



AGENDA

REGULAR MEETING OF THE LAWS AND ORDINANCES COMMITTEE TO BE HELD ON
TUESDAY, OCTOBER 1, 2019, AT 6:00 P.M. AT THE POLICE DEPARTMENT TRAINING
ROOM, 7760 QUINCY STREET, IN THE VILLAGE OF WILLOWBROOK, DUPAGE COUNTY,
ILLINOIS

Mayor

Frank A. Trilla

Village Clerk

Leroy R. Hansen

Village Trustees

Sue Berglund

Umberto Davi

Terrence Kelly

Michael Mistele

Gayle Neal

Paul Oggerino

Village Administrator

Brian Pabst

Chief of Police

Robert Schaller

Director of Finance

Carrie Dittman



1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF MINUTES – September 3, 2019 (Approve)
4. UPDATES
 - a) People v. Sterigenics Case Status
 - b) Village Notifications of IEPA Reports in Conjunction with the Matt Haller Act Requirements
 - c) Alarm Notifications for Hazardous Chemicals
 - d) Good Governance Suggestions
 - i. Require a Permit for the Transfer on Village Roads of Tier II Chemicals
 - ii. Retail Occupation Tax on Tier II Chemicals
 - iii. Enact zoning Restrictions for M1 to limit the storage of Tier II Extremely Hazardous Substances to 100 Lbs.
 - iv. Update Village Fire Codes to align with zoning restrictions and limit storage to 100 lbs.
5. DISCUSSION – Proposed Text Amendment: Consideration of a petition for text amendments to amend Sections 9-6B-1, 9-6C-1 and 9-6D-1 of Title 9 – Zoning Title of the Village of the Willowbrook Municipal Code to add “Video Gaming Cafe” as a new permitted use in the B-2, B-3 and B-4 Zoning Districts; to amend Section 9-2-2 of Title 9 – Zoning Title of the Village of the Willowbrook Municipal Code to add “Video Gaming Café” as a new definition and to amend the current definition of “Restaurant”; and to add a new use category in Sections 9-6A-2, 9-6B-2, 9-6C-2 and 9-6D-2 of Title 9 – Zoning Title of the Village of the Willowbrook Municipal Code. **(Recommend Referral to Plan Commission for its Consideration)**
6. DISCUSSION – Definition of Cannabis in Village Code Title 5 – Police Regulation – Section 5-3-20 and 5-2-23 as it relates to the Federal Agriculture Improvement Act of 2018 and the Cannabis Regulation and Tax Act **(Recommend to Village Board on October 14, 2019)**
7. COMMITTEE REPORTS
8. VISITOR’S BUSINESS (Public comment is limited to three minutes per person)
9. ADJOURNMENT

MINUTES OF THE REGULAR MEETING OF THE LAW AND ORDINANCES COMMITTEE OF THE VILLAGE OF WILLOWBROOK HELD ON TUESDAY, SEPTEMBER 3, 2019 AT 6:00PM AT THE WILLOWBROOK POLICE DEPARTMENT, 7760 QUINCY STREET, VILLAGE OF WILLOWBROOK, DUPAGE COUNTY, ILLINOIS.

1. CALL TO ORDER

Trustee Kelly called the meeting to order at the hour of 6:03 PM

2. ROLL CALL

Those present at roll call were Trustee Kelly, Trustee Davi, Village Administrator Pabst, Building Official Roy Giuntoli, Superintendent of Public Work Joe Coons. Absent: Village Attorney Bastian

3. APPROVAL OF MINUTES

Minutes – Regular Meeting July 2, 2019

Trustee Davi made a motion to approve the minutes from the July 2, 2019, seconded by Trustee Kelly. All in favor

MOTION CARRIED

4. UPDATES-Village Attorney Bastian not present so they will be tabled, except for item A. People V. Sterigenics - Trustee Davi informed board case is up on Friday and supposedly the Judge should be ruling on this motion.

Motion to table the other Updates was made by Trustee Davi, seconded by Trustee Kelly. All in favor

MOTION CARRIED

5. An Ordinance Amending Section 6-8-5 Entitled "Bills:" and Section 6-8-8 Entitled "Nonpayment:" of Chapter 8 Entitled "Water System" of Title 6 Entitled "Health and Sanitation" of the Municipal Code of Ordinances of the Village of Willowbrook (Refer to Village Board for Consideration on September 9, 2019)

Trustee Kelly: Discussion?

None

Trustee Kelly informed the Committee that Attorney Thomas Bastian said that the Ordinances should be referred to the Village Board for Consideration on September 9, 2019, seconded by Trustee Davi. All in favor

MOTION CARRIED

6. An Ordinance Amending Title 4 Entitled "Municipal Services" Chapter 2 Entitled "Building Code" Section 32 Entitled "Swimming Pool Regulations Adopted" of the Village Code of Ordinances of the Village of Willowbrook (Refer to Village Board for Consideration on September 23, 2019)

Trustee Kelly asked Building Official Roy Giuntoli if there was any discussion or explaining. Per Building Official Roy Giuntoli:

In late June of this year, the Village of Willowbrook Building and Zoning Division / Building Department completed a comprehensive update to Title 4, Chapter 2 of our Village Code. Title 4, Chapter 2 encompasses primarily Building and Property Maintenance Codes, as well as rules and regulations for the Building Department and establish overall construction regulations within the village. However, it was recently discovered that certain provisions of the 2018 International Swimming Pool and Spa Code (ISPSC) drastically changed the barrier requirements, to the point where we believe public life and safety are compromised. There are also several sections that needed to be corrected from the initial adoption process, mainly concerning Permit Expirations, Extensions and Penalties.

Regarding the Barrier: In past cycles of the "pool" code, a surrounding protective barrier was required for any pool with walls less than four feet (4') above grade (a common barrier is typically a fence, or wall of a structure/residence/building, or a combination thereof). As "In-Ground" pools have no walls above grade, they have *always* been required to have a barrier to surround them to protect from accidental fall ins. The new 2018 ISPSC code now allows for a certain type of "mechanical cover" to be used as an alternate to a barrier. Staff considers this code change a step back from the safe barriers required in years past. Staff will alter the code wording to remove "swimming pools" from the wording, subsequently reinstating the pool barrier/fence requirement.

Regarding the Permit Expirations, Extensions and Penalties: Staff also reworded several sections to be more consistent with other adopted codes, i.e. IBC (Building Code) and the IRC (Residential Code).

Trustee Davi asked if under new [unamended] rules, do you don't need a fence if you have one of those covers?

Building Official explained that the 2018 Pool code as written [unamended], as long as you have one of those covers you do not need a surrounding barrier.

Trustee Davi inquired is the proposal just to adopt this new code with this variance and all the other codes are good.

Building Official responded "yes". Just re-adopting the whole section with a few minor changes with the barriers and cleaning up inconsistencies with the other adopted codes as well.

