

ORDINANCE NO. 2019-04

ORDINANCE PROVIDING FOR LICENSED VIDEO GAMING

WHEREAS, the Board of Trustees previously passed Ordinance No. 237, on April 3, 1950, which declared that gambling or betting of any kind, which would include video gaming, was prohibited in the Village of Winnebago; and

WHEREAS, on July 13, 2009 the Illinois Video Gaming Act was signed into law (230 ILCS 40/1 et. seq, and sometimes hereinafter referred to as the "Act"), which Act allows certain licensed retail establishments to conduct video gaming, and establish a tax on the proceeds, a portion of which goes to the municipality where the video gaming takes place; and

WHEREAS, the Act provides that a non-home rule unit of government may impose a fee for the operation of a video gaming terminal not to exceed \$25.00 annually for each terminal; and

WHEREAS, the revenue from the gaming terminal fee will assist in the Village's fiscal financial situation; and

WHEREAS, the Village has the option of either adopting amendments to the above ordinance that would allow for video gaming, or to choose to allow the ordinance prohibiting, inter alia, video gaming to remain in full force and effect; and

WHEREAS, based on the extensive licensing and regulations contained in the Illinois Video Gaming Act, the Board of Trustees determines that it is not detrimental to the citizens of the Village of Winnebago to allow limited video gaming on the terms set forth in this ordinance; and

WHEREAS, in making this determination, the Board finds as follows:

1. Neighboring communities allow video gaming and as a result, local establishments have incurred loss in revenue and will likely continue to do so.
2. The allowing of limited video gaming will not impose any significant burden on the Village Police Department since the Illinois Gaming Board has extensive power to regulate and enforce the provisions pertaining to video gaming.
3. The limitations on the exterior appearance of an establishment will diminish or eliminate concerns as to any visual impact.
4. The passage of the ordinance is not an endorsement of video gaming, but recognition that this is a matter of personal choice for responsible adults to exercise.
5. The passage of the ordinance is necessary to allow local establishments a level playing field in a highly competitive industry.

6. It is not consistent to prohibit video gaming with a \$2.00 maximum wager, when the State of Illinois sponsors a lottery that is heavily promoted, is present in numerous locations, and allows amount to be wagered far in excess of what would be authorized by this ordinance.

NOW THEREFORE, be it ordained by the President and Board of Trustees of the Village of Winnebago, Illinois, as follows:

SECTION I--INCORPORATION OF PREAMBLES

The above recitals are hereby incorporated as though fully set forth herein.

SECTION II—DEFINITIONS

- (a) "Distributor": an individual, partnership, corporation, or limited liability company licensed under the Act to buy, sell, lease, or distribute video gaming terminals, or major components or parts of video gaming terminals, to or from terminal operators.
- (b) "Licensed establishment": any establishment that is both licensed to sell liquor at retail in the Village under the appropriate designated licensure, and licensed by the Illinois Gaming Board to operate a video gaming terminal on its premises.
- (c) "Licensed fraternal establishment": A licensed fraternal establishment is a location where a fraternal organization that derives its charter from its national parent organization regularly meets, and is licensed by the Illinois Gaming Board to operate a video gaming terminal on its premises.
- (d) "Licensed technician": an individual who is licensed under the Act to repair, service, and maintain video gaming terminals.
- (e) "Licensed terminal handler": a person, including, but not limited to, an employee or independent contractor working for a manufacturer, distributor, supplier, technician, or terminal operator, who is licensed under the Act to possess or control a video gaming terminal, or to have access to the inner workings of a video gaming terminal. A licensed terminal handler does not include an individual, partnership, corporation, or limited liability company defined as a manufacturer, distributor, supplier, technician, or terminal operator under the Act.
- (f) "Licensed truck stop establishment": A licensed truck stop establishment is a facility of at least three acres with a convenience store, separate diesel islands for fueling commercial motors vehicles, parking spaces for commercial vehicles as defined in Section 18b-101 of the Illinois Vehicle Code, which sells more than 10,000 gallons of diesel or biodiesel fuel per month, and is licensed by the Illinois Gaming Board to operate a video gaming terminal on its premises. The gallon

sale requirement may be met by showing that estimated future sales, or past sales, average at least 10,000 gallons per month.

