

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 Boards, Commissions & Committees (Green)
 Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: April 28, 2005 (COW)(B of T) May 5, 2005

TITLE: Ordinance Approving the Amendment to By-Laws of the Lombard Public Facilities Corporation

SUBMITTED BY: Leonard J. Flood, Director of Finance

BACKGROUND/POLICY IMPLICATIONS:

The attached ordinance amends the by-laws of the Lombard Public Facilities Corporation (LPFC) in regard the authority of the LPFC as it relates to the sale of hotel and convention center property in the future. A memo from Don Renner of Klein, Thorpe and Jenkins, attorney for the LPFC provides information as to why this amendment is necessary.

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X Leonard J. Flood Date 04/28/05
Village Manager X W.T. Lichter Date 4/28/05

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.

MEMORANDUM

SENT VIA E-MAIL

TO: William T. Lichter, Village Manager
FROM: Donald E. Renner III, LPFC Attorney
DATE: April 27, 2005
RE: Amendment to LPFC By-Laws

Attached you will find a copy of the amended By-Laws of the Lombard Public Facilities Corporation (the "LPFC") as well as the Village of Lombard (the "Village") ordinance approving the amended By-Laws of the LPFC.

As the LPFC has the authority to sell the Hotel and Convention Facility to a party other than the Village, it is advisable to add the language in Article X of the LPFC By-Laws. Article X provides that the LPFC may not sell the Hotel and Convention Facility to a third party without the prior consent of the President and Board of Trustees of the Village. In addition, if the LPFC does sell the Hotel and Convention Facility to a third party, the Village may demand that title and rights to purchase the Hotel and Convention Facility first be conveyed and assigned to the Village.

The purpose of granting the Village this authority over the LPFC is to further bolster our position that the Village is acting under color of law in constructing and acquiring a convention hall. The LPFC is to transfer title to the Hotel and Convention Facility upon the earlier of the redemption or retirement of the bonds. However, if the LPFC were to sell the Hotel and Convention Facility to a third party without the consent of the Village and without first conveying title to the Village, the Village would never hold a property interest in the Hotel and Convention Facility. The amendment ensures that the Village will retain the right to take title to the Hotel and Convention Facility. Further, the amendment provides additional support to the argument that the LPFC is an agency or instrumentality of the Village, as the Village is given additional control over the actions of the LPFC.

cc: Len Flood
Jim Shanahan
Peter Phillippi
Tom Bayer
(all via e-mail)

ORDINANCE NO. _____

AN ORDINANCE APPROVING THE AMENDMENT TO BY-LAWS
OF THE LOMBARD PUBLIC FACILITIES CORPORATION

WHEREAS, the Village of Lombard (the "Village") has previously approved the By-Laws of the Lombard Public Facilities Corporation (the "PFC") via Village Ordinance No. 5351 adopted September 4, 2003 (as amended by Village Ordinance No. 5534 adopted August 19, 2004); and

WHEREAS, on _____, 2005, the Board of Directors of the PFC adopted amended By-Laws; and

WHEREAS, pursuant to Article VII of the PFC By-Laws, the Village's approval of all amendments to the PFC By-Laws is required in order for the amendments to be effective;

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

SECTION 1: That the amended By-Laws adopted by the Board of Directors on _____, 2005 and submitted to the Village is hereby approved.

SECTION 2: That this Ordinance shall be in full force and effect from and after its passage and approval 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: _____

NAYES: _____

ABSENT: _____

Approved by me this ____ day of _____, 2005.

William J. Mueller
Village President

ATTEST:

Barbara A. Johnson
Deputy Village Clerk

BY-LAWS
OF
LOMBARD PUBLIC FACILITIES CORPORATION

ARTICLE I.

Name

Section 1.1. The name of the Corporation is Lombard Public Facilities Corporation ("Corporation").

ARTICLE II.

Fiscal Year

Section 2.1. The fiscal year of the Corporation shall begin each year on the first day of January and end on the last day of December of the same year.

ARTICLE III.

Members

Section 3.1. Membership. The Corporation shall have no members.

ARTICLE IV.

Board of Directors

Section 4.1. Appointment, Number and Term of Office. The Directors shall be appointed for terms of four (4) years, except for the filling of vacancies on the Board as provided in Section 4.2 of this Article.

The number of Directors of the Corporation shall be five (5) unless changed by amendment of this section. The initial Directors shall be appointed by the Village President with the advice and consent of the Board of Trustees of the Village of Lombard. A Director may be removed with or without cause by the majority vote of the members of the President and Board of Trustees of the Village of Lombard.

All Directors, except in the case of earlier resignation, removal or death, shall hold office until their respective successors are chosen and qualified in the same manner as the initial Board of Directors.

