



**VILLAGE OF WESTMONT
PLANNING AND ZONING COMMISSION**

MEETING DATE: February 10, 2016

AGENDA ITEM: P/Z 16-002

TITLE: Village of Westmont for the following:

A. Amend Appendix A, Article XIV - Definitions of the Westmont Zoning Code regarding the Video Gaming definition to remove distance separation restrictions between establishments with video gaming terminals.

BACKGROUND OF ITEM

On October 1, 2015, the Village of Westmont amended the municipal code for business licensing, liquor licensing and the zoning provisions to establish a minimum distance between businesses with video gaming terminals. Set at 500', this distance was determined to be the most efficient and legally defensible response to an influx of video gaming cafés, where gaming revenues greatly outweigh food and liquor sales.

Specific to the zoning provisions, Video Gaming as a permitted use was added into the B-1, B-2, B-3, C-1, M, and O/R Districts. In addition, Video Gaming was defined as:

“The ownership, placement, maintenance, operation or use of a video gaming terminal in a public place, fraternal or veterans' establishment, as defined by the Video Gaming Act (230 ILCS 40/1 et seq.) including any subsequent amendments thereto. For the purposes of this Zoning Ordinance, video gaming is subject to the distance separation restrictions imposed in Chapter 10 and Chapter 22 of the Village Code of Ordinances, which restrictions are incorporated by reference in this definition.”

A copy of the Ordinance 15-156 has been attached for reference.

While the distance requirement addressed saturation, the code revisions did not remedy all concerns regarding the use. Throughout the process, discussions often focused on the restrictions that a distance requirement would place on both established and new restaurants that may want video gaming as a secondary use. Specifically different from video gaming cafés, these establishments focus on a full menu with food, beverages, and a restaurant atmosphere.

With a clear distinction between a restaurant and a café, it was subsequently determined that the creation of a new class of liquor license specific to the video gaming cafés could provide better management when combined with the adopted distance requirement. As a result, a new class of liquor license was created as a Class 22, specific to video gaming cafés that include size restrictions, reduced requirements for food service, and a cap on the number of licenses. A copy of the Ordinance 15-181 has been provided with this report.

Having been brought for a discussion at the January 21, 2016 Community Development Committee, staff and the committee discussed if the 500' distance requirement would continue to be needed now that the liquor licensing had more regimented requirements. Although a consensus that the requirement should be removed from the zoning ordinance was achieved, a majority felt it should remain in the other portions of code. This would remove the need for a variance if a business was within the 500' distance of another video gaming establishment, but would require a requested waiver from the Liquor Licensing Commission. It was felt that removal of the public hearing process would grant substantial relief in terms of time, application fees and process, while still allowing the Village a decision for the waiver.

Based on the discussion at the Community Development Committee meeting and additional direction from the January 21, 2016 Village Board meeting, staff recommends a text amendment to remove the distance requirements from the zoning ordinance. As the distance is only referenced in Appendix A, Article XIV Definitions, only the language referencing Chapter 10 and Chapter 22 need be removed.

SUMMARY:

Staff recommends a text amendment to revise the definition of Video Gaming to remove the references to a distance requirement between video gaming establishments.

ATTACHMENTS:

1. Publication notice published in the January 27, 2016 edition of the Westmont Suburban Life.
2. Community Development Committee Draft minutes, January 21, 2016. (*NOTE: Draft minutes were not yet available on the date this Staff Report was produced and will be provided when available*).
3. Ordinance 15-156 (established video gaming as an allowable use in multiple zoning districts subject to the 500' restriction)
4. Ordinance 15-181 (established a Class 22 liquor license specific to video gaming cafés)

ORDINANCE # 15-156

**AN ORDINANCE AMENDING CHAPTER 10, CHAPTER 22 AND APPENDIX "A"
(ZONING) OF THE WESTMONT CODE OF ORDINANCES TO IMPOSE A
DISTANCE SEPARATION REQUIREMENT FOR VIDEO GAMING TERMINALS**

WHEREAS, the Village of Westmont is a municipal corporation duly organized and operating pursuant to the laws of the State of Illinois; and

WHEREAS, the corporate authorities of the Village of Westmont voted in Year 2012 to authorize video gaming within the Village;