Trustee Kelly's understating is every yard with pool needs a barrier regardless if they have the compliant cover. "Correct"

Trustee Kelly asked for a motion, Trustee Davi so moved, Trustee Kelly second. All in favor

MOTION CARRIED

7. COMMITTEE REPORTS: NONE

8. VISITOR'S BUSINESS: NONE

9. COMMUNICATIONS: NONE

10. ADJOURNMENT

Trustee Kelly made a motion to adjourn, so moved by Trustee Davi, seconded by Trustee Kelly. All in favor. The meeting adjourned at 6:14 PM

PRESENTED, READ and APPROVED

_____, 2019

CHAIRMAN

LAW AND ORDINANCES COMMITTEE MEETING
AGENDA ITEM SUMMARY SHEET

AGENDA ITEM DESCRIPTION

COMMITTEE REVIEW

DISCUSSION – Resident suggested enhancements to our Village Code entitled “Good Governance”

- I. **Require a Permit for the Transfer on Village Roads of Tier II Chemicals**
- II. **Retail Occupation Tax on Tier II Chemicals**
- III. **Enact zoning Restrictions for M1 to limit the storage of Tier II Extremely Hazardous Substances to 100 Lbs.**
- IV. **Update Village Fire Codes to align with zoning restrictions and limit storage to 100 lbs.**

- ☐ Finance/Administration
☐ Municipal Services
☐ Public Safety
☒ Law & Ordinances

Meeting Date:
October 1, 2019

- | | |
|---|---|
| <input checked="" type="checkbox"/> Discussion Only | <input type="checkbox"/> Approval of Staff Recommendation (for consideration by Village Board at a later date) |
| <input type="checkbox"/> Seeking Feedback | <input type="checkbox"/> Approval of Staff Recommendation (for <u>immediate</u> consideration by Village Board) |
| <input type="checkbox"/> Regular Report | <input type="checkbox"/> Report/documents requested by Committee |

BACKGROUND

The Village has received four suggestions to enhance our Village Code from a local resident. **The items for discussion below are submitted as they were received by the resident and are not presented as staff suggestions or legal opinions of the Village of Willowbrook:**

- I. **Require a permit for the transfer on Village roads of Tier II Chemicals that are designated as Extremely Hazardous Substances (EHS) for any quantity larger than 100 lbs. Permit each delivery. Charge an incremental rate, based on total pounds transported.**

This tax would fund first responders, to better prepare them for handling a chemical disaster. This would include equipment, not limited to Haz Mat gear, which must be custom fitted for each responder (fire & police), various Haz Mat equipment and training.

Support: Home Rule has been found in court to supersede amendments to the Illinois Constitution.
<http://municipalminute.ancelglink.com/2019/03/court-finds-that-home-rule-units-are.html?m=1>

The Court found that a provision contained in another section of the Constitution, such as the Safe Roads Amendment contained in Article IX, cannot limit home rule powers, as only Section 6 (a) of Article VII can do so. Following that logic, the Court noted that the drafters means “to limit homer rule powers (i.e., under Section (a) of Article VII), but the drafters chose not to use those means. So, Cook County’s homer rule power are not contained by the Safe Roads Amendment. If the decision is County’s Home Rule powers are not constrained by the Safe Roads Amendment. If the decision is upheld (likely to be appealed), there would be precedent for home rule units to enact policies that conflict with the Illinois Constitution, unless such powers are expressly limited in Article VII, Section 6.

By this, as CS 30/ Illinois Hazardous Materials Transportation Act does not expressly limit Home Rule Powers, the municipality has the authority regulate the transportation of Hazardous Materials on Village roads. List EHS:

<https://www.ecfr.gov/cgibin/textidx?SID=e208a869f7ca033d3fec0b908fc6065&node=ap40.28.355161.a&rgn=div9>

- II. Enact a Retailer's Occupation Tax on Tier II Chemicals, using Cook County Sugar Tax as a model. Require this tax to be collected and paid to the Village by the Chemical Distributor. As Tier II chemicals are used as part of performing a service and not as a manufacturing ingredient, it would fall under: "General merchandise" includes sales of most tangible personal property including the sales of
- i. Soft drinks and candy;
 - ii. Prepared food such as food purchased at a restaurant;
 - iii. Photo processing (getting pictures developed);
 - iv. Prewritten and "canned" computer software;
 - v. Prepaid telephone calling cards and other prepaid telephone calling arrangements;
 - vi. Repair parts and other items transferred or sold in conjunction with providing a service under certain circumstances based on the actual selling prices;
- III. Enacting zoning restrictions for M1 to limit the storage of Tier II Extremely Hazardous Substances to 100 lbs.
- IV. Update village fire codes to align with zoning restrictions and limit storage to 100 lbs.

STAFF RECOMMENDATION

Receive input from the Village Attorney and Building Code Official on the suggested items.

Good Governance

1. Require a permit for the transfer on village roads of Tier II Chemicals that are designated as an Extremely Hazardous Substance (EHS) for any quantity larger than 100 lbs. Permit each delivery. Charge an incremental rate, based on total pounds transported.

This tax would fund first responders, to better prepare them for handling a chemical disaster. This would include equipment, not limited to Haz Mat gear, which must be custom fitted for each responder (fire & police), various haz mat equipment and training.

Support: Home Rule has been found in court to supersede amendments to the Illinois Constitution, [https://www.cookcountyil.gov/press-releases/2019/06/20/2019-06-20-cook-county-home-rule-unit-appeals-illinois-supreme-court-decision.html](#)

The Court found that a provision contained in another section of the Constitution, such as the Safe Roads Amendment contained in Article IX, cannot limit home rule powers, as only Section 6(a) of Article VII can do so. Following that logic, the Court noted that the drafters of the Safe Roads Amendment had "a ready, straightforward, specifically prescribed means" to limit home rule powers (i.e., under Section 6(a) of Article VII), but the drafters chose not to use those means. So, Cook County's home rule powers are not constrained by the Safe Roads Amendment. If the decision is upheld (likely to be appealed), there would be precedent for home rule units to enact policies that conflict with the Illinois Constitution, unless such powers are expressly limited in Article VII, Section 6.

By this, as [COOK COUNTY HAZARDOUS MATERIALS TRANSPORTATION ACT](#), does not expressly limit Home Rule Powers, the municipality has the authority regulate the transportation of Hazardous Materials on Village roads. List EHS: [https://www.fda.gov/oc/ohrt/ehs.html](#)
[https://www.fda.gov/oc/ohrt/ehs.html#list-of-extremely-hazardous-substances](#)

2. Enact a Retailer's Occupation Tax on Tier II Chemicals, using the Cook County Sugar Tax as a model. Require this tax to be collected and paid to the Village by the Chemical Distributor. As Tier II chemicals are used as part of performing a service and not as a manufacturing ingredient, it would fall under: "General merchandise" includes sales of most tangible personal property including sales of

- soft drinks and candy;
- prepared food such as food purchased at a restaurant;
- photo processing (getting pictures developed);
- prewritten and "canned" computer software;
- prepaid telephone calling cards and other prepaid telephone calling arrangements;
- *repair parts and other items transferred or sold in conjunction with providing a service under certain circumstances based on the actual selling price;*

3. Enact zoning restrictions for M1 to limit the storage of Tier II Extremely Hazardous Substances to 100 lbs.

4. Update village fire codes to align with zoning restrictions and limit storage to 100 lbs.



Village of Willowbrook

Staff Report to the Plan Commission

Public Hearing Date: October 23, 2019

Prepared By: Ann Choi, Planning Consultant

Case Title: PC 19-09: Consideration of a petition for text amendments to amend Sections 9-6B-1, 9-6C-1 and 9-6D-1 of Title 9 – Zoning Title of the Village of the Willowbrook Municipal Code to add “Video Gaming Cafe” as a new permitted use in the B-2, B-3 and B-4 Zoning Districts; to amend Section 9-2-2 of Title 9 – Zoning Title of the Village of the Willowbrook Municipal Code to add “Video Gaming Café” as a new definition and to amend the current definition of “Restaurant”; and to add a new use category in Sections 9-6A-2, 9-6B-2, 9-6C-2 and 9-6D-2 of Title 9 – Zoning Title of the Village of the Willowbrook Municipal Code.

Petitioner: Village of Willowbrook, 835 Midway Drive, Willowbrook, Illinois 60527

Action Requested by Applicant: Title 9 – Zoning Sections:

9-2-2	Definitions (Add “Video Gaming Café”).
9-2-2	Definitions (Amend the current definition of “Restaurant”).
9-6B-1 (or 9-6B-2)	Add “Video Gaming Café” to Section 9-6B-1 (as a permitted use) OR to Section 9-6B-2 (as a special use) of the Zoning Ordinance in the appropriate alphabetical location.
9-6C-1 (or 9-6C-2)	Add “Video Gaming Café” to Section 9-6C-1 (as a permitted use) OR to Section 9-6C-2 (as a special use) of the Zoning Ordinance in the appropriate alphabetical location.
9-6D-1 (or 9-6D-2)	Add “Video Gaming Café” to Section 9-6D-1 (as a permitted use) OR to Section 9-6D-2 (as a special use) of the Zoning Ordinance in the appropriate alphabetical location.
9-6A-2 9-6B-2 9-6C-2 9-6D-2	Add a new use category “Other similar or compatible uses, as recommended by the Plan Commission and approved by the Village Board” to the list of special uses in the B-2 zoning district. Determination of what constitutes similar and compatible shall be made by the Village Administrator or his/her authorized designee.

