

040178

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

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

TO : PRESIDENT AND BOARD OF TRUSTEES
FROM: William T. Lichter, Village Manager
DATE : May 12, 2004 **B of T** May 20, 2004
SUBJECT: Resolution Repealing Resolution R-49-94
SUBMITTED BY: William T. Lichter, Village Manager

BACKGROUND/POLICY IMPLICATIONS:

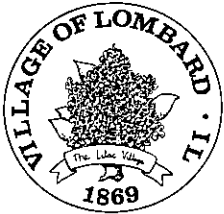
Please see attached.

Fiscal Impact/Funding Source:


Review (as necessary):

Finance Director _____ Date _____
Village Manager William T. Lichter Date 5/13/04

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.



To: Honorable President and Board of Trustees

From: William T. Lichter, Village Manager 

Date: May 12, 2004

Subject: Repeal of 12(c) Waiver Resolution

What follows is a summary regarding the proposed repeal of Resolution R 49-94 (attached) that waived the application of paragraph 12(c) of the DuPage Water Commission Charter Agreement.

In 1993 numerous Charter Members of the Water Commission, at the request of the Water Commission Chairman, Joel Herter, passed resolutions waiving the application of paragraph 12(c) of the Charter Agreement. Paragraph 12(c) of the Charter Agreement requires the Water Commission, upon application by a new applicant for water, to hire an independent consulting engineer, independent financial consultant, and competent attorney from a list of three (3) firms for each position submitted by the Charter Customers. The selected engineer, financial consultant, and attorney then make recommendations to the Commission regarding the "equitable and lawful differential rate" to be charged to the new applicant for water. The recommendation of these professionals is advisory only and the Commission is not obligated to follow the recommendations. The Charter Agreement does require that the formula for new customers be "equitable and lawful". This aspect of the agreement remains fully enforceable.

In 1993 when this Resolution was adopted, the political relationship between the Water Commission and Charter Customers was significantly different than it is today. In 1993 there had been no attempt to politicize the Water Commission and to abrogate various provisions of the Charter Agreement. However, over the past two years, there has been a very significant shift in the relationship between the current customers and the Water Commission. Part of this shift has included various attempts by some individuals to circumvent enforceable provisions of the Charter Agreement which benefit current customer interests.

From the onset it has been the goal of the Charter Customers to protect all current municipal customers' supply of adequate and reasonably priced water. Section 12(c) promotes that goal among all current customers because it provides for an analysis, which should be objective and not controlled by a political agenda. There has been an effort by some to establish a formula for new applicants or "hypothetical" applicants without input from the current customers. The irony

of this fact is there is no current applicant for this water. To permit this to occur without a thorough and sound evaluation of the issues associated with the Amended Water Commission Act reflects an effort by some to avoid the Water Commission's obligations to all its customers to act in a fair and equitable manner.

Based upon this fact it has been requested that any Charter Member who approved a resolution waiving paragraph 12(c) of the Charter Agreement pass a repealing resolution which will restore the ability of the Charter Customers to insist upon the hiring of three (3) independent consultants prior to the Commission's final determination of a subsequent customer formula. Although the conclusions of those three professionals are advisory only, it will assist all current customers in evaluating the appropriateness of the Commission's determinations and the determination of whether the new customer formula is ultimately fair and equitable as is still required under the Charter Agreement.

RESOLUTION

R 49 94

**A RESOLUTION APPROVING A WAIVER OF
CERTAIN PROVISIONS OF THE CHARTER CUSTOMER
CONTRACT WITH THE DUPAGE WATER COMMISSION**

WHEREAS, the DuPage Water Commission (the "Commission") and the Village of Lombard (the "Customer") entered into that certain Water Purchase and Sale Contract dated as of June 11, 1986 (the "Charter Customer Contract"); and

WHEREAS, the Charter Customer Contract provides that the Commission may not contract to supply Lake Michigan water on a long term basis to any customer other than a Lake Michigan water supplier or a Charter Customer, as defined in the Charter Customer Contract, except pursuant to a Subsequent Contract, as defined in the Charter Customer Contract; and

