

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
11/7/2023

SUBJECT:	SUBMITTED BY:
Ordinance Repealing Regulations Related to Amusement Devices	Dave Fieldman Village Manager

SYNOPSIS

An Ordinance repealing Article 8.XII of the Municipal Code (Amusement Devices) has been prepared. The Ordinance would remove the regulations and licensing requirements for Amusement Devices from the Village Code.

STRATEGIC PLAN ALIGNMENT

The Strategic Goals include *Continual Innovation* and *Exceptional Municipal Services*.

FISCAL IMPACT

N/A

RECOMMENDATION

Action at the discretion of the Village Council.

BACKGROUND

Article 8.XII of the Municipal Code requires the issuance of a license for the operation of any amusement device, which is defined as:

- 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 video disc machines, rides, athletic skill devices including, 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)

This article of the Municipal Code, originally adopted in 1980, contains the following key regulations:

- There shall be outstanding at any one time a maximum of one (1) amusement device business license for every five thousand (5,000) population in the Village as determined by the latest available federal census, regular or special.
- The amusement devices shall be an accessory use to the primary business located on the premises.

- The walls, ceiling or floor, or any combination thereof, of the building or structure, or portion thereof, containing such devices shall be insulated or otherwise constructed so that no noise or vibration that is detectable without the aid of any mechanical device or instrument will be allowed beyond the outer perimeter of the licensed premises.
- No amusement device shall be used for purposes of or in connection with the wagering of money, goods or merchandise upon the outcome of the use or manipulation of such device or otherwise used for purposes of gambling.
- No person under fifteen (15) years of age shall be allowed on the licensed premises during regularly scheduled school hours unless accompanied by a parent, teacher, guardian or an adult member of the immediate family of such person.
- At all times during the hours of operation of the licensed premises, there shall be present one of the managers (25 years of age or older) who has filed the required application information with the Village Clerk.
- No amusement device business shall be located within one thousand (1,000) feet of any public or private school or within two hundred (200) feet of any residential structure.

The annual fees for an amusement device license are based on the number of devices being operated, as follows:

Number of Devices	Annual Fee
0 to 9	\$598
10 to 19	\$855
20 to 29	\$1,140
30 to 39	\$1,425
40 or more	\$1,715

Currently, the Tivoli Bowl is the only establishment possessing an amusement device license.

Prompted by an inquiry from a business and Village Council members, staff reviewed this section of the Village Code and staff operations related to licensing. Staff is of the opinion that licensing of amusement devices is not necessary in the current business environment and recommends the repealing of Article 8.XII of the Municipal Code in its entirety.

ATTACHMENTS

Ordinance

ORDINANCE NO. ____

AN ORDINANCE REPEALING ARTICLE 8.XII OF THE DOWNERS GROVE MUNICIPAL CODE CONCERNING AMUSEMENT DEVICES

WHEREAS, the Village of Downers Grove ("Village") is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution of 1970 and may exercise any power and perform any functions pertaining to its government and affairs, including the power to regulate for the protection of public health, safety and welfare; and

WHEREAS, Section 11-42-5 of the Illinois Municipal Code authorizes the corporate authorities of each municipality to license, tax, and regulate all places for amusements (65 ILCS 5/11-42-5); and

WHEREAS, Article 8.XII of the Downers Grove Municipal Code implements Village regulations concerning the licensing of certain amusement devices in the Village; and

WHEREAS, the Village Council believes it is in the best interest of the Village to no longer impose the regulations set forth in Article 8.XII of the Downers Grove Municipal Code; and

NOW, THEREFORE BE IT ORDAINED by the Village Council of the Village of Downers Grove as follows:

Section 1. That Article 8.XII of the Downers Grove Municipal Code entitled, "Amusement Devices" shall be deleted and repealed as follows:

Article 8.XII Amusement Devices Reserved

Sec 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, 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) (Ord. 5101, Amended, 12/01/2009)

Sec 8.48 Amusement Devices; Licenses Required

~~No person shall engage in the business of keeping or providing any amusement device as defined in DGMC Section 8.47 for public use within the Village without first having obtained a license therefor from the Village Clerk. For purposes of this Section, any person that keeps or provides more than five (5) amusement~~

~~devices for public use within the Village shall be conclusively presumed to be engaged in the business of keeping or providing amusement devices for public use.~~

~~(Ord. No. 2167, § 6; Ord. No. 2494, § 1; Ord. No. 2685, § 1; Ord. No. 2816, § 1) (Ord. 4697, Amended, 07/05/2005)~~

Sec 8.49 Application; Issuance

- ~~(a) Application for the issuance of the licenses required by DGMC Section 8.48 shall be filed on a form or forms approved by the Village Manager for the purpose of providing reasonable information concerning the applicant. An application for an amusement device business license shall be signed by (i) the applicant, if the applicant is an individual; (ii) the president and secretary, if the applicant is a corporation; (iii) a general partner, if the applicant is a partnership. Such application shall contain the following information:

