



ORDINANCE NO. #O21-10-03

AN ORDINANCE LEVYING AN AMUSEMENT TAX ON PLAYS OF VIDEO GAMING TERMINALS

ADOPTED BY THE MAYOR AND BOARD OF TRUSTEES
OF THE VILLAGE OF CARY THIS 31ST DAY OF OCTOBER 2021

Published in pamphlet form by
authority of the Mayor and
Board of Trustees of the Village
of Cary, McHenry County, Illinois
this 31st day of October 2021.

WHEREAS, the Village of Cary ("Village") is an Illinois municipality pursuant to Article VII of the Constitution for the State of Illinois of 1970 with the power and authority granted in the Illinois Municipal Code and by the Illinois General Assembly; and

WHEREAS, the Illinois Video Gaming Act, 230 ILCS 40/1, *et seq.*, as amended, regulates the operation, licensing, and administration of video gambling; and

WHEREAS, the Village, in accordance with the Illinois Video Gaming Act, regulates video gaming activities within the Village; and

WHEREAS, pursuant to Section 11-42-5 of the Illinois Municipal Code, 65 ILCS 5/11-42-5, the Village is authorized to impose a tax upon amusements; and

WHEREAS, the Village 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 Village President and Board of Trustees find and determine that it is in the best interest of the Village and its residents to impose the Push Tax and that imposing the Push Tax would serve and promote the public's health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Cary as follows:

SECTION 1: Incorporation. That the recitals above shall be and are incorporated in this Section 1 as if fully restated herein.

SECTION 2: **Amendment.** That the Village Code is hereby amended by adding a new Chapter 3.58, to read as follows:

CHAPTER 3.58. - MUNICIPAL AMUSEMENT TAX – VIDEO GAMING PLAY

Sec. 3.58.010. – Application and Definitions.

- A. Applicability: The provisions of this Section, except as otherwise provided, shall apply to all amusements (as defined below), whether specifically licensed or regulated under other provisions of this Village Code or other ordinances, or not.
- B. Definitions: The following words and phrases shall have the meanings below for purposes of this Chapter, whether capitalized or not:
 - (1) Amusement means (1) any event, activity, or spectacular performance, show for entertainment purposes, 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; and (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 (as defined below) to or for which an admission fee, fee or charge is imposed, which is exhibited or staged in the village,
 - (2) Terminal Operator means any individual, partnership, corporation, or limited liability company that is licensed under the Illinois Video Gaming Act, 230 ILCS 40/1 *et seq.*, as amended, 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 means 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 means 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 means any electronic video game machine that, upon insertion of cash, electronic cards or vouchers, or any combination thereof, is available to play or simulate the play of a video game, including but not limited to video poker, line up, and blackjack, as authorized by the 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.

Sec. 3.58.020. – Tax Imposed – Amusement Push Tax

Amusement Push Tax:

- A. Except as otherwise provided in this Chapter, 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.
- B. The rate of the tax shall be equal to one cent (\$0.01) per play on a Video Gaming Terminal.
- C. The Terminal Operator of a Video Gaming Terminal may separately itemize and charge the tax imposed in this Chapter for each Person who plays a Video Gaming Terminal.
- D. The tax imposed in this Chapter is in addition to all other taxes imposed by the State of Illinois or any municipal corporation or political subdivision thereof.

Sec. 3.58.030. – 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 within the later of thirty (30) days after commencing such business or thirty (30) days after the effective date of this Ordinance imposing the tax.
- 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 tax imposed in this Chapter.

Sec. 3.58.040. – 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 tax imposed in this Chapter.

