

VILLAGE OF DOWNERS GROVE
Report for the Village
10/19/2021

SUBJECT:	SUBMITTED BY:
An Ordinance establishing video gaming regulations	Enza Petrarca Village Attorney

SYNOPSIS

An ordinance has been prepared to amend Chapter 3 of the Downers Grove Municipal Code to establish video gaming regulations.

STRATEGIC PLAN ALIGNMENT

The strategic goals for 2021-2023 include *Exceptional Municipal Services. Consider Allowing Video Gaming for Restaurants with an On-premise Consumption Liquor License* is a priority action item.

FISCAL IMPACT

The Village will collect application fees, annual license fees, and tax revenue from the State. An initial estimate of annual video gaming revenues ranges from \$250,000 to \$500,000. This estimate is dependent primarily upon the number of licenses granted, and the volume of usage of the terminals.

RECOMMENDATION

Approval on the November 2, 2021 active agenda.

BACKGROUND

The Illinois Video Gaming Act, adopted in 2009, allows video gaming only at establishments that have a liquor license for on-premise consumption. Currently the Village prohibits video gaming. The Village Council identified the consideration of video gaming as a priority action item in the most recently adopted 2021-2023 Long Range Plan.

Proposed Video Gaming Ordinance At a Glance

- A Video Gaming License is Required to Operate Gaming Terminals
- Licenses are Available for R1, R2, R3, C and B1 Liquor License Classifications
- Maximum of 20 Video Gaming Licenses
- Maximum of 6 Video Gaming Terminals per Licensed Establishment
- An Establishment Must Have Held a Village Liquor License for 12 Months Before it is Eligible to Apply
- The Video Gaming Terminals Must be Placed in a Separate Room with Walls at Least 7 ft High
- The Maximum Size of the Room is Limited to the Lesser of 25% of the Total Facility or 500 sf.
- Signs Must be Posted Prohibiting Anyone under 21 to enter the room

- If the underlying liquor license gets suspended or revoked for a violation so too will the VG license and vice versa
- The Effective Date is January 1, 2022
- The Annual Fee for Each Video Gaming Terminal is \$1,500
- The Initial One-Time Application Fee is \$1,885

State Law Summary

The Illinois Video Gaming Act was adopted in 2009. The act permitted video gaming in establishments with an on-premise consumption liquor license. Local municipalities and counties were given the option to opt-out or establish regulations allowing video gaming. The State Act requires establishments obtain a State video gaming license. To obtain a license, establishments must be in good standing and have a local liquor license.

The Act regulates the licensing of video gaming manufacturers, distributors, terminal operators and technicians. Local jurisdictions typically only deal with terminal operators. Terminal operators are licensed by the State to install, operate, and maintain video gaming machines in authorized establishments. They are also required to submit monthly financial reports to the State on video gaming revenues. Establishments can only obtain video gaming machines from terminal operators licensed by the State. The Act limits the total number of video gaming terminals to 6 per establishment. The Act also establishes strict penalties for establishments and terminal operators that do not comply with the numerous regulations established in the Act. These primarily deal with the proper operation of video gaming machines, proper financial monitoring mechanisms, and timely financial reporting to the State.

The State collects a tax of 30% of the total video gaming revenue and distributes approximately 15% of the total taxes collected back to local municipalities through a specially designated local distributive fund.

Eligibility and Location of Video Gaming Establishments

The draft ordinance limits the maximum number of video gaming licenses available to 20. The ordinance also limits the maximum number of terminals per licensed establishment to 6. Therefore, the maximum number of terminals operating in the Village would be limited to 120. Pursuant to the draft ordinance, establishments holding liquor licenses in the following classifications would be eligible for the issuance of a video gaming license.

Type of Business	Liquor License Classification	Number of License Holders
Restaurants	R-1, R-2 and R-3	46
Brew Pubs	B-1	1
Clubs	C-1	3
Recreational Facilities	REC-1, REC-2	5
Total		55

Currently there are 55 total establishments holding these licenses. The attached map shows the location of these establishments and the current zoning districts. Staff anticipates that not all eligible establishments will pursue video gaming, but initially there may be more demand than the number of licenses available.

