

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
NOVEMBER 24, 2009 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
An Ordinance Prohibiting Video Gaming	✓ Resolution Ordinance Motion Discussion Only	David Fieldman Village Manger

SYNOPSIS

An ordinance has been prepared to prohibit video gaming within the Village of Downers Grove. The Downers Grove Municipal Code currently prohibits gambling in or upon any premises licensed to sell alcoholic liquor (Section 3.33) and also has a general prohibition against gambling within the Village (Section 15.13). Because video gaming has been removed from the State law definition of gambling, Village ordinances require amendment in order to prohibit video gaming in the Village. The Video Gaming Act permits municipalities to prohibit video gaming by ordinance. Such prohibition can also be accomplished by referendum.

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals for 2008-2013 identified *Exceptional Municipal Organization*. A supporting objective of this goal is *Village organization aligned with Vision, Mission and Core Beliefs*.

FISCAL IMPACT

The fiscal impact of prohibiting video gaming is difficult to determine. If video gaming is permitted, the Village would receive 5% of the revenues generated by the video gaming machines which is the amount set forth in the Act. It is estimated that each machine would generate about \$2,250 per year (based on figures from the firm of Arduin, Laffer & Moore Econometrics provided for the City of Naperville). The Village has approximately 45 eligible establishments. The Act permits up to 5 machines per establishment. It is difficult to estimate the number of establishments that would take advantage of video gaming if it were allowed in the Village. Additionally, administrative and enforcement costs would need to be factored in to determine the net amount of revenue which could result from allowing video gaming. These are unknown costs at this time.

RECOMMENDATION

Approval on the December 1, 2009 agenda.

BACKGROUND

On July 13, 2009, the Governor signed into law the Video Gaming Act allowing the use video gaming terminals in certain establishments throughout the State. The following, although not exhaustive, are some of the Act's notable provisions:

- The gaming machines are allowed in any bar, restaurant, fraternal organization or veteran's organization possessing a valid liquor license to serve alcohol for consumption on the premises;
- Authorized establishments cannot be located within 1000 feet of a school or place of worship;
- No more than five video gaming machines are allowed per authorized establishment;
- Video gaming terminals must be located in an area restricted to persons over 21 years of age and in the view of an employee; and
- Video gaming is only permitted during the hours when alcohol can be consumed.

The Illinois Gaming Board is charged with regulating and enforcing the Video Gaming Act. Penalties for violations range from a \$100 fine to a Class 4 felony. For certain offenses, the establishment may lose its video gaming and/or State liquor license.

Numerous policy discussions related to gambling have been held in the past. In 2004, the Village Council “tabled indefinitely” a proposition related to amending provisions of the Downers Grove Municipal Code to permit conducting charitable games on liquor licensed premises (a discussion regarding Casino Nights for not-for-profit organizations). Minutes from this workshop and Council meeting can be found online at <http://www.downers.us/minutes/view/173> and <http://www.downers.us/minutes/view/188>.

The DuPage Mayors and Managers Conference has developed a list of municipal action taken to date on this issue. This is attached for your review.