 - ~~(1) Principal kind of business engaged in and what percentage of the business will be attributable to the amusement devices.~~
 - ~~(2) Statement of whether the business will be conducted by a manager or managers, and the name, address, date of birth and authority of each such manager.~~
 - ~~(3) Statement of personal history of each manager conducting business, each of whom shall meet the personal standards for issuance of a license required of an applicant pursuant to DGMC Section 8.2(a)(b) of this Chapter.~~
 - ~~(4) The location of the place of business, the place where the amusement devices are to be kept or displayed, and the total number of devices which are to be kept or displayed on the premises.~~~~
- ~~(b) If the applicant is a corporation, the applications filed shall contain the following information in addition to such information as is required in paragraph (a) herein:

 - ~~(1) Corporate name and address and date of incorporation.~~
 - ~~(2) Name, date of birth and address of each corporate officer and director and of each person, firm or organization owning directly or indirectly five percent (5%) or more of the corporation's stock.~~
 - ~~(3) Statement of whether any officer, manager, director or shareholder owning directly or indirectly five percent (5%) or more of the stock of the corporation has ever been convicted of any of the offenses enumerated in DGMC Section 8.2(b) of this Chapter.~~~~
- ~~(c) If the applicant is a partnership, the applications filed shall contain the following information in addition to such information as is required in paragraph (a) herein:

 - ~~(1) Name, date of birth and address of each general partner and each limited partner owning directly or indirectly five percent (5%) or more interest in the partnership.~~
 - ~~(2) Statement of whether any general partner or any limited partner owning directly or indirectly five percent (5%) or more interest in the partnership or any manager of the partnership has ever been convicted of any of the offenses enumerated in DGMC Section 8.2(b) of this Chapter.~~~~
- ~~(d) If the applicant is an individual, the applications filed shall contain the following information in addition to such additional information as is required in paragraph (a) herein:

 - ~~(1) Name, date of birth and address of the applicant.~~
 - ~~(2) Statement of whether the applicant has ever been convicted of any of the offenses enumerated in DGMC Section 8.2(b) of this Chapter.~~~~
- ~~(e) The Village Clerk, the Chief of Police and the Director of Community Development shall investigate the information contained in the application and shall determine the following:

 - ~~(1) That the premises designated by the applicant as the location of the business comply with the provisions of the Zoning Ordinance of the Village; and~~~~

- (2) That the premises and the managers comply with the provisions of DGMC Section 8.51(a) of this Chapter; and
- (3) That the applicant and each manager meet the standards for issuance of licenses established pursuant to DGMC Section 8.2 of this Chapter.
- (f) Subject to the limitation established as to the maximum number of amusement device business licenses to be issued by DGMC Section 8.49.01 of this Chapter, if the investigation shows the compliance of the applicant, its business and its managers with each of the requirements established in paragraph (e) herein, the Village Clerk shall issue the license upon payment by the applicant of the license fee required hereunder.
- (g) If a license is denied, the applicant may file a written appeal of the decision to the Village Manager within ten (10) days of receipt of the decision. The written appeal shall set forth the reasons why the applicant believes the decision to deny the license should be reversed. The Village Manager shall respond to the appeal within fourteen (14) days either affirming or reversing the decision to deny the license.

(Ord. No. 2167, § 6; Ord. No. 2399, § 2; Ord. No. 2494, § 2; Ord. No. 2541, § 12; Ord. No. 2685, § 2; Ord. No. 2816, § 1. (4801, Amended, 08/01/2006, "code services" to "community development"; Ord. 4533, Amended, 09/16/2003; 4463, Amended, 12/03/2002; 4045, Amended, 07/06/1998; 3730, Amended, 04/03/1995)

Sec 8.49.01 Maximum Number Of Amusement Device Business Licenses To Be Issued By The Village Clerk

There shall be outstanding at any one time a maximum of one (1) amusement device business license for every five thousand (5,000) population in the Village as determined by the latest available federal census, regular or special.

(Ord. No. 2494, § 3; Ord. No. 2816, § 3.)

Sec 8.50 Fee; Additional Devices

- (a) If at any time after issuance of an amusement device business license, a licensee shall seek to keep on display devices on the licensed premises in excess of the total number of devices applied for pursuant to DGMC Section 8.49(a)(4) hereof, the licensee shall notify the Village Clerk of the number of additional devices to be kept and pay such fee as may be required for such additional devices pursuant to paragraph (b) of this section.
- (b) The fee for the license required by DGMC Section 8.48 shall be determined as follows:
 - (1) For a business providing twenty (20) or less amusement devices the fee shall be set forth in Administrative Regulation entitled "User Fee, License and Fine Schedule";
 - (2) For a business providing more than twenty (20) but less than thirty (30) such devices, the fee shall be set forth in Administrative Regulation entitled "User Fee, License and Fine Schedule";
 - (3) For a business providing at least thirty (30) but less than forty (40) such devices, the fee shall be set forth in Administrative Regulation entitled "User Fee, License and Fine Schedule";
 - (4) For a business providing forty (40) or more such devices, the fee shall be set forth in Administrative Regulation entitled "User Fee, License and Fine Schedule".