The draft ordinance requires that establishments must have held a liquor license for at least 1 year before becoming eligible for a video gaming license, and must be in good standing with the Village. Further, the draft ordinance requires establishments to build a separate room with walls a height of at least 7 feet. The maximum size of the room will be 25% of the total square footage of the building, or 500 SQ FT, whichever is smaller. Individuals under the age of 21 will be prohibited from accessing this room, and establishment employees must be able to see inside the room at all times.

Establishments will be required to submit an application with basic information including a copy of their Illinois Video Gaming license, and their floor plan. Upon preliminary approval of their floor plan, and approval of their application, applicants will also be required to obtain building permits before moving forward with the construction of their video gaming rooms.

Fees

As part of the application process, establishments will be required to pay an application fee to cover the review and approval of their application. They will also be required to pay an annual license fee equal to the number of video gaming terminals in the establishment. The application fee will be \$1,885 as the video gaming license is being treated as a supplemental liquor license. The license fee will be \$1,500 per terminal. Village staff found that communities in DuPage County structure the fees in a variety of ways. Village staff chose a license fee of \$1,500 per terminal, as that matches the highest fee in DuPage County and is consistent with how other municipalities charge the license fees.

Revenue Projections

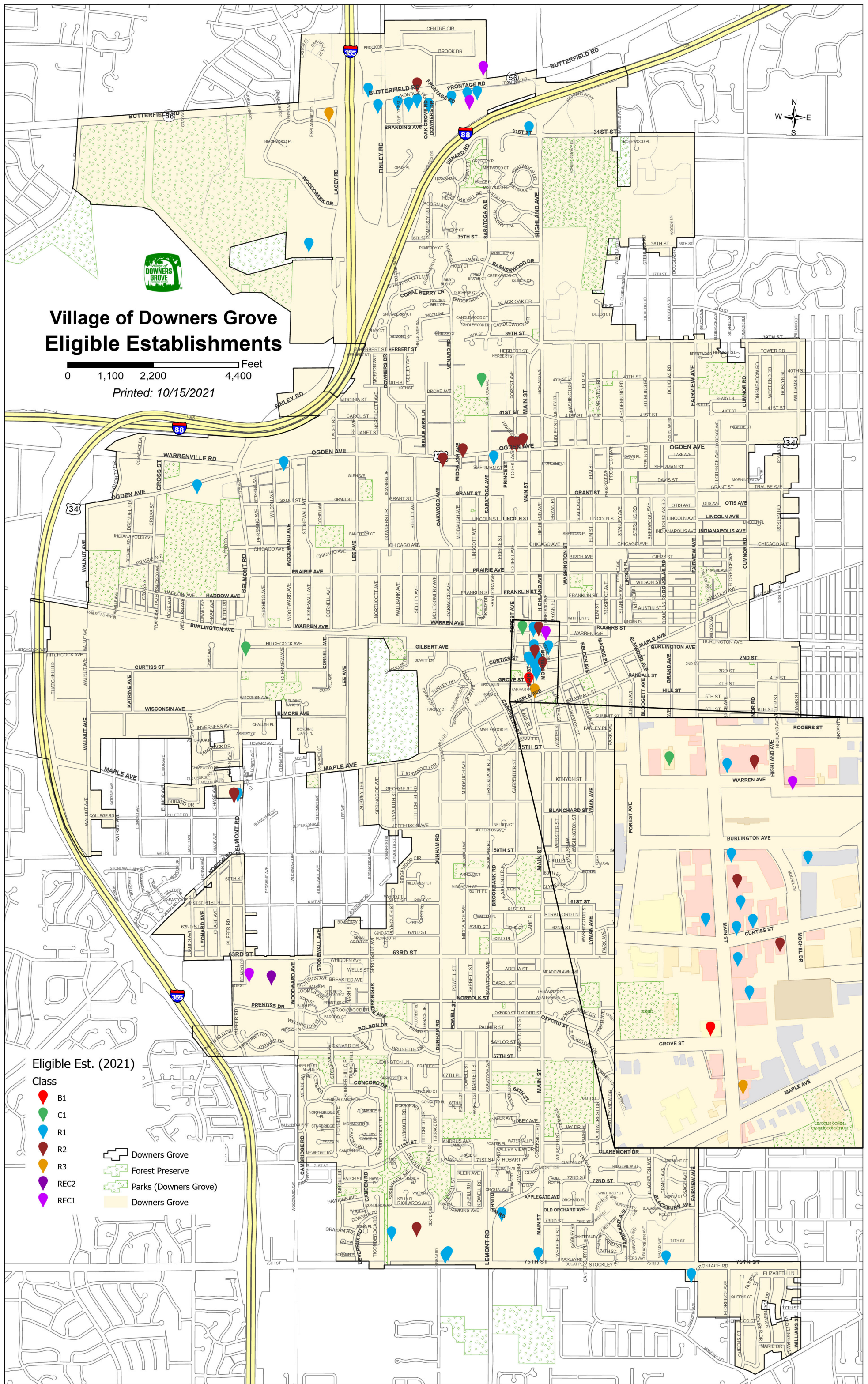
The Village will receive video gaming revenue through a combination of application fees, video gaming license fees, and tax revenues. Application fees will only be paid once by applicants, video gaming licenses will be paid on an annual basis, and tax revenues will be remitted by the State on a monthly basis. An initial estimate of annual video gaming revenues ranges from \$250,000 to \$500,000. Factors in the revenue estimate were the average amount of tax revenue generated by individual establishments in DuPage County in 2019, the number of establishments, and the number of video gaming terminals. The State collects a tax of 30% of the total video gaming revenue and distributes approximately 15% of the total taxes collected back to local municipalities through a specially designated local distributive fund. The lower estimate assumes ten establishments in operation for a full year with 6 video gaming machines each. The higher estimate assumes twenty establishments in operation for a full year with 6 video gaming machines each.

