

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager

DATE: August 7, 2012 (BOT) Date: August 23, 2012

TITLE: Resolution to Support and Affirm Freedom of Speech and Religious Expression

SUBMITTED BY: Department of Community Development *DH*

BACKGROUND/POLICY IMPLICATIONS:

The Economic and Community Development Committee (ECDC) transmits for your consideration its recommendation relative to the above-mentioned matter. The resolution is to Support and Affirm Freedom of Speech and Religious Expression as it relates to Chick-fil-A Appreciation Day on August 1, 2012 and events like it that highlight and support outstanding businesses in the Village.

The ECDC recommended approval of this resolution with changes.

Please place this item on the August 23, 2012 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X _____ Date _____

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: August 23, 2012

Subject: **Resolution to Support and Affirm Freedom of Speech and Religious Expression**

The Economic and Community Development Committee at their July 31, 2012 meeting considered a draft resolution and made a recommendation of approval to the Village Board with amendments.

Below is a portion of the draft minutes from this meeting which reflect the discussion of this issue.

Trustee Breen referred to the draft resolution included with the revised Committee agenda supporting Chick-fil-A Appreciation Day and affirming freedom of speech and religious expression. He explained he authored the resolution. Village Counsel reframed it in a proper format for consideration. He also referred to the legal opinion prepared by Village Counsel which explains what powers and authorities the Committee has relative to passing resolutions. This opinion states that the Committee has no power to pass resolutions but only to make recommendations regarding whether the Village Board should pass a resolution. Ultimately, there is a difference in his role as Trustee (a policy making role) versus the Committee's role (an advisory role).

He then explained how this issue evolved. Chick-fil-A recently opened a business in Lombard. Since that time they have proved to be a good corporate citizen, donating many items for various causes as well as immediately joining the Chamber of Commerce. Elected Chicago officials Rahm Emmanuel and Joe Moreno recently made comments about one of the leaders of CFA as to his stance on the issue of same sex marriage and premised government decisions to not allow a business based on CFA owner's beliefs. As his role as an attorney he was outraged and decided to propose a resolution to support CFA Appreciation Day and to affirm First Amendment rights relative to freedom of speech and religious freedom. His comments in support of CFA appeared in a newspaper article where he asked any business that has been forced out of Chicago to come to Lombard. As a result of this newspaper article, he received both positive and negative comments from his constituents. In particular, he exemplified a telephone call received from a gay business owner and after they engaged in conversation, the

owner supported the opinion on First Amendment rights. He further represented that the owner of Chick-fil-A is in favor of the concept as well and is glad for the support.

Trustee Breen stated that this Chicago incident is a misuse of government authority. With Lombard having the strongest transparency policy in the state as well as having a committee that makes supportive recommendations to aid businesses whether it be for outdoor dining permits or grants, it has demonstrated its position as stepping forward as a front runner. We should be a front runner in this issue too. Lastly, he indicated that he spoke to one of the committee members who could not be in attendance tonight. She expressed her position that we should come to the defense of any other business impacted by a government decision based on First Amendment rights.

Trustee Breen then opened the meeting for public participation and asked if anyone would like to speak.

Rick Newton of Wayne, Illinois stated he was taken aback when this became a news issue. We are walking a slippery slope when elected government officials say that if you don't share their values you cannot do business in their community. He commends the Village for responding with a resolution that affirms our First Amendment rights.

Barb Tremulis stated she has been a community member leader for years. She is pro-business and also wanted to commend Trustee Breen for initiating this resolution. She asked for the Committee's support and recommendation of approval.

Kevin Fitzpatrick, 348 S. Lewis, stated he concurs with the two previous speakers. The matter at hand is not someone's view on marriage but the bigger, more important issue is having a public official who takes a zoning matter and bases their decision to allow a business in their community on first amendment beliefs. This is an abuse of public power and a public intrusion and he commends Trustee Breen on the handling of this issue. People have a choice to honor a business and it must be the market that decides the success of a business. If a public official has the power to decide whether you can do business based on a specific issue, is a terrible precedence to send. The Village of Lombard has pro business tendencies and is open to any business as long as you follow the zoning rules. He asked the Committee what would happen if a Lombard Trustee was allowed to do the same thing.