Section 4.2. Vacancies. Any vacancy on the Board of Directors caused by an increase in the number of Directors or the expiration of the term of a Director shall be filled in the same manner as the initial Board of Directors was appointed. No decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director.

Any vacancy occurring in the Board of Directors caused by resignation, removal, death or other incapacity shall be filled in the same manner as the initial Board of Directors was appointed.

Section 4.3. Annual Meeting of Directors. The Board of Directors shall meet each year on the first Monday in June, at such place either within or without the State of Illinois as shall be set forth in the notice of the meeting, for the purpose of election of officers and consideration of any other business that may properly come before the meeting. No notice of any kind to either old or new members of the Board of Directors for such annual meeting shall be necessary.

Section 4.4. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places, either within or without the State of Illinois, as may be fixed by the Directors. Such regular meetings of the Board of Directors may be held without notice or upon such notice as may be fixed by the Directors.

Section 4.5. Special Meetings. Special meetings of the Board of Directors may be called by the President of the Corporation, or by not less than one-third of the members of the Board of Directors of the Corporation. Notice of the time and place, either within or without the State of Illinois, of a special meeting shall be served upon, telephoned, mailed, telegraphed or cabled to each Director at his or her usual place of business or residence at least forty-eight (48) hours prior to the time of the meeting. Directors, in lieu of such notice, may sign a written waiver of notice either before the time of the meeting, at the meeting or after the meeting. Attendance by a director in person at any such special meeting shall constitute a waiver of notice.

Section 4.6. Quorum. A majority of the actual number of Directors in office immediately before a meeting begins, shall be necessary to constitute a quorum for the transaction of any business, and the act of a majority of the Directors present at the meeting, at which a quorum is present, shall be the act of the Board of Directors, unless the act of a greater number is required by the Illinois General Not for Profit Corporation Act of 1986 (the "Act"), by the Articles of Incorporation, or by these By-Laws.

Section 4.7. Participation in Meetings. A Director, who is present at a meeting of the Board of Directors at which action on any corporate matter is taken, shall be conclusively presumed to have assented to the action taken, unless (a) his dissent shall be affirmatively stated by him at and before the adjournment of such meeting (in which event the fact of such dissent shall be entered by the secretary of the meeting in the minutes of the meeting), or (b) he shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. The right of dissent provided for by either clause (a) or clause (b) of the immediately preceding sentence shall not be available, in respect of any matter acted upon at any meeting, to a Director who voted at the meeting in favor of such matter and did not change his vote prior to the time that the result of the vote on such matter was announced by the chairman of such meeting.

Section 4.8. Open Meetings Act. The Corporation shall at all times act as if the provisions of the Open Meetings Act (5 ILCS 120/1 *et seq.*) applied to it. For such purposes, the Corporation's office shall always be deemed to be in Lombard, Illinois.

ARTICLE V.

Officers

Section 5.1. Principal Officers. The officers of the Corporation shall be a President, a Treasurer, a Secretary, a Vice President and such assistant officers as may be determined from time to time by the Board of Directors. The same individual may simultaneously hold more than one (1) office of the Corporation.

Section 5.2. Election and Term of Office. The officers of the Corporation shall be chosen annually by the Board of Directors at the annual meeting thereof. Each such officer shall hold office until his or her successor shall have been duly chosen and qualified, or until his or her death, or until such officer shall resign, or shall have been removed in the manner hereinafter provided.

Section 5.3. Removal. Any officer may be removed, either with or without cause, at any time, by resolution adopted at any meeting of the President and Board of Trustees of the Village of Lombard.

Section 5.4. Subordinate Officers. The Corporation may have one or more assistant officers who shall have such powers and duties as the officers whom they are elected to assist shall specify and delegate to them and such other powers and duties as the Board of Directors may prescribe. An Assistant Secretary may, in the event of the absence of the Secretary, attest the execution of all documents by the Corporation.

Section 5.5. Vacancies. Any vacancy in any office for any cause may be filled for the unexpired portion of the term in the manner prescribed in these By-Laws for election or appointment to such office for such term.

Section 5.6. President. The President shall be chosen from among the Directors and shall have all such powers and duties as, from time to time, may be assigned to him by the Board of Directors.

Section 5.7. Vice President. The Vice President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice President shall perform such other duties and have such other powers as the Board of Directors may from time to time assign.

