

VILLAGE OF ALGONQUIN
SPECIAL AND EMERGENCY VILLAGE BOARD MEETING
Ganek Municipal Center ~ 2200 Harnish Drive ~ Algonquin
October 31, 2021
12:30 PM

Pursuant to the Open Meetings Act, 5 ILCS 120/2.02(a), notice is given that a special and emergency meeting of the Village of Algonquin Board of Trustees will be held on Sunday, October 31, 2021, at 12:30 p.m. at the William Ganek Municipal Building, 2200 Harnish Drive, Algonquin, IL 60102. The purpose of the special and emergency meeting is to address the Illinois General Assembly's HB3136 which passed through both houses on Thursday, October 28, 2021 and was further amended on Thursday, October 28, 2021 to preempt home rule powers if an ordinance imposing an amusement tax on persons who participate in the playing of video gaming terminals was not in place before November 1, 2021. The special and emergency meeting is to consider an ordinance imposing a tax upon the amusement of playing a video gaming terminal (a Push Tax) within the Village.

1. Call to Order
2. Roll Call – Establish Quorum
3. Public Comment – Audience Participation
4. Adopt the following Ordinance:
 - A. Pass an Ordinance Pertaining to Amusement Taxes for the Village of Algonquin
5. Adjournment



VILLAGE OF ALGONQUIN
GENERAL SERVICES ADMINISTRATION

- M E M O R A N D U M -

DATE: October 29, 2021

TO: Tim Schloneger, Village Manager

FROM: Michael Kumbera, Assistant Village Manager

SUBJECT: Video Gaming Push Tax Ordinance

Video Gaming Background

In April of 2013, the Village Board adopted Ordinance 2013-O-18 which provided for video gaming within Algonquin’s corporate limits. State statute permits the Village to receive a portion of the proceeds from video gaming activities, along with the collection of license fees. As of September 2021, the Village of Algonquin has 16 establishments with 81 video gaming terminals. The following exhibit displays the distribution of “Net Terminal Income” or NTI, which is simply the difference between the funds paid into the machine vs. the funds paid out.

Terminal Operator	Establishment (Business)	State of Illinois	Municipality
• 35% of NTI	• 35% of NTI	• 25% of NTI	• 5% of NTI

Fiscal Year 20/21 video gaming terminal tax revenues for the Village were \$90,497. Additionally, a detailed monthly report from the Illinois Gaming Board has been included with this memo for reference.

Push Tax

Recently, two home-rule communities (Oak Lawn and Waukegan) have imposed a tax based on each play (or “push”) on video gaming terminals by the player. The tax as proposed would impose a penny-per-play on video gaming terminals. For example, if a player makes 100 wagers, the push tax would be one dollar (\$1.00). The dollar amount played does not factor into the push tax.

Similar to sales tax, the tax incidence/burden of the push tax would be passed through to the player. It would be the responsibility of the video gaming licensee and the video gaming operator to collect the tax from the player and remit to the Village.

Since the Village is a home-rule community, it is the legal opinion of the Village Attorney’s office that the Village could implement this tax if desired.

Revenue Estimates

Video Gaming Terminals offer many options for wagering activity which make estimating revenue from this tax challenging. While we do have access to data on total dollars wagered, we do not know the number of wagers or the average amount per wager. Conservatively, it would be reasonable to project an estimated range of \$150,000 to \$400,000 annually.

Current Legislation

As of the date of this memo, House Bill 3136 has passed the General Assembly and is awaiting signature by Governor Pritzker. This bill is the gaming omnibus legislation for the State, however, contains a key provision that would preempt home-rule communities from imposing a video gaming push tax after October 31, 2021. Therefore, if the Village desires to adopt a push tax, it must be done so at this time.

Home-rule communities that have adopted or do adopt a push tax “before November 1, 2021,” are allowed to maintain their push tax, but may not extend, expand or increase the tax after that date. This is an express preemption of home rule authority, grandfathering all actions taken before November 1, but disallowing any such actions on or after November 1, 2021.

Village staff will continue to monitor this legislation, along with the legal challenges and opposition from the gaming industry pertaining to the push tax and report back to the Village Board as necessary.

Action

Five (5) affirmative votes are required to pass this ordinance.

ORDINANCE NO. 2021 - O - ____

An Ordinance Pertaining to Amusement Taxes for the Village of Algonquin

WHEREAS, the Village of Algonquin (the “Village”), McHenry and Kane counties, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the Village’s home rule powers and functions including, but not limited to, the power to tax and to incur debt as granted in the Constitution of the State of Illinois.