ATTACHMENTS

List of Municipal Action
Ordinance

Municipality	Passed Ordinance	Date Passed	Comments
Addison	X	10/5/2009	<ul style="list-style-type: none"> ■ On Monday, October 5, the Addison Village Board approved the ordinance banning video poker machines until the State Gaming Board issues its regulations. (10/7/09) ■ To date we have taken no action but are waiting for the gaming board to develop the rules and procedures and then will give the public an opportunity to weigh in on the issue. In the meantime, our attorney is drafting an ordinance to place a temporary moratorium so establishments don't proceed to enter into contracts for purchasing the machines. (9/10/09)
Bartlett			<ul style="list-style-type: none"> ■ On September 1st, staff presented information to the Village Board. No further action was taken by the Board. Staff was directed to continue monitoring the actions taken by other municipalities and any information regarding the regulations when they become available. (9/14/09)
Bloomingdale	x	10/26/2009	
Bolingbrook			<ul style="list-style-type: none"> ■ Bolingbrook has no interest in pursuing video poker. An "informal" survey of the Board shows absolutely no interest. We have not taken formal action and will not until the state publishes the proper procedures to prohibit such activity. (9/10/09)
Burr Ridge			<ul style="list-style-type: none"> ■ Last night our Trustees voted to direct staff to draft an ordinance banning VGTs in Burr Ridge. The ordinance will be before Board on October 26th. (10/13/09) ■ I have given our Village Board the DuPage County letter from Chairman Schillerstrom with the specimen ordinance banning video gaming. Our Board has not discussed it substantively yet and it is not on our foreseeable due to the significant vagaries, lawsuits, indications that the legislators will reconsider it in veto session in November and the probability of the IGB not having the resources or inclination to promulgate rules and regs in the near future. (9/8/09)
Carol Stream	X	9/8/2009	<ul style="list-style-type: none"> ■ On Tuesday, September 8 we unanimously adopted the ordinance from Buffalo Grove. (9/10/09) ■ Carol Stream has not acted to ban video poker and is waiting to make a decision until administrative rules are promulgated by the state. (9/8/09)
Clarendon Hills			<ul style="list-style-type: none"> ■ No action by Clarendon Hills (9/10/09)

Downers Grove			<ul style="list-style-type: none"> Downers Grove is waiting for the Gaming Board to publish the administrative rules before we consider taking a position on this issue. (9/8/09)
Elmhurst			<ul style="list-style-type: none"> We are in the process of banning this in Elmhurst. I would expect an ordinance approval on the 3rd Monday or Sept. We would hope other towns would sign on as well. (9/8/09)
Glen Ellyn			<ul style="list-style-type: none"> No action has been taken, we are in the process of gathering the opinions of our residents and businesses that hold a liquor license. (9/21/09)
Glendale Heights			<ul style="list-style-type: none"> The Village of Glendale Heights has not taken any official action at this point, but the matter is under review and discussion with legal council. (9/14/09)
Hanover Park	X	11/5/2009	
Hinsdale			<ul style="list-style-type: none"> Hinsdale has not discussed this yet. (9/8/09)
Itasca	X	11/3/2009	
Lombard			<ul style="list-style-type: none"> No action is being considered until we have an understanding of the rules that the Gaming Commission is going to utilize. (9/21/09)
Naperville	X	10/6/2009	<ul style="list-style-type: none"> The City Council voted 7-0 on Tuesday to prohibit the gambling machines. (10/8/09)
Roselle			<ul style="list-style-type: none"> We will be having a discussion on the video gaming issue during our September 28 Committee of the Whole meeting. In the interim, staff has utilized a methodology shared by St. Charles to determine potential revenue for Roselle. I will follow up with you after our meeting. (9/8/09)
St. Charles			<ul style="list-style-type: none"> We are in a holding pattern. During the past few weeks, I have had conversations with colleagues in Elgin, South Elgin, Geneva, and Batavia. All have indicated that there are opinions on both sides of the issue, but that there is no pending action in those communities and that most plan to wait until the Kane County task force studying the issue completes its work. We are also waiting until the Illinois Gaming Board establishes the final rules regarding the deployment, regulation and enforcement of video gaming. (9/8/09)