Section 5.8. Treasurer. Except as noted herein, the Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Corporation and shall deposit all such funds in the name of the Corporation in such banks or other depositories as shall be selected by the Board of Directors. He or she shall upon request exhibit at all reasonable times

the books of account and records to any of the Directors of the Corporation during business hours at the office of the Corporation where such books and records shall be kept; shall render upon request by the Board of Directors a statement of the condition of the finances of the Corporation at any meeting of the Board of Directors; shall receive, and give receipt for, monies due and payable to the Corporation from any source whatsoever; and in general, shall perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President of the Board of Directors. The Corporation may appoint a financial institution to serve as trustee for the proceeds of any bond issue and the receipt of any moneys pledged to the repayment of those bonds.

Section 5.9. Secretary. The Secretary shall keep or cause to be kept in the books provided for that purpose the minutes of the meetings of the Board of Directors; shall duly give and serve all notices required to be given in accordance with the provisions of these By-Laws and by the Act; shall be custodian of the records and of the seal of the Corporation and see that the seal is affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these By-Laws; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by the President or the Board of Directors.

ARTICLE VI.

Miscellaneous

Section 6.1. Corporate Seal. The seal of the Corporation shall be circular in form with the name of the Corporation around its periphery, and the word "Seal" through the center.

Section 6.2. Execution of Contracts and Other Documents. Unless otherwise authorized or directed by the Board of Directors, all written contracts and other documents entered into by the Corporation shall be executed on behalf of the Corporation by the President and, if required, attested by the Secretary or an Assistant Secretary.

Section 6.3. Application of Other State Statutes. The officers and Directors of the Corporation shall act at all times as if the provisions of the State Gift Ban Act (5 ILCS 425/1 *et seq.*) and the conflict of interest statute (50 ILCS 105/3) applied to the Corporation.

ARTICLE VII.

Amendments

Section 7.1. Except as indicated in the Articles of Incorporation, the power to make, alter, amend, or repeal these By-Laws is vested in the Board of Directors, but the affirmative vote of a majority of the actual number of Directors elected and qualified, from time to time, shall be necessary to effect any alteration, amendment or repeal of these By-Laws. However, no amendment to Article IV shall be effective without the approval of the President and Board of Trustees of the Village of Lombard.

ARTICLE VIII

Indemnification

Section 8.1. Indemnification Against Third Party Claims. This Corporation shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation or, with respect to any criminal action or proceeding, that the person had reasonable cause to believe that his or her conduct was unlawful.

Section 8.2. Indemnification Against Claims by the Corporation. The Corporation shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, provided that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the corporation, unless, and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

Section 8.3. Scope of Indemnification. To the extent that a present or former director, officer or employee of the Corporation has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, if that person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation.

Section 8.4. Procedure for Indemnification. Any indemnification under Section 8.1 or Section 8.2 (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case, upon a determination that indemnification of the present or former director,

officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 8.1 or Section 8.2. Such determination shall be made with respect to a person who is a director or officer at the time of the determination: (1) by the majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (2) by a committee of the directors designated by a majority vote of the directors, even through less than a quorum, (3) if there are no such directors, or if the directors so direct, by independent legal counsel in a written opinion, or (4) by the members entitled to vote, if any.

Section 8.5. Time of Indemnification. Expenses (including attorney's fees) incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding, as authorized by its Board of Directors in the specific case, upon receipt of an undertaking by or on behalf of the director or officer to repay such amount, unless it shall ultimately be determined that such person is entitled to be indemnified by the Corporation as authorized in this Article. Such expenses (including attorney's fees) incurred by former directors and officers or other employees and agents may be so paid on such terms and conditions, if any, as the Corporation deems appropriate.

Section 8.6. Indemnification Not Exclusive. The indemnification provided by the Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of members or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 8.7. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article.

Section 8.8. "Corporation" Defined. For purposes of this Article, references to the "Corporation" shall include, in addition to the Corporation, any surviving corporation, any merging corporation (including any corporation having merged with a merging corporation) absorbed in a merger which, if its separate existence had continued, would have had the power and authority to indemnify its directors, officers, employees or agents, so that any person who was a director, officer, employee or agent of such merging corporation, shall stand in the same position under the provisions of this Article with respect to the surviving corporation as such person would have with respect to such merging corporation if its separate existence had continued.

ARTICLE IX

Executive Committee

Section 9.1 Formation of Executive Committee. The Board of Directors hereby appoints from their number an Executive Committee constituted of two (2) members of the Board of Directors selected by the Board, for the transaction of any business of the Corporation and the signing of any documents which may need to be signed by or on behalf of the Corporation, or which may require the attention of the Corporation, during the intervals between meetings of the Board of Directors. All documents signed by either member of the Executive Committee shall be reported to the Board of Directors at the Board's next regular or special meeting, and each and every business transaction conducted by either member of the Executive Committee and all documents signed by either member of the Executive Committee shall be ratified by the Board of Directors as its said next meeting.