The license shall be valid from January 1 to December 31, or for such time as the Mayor may determine appropriate given the findings of the investigation required by DGMC Section 8.49(e) and the standards of DGMC Section 8.2, such time not to be less than two (2) months nor to extend beyond the next following December 31.

(Ord. No. 2167, § 6; Ord. No. 2399, § 3; Ord. No. 2685, § 3; Ord. No. 2816, § 1) (Ord. 5132, Amended, 04/20/2010)

Sec 8.51 Conditions And Regulations; Violation; Penalty

- (a) In addition to any other condition or regulation contained in this Code or in the statutes of the State of Illinois, the following conditions and regulations shall be applicable to and shall govern and control the business of keeping or providing amusement devices for public use within the Village:
- (1) The amusement devices shall be an accessory use to the primary business located on the premises.
 - (2) The walls, ceiling or floor, or any combination thereof, of the building or structure, or portion thereof, containing such devices shall be insulated or otherwise constructed so that no noise or vibration that is detectable without the aid of any mechanical device or instrument will be allowed beyond the outer perimeter of the licensed premises.
 - (3) No amusement device shall be used for purposes of or in connection with the wagering of money, goods or merchandise upon the outcome of the use or manipulation of such device or otherwise used for purposes of gambling as defined in DGMC Section 15.212.
 - (4) No person under fifteen (15) years of age shall be allowed on the licensed premises during regularly scheduled school hours unless accompanied by a parent, teacher, guardian or an adult member of the immediate family of such person.
 - (5) At all times during the hours of operation of the licensed premises, there shall be present one of the managers who has filed the required application information with the Village Clerk pursuant to DGMC Section 8.49(a) and has been determined to meet all standards of DGMC Section 8.2(a)(b) of this Chapter. Each such manager shall be not less than twenty-five (25) years of age in order to provide adequate control and supervision of the licensed premises and the use of the amusement devices present therein.
 - (6) Upon a change of a manager conducting business for the licensee, the licensee shall, within ten (10) regular business days, give the Village Clerk written notice of such change by actual delivery or by registered or certified mail. The licensee shall thereafter, as promptly as practicable, but in any event within five regular business days, provide the information concerning the new manager which is required in DGMC Section 8.49(a) of this Chapter.
 - (7) No amusement device business shall be located within one thousand (1,000) feet of any public or private school or within two hundred (200) feet of any residential structure. Such distances shall be measured along a straight line, without regard to intervening structures or objects, from the nearest customer entrance to the amusement device business to the nearest property line of a school or to the nearest residential structure in the Village.
- (b) It shall be unlawful for any person licensed to engage in the business of keeping or providing amusement devices for public use within the Village to fail to comply with the conditions and regulations set forth in subsection (a) of this section or to suffer or permit noncompliance with such conditions and regulations on or within the licensed premises.

(Ord. No. 2167, § 6; Ord. No. 2399, § 4; Ord. No. 2494, § 4; Ord. No. 2541, § 13; Ord. No. 2685, § 4; Ord. No. 2816, § 1; Ord. No. 3019, § 1) (5803, Amended, 12/17/2019, 15.16 renumbered to 15.212 (gambling); Ord. 4697, Amended, 07/05/2005; 4045, Amended, 07/06/1998; 4013, Amended, 03/16/1998; 3951, Amended, 06/30/1997)

Sec 8.51.01 Exemptions From Certain Provisions Of This Article

Licensees holding an amusement device business license on December 31, 1980, shall not be subject to the limitations established in DGMC Section 8.51 (6) of this Article for the location licensed on such date.

(Ord. No. 2494, § 5; Ord. No. 2780, § 1; Ord. No. 2816, § 1.)

Sec 8.52 Suspension Or Revocation Of License

Nothing in the provisions of this Chapter shall preclude the right of the Village Clerk to suspend or revoke the license of the licensee, as follows:

- (a) The Village Clerk may temporarily suspend any license issued under the terms of this Article when there is reason to believe that the continued operation of a particular licensed premises will immediately threaten the welfare of the community or create an imminent danger of violation of applicable law. In such case, the Village Clerk may, upon the issuance of a written order stating the reason for such determination, and without notice or hearing, order the licensed premises closed for not more than seven (7) days; provided that the licensee shall be given an opportunity to petition the Village Manager for an informal public hearing during the seven (7) day period, and further provided that if such licensee shall also be engaged in the conduct of other businesses on the licensed premises, such order shall not be applicable to such other businesses.
- (b) The Village Clerk may suspend or revoke any license issued under the terms of this Article pursuant to the provisions of DGMC Section 8.4 of this Chapter.

(Ord. No. 2167, § 6; Ord. No. 2244, § 1; Ord. No. 2816, § 1.) (4463, Amended, 12/03/2002; 3945, Amended, 06/23/1997; 3730, Amended, 04/03/1995)

Section 2. The Village shall cease all enforcement of Article 8.XII of the Downers Grove Municipal Code.

Section 3. If any section, paragraph, subdivision or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain in full force and effect.

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. That this ordinance shall be in full force and effect January 1, 2024.

Mayor

Passed:

Published:

Attest:

Village Clerk