WHEREAS, the Village has received *bona fide* inquiries from several video gaming operators regarding congregating multiple video gaming cafes into a single strip mall within the Village; and

WHEREAS, at least two nearby communities have received similar inquiries regarding the congregation of video gaming cafes; and

WHEREAS, video gaming malls have been proposed in the Village of Hometown, Illinois and the Village of Crestwood, Illinois, and the proposal for Hometown, Illinois has proceeded to the Illinois Gaming Board; and

WHEREAS, video gaming is regulated by the State of Illinois pursuant to the Video Gaming Act, 230 ILCS 40/1, *et seq.* and corresponding administrative rules and regulations; and

WHEREAS, the Video Gaming Act and the corresponding administrative rules and regulations do not specifically address or disallow the congregation of multiple video gaming operations within a single building or strip mall or within a single block; and

WHEREAS, the corporate authorities of the Village of Westmont are concerned about the potential negative impacts that a video gaming mall or the congregation of video establishments within a strip mall, single building, or single street block would have on the Village of Westmont and the public; and

WHEREAS, the specific concerns about such video gaming congregation include, but are not limited to, (1) the physical appearance of a casino or casino-like operation, (2) the adverse impact on surrounding property values due to their location nearby a large casino-like operation, (3) the potential for crime due to the congregation of video gaming operations, (4) the potential for loitering due to the congregation of video gaming operations, (5) the potential for casino-like operations to be located within a strip mall adjacent to single-family houses, particularly those houses with children, (5) the negative aesthetics of casino-like operations, including concerns over lighting, signage and overall image, and (6) the potential prevention of redevelopment of a street block or strip mall in furtherance of the Village's Comprehensive Land Use Plan and/or TIF Development Plan due to the presence of a large casino-like operation occupying such street block or strip mall; and

WHEREAS, the corporate authorities find that all of the above-stated concerns, and others, will have a negative impact on the Village of Westmont and the public health, safety, welfare, and morals, as well as a negative impact on the aesthetics and economic redevelopment of the Village of Westmont; and

WHEREAS, United States courts have long recognized that gambling is an activity with significant negative effects, is an activity which can be regulated in order to minimize those effects, and that gambling falls within the category of social and economic evils that are the natural subject of government regulation; and

WHEREAS, United States courts have also recognized that the regulation of gambling is a valid exercise of a municipality's police power [see, e.g., *Edmonds Shopping Center Associates v. City of Edmonds*, 117 Wash.App. 344 (2003)]; and

WHEREAS, in initially authorizing video gaming within the Village, it was the intention of the Village of Westmont corporate authorities to provide assistance to existing restaurants and bars so they could generate additional revenue and remain in business after the Great Recession; and

WHEREAS, in authorizing video gaming within the Village, the corporate authorities did not intend to allow the close congregation of video gaming operations within a strip mall or within a street block, and did not intend to allow casinos or casino-like operations; and

WHEREAS, the Illinois Gaming Board recently denied a request for a casino mall consisting of up to 9 congregated video gaming cafes in the Village of Hometown, with the Chairman of the Illinois Gaming Board referring to the casino mall as a "backdoor casino" and stating that it was not the intent of the Video Gaming Act to allow such "backdoor casinos"; and

WHEREAS, Section 65 of the Video Gaming Act authorizes non-home rule municipalities to impose a fee of \$25.00 per year for the operation of a video gaming terminal; and

WHEREAS, pursuant to this express delegation of licensing power to municipalities over video gaming terminals, the Village enacted an ordinance which licenses video gaming terminals within the Village (Chapter 22, Division 9, "Video Gaming"); and

WHEREAS, Illinois courts have established that where there is the power to license by a municipality, there is the power to regulate, and that the State and a municipality may both license and regulate a particular activity provided there is no inconsistency between the two; and

WHEREAS, the Video Gaming Act does not provide for any distance separation requirements between video gaming operations; and

WHEREAS, the Village of Westmont corporate authorities desire to amend Chapter 22, "Businesses," Division 9 of the Westmont Code of Ordinances to impose a distance separation

requirement between video gaming operations/terminals in order to prevent the congregation of video gaming operations within a single strip mall or street block; and