- (g) "Licensed veterans' establishment": A licensed veterans establishment is a location where a qualified veterans' organization that holds a charter from its national parent organization regularly meets, and is licensed by the Illinois Gaming Board to operate a video gaming terminal on its premises.
- (h) "Licensee": Any of the establishments/individuals defined in Paragraph (a) through (k) herein.
- (i) "Manufacturer": an individual, partnership, corporation, or limited liability company that is licensed under the Act, and manufactures or assembles video gaming terminals.
- (j) "Supplier": an individual, partnership, corporation, or limited liability company that is licensed under the Act to supply major components or parts to video gaming terminals to licensed terminal operators.
- (k) "Terminal operator": An individual, partnership, or corporation that is licensed under the Act and that owns, services, and maintains video gaming terminals for placement in licensed establishments, licensed fraternal establishments, licensed veterans' establishments, or licensed truck stop establishments.
- (l) "Video gaming terminal": Any electronic video game machine that, upon insertion of cash, is available to play, or simulate the play of, a video game, including, but not limited to video poker, line up, and blackjack, authorized by the Illinois Gaming Board, utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, or tokens, or is for amusement purposes only.

All terms defined herein are based on definitions contained in the Illinois Video Gaming Act, and are subject to automatic amendment based on amended definitions of the same passed from time to time as amendments to the Illinois Video Gaming Act (230 ILCS 40/5, et seq)

SECTION III--LICENSED VIDEO GAMING EXEMPTION

Notwithstanding any other provisions in the Village ordinances that may reference or govern gambling or gaming, the same shall not apply to any video gaming terminal that has a valid video gaming terminal permit sticker and is being operated by a licensed establishment that has a valid Village video gaming establishment license and is in full compliance with this ordinance. Likewise, nothing in this ordinance shall be construed to authorize, regulate, permit, or license any gambling device, or authorize any gambling, in the Village other than that which is permitted as provided in this ordinance or by state or federal law.

SECTION IV--VIDEO GAMING ESTABLISHMENT LICENSE

In order for a licensed establishment to operate a video gaming terminal, the licensed establishment is required to obtain an annual video gaming establishment license from the Village by submitting a written application, on a form provided by the Village, to the President of the Board of Trustees or the party designated by him/her. The burden is upon each applying licensed establishment to demonstrate its suitability for licensure. All video gaming establishment licenses issued by the Village shall expire on April 30, next, after date of issue, with an annual license/permit fee of Twenty-five and 00/100 dollars (\$25.00) per terminal, up to a maximum of five (5) terminals, payable in full at the time the application is filed with the Village. A license shall be purely a personal privilege, good for a time period not to exceed one (1) year after issuance, unless sooner revoked as provided by law, and shall not constitute property, nor shall it be subject to attachment, garnishment, or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered.

SECTION V--VIDEO GAMING TERMINAL PERMIT STICKER

In order for a video gaming terminal to be operated at a licensed establishment, the licensed establishment is required to obtain an annual video gaming terminal permit sticker from the Village for each video gaming terminal located on its premises (maximum 5) by submitting a written application, on a form provided by the Village, to the President of the Board of Trustees or the party designated by him/her. Each video gaming terminal permit sticker issued by the Village shall expire April 30, next, after date of issue, with an annual fee of Twenty-five and 00/100 dollars (\$25.00) per video gaming terminal payable in full at the time the application is filed with the Village, with no prorations. Any continuing operation of a video gaming terminal shall require the payment of a new annual fee on or before May 1 of each year for the ensuing fiscal year.