Documents Attached: Attachment 1: Public Hearing Notice
Attachment 2:

Necessary Action by Plan Commission: Make either a positive recommendation or negative recommendation to the Mayor and Village Board for the proposed text amendments.

A sample motion can be found on page 5.



History & Background

The Illinois Video Gaming Act was enacted on July 13, 2009, authorizing individual municipalities to pass an ordinance prohibiting video gaming within their jurisdiction. At the time, Willowbrook had an ordinance prohibiting all forms of gambling, which also prohibited video gambling. In June 2013, the Village Board was asked to reconsider this ban on video gaming by the owner of Dell Rhea's Chicken Basket on behalf of various Willowbrook restaurant owners. On July 29, 2013, the Village Board further discussed the Illinois Video Gaming Act. An ordinance was subsequently drafted that amended the Village Code to remove the current prohibition and authorize and license video gaming. When permitted by the local jurisdiction, the state law allows a current licensed establishment (i.e., a retail establishment that holds a Village liquor license allowing consumption on premises) to install up to six (6) Video Gaming Terminals (VGTs) located within an area of the establishment restricted to persons 21 years of age and older. The state would issue the video gaming licenses to establishments, and the Village would issue a local license. If a complaint was received regarding underage gambling, etc., the Village would have the authority through the Liquor Code to bring the license before the liquor commissioner for a hearing on the violation. If the violation was confirmed, the Village would then report the violation to the state. The state then has the authority to revoke their gaming license. Ordinance No. 13-O-31, permitting video gaming within a retail establishment that holds a Village liquor license, was approved by the Village Board in August 2013.

Video gaming in Willowbrook has thus currently been allowed only at establishments that have a liquor license, and these establishments' primary use is a restaurant or bar, not video gaming. The original intent of the video gaming ordinance was for existing establishments such as bars, taverns and restaurants who wanted to have video gambling to remain competitive with businesses in surrounding communities that already allowed video gaming.

On August 3, 2016, a petition to allow video gaming as a special use in the B-2 zoning district was previously reviewed by the Plan Commission. This text amendment request was associated with a petition proposed by an applicant wishing to open a stand-alone video gaming facility in a vacant storefront in the Willowbrook Square Shopping Center. The Plan Commission recommended approval on both petitions with a 6-0 unanimous roll call vote of the members present. At the time, due to the number of residents who were not in favor of this use in the community, the Village Board ultimately denied the ordinance that would allow video gaming as a principal use.

Discussion of Request

This Village-initiated text amendment was brought about because of an increase in public inquiries by several local business owners who have expressed an interest in opening an establishment whose principal use is video gaming. The Village currently does not distinguish between video gaming cafés and restaurants that have video gaming as an ancillary use to their main business. The proposed text amendment would introduce a new "video gaming café" use that would be a standalone establishment in the Village with the service of alcohol and food as incidental to the operation of video gaming. The Village found that video gaming establishments which served liquor and packaged foods such as chips could *technically* still fall under the restaurant use category because it served food, and Staff felt that this should be differentiated. Local and State gaming licenses would still need to be obtained, but video gaming would be the primary use of the business as opposed to a restaurant or bar.

The Village will be presenting amendments to the Willowbrook Video Gaming Code and Liquor Code tentatively at the October 28, 2019 meeting in conjunction with the above text amendments. The additional liquor license classifications will be tied to restaurants with gaming and one for video gaming cafés. The new liquor licenses will provide the Village of Willowbrook additional controls to regulate the proliferation of these types of uses



in the Village. As part of this text amendment, minimum distances (minimum of ½ mile) between video gaming cafés will also be proposed.

The proposed text amendments will also introduce a new use category to Sections 9-6A-2, 9-6B-2, 9-6C-2 and 9-6D-2 of the Zoning Code that would create a catch all use category "Other similar and compatible uses" for those uses that are not listed as a special use in the business zoning districts. The determination of what constitutes "similar and compatible" will be made by the Village Administrator or his/her authorized designee and would need to be reviewed by the Plan Commission and approved by the Village Board. The new use category would alleviate the Village from amending the Zoning Code each time the Village encounters a similar or compatible use that is not listed in the Zoning Code.

Under the Video Gaming Act:

1. Video gaming is restricted from the following locations:
 - a. 1,000 feet of a facility operated by an organization licensee, inter-track wagering licensee, or inter-track wagering location licensee licensed under the Illinois Horse Racing Act of 1975 (230 ILCS 5/1 et seq. (West 2008)) (the Board may waive this restriction in certain circumstances);
 - b. 1,000 feet of the home dock of a riverboat licensed under the Riverboat Gambling Act (230 ILCS 10/1 et seq. (West 2008)) (the Board may waive this restriction in certain circumstances); or
 - c. 100 feet of either a school or a place of worship under the Religious Corporation Act (805 ILCS 110/0.01 et seq. (West 2008)).
2. Up to six (6) VGTs may be placed at each Licensed Video Gaming Location.
3. VGTs must be located in an area restricted to persons 21 years of age and over, the entrance to which is within the view of at least one employee who is at least 21 years of age. The placement of VGTs in Licensed Video Gaming Locations shall be subject to section 810 of the Video Gaming Rules. For all Locations that restrict admittance to patrons 21 years of age or older, a separate restricted area is not required. For all Locations that admit individuals under the age of 21, a physical barrier to the gaming area, including but not limited to a short partition, gate or rope shall be required. No barrier shall visually obscure the entrance to the gaming area from an employee of the Location who is over the age of 21.
4. The hours of operation of a VGT must coincide with the legal hours of operation for the consumption of alcoholic beverages on the premises.

Parking Analysis

Potential uses requesting occupancy of a new location are always evaluated as to whether adequate parking is provided on site. Although the Zoning Code does not specifically identify parking requirements for video gaming cafe's, Staff finds that the most appropriate parking requirement would be listed under "Other Business and Commercial Enterprises" in Chapter 10 of the Zoning Ordinance, which requires a lower parking ratio of 1 space per 250 square feet of floor area, as opposed to higher parking requirements for restaurants or fast-food establishment (1 space per 100 square feet of floor area). It is expected that a video gaming café will be more "restaurant" in nature but with a low patron turnover rate, where customers will come to the site, enter a "storefront, and sit down for an extended period of time. Other employees will also be available on the site. A future video gaming use(s) is anticipated to be located within a shopping center, which commands a parking requirement of 1 space per 250 square feet of floor area which is also consistent with the parking ratio required under "Other Business and Commercial Enterprises". Therefore, Staff is recommending a parking ratio of 1 parking space per 250 square feet of floor area under the "Other Business and Commercial Enterprises" in Chapter 10 of the Zoning Ordinance.



Permitted or Special Use

Staff believes the requirement of a special use within the business zoning districts would be too onerous of a process for potential applicants wishing to open up a video gaming café within the Village. The special use approval process will require notification of surrounding property owners and a public hearing before the Plan Commission which can be a minimum 60-day process at a minimum. Permitted uses, on the other hand, would allow applicants to fill out an application and be approved with a building license or permit. Video gaming cafés would further be subject to the consideration of a liquor license and approval by the Village Board. The following section of the Staff Report offers the general process and timeline of obtaining a liquor and business license for a video gaming café.