WHEREAS, the Village of Westmont corporate authorities also desire to amend Chapter 10, "Alcoholic Beverages", Article III of the Westmont Code of Ordinances to impose a distance separation requirement between video gaming operations/terminals in order to prevent the congregation of video gaming operations within a single strip mall or street block; and

WHEREAS, the amendments to Chapter 10 are warranted because only holders of certain classes of liquor licenses may obtain a video gaming license, and the Village is authorized to regulate the sale of liquor and certain activities of licensed liquor establishments pursuant to its police powers to protect the public health, safety, welfare and morals; and

WHEREAS, pursuant to its police powers and pursuant to the express authority of the zoning provisions in the Illinois Municipal Code, the Village is authorized to enact zoning regulations to protect the public health, safety, welfare and morals; and

WHEREAS, the Village of Westmont corporate authorities desire to amend Appendix "A," "Zoning," of the Westmont Code of Ordinances to impose a distance separation requirement between video gaming operations/terminals in those zoning districts where such terminals are allowed to operate in order to prevent the congregation of video gaming operations within a single strip mall or street block; and

WHEREAS, the Village of Westmont corporate authorities find that these regulations will eliminate the congregation of video gaming terminals within the Village of Westmont, thereby protecting the public health, safety, welfare and morals, while simultaneously protecting the State's ability to oversee and license video gaming operations pursuant to the Video Gaming Act.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Westmont DuPage County, Illinois, as follows:

Section 1: The above-stated Recitals are hereby restated and incorporated herein into this Section 1 as though fully set forth herein.

Section 2: Chapter 22, "Businesses," Division 9 of the Westmont Code of Ordinances is hereby amended by adding a new Section 22-1167 as follows (amendments are indicated by underlined and **shaded** text; deletions are indicated by ~~strikeouts~~):

DIVISION 9. - VIDEO GAMING

Sec. 22-1160. - Definitions.

Video gaming means the ownership, placement, maintenance, operation or use of a video gaming terminal in a public place, fraternal or veterans' establishment, as defined by the Video Gaming Act (230 ILCS 40/1 et seq.) including any subsequent amendments thereto.

Video gaming terminal is ascribed its meaning as defined in the Video Gaming Act (230 ILCS 40/1 et seq.) and any subsequent amendments thereto, but is generally defined as any electronic video gaming machine that, upon the insertion of cash, tokens or other access device, is available to play or simulate the play of video gaming, including but not limited to video poker, line up, and blackjack, as authorized by the Illinois Gaming Board. This term does not include a machine that directly dispenses coins, cash or tokens or is for amusement purposes only.

(Ord. No. 12-190, § 2, 12-17-2012)

Sec. 22-1161. - Required.

(a) The owner of a video gaming terminal shall obtain a license for such device issued by the Village of Westmont.

(b) It shall be unlawful for any person to install, keep, maintain or use or permit the installation, keeping, maintenance or use upon his premises of any video gaming terminal unless a valid license issued under this division for the video gaming terminal is in effect.

(c) It shall be unlawful for any person to deliver video gaming terminals within the Village of Westmont for use by any other person for gain or profit from the operation thereof unless a license therefor has been issued by the Village and the license fee has been paid for the current year.

(Ord. No. 12-190, § 2, 12-17-2012)

Sec. 22-1162. - Application.

Applications for the license required by this division shall [be] made by the owner of any video gaming terminal and filed with the village clerk and shall contain the following information:

- (1) The name, address, age and date of birth of the owner of the video gaming terminal and of the owner of the establishment where the video gaming terminal shall be located;
- (2) Prior convictions of the owner of the video gaming terminal and the owner of the establishment, if any;
- (3) The place where the video gaming terminal is to be displayed or operated and the business conducted at that place;
- (4) A description of the video gaming terminal to be covered by the license; and
- (5) Evidence that licenses have been issued by the Illinois Gaming Board to the owner of the video gaming terminal and the owner of the establishment.

(Ord. No. 12-190, § 2, 12-17-2012)

Sec. 22-1163. - License fee; number of licenses; privilege/transferability.