WHEREAS, the Illinois Video Gaming Act (“VGA”), 230 ILCS 40/1 *et seq.*, regulates the operation, licensing, and administration of video gambling; and

WHEREAS, the Village in accordance with the VGA regulates video gaming activity within the Village; and

WHEREAS, pursuant to Article VII, Section 6(a) and Section 6(i) of the Ill. Const. of 1970 in conjunction with 65 ILCS 5/11-42-5 of the Illinois Municipal Code, the Village is authorized to impose a tax upon amusements; and

WHEREAS, the Illinois General Assembly’s HB3136 which passed through both houses on Thursday, October 28, 2021 and was further amended on Thursday, October 28, 2021, preempts home rule powers if an ordinance imposing an amusement tax on persons who participate in the playing of video gaming terminals was not in place before November 1, 2021; and

WHEREAS, the Village now desires to impose a tax upon the amusement of playing a video gaming terminal within the Village (“Push Tax”); and

WHEREAS, the Village’s Push Tax will provide much needed revenue to promote the general health, safety, and welfare of the Village and its residents, and provide adequate funds to offset the adverse effects of gambling within the Village; and

WHEREAS, the President and Board of Trustees of the Village of Algonquin hereby believe that it is in the best interest of the Village and its residents to impose said Push Tax.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the VILLAGE OF ALGONQUIN, McHenry and Kane counties, Illinois, as follows:

SECTION 1: The foregoing recitals shall be and are hereby incorporated as findings of fact as if said recitals were fully set forth herein.

SECTION 2: Chapter 32, Occupation and Other Taxes, shall be amended to add a new Section 32.09 entitled “AMUSEMENT TAX” which shall read as follows:

32.09 AMUSEMENT TAX

A. Applicability of Provisions: The provisions of this section, except as otherwise provided, shall apply to all amusements as hereinafter defined, whether specifically licensed or regulated under other provisions of this code or other ordinances, or not.

B. Definitions:

1. The word “amusement” means: (1) any theatrical, dramatic, musical or spectacular performance, motion picture show, flower, poultry or animal show, animal act, circus, rodeo, athletic contest, sport, game or similar exhibition for public entertainment, including, without being limited to, boxing, wrestling, skating, dancing, swimming, racing, or riding on animals or vehicles, baseball, basketball, softball, football, tennis, golf, hockey, track and field games, bowling, billiard and pool games; (2) any entertainment offered for public participation, including, without being limited to, dancing, carnival, amusement park rides and games, bowling, billiard and pool games, or any Video Gaming Terminal.
2. Terminal Operator: Any individual, partnership, corporation, or limited liability company that is licensed under the Video Gaming Act, 230 ILCS 40/1 *et seq.*, and that owns, services, and maintains Video Gaming Terminals for placement in licensed establishments, licensed truck stop establishments, licensed large truck stop establishments, licensed fraternal establishments, or licensed veterans establishments.
3. Person: Any natural individual that participates in an amusement, including a firm, organization, society, foundation, institution, partnership, association, joint stock company, joint venture, limited liability company, public or private corporation, receiver, executor, trustee or other representative appointed by order of any court, or any other entity recognized by law.
4. Play: Each individual push of the Video Gaming Terminal which initiates the simulation provided by the Video Gaming Terminal. Play shall not include the push of individual wager amounts, selection of types of games on the Video Gaming Terminal or entry of any information or printing of winning receipts.
5. Video Gaming Terminal: Any electronic video game machine that, upon insertion of cash, electronic cards or vouchers, or any combination thereof, is available to play or simulate the play of a video game, including but not limited to video poker, line up, and blackjack, as authorized by the 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.

C. Amusement Tax Imposed

1. Push Tax
 - a. Except as otherwise provided by this section, an amusement tax is imposed upon any person who participates in the Play of a Video Gaming Terminal that takes place within the jurisdictional boundaries of the Village of Algonquin.
 - b. The rate of the tax shall be equal to \$0.01 (one cent) per Play on a Video Gaming Terminal.

- c. The Terminal Operator of a Video Gaming Terminal may separately itemize and charge each Person who Plays a Video Gaming Terminal.

2. Tax Additional

The tax imposed in this section is in addition to all other taxes imposed by the State of Illinois or any municipal corporation or political subdivision thereof.