The Plan Commission would be limited in the types of conditions it could impose on a video gaming café, as the Plan Commission does not have the authority to limit the hours of operation, the number of video gaming terminals, the number of licenses, or set license fees. These would be under the purview of the Village Board. Additionally, Staff will propose amendments to the Willowbrook Video Gaming Code and Liquor Code to regulate these establishments by introducing a liquor license tied exclusively to video gaming cafés, limiting the number of these licenses and proposing a minimum distance between video gaming cafés. Given these reasons and the fact that the State already heavily regulates these types of businesses, Staff does not recommend that the video gaming café to be assigned as a special use.

Obtaining a Valid License to Operate a Video Gaming Café

The process to open a licensed video gaming café in the Village of Willowbrook is as follows:

1. Applicant meets with Village Staff for an internal zoning review (1 day)
2. Applicant applies for Liquor License & Gaming License (varies)
3. Village Reviews application and performs background check (2 weeks)
4. Applicant meets with Liquor Commissioner or Designee (1 day)
5. Village Board consideration of Liquor License (2-4 weeks)
6. Applicant Applies for Building Permit (3-5 weeks)
7. Applicant Applies for Business License (varies)
8. Liquor License, Business License, Business License is issued with Occupancy Permit (varies)

Staff estimates it may take up to three months to obtain a valid liquor license.

Proposed Amendments

1. Add the following definition to Section 9-2-2:

"VIDEO GAMING CAFÉ:

An establishment whose primary or major focus is video gaming and the service of alcohol and food is incidental to the operation of video gaming."

2. Delete the following definition of "Restaurant" in its entirety in Section 9-2-2 and in lieu thereof, the following language shall be substituted:

"RESTAURANT:

A retail establishment that is kept, used, maintained, advertised, and held out to the public as a place where meals are cooked and prepared in an adequate and sanitary kitchen located on the licensed premises using stoves, ovens, fryers, and related equipment located on the licensed premises and which are protected by a fire protection system that conforms with the Village Code. The sale of



packaged food such as potato chips, pretzels, popcorn, peanuts, or other similar snacks or frozen packaged food shall not be considered food prepared and served on premises, as required herein."

3. Add the following use to Section 9-6B-1 (as a permitted use) OR to Section 9-6B-2 (as a special use) of the Zoning Ordinance in the appropriate alphabetical location:

"Video Gaming Café"

4. Add the following new use category to Sections 9-6A-2, 9-6B-2, 9-6C-2 and 9-6D-2 of the Zoning Ordinance in the appropriate alphabetical location:

"Other similar or compatible uses, as recommended by the Plan Commission and approved by the Village Board" to the list of special uses in the B-2 zoning district. Determination of what constitutes similar and compatible shall be made by the Village Administrator or his/her authorized designee.

Recommendation

If the Plan Commission wishes to **support** the proposed text amendments to define and allow video gaming as a permitted use, revise the current definition of "restaurant", and add a new use category to the list of special uses in the business zoning districts, staff recommends the following sample motion:

Based on the submitted petition and testimony presented, I move that the Plan Commission recommend to the Village Board approval of the text amendments presented on Pages 4 and 5 of the Staff Report for PC Case Number 19-09 to define and allow "Video Gaming Café" as a permitted use in the B-2, B-3 and B-4 Zoning Districts, to revise the current definition of "restaurant", and to add a new use category to the list of special uses in the business zoning districts.

If the Plan Commission wishes to **support** the proposed text amendments to define and allow video gaming as a special use, revise the current definition of "restaurant", and add a new use category to the list of special uses in the business zoning districts, staff recommends the following sample motion:

Based on the submitted petition and testimony presented, I move that the Plan Commission recommend to the Village Board approval of the text amendments presented on Pages 4 and 5 of the Staff Report for PC Case Number 19-09 to define and allow "Video Gaming Café" as a special use in the B-2, B-3 and B-4 Zoning Districts, to revise the current definition of "restaurant", and to add a new use category to the list of special uses in the business zoning districts.

If the Plan Commission wishes to **deny** the proposed text amendments, staff recommends the following sample motion:

Based on the submitted petition and testimony presented, I move that the Plan Commission forward a negative recommendation to the Village Board for the text amendments presented on Pages 4 and 5 of the Staff Report for PC Case Number 19-09 to define and allow "Video Gaming Café" as a permitted use in the B-2, B-3 and B-4 Zoning Districts, to revise the current definition of "restaurant", and to add a new use category to the list of special uses in the business zoning districts.

NOTICE OF PUBLIC HEARING
ZONING HEARING CASE NO. 19-09

NOTICE is hereby given that the Plan Commission of the Village of Willowbrook, DuPage County, Illinois, shall conduct a public hearing at a special meeting of the Plan Commission on the 23rd of October, 2019 at the hour of 7:00 P.M. in the Willowbrook Police Department Training Room, 7760 South Quincy Street, Willowbrook, IL 60527.

The purpose of this public hearing shall be to consider a petition for text amendments to amend Sections 9-6B-1, 9-6C-1 and 9-6D-1 of Title 9 – Zoning Title of the Village of the Willowbrook Municipal Code to add “Video Gaming Cafe” as a new permitted use in the B-2, B-3 and B-4 Zoning Districts; to amend Section 9-2-2 of Title 9 – Zoning Title of the Village of the Willowbrook Municipal Code to add “Video Gaming Café” as a new definition and to amend the current definition of “Restaurant”; and to add a new use category in Sections 9-6A-2, 9-6B-2, 9-6C-2 and 9-6D-2 of Title 9 – Zoning Title of the Village of the Willowbrook Municipal Code.

A copy of the Village’s petition is on file in the Office of the Village Planner, Village of Willowbrook, 835 Midway, Willowbrook, Illinois, and is available for public inspection.

Any individual with a disability requiring a reasonable accommodation in order to participate in any public meeting held under the authority of the Village of Willowbrook should contact Roy Giuntoli, Village of Willowbrook, 835 Midway, Willowbrook, IL 60527, or call (630) 920-2262, Monday through Friday, between 8:30 A.M. and 4:30 P.M., within a reasonable time before the meeting. Requests for sign language interpreters should be made a minimum of five working days in advance of the meeting.

All persons desiring to be heard in support or opposition to the application shall be afforded an opportunity and may submit their statements orally, in written form, or both. This hearing may be recessed to another date if not concluded on the evening scheduled.

/s/ Brian Pabst

Village Administrator

(630) 920-2261

Published in the October 6, 2019 edition of *The Chicago Sun Times Newspaper*.

FINANCE AND ADMISITRATION COMMITTEE MEETING

AGENDA ITEM SUMMARY SHEET

AGENDA ITEM DESCRIPTION

Discussion – Amendments to the Village of Willowbrook Video Gaming Code and Liquor Code

COMMITTEE REVIEW

- ☒ Finance/Administration
- ☐ Municipal Services
- ☐ Public Safety
- ☐ Law & Ordinances

Meeting Date: August 12, 2019

- | | |
|--|--|
| <input type="checkbox"/> Discussion Only
<input type="checkbox"/> Seeking Feedback
<input type="checkbox"/> Regular Report | <input checked="" type="checkbox"/> Approval of Staff Recommendation (for consideration by Village Board at a later date)
<input type="checkbox"/> Approval of Staff Recommendation (for <u>immediate</u> consideration by Village Board)
<input type="checkbox"/> Report/documents requested by Committee |
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ITEM HISTORY (PREVIOUS VILLAGE BOARD REVIEWS, ACTIONS RELATED TO THIS ITEM, OTHER HISTORY)

The Village currently allows Video Gaming within the community. The Village has four (4) businesses with video gaming operations; Dell Rhea's Chicken Basket, Kerry Piper, Madison's Pub & Grill, and Stats Sports Bar. Each of the establishments has five (5) video gaming terminals per location. The Village currently charges a license fee of twenty-five dollars (\$25.00) per terminal plus the corresponding liquor license per location.

