisions, as may be amended, by reference. Adoption of the specific IVC provisions insures that the ordinance will be current, but also insures that the ordinance will not conflict with the provisions of Chapter 11 of the IVC, as required in Section 11-207, 625 ILCS 5/11-207. Section 11-501(d) is excluded from the ordinance as it establishes the offense of aggravated DUI, a felony, which the Village does not have authority to adopt.

You might consider revising the Traffic Code at some point in the future. Many of our clients have adopted the IVC, as may be amended, by reference for all similar offenses. This helps to keep the Traffic Code current and make it more user friendly. Those local ordinance violations can then be cited by referencing the local ordinance section and the applicable IVC section.

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

Sincerely,

KLEIN, THORPE & JENKINS, LTD.



George A. Wagner

cc: Thomas P. Bayer

@PFDesktop\::ODMA/MHODMA/CH2KDC01;iManage;124287;1

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE LOMBARD TRAFFIC CODE
(ORDINANCE NO. 1186) IN RELATION TO THE
OFFENSE OF DRIVING WHILE UNDER THE INFLUENCE**

BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard,

DuPage County, Illinois, as follows:

Section 1: That the Lombard Traffic Code is hereby amended by revising Article V thereof to delete in its entirety Section 10-5-2, "Persons under the influence of intoxicating liquor or narcotic drugs," and replace it with a new Section 10-5-2 which shall read as follows:

"Section 10-5-2. Driving while under the influence.

The following provisions of the Illinois Vehicle Code, 625 Illinois Compiled Statutes, 625 ILCS 5/1-100 et seq., as may be amended from time to time, are hereby adopted by reference pursuant to the authority granted in 625 Illinois Compiled Statutes 5/20-204:

Sections 11-501, 11-501.1, 11-501.2, 11-501.4, 11-501.4-1, 11-501.5, 11-501.6, 11-501.7, and 11-501.8, excepting Section 11-501(d).

Reference to this Section 10-5-2 can be made in the following manner: The Lombard Traffic Code, Chapter 10, Section 5-2 followed by the applicable Illinois Vehicle Code section number, e.g., 10-5-2(11-501(a))."

Section 2: 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 _____, 2003.

First reading waived by action of the Board of Trustees this ___ day of _____, 2003.

Passed on second reading this ___ day of _____, 2003, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this _____ day of _____, 2003.

William J. Mueller
Village President

ATTEST:

Barbara A. Johnson
Deputy Village Clerk

Published by me in pamphlet form this _____ day of _____, 2003.

Barbara A. Johnson
Deputy Village Clerk