SECTION VI--APPLICATION FOR PERMIT

Any appropriately licensed liquor establishment within the corporate limits of the Village of Winnebago which may qualify for a video gaming license, and is desirous of the same, shall obtain a license to permit video gaming within the premises at its licensed liquor establishment address, which license must be issued by the Village. Each such licensee shall make application to the Village Office for a permit, and at time of application submission shall pay the annual fee for each video gaming terminal to be operated. Upon receipt of a properly completed application with the appropriate fee paid, as determined upon review by the Village Attorney, the Village Clerk shall forward a copy of the application to the Village Board for consideration. To the extent a video gaming license application is not approved, any license fee paid by the applicant shall be refunded to the applicant within 30 days of the denial of the license. Such application shall include all of the following information:

- (a) The name of the applicant, its business address, its owners and in the case of corporations, veteran, or fraternal establishments, the names and addresses of its officers and board members.
- (b) The name, address, and age of the owner(s) of the video gaming terminal and the owner(s) of the establishment where the video gaming terminal shall be located.

- (c) Disclosure of any prior conviction of the owner(s) of the video gaming terminal and/or the owner(s) of the establishment where the video gaming terminal shall be located.
- (d) The location for which the license is sought.
- (e) The number of video gaming terminals to be on the premises of the location for which the permit is sought, and a description of the video gaming terminal to be operated under the license.
- (f) The location of each video gaming terminal as it is to be located in the local establishment.
- (g) A copy of the written, signed lease, use, or rental agreement with the terminal operator for placement of the video gaming terminals, at the licensed premises, and a copy of the license issued by the Illinois Gaming Board for each video gaming terminal located at the licensed premises. No permit shall be issued to any person whose video gaming terminal is not licensed by the State of Illinois for the location for which the permit is sought.
- (h) Written evidence of a video gaming license having been issued by the Illinois Gaming Board to the owner of the video gaming terminal and the owner of the establishment where the video gaming terminal shall be located.

All permits issued hereunder shall be issued by the Village President, attested by the Village Clerk, and no permit shall issue until the application therefore shall have been approved by the Village Board of Trustees.

SECTION VII--REGULATIONS GOVERNING LICENSED ESTABLISHMENT OPERATING VIDEO GAMING TERMINALS

The following regulations apply to all licensed establishments operating a video gaming terminal on its premises with a valid gaming establishment license and valid video gaming terminal permit stickers for each of its video gaming terminals:

- (a) A valid Village video gaming establishment license must be clearly displayed at all times.
- (b) A valid Village video gaming terminal permit sticker shall be clearly displayed at all times on each video gaming terminal.
- (c) No more than five (5) video gaming terminals may be located on the licensed establishment's premises.
- (d) All video gaming terminals must be located in an area restricted to persons

twenty-one (21) years of age or older. The entrance to such area must, at all times, be within the view of at least one employee who is at least twenty-one (21) years of age. Further, all licensed video gaming terminals shall at all times be kept and placed in plain view of any person(s) who may frequent or be in any place of business where such devices are kept or used.

- (e) No licensed establishment may cause or permit any person under the age of twenty-one (21) years to use, play, or operate a video gaming terminal.
- (f) No licensed video gaming terminal may be played except during the legal hours of operation allowed for the consumption of alcoholic beverages at the licensed establishment, as set forth in the Village's liquor ordinance, except for truck stops, wherein a licensed video gaming terminal may be played at all hours the given truck stop is open for business.
- (g) The licensed establishment must fully comply with the Illinois Video Gaming Act (230 ILCS 40/1, et seq.) and all rules, regulations, and restrictions imposed by the Illinois Gaming Board.
- (h) The licensed establishment must fully comply with all other provisions of the Illinois Video Gaming Act (230 ILCS 40/1 et. seq), as amended, the provisions of all rules promulgated by the Illinois Gaming Board pursuant to the Illinois Administrative Procedures Act, Village ordinances, and all federal and other Illinois laws.
- (i) It shall be unlawful for any persons to install, keep, maintain, or use, or permit the installation, keeping, maintenance, or use, upon its premises of any video gaming terminal, unless proper and valid licenses issued under this ordinance for video gaming are issued and in effect.
- (j) It shall be unlawful for any person to deliver video gaming terminals within the corporate limits of the Village of Winnebago for use by any others person for gain or profit from the operation thereof, unless a license has been issued by the Village, and the license fee has been paid in full for the current year.
- (k) Each licensed distributor, terminal operator, and person with a substantial interest in a licensed distributor or terminal operator shall be an Illinois resident, or duly authorized to conduct business within the State of Illinois. However, if an out-of-state distributor or terminal operator has performed its respective business with Illinois for at least 48 months prior to the effective date of the Illinois Video Gaming Act, the out-of-state person may be eligible for licensing from the Village.
- (l) The revocation, loss, or suspension of any video gaming license by the State of Illinois shall automatically result in the revocation, loss, or suspension of any