Villa Park	X	10/26/2009	
Warrenville			<ul style="list-style-type: none"> ■ The City of Warrenville Police Department is currently researching the Act, what other communities are doing, and what are the likely local impacts of video gaming should it be enacted. Staff intends to make a presentation at one or both of the Public Safety Committee of the Whole meetings in October and December 2009. (9/8/09)
Wayne	X		<ul style="list-style-type: none"> ■ The President and Board of Trustees of the Village of Wayne approved Ordinance #09-13 Prohibiting Video Gaming in the Village of Wayne. (9/16/09)
West Chicago	X	10/27/2009	
Westmont	X	10/19/2009	
Westmont (continued)			<ul style="list-style-type: none"> ■ I want to give you an update on our Village Board's discussion regarding video gaming. On Thursday, September 3, 2009 (Committee of the Whole meeting) the Village Board began to discuss the issue. Staff presented revenue information to the Village Board using the data model developed by the City of St. Charles. On Tuesday (because of Labor Day) the Board voted to postpone the discussion. In the meantime the Board asked staff to continue to monitor other area towns to see what other communities are doing. The Board also asked our Deputy Liquor Commissioner to survey current liquor license holders to find out what level of interest exists to acquire video gaming machines. Finally, the Board asked staff to use our web site and public access TV channels to solicit feedback from residents and business owners about they feel about the new law. At this point I am not sure when this will next appear on a Board agenda for further discussion. This depends, somewhat, on how quickly some of the requested information is gathered and analyzed. I will keep you posted. (9/10/09)
Westmont (continued)			<ul style="list-style-type: none"> ■ We have not done anything yet. We have, on our VB Committee of the Whole agenda, for tonight's meeting, an item to discuss the issue. Mayor Rahn specifically requested this to begin some public discussion about the new law. I do not anticipate any action at our regular VB meeting next Tuesday, September 8, 2009 other than postponement of the item to a future agenda. The Mayor is asking for this discussion now, to raise awareness in the community, as we have heard that certain liquor license holders may be placing orders for video gambling machines. We have also been told that there is at least one vendor who is actively marketing machines within our community. (9/8/09)
Wheaton	X		<ul style="list-style-type: none"> ■ Wheaton will be considering an ordinance prohibiting. 1st reading on September 21; vote on October 5. (9/8/09)

Winfield	X		■ On 10/1/09 staff was directed to draft an ordinance prohibiting video gaming. (10/13/09)
Willowbrook			■ The Village of Willowbrook staff has presented information to the Village Board. No further action taken. (9/8/09)

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ORDINANCE NO. _____

AN ORDINANCE PROHIBITING VIDEO GAMING

BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by ~~shading~~/underline; deletions by ~~strikeout~~):

Section 1. That Section 3.33. is hereby amended to read as follows:

3.33. Prohibited activities on licensed premises.

(a) Gambling. It shall be unlawful to permit any gambling or video gaming as defined in 230 ILCS 40/1 et al. on any premises licensed to sell alcoholic liquor with the following exception:

(1) the game commonly known as "bingo", when conducted in accordance with the provisions of the of the Illinois Bingo License and Tax Act (230 ILCS 25/1 et seq.) and pull tab and jar games when conducted in accordance with the provisions of the Illinois Pull Tabs and Jar Games Act (230 ILCS 20/1 et seq.) may be conducted for the sole benefit of the not-for-profit organization holding a valid Class "C" liquor license and shall be conducted upon those premises holding a Class "C" liquor license;

(b) Solicitation. It shall be unlawful for any licensee, its manager or other person in charge of any licensed premises where alcoholic liquor is sold or offered for sale for consumption thereon to engage, employ or permit the engagement or employment of any person, nor shall any person be permitted to remain on said premises, who shall solicit any patron or customer thereof to purchase alcoholic or nonalcoholic liquor for said person, or any other person therein; nor shall any person, whether or not such person impersonates or presents the appearance of one of the opposite sex, and whether or not such person is an employee or entertainer, solicit any patron or customer therein to purchase alcoholic or nonalcoholic liquor for himself or herself or any other person therein; provided, however, that nothing herein contained shall prohibit any adult manager, bartender or waitress who shall be regularly employed therein from accepting and serving the order of a patron or customer in the regular course of employment as such manager or waitress.