Trustee Breen opened the meeting to Committee members for discussion.

Mr. Phillips agreed with Ms. Gannon's recommendation and the language she proposed.

Mr. McNicholas suggested deleting the second to the last "Whereas" on page 1, specifically referring to the phrases "subjected to negative government treatment" and "sincerely held religious beliefs". He felt that the paragraph held too much emotion which could be retriggered at a future date. He suggested that the Committee could accomplish its goal without this paragraph. Also on page 2, in SECTION 1, specifically the phrase "all people of good will" – he

suggested changing or eliminating those words as people may interpret this as saying that if they do not agree, they are not of good will. He is in favor of the resolution and all businesses except those which are in violation of local ordinances. The resolution must include a broadening of all issues and not be specifically geared toward Chick-fil-A.

Trustee Breen suggested using the word “we” instead of “all people of good will”. The Committee agreed.

Referring to the “Whereas” paragraph on page 1, Mr. Phillips stated there is an important point in that paragraph whereby we can distinguish ourselves from neighboring communities who are using their powers for political speech. He recommended removing the words “sincerely held religious beliefs”.

Mr. Pike agreed to take those words out due to beliefs of our neighboring areas leaders.

Mr. McNicholas stated that having this resolution sets us apart from other communities.

Mr. Nielsen asked what the objective of this was since it will be after the fact. Trustee Breen explained that while their appreciation day is tomorrow there will be events similar to this in the future. Doing this now ensures that something was done prior to the appreciation day and the aim was to add “other instances” for the future. Mr. Nielsen stated that the resolution needs to be passed by the Village Board while the objective is to say we are standing against the type of treatment this organization received by another municipality. Trustee Breen answered yes and that we support this local business.

Mr. Glazier agreed with the broadening of the resolution to include that we are doing this in defense of all businesses that might be impacted by a government decision based on First Amendment rights.

Mr. McNicholas added that this resolution should be written in such a way so that people do not interpret our position being one in the same as those comments made by Chick-fil-A.

Mr. Nielsen stated that while the Committee is trying to make this resolution appear neutral and include all businesses, the title of the resolution specifically names Chick-fil-A. While he agrees with the spirit of the resolution, he suggested the Chick-fil-A name be removed from the title.

Ms. Wareham suggested that the resolution should include all businesses not just Chick-fil-A. Trustee Breen indicated that on page 2, SECTION 2, it refers to all businesses.

Mr. Nielsen referred to the top of page 2, first line, and indicated that those words reflect the spirit of the entire resolution. If that is the case, why can't the resolution be simple and not run the risk of mentioning Chick-fil-A and just tying it with certain occurrences. Trustee Breen answered that it is important to mention the Chick-fil-A appreciation day as it needs to be more positive.

Trustee Breen summarized the Committee's suggested changes:

- On page 1, strike the second to last "Whereas" paragraph
- Delete Chick-fil-A Appreciation Day from the title
- On page 2, SECTION 1, strike the words "all people of good will" and replace with "we"
- Insert the date of August 1, 2012 in the last "Whereas" paragraph on page 1 after the words "Chick-fil-A Appreciation Day"



MEMORANDUM

TO: Peter Breen, Chairperson
Economic and Community Development Committee

FROM: William J. Heniff, AICP, Director of Community Development *WJH*

DATE: July 27, 2012

SUBJECT: **Chick-fil-A Appreciation Day**

At the request of Trustee Peter Breen, Chairperson of the Economic and Community Development Committee (ECDC), consideration of draft resolution from the ECDC recognizing "Chick-fil-A Appreciation Day," will be placed on the July 31, 2012 meeting agenda. The draft resolution for consideration by Trustee Breen is attached.