(a) *Annual fee.* The annual fee for the license required by this division shall be \$25.00 per terminal and shall be renewed annually, if desired. The fee shall be nonrefundable.

(b) *Number of licenses.*

(1) The total number of video gaming licenses issued under this article shall be restricted to the following total: zero

(2) The total number of video gaming licenses may be increased or decreased from time to time in the discretion of the village board as follows:

a. Upon the recommendation of the village clerk concerning a pending application.

b. Upon failure of a licensee to renew its license, or upon notice from the village clerk that a license has been declared forfeited or that a license has been revoked by order of the mayor pursuant to section 22-1166.

(c) *Privilege/transferability.* A license granted under this division shall be purely a personal privilege, good for a maximum of one year after issuance, unless sooner revoked as provided herein, and shall not constitute property, nor shall it be subject to attachment, garnishment, or execution, nor shall it be transferable, voluntarily or involuntarily, or subject to being encumbered. Such license shall not descend by the laws of testate or intestate devolution, but it shall cease upon the cessation of the business or death of the licensee/owner.

(Ord. No. 12-190, § 2, 12-17-2012)

Sec. 22-1164. - Expiration.

Licenses issued pursuant to this division shall terminate on the fourth Tuesday of May the next year following issuance.

(Ord. No. 12-190, § 2, 12-17-2012)

Sec. 22-1165. - Display.

The license required by this division shall be prominently displayed next to the video gaming terminal.

(Ord. No. 12-190, § 2, 12-17-2012)

Sec. 22-1166. - Revocation.

The Mayor of the Village of Westmont, at any time, may notify any licensee under this division within five business days of any charge of a violation of any of the provisions of this article in connection with the operation of any video gaming terminal. After a hearing presided over by the mayor, the mayor may order the revocation of the license upon a finding that the violation has occurred, and the license for that owner shall thereupon be terminated for the remainder of the year. Any appeal is subject to judicial review pursuant to the Administrative Review Act, 735 ILCS 5/301 et seq.

(Ord. No. 12-190, § 2, 12-17-2012)

Sec. 22-1167. Distance Separation Requirement.

- (a) No building housing a video gaming terminal shall be located within five hundred (500) feet of another building housing a video gaming terminal. This distance separation requirement shall be measured from the nearest corner of the building or leased space housing the video gaming terminal to the nearest corner of the building or leased space housing the closest video terminal. No license shall be issued if the village determines that this distance separation requirement is not met.
- (b) Existing businesses licensed under this division which operate video gaming terminals which do not meet this distance separation requirement on the effective date of this ordinance are grandfathered and may continue to operate and have their annual video gaming terminal license renewed, provided they meet the other requirements of this division.
- (c) In the event that a business which is grandfathered pursuant to subsection (b) above is sold or ownership is otherwise transferred, and provided that the video gaming operations do not cease for a consecutive period of more than three hundred sixty (360) days after such sale or transfer, the new owner or transferee may obtain a video gaming terminal license pursuant to this division if the owner or transferee otherwise qualifies for such license, and such business shall be considered grandfathered from this distance separation requirement.
- (d) A violation of this section shall be grounds for termination of the video gaming terminal license.

Secs. 22-1167~~8~~—22-1180. - Reserved.

Section 3: Chapter 10 “Alcoholic Beverages,” Article III, Section 10-83(a) of the Westmont Code of Ordinances is hereby amended as follows (amendments are indicated by underlined and shaded text; deletions are indicated by ~~strikeouts~~):

ARTICLE III. - CONDUCT ON LICENSED PREMISES

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Sec. 10-83. - Prohibited or restricted activities.