Neighboring Communities

Neighboring municipalities that currently allow Video Gaming include Westmont, Darien, Oakbrook Terrace, Woodridge, Willowbrook, Lemont, and Lombard. The attached table summarizes the number of terminals and estimated annual revenue for DuPage County municipalities that permit video gaming.

ATTACHMENTS

- Map of Eligible Establishments
- Zoning Districts of Eligible Establishments
- Summary of DuPage Municipalities Allowing Video Gaming Ordinance



Village of Downers Grove Eligible Establishments

0 1,100 2,200 4,400 Feet
Printed: 10/15/2021



Eligible Est. (2021)

- B1
- C1
- R1
- R2
- R3
- REC2
- REC1
- Downers Grove
- Forest Preserve
- Parks (Downers Grove)
- Downers Grove

Zoning Districts - Eligible Establishments

Name	Class	Address	Zoning
Emmett's Ale House	B1	5200 Main St	DC
Veteran Century Post #503	C1	5101 Belmont Ave	B2
Downers Grove Loyal Order of Moose	C1	1030 Warren Ave	DB
American Legion Post #80	C1	4000 Saratoga Ave	R1
Parker's Restaurant & Bar	R1	1000 31st St	B2
Chilis Grill & Bar	R1	1330 A W 75th St	B2
Gong Ho Restaurant	R1	1338 75th St	B2
Shikara Restaurant & Ashyana Banquets	R1	1620 75th St	B2
Carnivore & the Queen	R1	2241 Maple Ave	B2
Downers Delight Restaurant	R1	401 75th St	B2
3 Corners Grill & Tap	R1	7231 Lemont Rd	B2
Grand Duke's	R1	980 75th St	B2
Chipotle Mexican Grill	R1	1203 Ogden Ave	B3
The Melting Pot	R1	1205 B Butterfield RD	B3
Bowl O Biryani	R1	1211 A Butterfield Rd	B3
Olive Garden	R1	1211 Butterfield Rd	B3
Hooters of Downers Grove	R1	1303 Butterfield Rd	B3
Casa Margarita	R1	1341 Butterfield Rd	B3
Brick House Tavern & Tap	R1	1461 Butterfield Rd	B3
Bryan's American Grille	R1	2009 Ogden Ave	B3
Tacochela	R1	2321 Ogden Ave Ste A9	B3
Outback Steakhouse	R1	2970 Finley Rd	B3
Honey Jam Café	R1	3000 Oak Grove Rd	B3
Red Lobster	R1	3001 Finley Rd	B3
Chama Gaucha Brazilliaian Steakhouse	R1	3008 Finley Rd	B3
Chula's Bar and Grill	R1	500 75th St	B3
Capri	R1	5101 Main St	DB
Cadence Kitchen	R1	5101 Mochel Dr	DB
Gia Mia	R1	994 Warren Ave	DB
Bar Chido	R1	1012 Curtiss St	DC
Gatto's Restaurant & Bar	R1	5123 Main St	DC
Wasabi Restaurant & Bar	R1	5130 Main St	DC
Pierce Tavern	R1	5135 Main St	DC
Another Round	R1	5141 Main St	DC
Ballydoyle Irish Pub	R1	5157 Main St	DC
Esplanada Lakes by Doubletree	R1	3500 Lacey Rd	ORM
Sushi City	R2	1510 A 75th St	B2
Thai First	R2	2249 Maple Ave	B2
Los Dos	R2	2251 Maple Ave	B2
MOD Pizza	R2	1022 Ogden Ave	B3
City Barbeque	R2	1034 Ogden Ave	B3

Omega Restaurant	R2	1300 Ogden Ave	B3
Lao Sze Chuan	R2	1331 Ogden Ave	B3
Portillos	R2	1500 Butterfield Rd	B3
Mrs T's Pizza & Pub	R2	4246 Main St	B3
Sushi House	R2	950 Warren Ave	DB
Angelo's Pizza	R2	1001 Curtiss St	DC
Giordano's	R2	5115 Main St	DC
The Foxtail	R3	5237 Main St	DB
Cooper's Hawk	R3	1801 Butterfield Rd	ORM
Q Pub & Grill	REC1	2145 W 63rd St	B2
Downers Sand Club	REC1	1211 B Butterfield Rd	B3
X Golf	REC1	1310 Butterfield Rd	B3
Tivoli Bowling Lanes	REC1	938 Warren Ave	DB
Legends Indoor Golf	REC2	2091 W 63rd St	B2

Liquor License Key	
B1	Brew Pub/Restaurant
C1	Club
R1	Restaurant - Liquor Consumption & Retail Beer/Wine
R2	Restaurant - Beer/Wine Consumption & Retail Beer/Wine
R3	Restaurant - Beer/Wine Consumption & Retail Beer/Wine
REC1	Recreation Facility - Liquor
REC2	Recreation Facility - Beer and Wine

Zoning Key	
B2	General Retail Business
B3	General Services and Highway Business
R1	Residential Detached House 1
DB	Downtown Business
DC	Downtown Core
ORM	Office-Research-Manufacturing

Municipality	2019 Video Gaming Revenue*	Terminals	Rev Per Terminal
Addison	372,452	105	3,547
Bartlett	215,019	69	3,116
Bensenville	86,736	38	2,283
Bloomington	271,936	Not Reported	--
Carol Stream	364,376	75	4,858
Hanover Park	221,852	40	5,546
Itasca	89,021	Not Reported	--
Lemont	207,100	102	2,030
Roselle	164,219	Not Reported	--
Villa Park	272,128	82	3,319
Westmont	383,677	79	4,857
Willowbrook	49,704	20	2,485
Woodridge	106,154	30	3,538

Source: DuPage Mayors and Managers Conference Municipal Revenue Survey, 2020

*NOTE: Revenue includes State-shared revenue and annual terminal fees imposed by the municipality