(c) It shall be unlawful for any licensee, its manager, or other person in charge of premises licensed to sell alcoholic liquor to permit the following kinds of conduct; or books, magazines, coin-operated motion picture devices, films, or movies depicting, describing or relating to the following kinds of conduct on such premises:

(1) The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

(2) The actual or simulated touching, caressing or fondling of the breast, buttocks, anus or genitals.

(3) The actual or simulated displaying of the breasts, pubic hair, anus, vulva or genitals.

(d) It shall be unlawful for any licensee, its manager, or other person in charge of premises licensed to sell alcoholic liquor to permit any entertainment, fashion show, presentation or performance which may include any person in a nude or semi-nude state, including, but not limited to, servers, hosts, hostesses, dancers, singers, models or other performance artists, or to permit role playing interactions. (Ord. No. 2489, § 1; Ord. No. 2735, § 1.)

Section 2. That Section 8.47. is hereby amended to read as follows:

8.47. Definitions.

(a) The term "*amusement device*", as used herein, shall mean any mechanical or electronic device, which may be operated by the public generally for the purpose of a game or amusement or as a test of skill, whether or not such device requires insertion of any coin, token, disc or similar object. The term "amusement device" shall specifically include, without limitation, devices commonly known as video games, pinball machines, and similar devices. The term "amusement device" shall not include vending machines not operated for amusement or as a test of skill; mechanical or electronic musical devices or jukeboxes, television, motion picture, movie, videotape or videodisc machines, rides, athletic skill devices including,

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without limitation, golf driving or putting devices, baseball batting cages, tennis, handball or racquetball courts or other similar mechanical or electronic devices. "Amusement device" shall not include video gaming terminals as defined in 230 ILCS 40/1 et al. (Ord. No. 2816, § 2)

(b) The term "*person*" as used herein shall include the following: Any person, firm, corporation or association which owns any amusement device; the person, firm, corporation or association in whose place of business any such device is placed for use by the public; and the person, firm, corporation or association having control over such device. (Ord. No. 2167, § 6; Ord. No. 2622, § 1; Ord. No. 2816, § 1.)

Section 3. That Section 15.13. is hereby amended to read as follows:

15.13. Gambling.

(a) No person shall, upon any premises or within any building within the Village occupied or controlled by him, set up, keep, maintain or operate or permit to be set up, kept, maintained or operated any card game or instrument, device or thing for the purpose of gambling or with which money or property, or anything representing money or property or anything of value shall in any manner be lost or won; provided, however, that the game commonly known as "bingo", when conducted in accordance with the provisions of the of the Illinois Bingo License and Tax Act,¹ pull tab and jar games when conducted in accordance with the provisions of the Illinois Pull Tabs and Jar Games Act², charitable games when conducted in accordance with the Illinois Charitable Games Act³, and lotteries when conducted by the State of Illinois in accordance with the Illinois Lottery Law, shall be permitted and shall not be construed as a violation of this section.

(b) Pursuant to Section 27 of the Video Gaming Act (230 ILCS 40/27), video gaming is hereby prohibited within the corporate boundaries of the Village.

(c) No person shall participate in the activities defined as gambling in subsection (a) and (b). (R.O. 1925, § 411; Ord. No. 301, § 1; Ord. No. 2121, § 1; Ord. No. 2812, § 3; Ord. No. 2877, § 1.)

NOTE: For state law as to gambling, see Ill. Comp. Stat., ch. 720, §§ 5/28-1 to 5/28-9. As to authority of Village to suppress gambling, see Ill. Rev. Stat., ch. 24, § 11-501. (Repealed)

¹Ill. Comp. Stat., ch. 230, §§ 25/1 et seq.

²Ill. Comp. Stat., ch. 230, §§ 20/1 et seq.

³Ill. Comp. Stat., ch. 230, §§ 30/1 et seq.

⁴Ill. Comp. Stat., ch. 230 §§ 15/.01 et seq.

Section 4. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 5. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____

Village Clerk