- B. For purposes of this Chapter, it shall be presumed that the amount of the 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. Tax payments accompanied by tax returns prescribed by the Village shall be remitted to the Village on or before the twentieth (20th) day of the month following the month in which payment for the tax is made.
- D. Every Terminal Operator of a Video Gaming Terminal who is required to collect the tax imposed in this Chapter shall be considered a tax collector for the Village. All tax amounts collected shall be held by the Terminal Operator as trustee for and on behalf of the Village. The failure of the Terminal 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 tax imposed in this Chapter shall remain on the Person and shall never be shifted to the Terminal Operator.
- F. Notwithstanding any other provision of the Village Code, 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 tax imposed in this Chapter unless the person files a claim for a refund or credit within one (1) year after the date on which the 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 in this Village Code.
- H. It shall be unlawful for any Terminal Operator and/or Person to prevent, hinder, or interfere with the Village's officials, employees, contractors and / or agents designated to discharge their respective duties in the performance and enforcement of the provisions of this Section. 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, contractors and / or agents shall at all times have full access.

Sec. 3.58.050. – Rules and Regulations.

- A. Authority. The Village Administrator is authorized to adopt, promulgate, and enforce any additional rules and regulations pertaining to the interpretation, collection, administration, and enforcement of this Chapter.
- B. Failure to Pay Tax:
 - (1) If a Terminal Operator fails to pay to the Village the tax imposed by this Chapter by the date the same shall be due, interest shall accumulate at a rate of one and a half percent (1.5%) per month until paid.

- (2) Whenever any Terminal Operator falsely reports to the Village information regarding the tax levied in this Chapter, or fails to pay the tax levied in this Chapter, the Village Attorney shall, upon the request of the Village President and Board of Trustees, bring or cause to be brought an action to enforce the payment of said tax on behalf of the Village in any court of competent jurisdiction.
- (3) If the Village President or their designee, after holding a hearing, shall find that a Terminal Operator has failed to make payment of the tax imposed by this Chapter, or has provided false information or reports regarding the tax imposed by this Section, the Village President may suspend or revoke all Village licenses held by such Terminal Operator. The Terminal Operator may have an opportunity to be heard at such hearing, which shall be held not less than ten (10) days after notice of the time and place of the hearing, with said notice, addressed to the Terminal Operator at their last known place of business. Pending notice, hearing and finding, any license which the Terminal Operator may possess may be temporarily suspended by the Village President. Any suspension or revocation of any license as provided for hereunder shall not release or discharge the Terminal Operator from their civil liability for the payment of the tax nor from prosecution for such offense.

Sec. 3.58.060. – Penalties and Enforcement.

- A. Violation: It shall be a violation of this Chapter for a Terminal Operator to fail to file a report or return within the time prescribed in this Chapter.
- B. Report Required: A Terminal Operator who falsely reports, or who fails to report, the amount of tax due as required by this Chapter shall be in violation of this Chapter.
- C. False or Inaccurate Information: It shall a violation of this Chapter for any Person to knowingly furnish false or inaccurate information regarding the tax imposed in this Chapter to the Village.
- D. Fine: Any Terminal Operator violating the provisions of this Chapter shall be fined not less than One Hundred Dollars (\$100) nor more than Seven Hundred Fifty Dollars (\$750), for each offense. Each day a violation continues shall constitute a separate violation and offense.”

SECTION 3: Continuing Effect. That all parts of the Village Code not amended herein shall remain in effect.

SECTION 4: Severability. That if any Chapter, Section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such Chapter, Section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 5: **Repeal.** That all ordinances, resolutions, motions or parts thereof in conflict with this Ordinance shall be and the same are hereby repealed.

SECTION 6: **Effective Date.** That this Ordinance shall be in full force and effect immediately upon its passage and approval and the Village shall be authorized to implement the tax provided for herein on or after the first day of November 2021.

PASSED THIS 31ST DAY OF OCTOBER 2021

AYES: Collier, Covelli, Dudek, McAlpine, Walrath, Weinhammer

NAYS: None

ABSTAIN: None

ABSENT: None

APPROVED THIS 31ST DAY OF OCTOBER 2021

ATTEST:

Mark Kownick, Mayor

Susan Greene, Deputy Village Clerk