ORDINANCE NO. _____

**AN ORDINANCE ESTABLISHING
VIDEO GAMING REGULATIONS**

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

Section 1. That Section 3.13 is hereby amended as follows:

Sec 3.13 Classification Of Licenses

Such licenses shall be, and are hereby, divided into the following classes

* * *

Class "VG" On-Premise Consumption, Video Gaming Licenses

"VG" Video Gaming licenses shall authorize video gaming in a designated gaming area where the sale and service of alcohol, non-alcoholic drinks or food is available and where gaming is incidental to the primary operation of the establishment. This license shall only be supplemental to establishments holding a Class B-1, C, R-1, R-2, R-3, REC-1 and REC-2 liquor license. Operation of the gaming area shall be subject to provisions set forth in DGMC Article 3.VI of this Chapter.

* * *

Section 2. That Section 3.40 is hereby amended as follows:

Sec 3.40 Revocation Or Suspension Of Local License; Notice; Hearing

- (a) The Local Liquor Commissioner may revoke or suspend any license issued, require mandatory certified training or impose any additional conditions if the Local Liquor Commissioner determines that the licensee has violated any of the provisions of this Chapter or any State law pertaining to the sale of alcoholic liquor or video gaming. In addition to or in lieu of suspension, the Local Liquor Commissioner may levy a fine on the licensee for such violations. Each day on which a violation continues shall constitute a separate violation. However, no such license shall be revoked or suspended, and no fine shall be imposed, except after a public hearing by the Local Liquor Commissioner with at least three (3) days prior written notice, to the licensee, as provided in DGMC Section 3.41, affording the licensee an opportunity to appear and defend. If the licensee fails to appear for such public hearing after receiving notice as provided in DGMC Section 3.41, a default judgment may be entered and the Local Liquor Commissioner may revoke or suspend the license, and/or impose a fine.
- (b) If the Local Liquor Commissioner has reason to believe that any continued operation of a particular licensed premises will immediately threaten the welfare of the community, the Local Liquor Commissioner may, upon the issuance of a written order stating the reason for such conclusion, and without notice or hearing, order the licensed premises closed for not more than seven (7) days,

giving the licensee an opportunity to be heard during that period. Provided, if such licensee shall also be engaged in the conduct of another business on the licensed premises, such order shall not be applicable to such other business.

- (c) In determining the appropriate penalty for violating any of the provisions of this Chapter or any State law pertaining to the sale of alcoholic liquor, the Local Liquor Commissioner may consider such matters and information as the Local Liquor Commissioner deems relevant including, but not limited to, the nature and circumstances surrounding the violation, the past record of the licensee and the penalties previously imposed by the Local Liquor Commissioner for similar violations. The past record shall include the record of the current licensee as well as the record of any other existing or prior licensee where there is, or was, not less than forty percent (40%) common identity between the owners of the current licensee and the owners of such other licensee. Such common identity shall be established where persons holding an ownership interest of not less than forty percent (40%) of the licensee under consideration also hold or held an ownership interest of not less than forty percent (40%) of another existing or prior licensee. Where the licensee under consideration, or such other prior or existing licensee, is a business entity such as a corporation or partnership, the ownership interest includes the equity holdings of the stockholder or partner. The consideration of the past record of such other or prior licensee shall only include that time period when such common identity is found.
- (d) The Local Liquor Commissioner shall, as promptly as practicable and in any event within thirty (30) days after such hearing, if the Local Liquor Commissioner determines after such hearing that the license should be revoked or suspended, and/or a fine should be imposed, state the reasons for such determination in a written order of revocation or suspension, and/or a fine should be imposed and shall serve a copy of such order upon the licensee.
- (e) Any licensee found guilty by the Local Liquor Commissioner for violating any provision of this Chapter, in addition to any other penalty which may be imposed, shall be assessed and required to pay to the Village an amount to cover administrative costs associated with the hearing, including, but not limited to, attorney's fees, investigation fees and court reporting fees. The Local Liquor Commissioner shall designate the amount of costs in his/her Findings and Order. Provided, such costs shall not exceed one thousand dollars (\$1,000.00).
- (f) Any license may be denied or revoked when it is determined that the application, plans, or other supporting documents required by this Ordinance reflect a false statement or misrepresentation of a material fact.