3. Registration

- a. Every Terminal Operator of a Video Gaming Terminal(s) located in the Village shall apply for registration as a tax collector with the Village no later than thirty (30) days after commencing such business or thirty (30) days after the effective date of this Ordinance imposing the Push Tax, whichever occurs later.
- b. The application shall be submitted to the Village on the forms provided by the Village and contain such information as reasonably required by the Village to impose, collect, and audit all amounts related to the Push Tax.

4. Collection, Payment, and Accounting

- a. It shall be the joint and several duty of every Terminal Operator of a Video Gaming Terminal(s) to secure from each Person participating in the Play of a Video Gaming Terminal the Push Tax imposed by this Chapter.
- b. For purposes of this section, it shall be presumed that the amount of the Push Tax imposed on each Person, unless the taxpayer or tax collector provides otherwise with books, records, or other documentary evidence, has been collected from the Person by the Terminal Operator.
- c. Push Tax payments accompanied by tax returns prescribed by the Village shall be remitted to the Village on or before the 20th day of the month following the month in which payment for the Push Tax is made.
- d. Every Terminal Operator of a Video Gaming Terminal who is required to collect the Push Tax by this Chapter shall be considered a tax collector for the Village. All Push Tax amounts collected shall be held by the Terminal Operator as trustee for and on behalf of the Village. The failure of the Operator to collect the tax shall not excuse or release the Person from the obligation to pay the tax.
- e. The ultimate incidence of the Push Tax shall remain on the Person and shall never be shifted to the Terminal Operator.
- f. Notwithstanding any other provision of this section, in order to permit sound fiscal planning and budgeting by the Village, no person shall be entitled to a refund of, or credit for, the Push Tax imposed by this section unless the person

files a claim for a refund or credit within one (1) year after the date on which the Push Tax was paid or remitted to the Village.

- g. The Terminal Operator of any Video Gaming Terminal(s) shall be subject to audit, inspection, and record keeping provisions of this Code.
- h. It shall be unlawful for any Terminal Operator and/or Person to prevent, hinder, or interfere with the Village's officials, employees, and/or agents designated to discharge their respective duties in the performance and enforcement of the provisions of this section.
- i. It is the duty of every Terminal Operator of a Video Gaming Terminal(s) to keep accurate and complete books and records to which the Village's officials, employees, and/or agents will at all times have full access.

5. Rules and Regulations; Authorized

The Village is authorized to adopt, promulgate, and enforce any additional rules and regulations pertaining to the interpretation, collection, administration, and enforcement of this section.

6. Application of Village Code.

Any citation under this section may be in addition to any other citations issued by the Village under any and all applicable sections of the Village Code.

7. Violations; Penalties

It shall be a violation of this section for a Terminal Operator to fail to file a report within the time prescribed in this section.

- a. Report Required: A Terminal Operator who falsely reports or fails to report the amount of Push Tax due as required by this section shall be in violation of this section and is subject to the suspension and/or revocation of their Terminal Operator License. All payments not remitted when due shall be paid together with a penalty assessment on the unpaid balance at a rate of 1.5% per month.
- b. Suspension or Revocation of License: The Local Liquor Commissioner or his or her designee shall have the power to suspend for not more than thirty (30) days or revoke any video gaming license issued under the provisions of this chapter for cause, or if he/she determines that a Terminal Operator shall have violated any of the provisions of this section, any of the statutes of the State or any other valid ordinance or resolution enacted by the corporate authorities of the Village. However, no such license shall be revoked or suspended except after the holding of a public hearing by the Local Liquor Commissioner or his or her designee. Ten (10) days' notice of the hearing shall be given to the Terminal Operator. Alternatively, the Terminal Operator shall have the

opportunity to engage in a prehearing conference and agree to negotiated penalties rather than proceed to a hearing.

- c. Fine Imposed: In addition, any Terminal Operator violating the provisions of this section shall be subject to a fine of \$250.00 for the first offense, and \$500.00 for the second offense and \$750.00 for a third offense and subject to a revocation of any license to operate a Video Gaming Terminal for the third offense.
- d. Each day a violation continues shall constitute a separate violation.
- e. It shall be deemed a violation of this section for any Person to knowingly furnish false or inaccurate information to the Village.

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

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

SECTION 5: This Ordinance shall take effect immediately upon its passage, due to the urgency of implementing a Push Tax in light of HB3136.

Aye:
Nay:
Absent:
Abstain:

APPROVED:

Village President Debby Sosine

(SEAL)
ATTEST: _____
Village Clerk Fred Martin

Passed: _____
Approved: _____
Published: _____

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