For reference purposes, staff received the attached opinion from Village Counsel relative to the authority of the Committee to pass resolutions. The ECDC is being requested to make a recommendation relative to the resolution to the Village Board accordingly.

DRAFT

RESOLUTION NO. R-00-13

**A RESOLUTION TO SUPPORT
CHICK-FIL-A APPRECIATION DAY AND AFFIRM
FREEDOM OF SPEECH AND RELIGIOUS EXPRESSION**

WHEREAS, Village businesses and their leaders are the backbone of our community; and

WHEREAS, the freedom of speech and free exercise of religion are not merely recognized and protected by our United States Constitution but are cherished values of our community; and

WHEREAS, government decisions, including those related to business and zoning, should not be made in violation of these cherished values; and

WHEREAS, the residents and business owners of the Village, and the members of this Village Board, hold a wide range of religious and political opinions on any number of issues of public concern – and all of us share an equal right to robustly express those opinions in public without fear of government retribution; and

WHEREAS, after much hard work by Village officials and staff, the Village is now home to a Chick-fil-A restaurant, which is creating jobs and bringing new people and revenue to our community; and

WHEREAS, the Chick-fil-A company has been subjected to negative government treatment in neighboring areas because of the sincerely held religious beliefs of its leaders, in response to which National Chick-fil-A Appreciation Day has been set for August 1, 2012; and

WHEREAS, our community should support occasions like Chick-fil-A Appreciation

Day, which serve to both support one of our local businesses and to reaffirm for all that "Lombard values" are pro-business, pro-jobs, and pro-freedom;

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

SECTION 1: That all people of good will celebrate the freedoms of speech and religious expression recognized herein and affirm them at every opportunity.

SECTION 2: Residents of the Village are encouraged to support National Chick-fil-A Appreciation Day of August 1, 2012 and events like it that highlight and support outstanding businesses in the Village.

SECTION 3: That this Resolution shall be in full force and effect from and after its adoption and approval as provided by law.

DRAFT



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To: David A. Hulseberg, Village Manager, Village of Lombard

From: Jason A. Gulsinger, Aselstant Village Attorney

Via e-mail only

Date: July 26, 2012

Re: AUTHORITY OF ADVISORY VILLAGE COMMITTEE TO PASS RESOLUTION

Please accept this memorandum as a response to your question regarding whether a standing advisory committee of the Village has the authority to pass its own resolution, as opposed to simply making recommendations to the Village Board for approval. It is our opinion that an advisory committee of the Village generally does not have the authority to pass its own resolutions.

Advisory municipal committees, such as those utilized by the Village, are the creature of the corporate authorities of the municipality; thus, any such committee's function must first have been authorized by the corporate authorities. *Gillett v. Board of Supervisors of Logan County*, 87 Ill. 256 (1873). Indeed, "[s]uch committees are mere agencies or instrumentalities of the governing body. . ." 4 Eugene McQuillin, *THE LAW OF MUNICIPAL CORPORATIONS* §13.74 (3d ed. rev. 2011). Thus, any power or function exercised by a municipal advisory committee must be authorized by the corporate authorities that created it.

The standing advisory committees of the Village (hereinafter referred to as "Committees" or singularly as a "Committee") were created and are governed by Chapter 30 of the Village Code. The Committees were given specific duties and functions, which are clearly defined in the Village Code.

Pursuant to §30.24 of the Village Code, the duties and powers of the Committees are defined. Most importantly, the Committees are generally only given advisory powers, meaning that they can make recommendations to the Village Board, but have no authority to take any final action on their own. Indeed, §30.24(A) states that "[e]ach advisory committee shall make recommendations to the corporate authorities regarding matters of policy and legislation..."

Further, each individual Committee's powers are specifically defined and limited in Chapter 30 of the Village Code. For example the Economic and Community Development Committee's ("ECDC") duties and powers are set forth in §30.24(E) of the Village Code as follows:

Economic and Community Development Committee. The Economic and Community Development Committee shall consider and make recommendations to the corporate authorities regarding:

- (1) Community liaison. The Committee shall have the responsibility of coordinating a solid, positive working relationship with community organizations and resident groups.