WHEREAS, Subsequent Contracts with any of the units of local government who were eligible to become Charter Customers of the Commission, as set forth in Section 24 of the Charter Customer Contract, but which did not do so are subject to the additional requirements set forth in Subsection 12(c) of the Charter Customer Contract, including the assessment of an equitable and lawful differential rate, to be determined by the Commission based upon the factors and the procedures set forth in Subsection 12(c) of the Charter Customer Contract; and

WHEREAS, the Commission developed a pricing methodology for Subsequent Contracts that is based upon the factors set forth in, and meets the requirements of, said Subsection 12(c) without the need for engaging the services of an independent consulting engineer, an independent financial consultant and a competent attorney pursuant to the procedures set forth in Subsection 12(c) of the Charter Customer Contract; and

WHEREAS, the Commission has requested that all Charter Customers waive the procedures set forth in Subsection 12(c) for determining the equitable and lawful differential rate to be charged to those Subsequent Customers who were eligible to join the Commission as Charter Customers but which did not do so.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

Section 1: Recitals. The foregoing recitals are hereby incorporated herein as if fully set forth.

Section 2: Approval of Waiver. The requirements for, and the procedures for the selection of, an independent consulting engineer, an independent financial consultant, and a competent attorney to make recommendations with respect to the equitable and lawful differential rate to be charged and the allocation of the benefit thereof, as set forth in Subsection 12(c) of the Charter Customer Contract, shall be and they hereby are waived,

on behalf of the Village of Lombard; provided, however, that the waiver herein provided shall be of no force or effect unless and until (i) all of the other Charter Customers of the Commission shall have similarly agreed to the waiver, in form substantially the same as this Resolution, and (ii) Chapman and Cutler shall have rendered its approving opinion that the waiver provided in this Section 2 does not affect the rights and interests of the holders of the Commission's Revenue Bonds nor violate the Commission's Bond Resolutions or Ordinances.

Section 3: Withdrawal of Waiver. The waiver provided in Section 2 of this Resolution may be withdrawn at any time, provided that a request in writing for the withdrawal of such waiver is filed with the Commission. Any such request for withdrawal shall be effective only for those units of local government who were eligible to become Charter Customers of the Commission but which did not do so and which have not, as of the date of receipt of the request for withdrawal, executed a Subsequent Contract with the Commission. Unless withdrawn in the manner herein specified, the waiver provided in Section 2 of this Resolution shall remain in full force and effect.

Section 4: Charter Customer Contract in Full Force and Effect. Except as herein waived, all of the terms, provisions and conditions of the Charter Customer Contract shall remain in full force and effect.

Section 5: Effective Date. This Resolution shall be in full force and effect from and after its passage and approval as provided by law; provided, however, that this Resolution shall be of no force or effect unless and until the conditions precedent set forth in Section 2 above shall have been satisfied.

Passed this 4th day of November, 1993.

Ayes: Trustees Mackett, Carlson, Tross, Koenig, Bird, Gatz

Nays: None

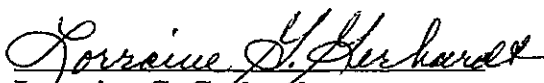
Absent: None

Approved this 4th day of November, 1993.



William J. Mueller
Village President

ATTEST:



Lorraine G. Gerhardt
Village Clerk

RESOLUTION

R _____ 04

DUPAGE WATER COMMISSION

WHEREAS, the Village of Lombard is a Charter Member of the DuPage County Water Commission; and

WHEREAS, the Village of Lombard in Resolution R-49-94 waived the application of Subsection 12C of the Charter Customer Contract between the Village of Lombard and the DuPage County Water Commission; and

WHEREAS, Section 3 of said Resolution permits written withdrawal of said waiver; and

WHEREAS, the Corporate Authorities of the Village of Lombard deem it in the best interests of the public health, safety and welfare of the citizens of the Village of Lombard to repeal the Resolution approving the waiver of subsection 12(c) of the Charter Customer Contract.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois that Resolution R-49-94 is hereby repealed and rescinded in its entirety. Be it further resolved, the Village of Lombard hereby asserts application of subsection 12(c) of the Charter Customer Contract in full accordance with its term and is consistent with State Statute

ADOPTED this _____ day of _____, 2004.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this _____ day of _____, 2004.

William J. Mueller
Village President

ATTEST:

Barbara Johnson
Acting Village Clerk

APPROVAL AS TO FORM:

Thomas P. Bayer
Village Attorney