Section 9.2 Powers. The Executive Committee and each member thereof shall possess and may exercise all of the powers of the Board of Directors, except as otherwise provided in 805 ILCS 105 /108.40(c).

Section 9.3 Term and Scope. The members of the Executive Committee shall serve at the pleasure of the Board of Directors, but not beyond the expiration of their respective terms of office as Directors. Vacancies in the Executive Committee shall be filled from and by the Board of Directors, and each member of the Executive Committee shall be fully authorized to act without any action by or notice to the other member of the Executive Committee, and such action shall have the full power and authority of the Corporation.

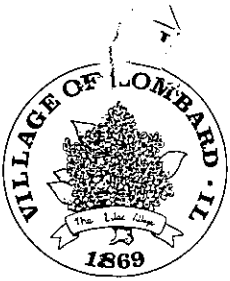
Section 9.4 Circumstances under which Executive Committee is to Act. No action may be taken by either member of the Executive Committee pursuant to this Bylaw unless (1) there is a pressing need to get documents signed expeditiously *and* (2) due to the lack of a quorum, no special meeting of the Board of Directors can be held.

ARTICLE X

Sale of Property

Section 10.1 Pursuant to the Tax Rebate Agreement entered into between the Village of Lombard and the Corporation, the Corporation is to transfer title to the Hotel and Convention Facility to the Village of Lombard upon the earlier of the redemption or retirement of the bonds issued by the Corporation for the construction and operation of the Hotel and Convention Facility. As such, the Corporation shall not sell, transfer or otherwise convey title to the Hotel and Convention Facility to a third party without the prior consent of the President and Board of Trustees of the Village of Lombard, with said consent to be solely within the discretion of the President and Board of Trustees. Said consent shall be in the form of a resolution adopted by the President and the Board of Trustees of the Village of Lombard, and filed with the Corporation. If the President and Board of Trustees of the Village of Lombard approve of the sale of the Hotel and Convention Facility to a third party by the Corporation, title to the Hotel and Convention Facility shall, if so directed by the President and Board of Trustees of the Village of Lombard, first be conveyed to the Village of Lombard prior to the transfer thereof to said third party, and the Corporation shall also assign to the Village of Lombard all of the Corporation's rights, title,

interests, privileges, duties and obligations in any contract or agreement with such third party with respect to the sale, transfer or other conveyance of the Hotel and Convention Facility.



ml
5/3/05

To: William T. Lichter
Village Manager

From: Leonard J. Flood
Director of Finance

Date: May 3, 2005

Subject: Revised Ordinance Approving an Amendment to the By-Laws of the Lombard
Public Facilities Corporation (LPFC)

I have received this revised ordinance from Don Renner, attorney for the LPFC, which replaces the one included in the Village Board agenda packets for the meeting on May 5.

Since the LPFC will be meeting to adopt the amended by-laws after the Village meeting, Mr. Renner deemed it necessary to revise the Ordinance approving the amendment. You will note that reference to the adoption by the LPFC, definitional terms, as well as reference to the amended by-laws as an Exhibit to the Ordinance have been changed/added.

The changes are all technical and not substantive revisions to the ordinance previously distributed. Please forward this revised ordinance to the Village Board.

- c. Tom Bayer, Village Attorney
- Don Renner, LPFC Attorney
- Barb Johnson, Acting Village Clerk

ORDINANCE NO. _____

AN ORDINANCE APPROVING AN AMENDMENT TO THE BY-LAWS
OF THE LOMBARD PUBLIC FACILITIES CORPORATION

WHEREAS, the Village of Lombard (the "Village") previously approved the By-Laws of the Lombard Public Facilities Corporation (the "PFC") pursuant to Village Ordinance No. 5351 adopted September 4, 2003 (the "By-Laws"); and

WHEREAS, on _____, 2005, the Board of Directors of the PFC will adopt amended by-laws, which supersede the By-Laws, a copy of which is attached hereto as Exhibit A and made part hereof (the "Amended By-Laws"); and

WHEREAS, pursuant to Article VII of the By-Laws, the Village's approval of all amendments to the By-Laws is required in order for the amendments to be effective;

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

SECTION 1: That the Amended By-Laws to be adopted by the PFC Board of Directors on _____, 2005, attached hereto as Exhibit A and made part hereof, are hereby approved.

SECTION 2: That this Ordinance shall be in full force and effect from and after its passage and approval 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: _____

NAYES: _____

ABSENT: _____

Approved by me this ____ day of _____, 2005.

William J. Mueller
Village President

ATTEST:

Barbara A. Johnson
Deputy Village Clerk