Staff has received a few inquiries regarding video gaming cafes within the community. The Village does not currently distinguish between video gaming cafes and restaurants that have video gaming as an ancillary use to their main business. The Village does not have any regulations that would limit the location or quantity of video gaming cafes, should it desire to do so.

ITEM COMMENTARY (BACKGROUND, DISCUSSION, RECOMMENDATIONS, ETC.)

Staff would recommend that the Finance and Administration Committee consider the following items for clarification and to provide a more controlled environment as it pertains to Video Gaming establishments.

- 1) **Define: Restaurant** - Any place kept, used, maintained, advertised, and held out to the public as a place where meals are cooked and prepared in an adequate and sanitary kitchen located on the licensed premises using stoves, ovens, fryers, and related equipment located on the licensed premises and which are protected by a fire protection system that conforms with the Village Code. The sale of packaged food such as potato chips, pretzels, popcorn, peanuts, or other similar snacks or frozen shall not be considered food prepared and served on premises, as required herein.
- 2) **Define: Video Gaming Café** as an establishment whose primary or major focus is video gaming and the service of alcohol and food is incidental to the operation of video gaming. The following factors may be considered when determining if the establishment is a video gaming cafe:
 - a. Does not meet the definition of "restaurant" as provided herein;
 - b. An expected revenue to be at least **60% of its gross revenue on an annual basis exclusively from video gaming activities**, which can be certified by request from the Village for pertinent business records to verify the certification included but not limited to financial statements, business financial reports, State of Illinois tax information, or any other record deemed acceptable by the Village.
 - c. **2,640 linear feet (1/2 mile) separation between Video Gaming Cafes.**

- 3) Adjust gaming license fee from \$25 / terminal to the following:
- a. **Establish an Application Fee:** In connection with **the first application** of any person applying for a license, said person shall pay at the time of such application a non-refundable initial license application fee of **\$1,500.00** in addition to the license fees required in this Chapter. The license application fee shall be for the purpose of defraying any and all costs which the Village may incur as a result of the consideration and investigation of said application and applicant(s). This initial license application fee shall be retained by the Village regardless of whether or not person/applicant is granted a license.
 - b. **Adjust Terminal Fee:** The annual video gaming terminal fee shall be **\$1,000.00 for each video gaming terminal** on a licensed premise.
- 4) Create a new **Restaurant Gaming Liquor License, Class O, at \$5,000.00 per establishment location.**
- a. Class O license shall authorize video gaming and the retail sale on the specified premises of alcoholic liquor for consumption on said premises, when the primary business conducted upon said premises is that of a Restaurant as defined herein.
- 5) Create a new **Video Gaming Café Liquor License, Class P, at \$5,000.00 per establishment location.**
- a. Class P license shall authorize video gaming and the retail sale on the specified premises of alcoholic liquor for consumption on said premises, when the primary business conducted upon said premises is that of a Video Gaming Café where the expected revenue to be at least 60% of its gross revenue on an annual basis exclusively from video gaming activities as defined herein.
- 6) Video Gaming Licenses **shall be Prohibited in Nail Salons and Spas** that have obtained a Class N Liquor License.
- 7) The Village will allow up to **6 Video Terminals per establishment** as allowed by the new State legislation.

The establishment of refined definitions, distant separations for gaming cafes, enhanced fees and new gaming / liquor classifications will provide the Village with more regulatory control over the type and location of video gaming within the community.

STAFF RECOMMENDATION

Recommended for formal Village Board consideration on August 26, 2019.

CURRENT CODE VIDEO GAMING CODE

Chapter 1A LICENSE FEES

3-1A-1: FEES ENUMERATED:

3-1A-1: FEES ENUMERATED:

License fees under the terms of activities and uses set forth shall be as follows:

36.	Video gaming license	\$25.00 per machine per year
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3-19A-1: DEFINITIONS:

3-19A-2: LICENSE REQUIRED:

3-19A-3: APPLICATION FOR LICENSE:

3-19A-4: VIOLATIONS:

3-19A-1: DEFINITIONS:

As used in this chapter, the following terms shall have the following meanings:

APPLICANT: A person applying for a video gaming license under this chapter.

CODE: The Code of ordinances of the Village of Willowbrook, DuPage County, Illinois.

FRATERNAL ORGANIZATION: An organization or institution organized and conducted on a not for profit basis with no personal profit inuring to anyone as a result of the operation and that is exempt from Federal income taxation under section 501(c)(8) or (c)(10) of the Internal Revenue Code.

GAME: A gambling activity that is played for money, property or anything of value, including, without limitation, those played with cards, chips, tokens, vouchers, dice, implements, or electronic, electrical or mechanical devices or machines.

ILLINOIS GAMING BOARD: The board created by the Illinois legislature to regulate video gaming by the State of Illinois.

LICENSED ESTABLISHMENT: Any retail liquor licensed premises in the Village where alcoholic liquor is drawn, poured, mixed, or otherwise served for consumption on the premises.

LICENSED FRATERNAL ESTABLISHMENT: The location in the Village where a qualified fraternal organization that derives its charter from a national fraternal organization regularly meets.

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 Video Gaming 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 Video Gaming Act.

LICENSED VETERANS' ESTABLISHMENT: The location in the Village where a qualified veterans' organization that derives its charter from a national veterans' organization regularly meets.

LICENSED VIDEO GAMING LOCATION: A licensed establishment, licensed fraternal establishment or a licensed veterans' establishment, all as defined in section 5 of the Video Gaming Act and this chapter that holds a valid permit issued by the Illinois Gaming Board and an authorization granted by the Village permitting the licensee to locate one or more, but not more than five (5) video gaming terminals at the establishment.

LICENSEE: The person, firm or entity to whom an authorization granted by the Village permitting it to engage in the defined activities of video gaming.

LIQUOR COMMISSIONER: The Liquor Commissioner of the Village or his/her designee.

LIQUOR LICENSE: A local retail license issued by the Village authorizing the holder to sell and offer for sale at retail alcoholic liquor for use or consumption on the premises.

STATE: The State of Illinois.

STATE LICENSE: Authorization granted by the Illinois Gaming Board permitting a licensee to engage in the defined activities of video gaming.

TERMINAL OPERATOR: An individual, partnership, corporation, or limited liability company that is licensed under the Video Gaming Act and that owns, services, and maintains video gaming terminals for placement in licensed video gaming locations in the Village.

VETERANS' ORGANIZATION: An organization or institution organized and conducted on a not for profit basis with no personal profit inuring to anyone as a result of the operation and that is exempt from Federal income taxation under section 501(c)(19) of the Internal Revenue Code (26 USC 501(c)(19)).

VIDEO GAMING ACT: The Illinois Video Gaming Act¹.

VIDEO GAMING LICENSE: Authorization granted by the Village permitting a licensee to locate a video gaming terminal at a permitted location in the Village.

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, as 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.

