



LOMBARD POLICE DEPARTMENT

Date: March 16, 2004

To: William T. Lichter
Village Manager

From: Ray Byrne
Police Chief

Re: **Ordinance Amending the Village's Curfew Law**

Recently, the United States Seventh Circuit Court of Appeals rendered a decision titled Hodgkins v. Peterson. The decision found the State of Indiana's curfew law to be unconstitutional and ordered that it not be enforced. The essence of the court's opinion was that the Indiana curfew law was unconstitutional because it could be applied to arrest juveniles who were engaged in activities protected by the First Amendment. Examples would include juveniles participating in, going to, or returning from religious events, political events or activities conducted by nonprofit organizations or governmental entities.

The State of Illinois has a very similar curfew statute to that of Indiana. Furthermore, the current Village Ordinance mirrors the Illinois state statute. (Title 13, chapter 130, section 130.10) Therefore, it is logical to assume that the Village's current curfew ordinance is not constitutional in light of the opinion in Hodgkins.

Village Attorney Tom Bayer has drafted a new curfew ordinance that reflects the exceptions raised by the Seventh Circuit. There are no changes in the age or time restrictions from the current ordinance. The ordinance does place a duty on our police officers to ensure that none of the exceptions outlined in the ordinance are applicable before making an arrest. As a practical matter, we do not anticipate any significant difficulties in applying the new curfew ordinance.

I would respectfully request that you forward this proposed ordinance to the Village Board of Trustees for adoption. I would also request a waiver of first reading since in reality the Village does not have a valid curfew ordinance that can be applied at this time. If you should have any questions, or would like additional information, please do not hesitate to contact me.

cc: Dep. Chief Cuny
Dep. Chief Rollins

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MEMORANDUM

VIA FAX (630) 620-0696 AND U.S. MAIL

TO: Raymond Byrne, Chief of Police
FROM: Tom Bayer, Village Attorney
DATE: March 3, 2004
RE: New Curfew Law Court Decision - Curfew Ordinance Revisions

Per our discussion on March 3, 2004, attached please find a revised copy of the following Ordinance relative to the above-captioned matter:

**AN ORDINANCE AMENDING TITLE 13, CHAPTER 130, SECTION 130.10
OF THE LOMBARD VILLAGE CODE IN REGARD TO CURFEW**

The attached Ordinance bring the Village Code curfew provisions into compliance with the Court's ruling in Hodgkins v. Peterson, 2004 WL 99028 (7th Cir. 2004).

If there are any questions, please feel free to call.

TPB:cb

cc: William T. Lichter, Village Manager

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ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE 13, CHAPTER 130, SECTION 130.10
OF THE LOMBARD VILLAGE CODE IN REGARD TO CURFEW**

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

SECTION 1: That Title 13, Chapter 130, Section 130.10 of the Lombard Village Code is
hereby amended to read in its entirety as follows:

“§130.10 CURFEW:

(A) It is unlawful for a person less than seventeen (17) years of age (the “minor”) to be present at any public assembly or in any public building, park, sidewalk, street or highway or other public place:

- (1) Between 11:00 P.M. on Sunday, Monday, Tuesday, Wednesday or Thursday, and 6:00 A.M. on the following day;
- (2) Between 12:01 A.M. and 6:00 A.M. on Saturday; and
- (3) Between 12:01 A.M. and 6:00 A.M. on Sunday.

(B) The curfew set forth in subsection (A) above does not apply to a minor who is:

- (1) accompanied by the minor's parent, guardian or custodian;
- (2) accompanied by a person at least seventeen (17) years of age approved by the minor's parent, guardian or custodian;
- (3) engaged in a business or occupation which the laws of this State authorize a person less than eighteen (18) years of age to perform;
- (4) participating in, going to, or returning from:
 - (a) an emergency involving the protection of a person or property from an imminent threat of serious bodily injury or substantial damage;

- (b) an activity involving the exercise of the minor's rights protected under the First Amendment to the United States Constitution or Article 1, Sections 3, 4, and 5 of the Constitution of the State of Illinois, or both, such as freedoms of religion and speech and the right of assembly, to include, but not be limited to:
 - (i) a religious event, including, but not limited to, prayer and vigil services; or
 - (ii) a political event, including, but not limited to, observing or influencing a legislative session and attending a political rally or event; or
 - (c) an activity conducted by a nonprofit or governmental entity that provides recreation, education, training or other care under the supervision of one (1) or more adults; or
 - (5) engaged in interstate or international travel from a location outside Illinois to another location outside Illinois with the permission of a parent or legal guardian.
- (C) Prior to arresting or citing a minor for curfew under this Section, the Police Officer must make reasonable inquiry to determine whether any of the exceptions contained in subsection (B) above apply, in addition to the age and time requirements set forth in subsection (A) above. A Police Officer shall issue a citation or make an arrest for curfew only if the Police Officer has reasonable grounds to believe that the minor has violated this Section and that no exceptions apply.”

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 _____, 2004.

First reading waived by action of the Board of Trustees this _____ day of _____, 2004.

Passed on second reading this _____ day of _____, 2004, pursuant to

a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this _____ day of _____, 2004.

William J. Mueller
Village President

ATTEST:

Barbara A. Johnson
Deputy Village Clerk

Published by me in pamphlet form this _____ day of _____, 2004.

Barbara A. Johnson
Deputy Village Clerk