- (a) *Gambling.* It shall be unlawful to permit any gambling on any premises licensed to sell alcoholic liquor. Provided, however, the prohibition shall not apply to any video gaming terminal for which: (i) a license or permit has been issued by the Illinois Gaming Board pursuant to the Illinois Video Gaming Act as codified in 230 ILCS 40/1 et seq.; and (ii) a license has been issued to the owner of a video gaming terminal by the Village of Westmont, so long as such device or terminal is conducted in compliance with all requirements of said Illinois Video Gaming Act (230 ILCS 40/1 et seq.) and all rules and regulations of the Illinois Gaming Board and the Village of Westmont. Where alcoholic liquor is served at a premises which contains one or more video gaming terminals, the following distance separation requirements apply:

- (1) No building housing a video gaming terminal shall be located within five hundred (500) feet of another building housing a video gaming terminal. This distance separation requirement shall be measured from the nearest corner of the building or leased space housing the video gaming terminal to the nearest corner of the building or leased space housing the closest video terminal. No liquor license shall be issued to a business which proposes to operate video gaming if the village determines that this distance separation requirement is not met.
- (2) Existing businesses licensed under this chapter which operate video gaming terminals which do not meet this distance separation requirement on the effective date of this ordinance are grandfathered and may continue to operate and have their annual liquor license renewed, provided they meet the other requirements of this chapter.
- (3) In the event that a business which is grandfathered pursuant to subsection (b) above is sold or ownership is otherwise transferred, and provided that the video gaming operations do not cease for a consecutive period of more than three hundred sixty (360) days after such sale or transfer, the new owner or transferee may obtain a video gaming terminal license and liquor license if the owner or transferee otherwise qualifies for such licenses, and such business shall be considered grandfathered from this distance separation requirement.
- (4) A violation of this section shall be grounds for termination of the liquor license.

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Section 4: Appendix "A", Zoning, Section 7.03 of the Westmont Code of Ordinances is hereby amended as follows (amendments are indicated by underlined and shaded text; deletions are indicated by ~~strikeouts~~):

Sec. 7.03. - Permitted uses and special uses in business districts.

Use	B-1 District			B-2 District		
	Permitted Use	Special Use	Special Conditions Code No. (see 7.04)	Permitted Use	Special Use	Special Conditions Code No. (see 7.04)
(A) Business and commercial uses:						
(1) Amusement establishments, excluding adult entertainment cabarets:	—	—		—	S	1
(a) Arcade, electronic/mechanical game	—	—		—	S	6
(2) Amusement parks	—	—		—	S	1
(3) Animal hospitals	—	—		—	S	1
(3a) Animal clinics, veterinarian	—	S	1, 12	—	S	1, 12

ORDINANCE NO. 15-181
AN ORDINANCE AMENDING CHAPTER 10, SECTION 10-36 OF THE WESTMONT
CODE OF ORDINANCES TO CREATE A NEW LIQUOR LICENSE
CLASSIFICATION FOR VIDEO GAMING CAFÉS

WHEREAS, the Village of Westmont is a municipal corporation duly organized and operating pursuant to the laws of the State of Illinois; and

WHEREAS, Chapter 10 of the Westmont Code of Ordinances governs Alcoholic Beverages and regulates liquor licenses and the conduct of licensed liquor establishments within the Village of Westmont; and

WHEREAS, Section 10-36 of said Chapter 10 establishes and regulates the various classification of liquor licenses available within the Village of Westmont; and

WHEREAS, the Local Liquor Commissioner has recommended an amendment to Section 10-36 of said Chapter 10 to create a new Class 22 liquor license classification for video gaming cafés; and

WHEREAS, the Village of Westmont Board of Trustees has determined that this new license classification is reasonable and necessary in that video gaming cafés do not operate as a traditional restaurant as required for a Class 1, 2, 3 or 4 liquor license and instead derive the majority of their revenue from video gaming, with the service of food and alcohol as an amenity thereto; and

WHEREAS, the Village of Westmont Board of Trustees desires to approve this new license classification, finding that this new license classification will provide more consistency in administering the Village's liquor ordinances and will promote local businesses on a limited basis, and finding that sufficient safeguards are in place to protect the public health, safety and welfare; and

WHEREAS, it is the intent of the Local Liquor Commissioner and the Board of Trustees to have existing video gaming cafés which hold a Class 4 or similar restaurant liquor license transfer their existing liquor license to this new Class 22 liquor license classification, at no cost to the existing business.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Westmont, DuPage County, Illinois, as follows:

Section 1: The above-stated recitals are hereby restated and incorporated into this Section 1 as though fully set forth herein.