VILLAGE: The Village of Willowbrook, DuPage County, Illinois. (Ord. 13-O-31, 8-12-2013)

3-19A-2: LICENSE REQUIRED:

It shall be unlawful to permit, suffer or allow video gaming within the Village, except as otherwise permitted by the Video Gaming Act, 230 Illinois Compiled Statutes 40/1 et seq., and this chapter. For the purposes of this section, gambling shall be defined in accordance with the definition ascribed thereto, from time to time, in 720 Illinois Compiled Statutes 5/28-1 et seq. (Ord. 13-O-31, 8-12-2013)

3-19A-3: APPLICATION FOR LICENSE:

No person, corporation, or partnership shall display or offer for play any video gaming terminal within the Village without first having applied for and received a Village video gaming terminal license for each video gaming terminal located on the licensed premises. The license fee shall be as set forth in section 3-1A-1 of this title. (Ord. 13-O-31, 8-12-2013)

3-19A-4: VIOLATIONS:

Any person, corporation, or partnership violating the provisions of this chapter shall be fined in an amount not to exceed seven hundred fifty dollars (\$750.00) for each violation. Each day that a violation exists shall constitute a separate offense. (Ord. 13-O-31, 8-12-2013)

5-3-14: GAMBLING GENERALLY; BINGO, ILLINOIS STATE LOTTERY, CHARITABLE GAMES AND VIDEO GAMING EXCEPTED; PENALTY; AUTHORITY:

- (A) Gambling Generally Prohibited: It shall be unlawful to gamble or attend any gambling establishment, or to make any bet, lottery or gambling hazard, or to buy or sell any chances or tickets in any gambling game, arrangement or device, except as otherwise provided herein.
- (B) Advertising of Any Gambling Activity: It shall be unlawful to advertise any gambling establishment in any street, alley or public place within the Village except as otherwise provided herein.
- (C) Possession of Gambling Devices: It shall be unlawful to possess any gambling device or paraphernalia with the intent to use the same for any unlawful purpose; and any such device or paraphernalia kept with such intent may be confiscated by any member of the Police Department, except as otherwise provided herein.
- (D) Bingo Excepted: Notwithstanding any provision of this section, the gambling game known as bingo shall be permitted within the Village when being held in compliance with State Statute.
- (E) Illinois State Lottery Excepted: Notwithstanding any provision of this section, the gambling game known as the Illinois State lottery is permitted within the Village when being held in compliance with State Statute. (Ord. 79-O-11, 3-26-1979; amd. Ord. 80-O-1, 1-14-1980)
- (F) Charitable Games Excepted: Notwithstanding any provision of this section, the gambling game known as charitable games is permitted within the Village when being held in compliance with State Statute. (Ord. 01-O-20, 9-10-2001)

(G) Video Gaming Excepted: Notwithstanding any provision of this section, video gaming shall be permitted at locations within the Village only when so authorized and licensed pursuant to the provisions of the Video Gaming Act¹, this Code and [title 3, chapter 19A](#) of this Code. (Ord. 13-O-31, 8-12-2013)

CURRENT LIQUOR CLASSIFICATIONS

3-12-5: CLASSIFICATIONS:

<u>Class</u>	
A	Retail - no consumption
B	Entertainment, dancing and consumption
B-1	Retail - no consumption - restaurant
B-2	Retail - consumption on and off premises - coffee/sandwich shop
C	One day license
D	Hotel, motel type of class
E	Retail - no consumption - grocery stores
F	Recreational facility - consumption
G	Private recreational facility - consumption
H	Catering
I	Indoor/outdoor commercial recreational facility
J	Homeowners' association
K	Retail consumption on and off premises - grocery store over 30,000 square feet of retail floor area
L	Retail consumption on and off premises of a brewpub or Class I brewer
M	Retail - no consumption - gas stations
N	Retail - on premises consumption - hair and nail salon

(Ord. 14-O-26, 6-9-2014; amd. Ord. 15-O-10, 4-27-2015; Ord. 16-O-15, 4-25-2016; Ord. 17-O-22, 11-27-2017; Ord. 18-O-03, 1-22-2018)

(A) Class A License: Class A license shall authorize the retail sale of alcoholic liquor, but not for consumption on the premises where sold, at premises having not less than four thousand (4,000) square feet of retail floor area. This class of license shall not be applicable to the retail sale of alcoholic liquor by grocery stores, said grocery stores falling under the license classification as set forth in subsection (E) of this section. The annual fee for such license shall be two thousand five hundred dollars (\$2,500.00). There shall be no more than three (3) Class A licenses issued at any one time. (Ord. 99-O-26, 10-25-1999; amd. Ord. 03-O-31, 11-24-2003;

Ord. 10-O-05, 2-22-2010; Ord. 12-O-01, 1-9-2012; Ord. 13-O-27, 7-22-2013; Ord. 14-O-10, 2-10-2014)

(B) Class B License: Class B license shall authorize the retail sale on the specified premises of alcoholic liquor for consumption on said premises, when the primary business conducted upon said premises is that of a restaurant where not less than seventy five percent (75%) of the retail floor area is devoted to the service of complete sit down meals from a menu and not more than twenty five percent (25%) of the retail floor area is devoted to lounge or bar purposes. Any person holding any Class B license shall have the privilege of providing upon the licensed premises an orchestra and permitting dancing by patrons therein; provided, however, that no such dancing by patrons shall be permitted unless there is provided in the licensed premises a compact, clear and open area containing not less than four hundred (400) square feet for such dancing; and provided further, that no entertainers other than members of the orchestra shall be engaged or permitted to perform therein. The annual fee for such license shall be two thousand five hundred dollars (\$2,500.00). There shall be no more than fourteen (14) Class B licenses issued at any one time. (Ord. 08-O-11, 5-12-2008; amd. Ord. 08-O-26, 12-15-2008; Ord. 09-O-14, 6-8-2009; Ord. 09-O-22, 10-12-2009; Ord. 10-O-30, 12-13-2010; Ord. 12-O-18, 7-23-2012; Ord. 13-O-42, 12-16-2013; Ord. 14-O-07, 1-27-2014; Ord. 14-O-37, 9-8-2014; Ord. 14-O-49, 10-27-2014; Ord. 15-O-03, 3-9-2015; Ord. 16-O-02, 1-11-2016; Ord. 16-O-26, 6-27-2016; Ord. 16-O-29, 7-11-2016; Ord. 17-O-09, 4-10-2017; Ord. 18-O-01, 1-8-2018)

1. Class B-1 License: Class B-1 license shall authorize the retail sale of beer and wine in sealed packages but not for consumption on the premises where sold, provided the primary business conducted upon said premises is that of a restaurant. The Class B-1 license shall only be issued along with and in addition to a Class B license. The annual fee for such license shall be five hundred dollars (\$500.00). There shall be no more than zero (0) Class B-1 licenses issued at any one time. (Ord. 12-O-23, 10-8-2012; amd. Ord. 13-O-19, 6-10-2013)
2. Class B-2 License: Class B-2 license shall authorize the retail sale of beer and wine after twelve o'clock (12:00) noon on each day and the sale of liqueurs/cordials all for consumption on the licensed premises of a coffee/sandwich shop of less than two thousand (2,000) square feet of gross floor area. A Class B-2 license shall also authorize the retail sale of wine in sealed packages for consumption not on the licensed premises. The annual fee for a Class B-2 license shall be one thousand five hundred dollars (\$1,500.00). There shall be no more than zero (0) Class B-2 licenses issued at any one time. (Ord. 15-O-11, 5-11-2015; amd. Ord. 19-O-01, 1-14-2019)

(C) Class C License: The Local Liquor Control Commissioner may grant a Class C license to any local organization or group such as a Fire Department, veterans' organization, lodge, church or similar organization, or to any other such local organization as the Local Liquor Control Commissioner may, from time to time, determine. A Class C license shall be effective for a period of one day and shall authorize the sale of such alcoholic liquor as the Local Liquor Control Commissioner may permit, at any picnic, carnival or similar function given by said organization. The Local Liquor Control Commissioner may impose such other restrictions on said licenses as he shall see fit. The fee for such license shall be two hundred fifty dollars (\$250.00). (Ord. 99-O-26, 10-25-1999; amd. Ord. 03-O-31, 11-24-2003)

(D) Class D License: Class D license shall authorize the storage, distribution and retail sale, on the premises of motels and hotels, of alcoholic liquor for consumption on the premises. The retail

sale of alcoholic liquor in the original package to occupants of the motel or hotel only shall also be authorized.