In the event of the revocation of any license under this Chapter, such person shall not be issued any license provided for in this Chapter for one (1) calendar year following the revocation or disposition of any appeal thereof.

Section 3. That Article 3.VI is hereby added as follows:

Article 3 .VI Video Gaming

Section 4. That Section 3.601 is hereby added as follows:

Sec. 3.600 Definitions

Act means Illinois' Video Gaming Act, 230 ILCS 40/5.

Board means the Illinois Gaming Board.

Licensed Establishment means any retail establishment where alcoholic liquor is drawn, poured, mixed, or otherwise served for consumption on the premises, and which is also licensed by the State of Illinois to have or operate a video gaming device in the Village, including any licensed fraternal establishment or licensed veterans' establishment.

Liquor License means a license issued by the Village authorizing the holder to sell and offer for sale at retail alcoholic liquor for on-premises use or consumption.

Person means an individual, corporation, partnership, limited liability company or trust.

State means the State of Illinois.

Sweepstakes Kiosks or Electronic Product Promotions Sweepstake Kiosk means any standalone, table top, or similar mechanically, electrically or electronically operated device in which, upon payment, a participant is automatically entered into a sweepstakes or similar promotion wherein the participant has the option to reveal the results of entry into said sweepstakes or promotion via a display mimicking slot machines, poker, keno, bingo or any form of a printed ticket or otherwise, for cash or merchandise as a prize. Any such device shall be considered a sweepstakes kiosk regardless of whether a coupon for a product or service is provided in exchange for the payment.

Video Gaming Café means an establishment whose primary focus is video gaming and the sale and service of alcohol, non-alcoholic drinks or food is incidental to the operation of video gaming, and which has an expected revenue to be at least 20% of its gross revenue on an annual basis exclusively from video gaming activities.

Video Gaming Terminal means any electronic video game machine that, upon insertion of cash, electronic cards or vouchers, or any combination thereof, is available to play or simulate the play of a video game, including but not limited to, video poker, line up and blackjack, as authorized by the 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. A sweepstakes kiosk or electronic product promotions sweepstakes kiosk shall be considered a video gaming terminal for purposes of this Article.

Village means the Village of Downers Grove, Illinois.

Section 5. That Section 3.602 is hereby added as follows:

Sec 3.602 License Required

- (a) No person shall operate or maintain or permit to be operated or maintained any video gaming terminal at any premises within the Village without first having obtained a

VG liquor license from the Village, which shall be a supplemental liquor license to Class B-1, C, R-1, R-2, R-3, REC-1 and REC-2 licenses.

- (b) The term for such license shall be from November 1 through October 31.
- (c) The annual fees for a VG license shall be as set forth in Administrative Regulation entitled “User-Fee, License and Fine Schedule”. These fees are in addition to any fees payable to the State or the Board. Said fees are not subject to proration or refund and are due prior to issuance of the license.

Section 6. That Section 3.603 is hereby added as follows:

Sec. 3.603. Eligibility

- (a) No applicant shall be eligible for a VG license from the Village, nor shall an existing license holder be entitled to maintain a VG license, unless each of the following requirements are met and continue to be met:
- (1) The applicant holds the appropriate certificate or license from the State permitting video gaming and is in good standing with same;
 - (2) The applicant has been in operation and held a Village liquor license in good standing (no violations, suspensions or fines) at the proposed location for at least twelve (12) months at the time the application is filed;
 - (3) The applicant must maintain customer seating outside of the video gaming room as hereinafter defined, but within the licensed premises;
 - (4) The applicant has no outstanding fees, fines, assessments, debt or penalties payable to the Village;
 - (5) The applicant has completed and complies with all the application requirements and is not disqualified due to a felony, gambling offense, or crime of moral turpitude; and
 - (6) The establishment holds a Class B-1, C, R-1, R-2, R-3, REC-1 or REC-2 liquor license from the Village.
- (b) No VG license shall be issued or renewed to any person who is not eligible for a license under the provisions of the Act or in the Village’s discretion.