Village license issued hereunder, without refund of any license fee paid to the Village.

- (m) Licenses shall expire on April 30th of every year. License holders must renew their licenses prior to the April 30th expiration date, or they shall not be permitted to operate, or cause to be operated, any video gaming terminal until such time as the license is renewed.
- (n) Upon approval of an initial application of a video gaming license, or renewal of the same, the Village shall issue a stamp bearing the notation, "Village of Winnebago VGT License No. _____ for _____ (year)". One stamp shall be issued for each video gaming terminal, and it shall be placed in a conspicuous place on the terminal, and affixed in such a manner that it cannot be transferred from one terminal to another. Whenever a licensed video gaming terminal is replaced during the license year, a replacement stamp must be purchased from the Village. The replacement stamp shall cost \$5.00.)
- (o) No licensed establishment, licensed truck stop establishment, licensed fraternal establishment, or licensed veterans establishment that is located within 1,000 feet of a school, or place of worship under the Illinois Religious Corporation Act, or within 1,000 feet of a facility operated by an organization licensee licensed under the Illinois Horse Racing Act of 1975, or within 1,000 feet of the home dock of a riverboat licensed under the Riverboat Gambling Act, shall be eligible to operate a video gaming terminal. The location restrictions stated herein do not apply if the following conditions exist: A) a facility operated by an organization licensee, a school, or a place of worship moves to, or is established, within, the restricted area after a licensed establishment, licensed truck stop establishment, licensed fraternal establishment, or licensed veterans establishment becomes licensed under the Illinois Video Gaming Act; or B) a school or place of workshop moves to, or is established within, the restricted area after a licensed establishment, licensed truck stop establishment, licensed fraternal establishment, or licensed veterans establishment obtains its original liquor license. For purposes of this subsection, per state statute, "school" means an elementary or secondary public school, or an elementary or secondary private school registered with, or recognized by, the State Board of Education.

SECTION VIII--INSPECTION OF PREMISES

Every licensed establishment where a video gaming terminal is kept shall be subject to inspection by the Chief of Police or his/her authorized agents, at any time, to ensure compliance with the Village ordinances. This includes licensed establishments applying for a video gaming establishment license and/or video gaming terminal permit sticker. It shall be unlawful for any person to hinder, resist, oppose, or attempt to hinder, resist, or oppose the Chief of Police or his/her respective agents in the course of any inspection.

SECTION IX--REVOCATION/SUSPENSION OF LICENSE AND PERMIT STICKER

The Village Liquor Control Commission may revoke or suspend any video gaming establishment license and any video gaming terminal permit sticker issued by the Village if it determines that the licensed establishment has violated any of the provisions of this ordinance. No license shall be so revoked or suspended, except after a public hearing before the Liquor Control Commission, with a three (3) day written notice to the licensed establishment affording the licensed establishment an opportunity to appear and defend. Notwithstanding the foregoing, any licensed establishment that has its liquor license revoked or suspended by the Village Liquor Commissioner under the Village Liquor Ordinance, or by the Illinois State Liquor Commission, or has its video gaming license revoked or suspended by the Illinois Gaming Board, shall automatically, without a hearing before the Liquor Control Commission, have its Village video gaming establishment license and all Village video gaming terminal permit stickers revoked or suspended for the same time frame as its liquor and/or Illinois Gaming Board gaming license is suspended, whichever the case may be, without refund of any fee paid. Liquor establishments must immediately notify the Liquor Commissioner in the event the Illinois Gaming Board revokes or suspends the licensed establishment's video gaming license. Thus, proof before the Liquor Control Commission of the facts which establish a violation of any federal law, state statute, Village ordinance, or resolution or rule of the Illinois Liquor Control Commission, or the Illinois Gaming Board shall be sufficient cause for revocation, suspension, and fine of any liquor licensee, irrespective of whether or not a conviction has been obtained in any court. In addition, the licensee shall be obligated to reimburse the Village for all attorney's fees and costs incurred as a result of the prosecution of the offending licensee.