1. The holder of a Class D license shall have the privilege of providing live music upon the licensed premises. (Ord. 99-O-26, 10-25-1999)
2. The annual fee for such license shall be three thousand five hundred dollars (\$3,500.00), and there shall be no more than one Class D license issued at any one time. (Ord. 99-O-26, 10-25-1999; amd. Ord. 03-O-31, 11-24-2003)

(E) Class E License: Class E license shall authorize the retail sale of alcoholic liquor, but not for consumption on the premises where sold, by those retail food establishments commonly referred to as grocery stores; provided, that said grocery store has not less than ten thousand (10,000) square feet of retail floor area; and, further provided, that the retail floor area devoted to the display of alcoholic liquor shall not exceed five percent (5%) of the total retail floor area of said grocery store, or two thousand (2,000) square feet of retail floor area, whichever is less. The annual fee for such license shall be two thousand five hundred dollars (\$2,500.00). There shall be no more than one Class E license issued at any one time. (Ord. 06-O-28, 9-11-2006; amd. Ord. 14-O-05, 1-27-2014; Ord. 15-O-24, 9-14-2015; Ord. 18-O-24, 8-27-2018)

(F) Class F License: Class F license shall authorize the sale on the specified premises of alcoholic liquor for consumption on said premises when the primary business conducted upon said premises is that of a recreational facility. For the purpose of this class of license, a "recreational facility" shall be defined as a racquetball club, tennis club, health club, sports complex or bowling alley, wherein at least eighty five percent (85%) of the retail floor area is devoted to recreational purposes other than the sale or consumption of alcoholic liquor. There shall be no more than one Class F license issued at any one time. The annual fee for such license shall be two thousand five hundred dollars (\$2,500.00). (Ord. 01-O-21, 10-8-2001; amd. Ord. 03-O-31, 11-24-2003; Ord. 08-O-26, 12-15-2008; Ord. 16-O-36, 8-8-2016)

(G) Class G License: Class G license shall authorize the sale on the specified premises of alcoholic liquor for consumption on the premises, where the primary use of said premises is that of a private recreational facility. This class of license shall be limited to those private recreational facilities owned by incorporated not for profit homeowners' associations and which are located in residential districts. The retail sale of alcoholic liquor shall be limited to members of any such licensed not for profit homeowners' associations and their guests. There shall be no more than one Class G license issued at any one time. The annual fee for such license shall be two hundred fifty dollars (\$250.00). (Ord. 99-O-26, 10-25-1999; amd. Ord. 03-O-31, 11-24-2003; Ord. 14-O-19, 5-12-2014)

(H) Class H License: Class H license shall authorize the sale of alcoholic liquor in connection with an off-site catering business operating within the Village. For purposes of this classification, an "off-site catering business" is one which serves food at locations not owned or leased by such catering business. Alcoholic liquor shall only be sold by the licensee in connection with the catering of foods. In addition to the other requirements of this chapter, a Class H license shall only be issued to persons who can demonstrate that they are operating a bona fide catering business. No Class H licensee shall serve alcoholic liquor at a single location for more than three (3) consecutive twenty-four (24) hour periods. No Class H licensee shall serve alcoholic liquor at

any location that is not properly zoned for the activity at which alcoholic liquor is to be served. There shall be no more than three (3) Class H licenses authorized at this time. The annual fee for such license shall be two hundred fifty dollars (\$250.00).

- (I) Class I License: Class I license shall authorize the sale on the specific premises of alcoholic liquor for consumption on the premises, where the primary use of said premises is that of an indoor/outdoor commercial recreational facility. For purposes of this classification, an indoor/outdoor commercial recreational facility is one which is located on a parcel of land of not less than eight (8) acres in area and which provides for and permits diverse recreational activities, including, but not limited to, picnics, horse shows, horse auctions, square dancing, volleyball, pig roasts, etc., as well as other social and political activities. All alcoholic liquor sold, given or delivered at the licensed premises shall be deemed to be the act of the licensee. Any person or other legal entity selling, giving or delivering alcoholic liquor at the premises shall be deemed to be the agent of the licensee for purposes of this chapter. There shall be no more than zero (0) Class I licenses authorized at any one time. The annual fee for such license shall be two thousand five hundred dollars (\$2,500.00). (Ord. 99-O-26, 10-25-1999; amd. Ord. 03-O-31, 11-24-2003; Ord. 16-O-35, 8-8-2016)

- (J) Class J License: Class J license shall authorize the retail sale of alcoholic liquor, by a homeowners' association to members of the homeowners' association and their invited guests at designated special events, not to exceed twenty (20) such events during the license period for consumption on the licensed premises. Each special event shall not exceed one day.

The licensee shall, for each such special event, make written application or request to the Village Administrator and shall include the date of the special event and the hours of authorized sale of alcoholic liquor. The homeowners' association shall, if a not for profit corporation, attach a copy of a certificate of good standing issued by the Illinois Secretary of State with each such request.

The Village Administrator shall be authorized to issue a written authorization or subsidiary liquor license for each authorized special event which shall include the date, location and permitted hours of sale of alcoholic liquor for consumption on the premises.

The annual fee for a Class J license shall be two hundred fifty dollars (\$250.00). No additional fee shall be charged for each special event sponsored or held.

There shall be no more than one Class J license issued at any one time. (Ord. 14-O-17, 3-24-2014)

- (K) Class K License: Class K license shall authorize the retail sale of alcoholic liquor both for consumption on and off the premises where sold as an incidental part of sales by those retail food establishments commonly referred to as grocery stores that have a minimum of thirty thousand (30,000) square feet of retail floor area; and, further provided, that the retail floor area devoted to the sale of alcoholic liquor shall not exceed three thousand (3,000) square feet, excluding seating areas. The consumption of alcoholic liquor intended for consumption on the licensed premises shall be permitted throughout the entire retail floor area of the licensed premises and on designated outdoor patios attached to the licensed premises. Alcoholic liquor stocked on store display shelves within the retail floor area and sold in their original packages shall not be consumed on the licensed premises.

The annual fee for a Class K license shall be three thousand dollars (\$3,000.00). There shall be no more than one Class K license issued at any one time. (Ord. 15-O-10, 4-27-2015)

- (L) Class L License: Class L license shall authorize the retail sale of beer brewed on the premises of a brew pub or Class I brewer, as defined by article V of the Liquor Control Act of 1934 in a tap-room less than two thousand (2,000) square feet on the licensed premises and the retail sale of beer brewed on the premises sold in sealed containers for consumption off the licensed premises.

Effective January 1, 2018, the annual fee for a Class L license shall be two thousand five hundred dollars (\$2,500.00). There should be no more than one Class L license issued at any one time. (Ord. 17-O-19, 11-13-2017)

- (M) Class M License: Class M license shall authorize the retail sale of beer and wine, in their original packages, not for consumption on the premises where sold, of a business where the primary purpose is the sale of petroleum products (gas stations) provided the gas station has a minimum of three thousand (3,000) square feet of interior space. The total floor and cooler space dedicated to the sale of beer and wine shall be limited to ten percent (10%) of total square footage of the interior of the premises; signs shall be posted in the store displaying the prohibited sale hours of beer and wine; the percentage of window space permitted to be used for the advertising of the sale of beer and wine at such gas station is limited to ten percent (10%) of the total window space available; and no signage advertising the sale of beer or wine shall be permitted on the outside of the building or on the grounds of the gas station except that which is permitted in the window of the establishment.

Additional restrictions:

1. Floor displays or stacking of beer and wine shall be at least ten feet (10') from any point of ingress and egress and shall not be stacked so as to obstruct the view of the interior of the premises from the exterior of the premises;
2. Coolers shall be locked during those hours when the sale of beer and wine is prohibited;
3. A Class M license shall not authorize the sale of individual bottles or cans of beer and bottles or containers of wine less than seven hundred fifty milliliters (750 mL).

The annual license fee for a Class M license shall be two thousand five hundred dollars (\$2,500.00). The maximum number of Class M licenses shall be one. (Ord. 17-O-22, 11-27-2017)

- (N) Class N License: Class N license shall authorize the retail sale of beer by the can, bottle or glass and wine by the glass for consumption on the licensed premises only of a hair salon or nail salon. The sale of beer and wine shall be limited to patrons of the hair or nail salon as part of salon services being rendered to those patrons. In addition, there shall be a two (2) alcoholic beverage drink maximum for each patron receiving salon services. No alcoholic liquor may be sold, given or delivered to persons who are not receiving salon services.