Section 7. That Section 3.604 is hereby added as follows:

Sec. 3.604 Application

- (a) Initial application.

- (1) A person seeking to obtain a Class VG license shall submit an application on a form provided by the Village. The application shall be executed by the applicant or its duly authorized representative and shall not contain material misrepresentations, misstatements or omissions. In addition to all the information and documents required to be submitted with the application, a non-refundable application fee as set forth in Administrative Regulation entitled “User-Fee, License and Fine Schedule” shall be required with the filing of any application.
- (2) An application shall be processed in accordance with the procedures set forth in Section 3.12 of this Chapter, except that no hearing before the Liquor Commission is required as set forth in Section 3.12(d).
- (3) If an application is withdrawn or denied, the applicant may not reapply for a Class VG license within one (1) year from the date of withdrawal or denial.
- (b) Renewal application. The renewal application for a Class VG license shall be part of the renewal application for the underlying liquor license. A Class VG license may only be renewed if the licensee is in good standing, as defined above, and continues to meet all the eligibility requirements and upon receipt of a copy of the current State video gaming license, the applicable renewal application and annual fee.

Section 8. That Section 3.605 is hereby added as follows:

Sec. 3.605. Restrictions on Issuance

No supplemental VG license shall be issued to any establishment:

- (a) which is located within one hundred feet (100’) of any church or school, provided:
- (1) This prohibition shall not apply to the renewal of a license where such church or school has been established within such one hundred feet (100’) since the issuance of the original license.
- (b) that meets the definition of a video gaming café.
- (c) that does not hold a Class B-1, C, R-1, R-2, R-3, REC-1 or REC-2 liquor license.

Section 9. That Section 3.606 is hereby added as follows:

Sec. 3.606 Limitation on Number of Video Gaming Licenses

There shall be no more than twenty (20) VG licenses issued by the Village at any given time. Said licenses shall be issued on a first come – first served basis.

Section 10. That Section 3.607 is hereby added as follows:

Sec. 3.607 Video Gaming Terminals

- (a) Location. The location of a video gaming terminal in a licensed establishment shall be in a separate enclosed room from the dining area. The walls of the video gaming room are not required to extend from floor to ceiling, but shall be at least seven (7) feet high or as otherwise authorized by the Community Development Director. The video

- gaming room cannot be larger than five hundred (500) square feet nor more than twenty-five percent (25%) of the total square footage of the licensed establishment. The entrance door to the video gaming room must be within the view of at least one employee of the licensed establishment who is at least twenty-one (21) years of age.
- (b) Age requirement.** No person under the age of twenty-one (21) may enter the video gaming room. Signs must be posted on the exterior and interior of the video gaming room restricting entrance to persons at least twenty-one (21) years of age.
- (c) Time of play.** A video gaming terminal can only be played during the legal hours of operation allowed for the consumption of alcohol at the licensed establishment.
- (d) Registration.** Each video gaming terminal shall have the registration tag issued by the Board affixed thereto.
- (e) Limitation on number.** There shall be no more than six (6) video gaming terminals allowed for each licensee at any one licensed establishment.
- (f) Display of License.** The licensed establishment shall prominently display its video gaming license next to the video gaming terminals.
- (g) Violation.** Any video gaming terminal in violation is subject to seizure, confiscation and destruction.

Section 11. That Section 3.603 is hereby added as follows:

Sec. 3.608 Right of Entry

The Village shall have unrestricted access to enter the licensed establishment at any time when persons are present in the licensed establishment, for the purposes of inspection and investigating compliance with this Article, any ordinance of the Village, or any State law or regulation regarding video gaming.

Section 12. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 13. That this ordinance shall be in full force and effect January 1, 2022.

Mayor

Passed:

Published:

Attest: _____

Village Clerk