Section 2: Chapter 10, "Alcoholic Beverages," Article II "Retail Licenses," Section 10-36 "Classification of Licenses" is hereby amended to create a new Class 22 liquor license classification for video gaming cafés as follows (amendments are indicated by underlining and shading; deletions are indicated by ~~strikeouts~~):

Sec. 10-36. - Classification of licenses.

Liquor licenses to be issued under this chapter shall be divided into the following classes:

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(22) Class 22, which shall authorize the retail sale of beers and wines only for consumption on the licensed premises where the major and primary business is that of a video gaming café, defined as an establishment which will obtain a video gaming license under the Illinois Video Gaming Act and which offers alcohol and food as an amenity only, subject to the following restrictions:

- a. The licenses premises shall contain no more than 2250 gross square feet;
- b. The business must derive a portion of its revenue from food sales, but the food sold need not be prepared on-site;
- c. All operations must be conducted indoors (no beer gardens or outdoor eating/drinking/gaming allowed);
- d. No other forms of gaming (billiards, darts, etc.) are allowed on the premises except for board and card games or other games as approved by the local liquor commissioner which do not involve gambling;
- e. Patrons may not bring their own alcohol onto the premises; and
- f. No more than two televisions are allowed on the premises.

(Ord. No. 94-68, § 1(4-9), 9-20-1994; Ord. No. 96-95, § 1, 11-18-1996; Ord. No. 97-39, § 1, 4-21-1997; Ord. No. 05-97, § 1, 4-18-2005; Ord. No. 06-160, § 1, 9-5-2006; Ord. No. 07-144, § 1, 9-4-2007; Ord. No. 07-182, § 1, 12-3-2007; Ord. No. 08-154, § 1, 10-20-2008; Ord. No. 08-184, § 1, 11-17-2008; Ord. No. 10-104, § 1, 6-21-2010; Ord. No. 11-145, § 1, 9-6-2011; Ord. No. 12-118, § 1, 7-2-2012; Ord. No. 12-136, § 1, 9-4-2012; Ord. No. 13-36, § 1, 2-19-2013; Ord. No. 13-37, § 1, 2-19-2013; Ord. No. 13-197, § 1, 10-17-2013; Ord. No. 14-187, § 2, 11-13-2014; Ord. No. 14-188, § 2, 11-13-2014)

State Law reference— Classification of state licenses, 235 ILCS 5/5-1.

Section 3: Chapter 10 “Alcoholic Beverages,” Division II “Retail Licenses”, Section 10-37(a) “License Fees” is hereby amended to add a new liquor license classification and fee schedule for a Class 22 liquor license as follows (**amendments are indicated by underlining and shading; deletions are indicated by ~~strikeouts~~**):

Sec. 10-37. - License fees.

- (a) *Fee schedule.* The initial license fees and annual license fees for the various classes of licenses established in this chapter shall be as follows:

- (18) The total number of class 18 licenses shall not exceed two.
- (19) The total number of class 19 licenses shall not exceed one.
- (20) The total number of class 20 licenses shall not exceed one.
- (21) The total number of class 21 licenses shall not exceed one.
- (22) The total number of class 22 licenses shall not exceed 5.

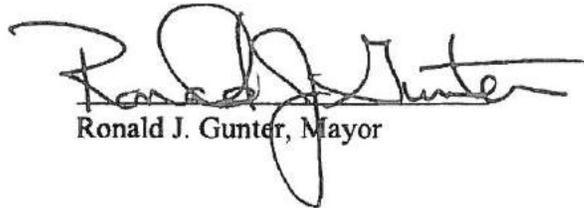
Section 5: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of the conflict.

Section 6: This ordinance shall be in full force and effect after its passage, approval and publication as provided by law.

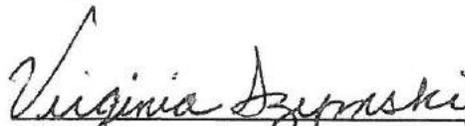
PASSED AND APPROVED by the Mayor and Board of Trustees of the Village of Westmont, DuPage County, Illinois, this 12th day of November, 2015.

Ayes: 6 Nays: 0 Absent: 0

APPROVED:


Ronald J. Gunter, Mayor

ATTEST:


Virginia Szymanski, Village Clerk