The annual license fee for a Class N license shall be one thousand five hundred dollars (\$1,500.00). The maximum number of Class N licenses shall be zero (0). (Ord. 18-O-03, 1-22-2018)

LAW AND ORDINANCES COMMITTEE MEETING
AGENDA ITEM SUMMARY SHEET

AGENDA ITEM DESCRIPTION

DISCUSSION – Definition of Cannabis in Village Code Title 5 – Police Regulation – Section 5-3-20 and 5-2-23 as it relates to the Federal Agriculture Improvement Act of 2018 and the Cannabis Regulation and Tax Act

COMMITTEE REVIEW

- ☐ Finance/Administration
☐ Municipal Services
☐ Public Safety
☒ Law & Ordinances

Meeting Date:

October 1, 2019

- | | |
|---|---|
| <input type="checkbox"/> Discussion Only | <input checked="" type="checkbox"/> Approval of Staff Recommendation (for consideration by Village Board at a later date) |
| <input type="checkbox"/> Seeking Feedback | <input type="checkbox"/> Approval of Staff Recommendation (for <u>immediate</u> consideration by Village Board) |
| <input type="checkbox"/> Regular Report | <input type="checkbox"/> Report/documents requested by Committee |

BACKGROUND

The use of hemp-based CBD oils and creams has been recently legalized by state and federal laws.

State / Federal Laws

The Federal Agriculture Improvement Act of 2018 ("2018 Farm Bill") removed "hemp" from the prohibitions of the Federal Controlled Substances Act, basically legalizing it, subject to regulation of its production. Hemp is defined to include the marijuana plant (*Cannabis sativa* L.) "and any part thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." (Section 297A (1); Delta-9-tetrahydrocannabinol is commonly referred to as "THC"). The 2018 Farm Bill allows states to regulate hemp production in a more stringent manner (Section 297B(a)), but they cannot prohibit the transportation or shipment of hemp or hemp products. Meanwhile, the Federal Drug Administration ("FDA") continues to regulate products containing cannabis or cannabis-derived compounds and it is unlawful "to introduce food containing added CBD or THC into interstate commerce, or to market CBD or THC as, or in, dietary substances, regardless of whether the substances are hemp-derived," unless approved by the FDA.

In response to the 2018 Farm Bill, the State of Illinois enacted the Industrial Hemp Act, Public Act 100-1091, effective August 26, 2018, which, among other things, requires a license to cultivate and process "industrial hemp," which is similar to "hemp" under the Farm Bill as it includes the marijuana plant (*Cannabis sativa* L.), and any parts, growing or not, containing less than 0.3 percent of THC. This Act also amended the Illinois Cannabis Control Act to exclude industrial hemp from the definition of cannabis, such that industrial hemp is legal in Illinois. The Illinois Department of Agriculture is required to adopt rules for the administration and enforcement of the Act, including the testing of hemp for the required THC level, and has proposed such rules (See 2018 Ill. Register, Volume 42, Issue 52, 24363-24374). Those rules specifically provide that the Department shall permit the sale to members of the general public, as follows, in Section 1200.70(c):

The Department shall permit the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts (excluding THC in excess of 0.3%) and other marketable hemp products to members of the general public, both within and outside the State of Illinois.

Use of CBD Products

Hemp is the portion of the *Cannabis sativa* L. plant that contains less than 0.3 percent of THC and generally includes the fiber and seed part of the *cannabis sativa* L. plant. One product of hemp is cannabidiol (CBD) oil, which is apparently being used by some for the treatment of pain and other ailments without the side effects

of marijuana and other drugs. However, only hemp-based CBD oil, containing less than 0.3 percent of THC, is legal.

Regulation of CBD Products

In summary, based upon the statutory framework and the State's proposed rules, hemp-based CBD oil products, containing less than 0.3 percent of THC, are legal, can be transported in interstate commerce and are intended to be sold to the general public. However, the sale of any CBD oil products with more than 0.3 percent of THC is unlawful under State and Federal laws and the sale of CBD oil in food, without FDA approval, is unlawful under Federal law. There are no provisions in State or Federal law or regulations prohibiting a municipality's further regulation or licensing of such products.

The Illinois Municipal Code specifically allows municipalities to "pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper." 65 ILCS 5/1-2-1. Further, to the extent that hemp-based CBD oil products may be ingested, the Municipal Code also allows municipalities to regulate the sale of food for consumption and places where and manner in which such food may be sold, 65 ILCS 5/11-20-2, and to regulate the inspection of such food. 65 ILCS 5/11-20-3. In further support of such regulation, home rule municipalities have broad discretion to determine what is in the best interest of the public welfare and to exercise police powers to regulate the public health, safety, and welfare of the public.

Status of CBD Under the Village's Cannabis Regulations

There are three key provisions in the Village Code regarding cannabis possession:

1. The Village prohibits the possession of any substance containing more than 30 grams of cannabis, in Section 5-3-20 of the Village Code. There is no definition of cannabis under Section 5-3-20 of the Village Code.
2. The Village prohibits the possession of paraphernalia related to cannabis, in Section 5-3-23 of the Village Code. Cannabis is defined in this Section as being the same as defined in the Illinois Cannabis Control Act, 720 ILCS 550/3, which excludes from the definition of cannabis "industrial hemp as defined and authorized under the Industrial Hemp Act." The Illinois Industrial Hemp Act defined industrial hemp as "the plant *Cannabis sativa* L. and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis that has been cultivated under a license issued under this Act or is otherwise lawfully present in this State, and includes any intermediate or finished product made or derived from industrial hemp." 505 ILCS 89/5. As discussed above, this definition excludes CBD, so long as there is less than 0.3% THC in it.
3. The Village exempts persons appropriately possessing and using medical cannabis from these requirements, in Section 5-3-24 of the Village Code.

The Village's cannabis regulations currently prohibit the possession of more than 30 grams of any concentration of cannabis, which includes CBD, in Section 5-3-20 of the Village Code. Because cannabis is not defined in that Section, the Village's prohibition includes any concentration of THC, even if the concentration is so low as to be considered CBD. On the other hand, the Village defines cannabis in Section 5-3-23 as only being cannabis with a THC concentration over 0.3%, which excludes CBD. If the Village wants to allow CBD in the Village, and be consistent with its definition of cannabis in Section 5-3-23, State law and Federal law, the Village could consider defining cannabis in Section 5-3-20 as it does in Section 5-3-23, by incorporating the definition of cannabis from the Illinois Cannabis Control Act, which would exclude CBD, which is a legal substance under State and Federal law.

Sales of CBD in the Village

CBD may be sold in the Village, subject to the 30 grams possession limit in Section 5-3-20 of the Village Code. Any seller of CBD in the Village would likely be in violation of Section 5-3-20 of the Village Code, as they would be expected to have more than 30 grams of CBD in stock. With regard to zoning classifications for the sale of CBD, such sales would likely be "retail sales" as defined in Section 9-2-2 of the Zoning

Ordinance ("RETAIL SALES: The sale of any product or merchandise to customers for their own personal consumption or use, not for resale.").

STAFF RECOMMENDATION

Amendments would need to be made at the Village Board level- namely to Title 5 - Police Regulations, specifically Section 5-3-20. The Village's cannabis regulations currently prohibit the possession of more than 30 grams of any concentration of cannabis, which includes CBD, in Section 5-3-20 of the Village Code. Because cannabis is not defined in that Section, the Village's prohibition includes any concentration of THC, even if the concentration is so low as to be considered CBD. On the other hand, the Village defines cannabis in Section 5-3-23 as only being cannabis with a THC concentration over 0.3%, which excludes CBD.

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