SECTION X--VIOLATION OF VIDEO GAMING ORDINANCE CONSIDERED VIOLATION OF LICENCEE'S LIQUOR LICENSE

If a licensee violates any provision of the Illinois Video Gaming Act, or rule or regulation of the Illinois Gaming Board, or any provision related to video gaming terminals contained in this ordinance, such violation shall be deemed a violation of the licensee's liquor license issued by the Village.

SECTION XI--SEIZURE OF UNLAWFUL VIDEO GAMING TERMINALS

Every video gaming terminal that does not have a valid video gaming terminal permit sticker, or is otherwise unlawful, shall be considered a gambling device subject to seizure, and shall be turned over to the Illinois Gaming Board, in accordance with Board regulations and applicable law, unless otherwise ordered by a court of competent jurisdiction.

SECTION XII--FINES AND PENALTIES

Whoever violates any provision of this Ordinance shall be guilty of a petty offense and be punished by a fine of not less than Five Hundred and 00/100 Dollars (\$500.00) for a first offense in any twelve (12) month period and a fine of Seven Hundred Fifty and 00/100 Dollars (\$750.00) for a second offense and each subsequent offense in a twelve (12) month period, and the license or licenses shall be subject to suspension or revocation as herein provided. This penalty may be enforced by issuance of a "Notice of Violation" for the fine amount, or by issuance of a "Notice to Appear." Each day any violation continues shall constitute a separate offense. This monetary penalty shall be in addition to any

and all other remedies which may be available to the Village under this ordinance, or any other provision of the Village ordinances, or federal or Illinois law. Irrespective of the above, per Illinois statute, any licensee who knowingly permits a person under the age of twenty-one (21) years to use or play a video gaming terminal is guilty of a business offense and shall be fined an amount not to exceed Five thousand and 00/100 Dollars (\$5,000.00).

SECTION XIII--APPEARANCE OF PREMISES

The exterior of premises that has been granted a license for video gaming shall not exhibit any electronic signs or flashing signs or devices that indicate video gaming is available on the premises. A sign not to exceed two (2) feet by four (4) feet is permissible provided it complies with the Village's sign regulation ordinance. Offsite signs located in the Village corporate limits indicating video gaming is available at a premise are prohibited.

SECTION XIV--EFFECT OF ORDINANCE

Ordinance No. 237 is repealed only to the extent it prohibits video gaming, and video gaming is allowed only to the extent set forth in this ordinance. Any other part of said Ordinance No. 237, or any other ordinances or parts thereof that are inconsistent with the terms of this ordinance are repealed only to the extent of the inconsistency.

SECTION XV--ENFORCEABILITY

If any section, paragraph, sentence, clause or other portion of this ordinance is held or deemed to be unenforceable or invalid, then such holding or finding of unenforceability or invalidity shall not affect the validity of the remaining provisions of this ordinance.

SECTION XVI--EFFECTIVE DATE

This ordinance shall be in full force and effect upon its passage, approval, and publication as may be required by law.

PASSED AND ADOPTED at a regular meeting of the President and Board of Trustees of the Village of Winnebago this 11th day of March, 2019, and upon roll call the vote was as follows:

AYES: 5

NAYS: 0

ABSENT: 0

ABSTAINING: 1

Approved this 11th day of March, 2019.

APPROVED:



Franklin J. Eubank, Jr., President of the Board of Trustees of the Village of Winnebago, Illinois

ATTEST:



Sally Jo Huggins, Village Clerk

PREPARED BY:

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