- (2) **Development.** The Committee shall make recommendations to the corporate authorities which encourage and guide development and re-development in the community, but shall not intrude upon the duties and responsibilities of the Plan Commission or Zoning Board of Appeals.
- (3) **Resources.** The Committee shall review related resources, plans, grant applications and proposals and other materials pertaining to community betterment and development.
- (4) **Downtown Redevelopment.** The Committee shall have the responsibility to study and to recommend appropriate action concerning the redevelopment of the downtown area to include but not be limited to adaptive building reuse and the preservation of buildings of historic and architectural significance.
- (5) **Tax Increment Financing Districts.** The Committee shall act as a conduit and coordinating body for the tax increment financing district(s) of the Village.
- (6) **Other matters.** The Committee shall consider other matters which are specifically referred to it by the corporate authorities.

As such, ECDC only has the authority to make *recommendations* to the Village Board within the confines of the outlined categories of responsibility for ECDC. Thus, while ECDC has the power to recommend that the Village Board pass a resolution that fits within one of the listed categories of responsibility, it has no authority to pass such a resolution itself. This same principle applies to all of the Committees of the Village.

In order for a Committee to have final authority to take action on behalf of the Village, the Village Board must specifically delegate the authority to the Committee. For instance, under §30.25(C) of the Village Code, the Village Board has given ECDC the authority to approve Downtown Lombard Renovation and Improvement Expenditures of less than \$10,000. Absent a specific grant of authority to take final action on a matter, a Committee is without such authority.

The same principles discussed above in regard to resolutions, would apply to a Committee making a proclamation. The Village Board has not given the Committees the authority to make proclamations; thus, none exists.

In sum, advisory committees of a municipality, as mere agencies or instrumentalities of a municipality, are relegated to those powers specifically granted by the municipality itself. Under the Village Code, the Village Board has given the Committees no power to pass resolutions. Rather, the Committees have only been given the power to make recommendations regarding whether the Village Board should pass a resolution, assuming that the resolution fits within the defined responsibilities of the particular Committee.

Please contact us with any questions.

cc: Thomas P. Bayer, Village Attorney

RESOLUTION NO. R-_____-13

**A RESOLUTION TO SUPPORT AND AFFIRM
FREEDOM OF SPEECH AND RELIGIOUS EXPRESSION**

WHEREAS, Village businesses and their leaders are the backbone of our community; and

WHEREAS, the freedom of speech and free exercise of religion are not merely recognized and protected by our United States Constitution but are cherished values of our community; and

WHEREAS, government decisions, including those related to business and zoning, should not be made in violation of these cherished values; and

WHEREAS, the residents and business owners of the Village, and the members of this Village Board, hold a wide range of religious and political opinions on any number of issues of public concern – and all of us share an equal right to robustly express those opinions in public without fear of government retribution; and

WHEREAS, after much hard work by Village officials and staff, the Village is now home to a Chick-fil-A restaurant, which is creating jobs and bringing new people and revenue to our community; and

WHEREAS, our community should support occasions like Chick-fil-A Appreciation Day on August 1, 2012, which serve to both support one of our local businesses and to reaffirm for all that “Lombard values” are pro-business, pro-jobs, and pro-freedom;

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

SECTION 1: That we celebrate the freedoms of speech and religious expression recognized herein and affirm them at every opportunity.

SECTION 2: Residents of the Village are encouraged to support National Chick-fil-A Appreciation Day of August 1, 2012 and events like it that highlight and support outstanding businesses in the Village.

SECTION 3: That this Resolution shall be in full force and effect from and after its adoption and approval as provided by law.

Adopted this _____ day of _____, 2012.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____, 2012.

William J. Mueller
Village President

ATTEST:

Brigitte O'Brien
Village Clerk