



MEMORANDUM

TO: Trustee Anthony Puccio, Chairperson
Economic and Community Development Committee

FROM: Nicholas J. M. Partipilo, Administrative Intern, Office of the Village
Manager *NJP*

MEETING DATE: July 8, 2019

SUBJECT: **Coin-Operations and Amusement Tax – Amendments to Section 110.20 of the Village Code**

Following the June ECDC meeting on, the committee tabled the vote regarding the amending of Lombard's coin-operated amusement devices licensing fee. Staff presented five choices regarding the licensing of coin-operated amusement devices and recommended setting the licensing fee to a flat rate of \$75 per machine. Since the June ECDC meeting, staff has met with relevant stakeholders as well as performed subsequent analysis regarding coin-operated amusement licensing and amusement taxes. The initial coin-operated amusement device memorandum brought forth to the June ECDC meeting is attached to provide further background regarding the topic.

BACKGROUND

Following the June ECDC meeting, Village staff met with Village Attorney Tom Bayer to discuss specifics mentioned at the ECDC meeting. Mr. Bayer explained how Village Code Title XI, Chapter 110.29, specifically addresses that in addition to the established definition of a coin-operated amusement device, any noncoin-operated amusement device where the operators or users of the device pay the operator or proprietor for the privilege of using the device also meets the definition of coin-operated amusement devices so long as the device meets all standards set within the original definition save for the insertion of a coin, token, or similar object. In addition to this, Mr. Bayer informed staff of the risks and difficulties associated with "splitting" the ordinance and allowing businesses to choose which fee style to pay. He strongly recommends the Village not follow this path and continue using something similar to its current model.

In addition to the clarifications regarding noncoin-operated devices, staff is recommending that "claw machines" and other similar amusement devices now be considered amusements and thus are subject to Lombard's amusement tax. Since claw machines do not keep score for the player, they do not meet the established standard for a "coin-operated amusement device" as it is defined within the Village code. The Lombard Fire Department performs on-site visits for various businesses and will be updated to additionally look out for claw machines as well so the Village can keep track of them for tax purposes. Additionally, our Business Administrator will send out this change along with licensing information that is sent to businesses across the Village.

Staff met with Frank Sikora, owner of Enchanted Castle, to further discuss Enchanted Castle's business model and how it related to the potential changing of coin-operated amusement device ordinances. Mr. Sikora informed staff that Enchanted Castle sells both cards with a limited amount of "points" on them to use to play games around the arcade and cards with a set amount of time on it allowing for unlimited play within that period. He further clarified that not only the arcade machines, but also amusement's such as laser tag and mini golf, track swipes independently for both types of cards as to better track revenue for tax filing. Mr. Sikora again stressed his stance on keeping the current ordinances in place but supported the lowering of licensing fees. He informed staff that changing away from the standard licensing to an amusement tax would force him to increase his prices, thus making Enchanted Castle less competitive with arcades in surrounding municipalities.

Since the June ECDC meeting, The Game Room has officially moved into Yorktown Center. Mr. Czarnowski plans to open The Game Room on 7/1 and is aware that if any changes to the Village's code were to occur, they would not have an impact until the next cycle of license issuance on 7/1/2020.

COMMITTEE ACTION REQUESTED

Staff requests the ECDC provide a recommendation to the Board on coin-operations and the amusement tax within the context and scope of the Committee. Staff recommends the ECDC to review all options but recommends choosing Option A, Proposal 1.

§ 110.20 - Definitions.

For the purpose of this Chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Coin-operated amusement device. Any machine or device which, upon the insertion of a coin, slug, token, plate, or disc, may be operated by the public generally by manipulating special equipment whereby a score is established, the object of which is to secure a special number or numbers or a total score, whether a prize is offered or not.

('70 Code, § 5.10.010) (Ord. 2543, passed 7-8-82, Ord. 3739, passed 8/5/93)

§ 110.21 - License; fees.

- (A) No person, firm, corporation, or association shall display for public patronage or keep for operation any coin-operated amusement device, as defined herein without first having obtained a license therefor.
- (B) Each coin-operated amusement device shall be separately licensed at an annual fee of \$200.00 per machine for the first ten coin-operated amusement devices located on the licensed premises, and \$75.00 per machine for each coin-operated amusement device in excess of ten located on the licensed premises.
- (C) In addition to the license required by subsection (B) for each individual coin-operated amusement device, there shall be issued no more than the stated number of annual licenses in the following classifications for persons, firms, corporations or associations displaying for public patronage or keeping for operation any coin-operated amusement device:
 - Class A*
Four to eight coin-operated amusement devices.
No more than three licenses.
 - Class B*
More than eight coin-operated amusement devices.
No more than two licenses.
- (D) Where other section(s) of this Code provides for a license fee for a specific type of coin-operated amusement device, the licensing provisions of said section(s) shall be applicable to said specific coin-operated amusement device in lieu of the general licensing provisions contained herein.
- (E) The license year for all coin-operated amusement device licenses shall be from July 1st of each year through June 30th of the following year.
- (F) After December 31st of each year, any person who applies for any license(s) under subsections (B) above shall only be required to pay one-half of the then applicable license fee.
- (G) In addition to any other penalty for violating the provisions of this Code, any person who purchases the appropriate coin-operated amusement device license(s), after said coin-operated amusement devices are located on the licensed premises, shall pay license fee equal to double the then applicable license fee. This subsection (G) shall not go into effect until October 14, 1993.

(Ord. 3778, passed 10/21/93; Ord. 5628, passed 4/21/05; Ord. 6095, passed 10/18/07; Ord. 6647, passed 9/15/11; Ord. 6846 passed 6/20/13; Ord. 6865, passed 9/5/13; Ord. No. 6981, § 1, passed 8-21-14; Ord. No. 7234, § 1, passed 6-16-16)

§ 110.23 - Display of license; nontransferability.

- (A) The license, with the authorized number of coin-operated amusement devices clearly stated thereon, shall be posted permanently and conspicuously at the location of the coin-operated amusement device(s) at the premises where the device(s) is/are to be operated and/or maintained.
- (B) Licenses are issued for a specific number of coin-operated amusement devices and, as such, the specific coin-operated amusement devices can be changed during the license year, provided the number of coin-operated amusement devices on the licensed premises does not exceed the number authorized by the license.
- (C) A license shall not be transferable from person to person or from place to place but shall be usable only at the place and by the person designated in the license.

§ 110.24 - Governmental entities; fee waiver.

No license fee shall be charged to any governmental entity that applies for a coin-operated amusement device license(s). However, all other provisions relative to the licensing process, as set forth in §§ 110.20—110.30, shall be applicable to said governmental entities.

§ 110.25 - Business activity.

For Class B and C licenses issued in conjunction with a liquor license, there shall be a maximum of two coin-operated amusement devices for each 40 square feet of floor space as defined by the zoning code for determining the size of an establishment.

§ 110.26 - Revocation of license.

Every license issued under this chapter is subject to the right, which is hereby expressly reserved, to revoke the same should the licensee, directly or indirectly, permit the operation of any coin-operated amusement device contrary to the provisions of this Chapter, the ordinances of the village or the laws of the state. Said license may be revoked by the Village Manager after written notice to the licensee, which notice shall specify the ordinance or law violations with which the licensee is charged, if, after a hearing, the licensee is found to be guilty of such violations. Ten days' notice of the hearing shall be given the licensee. At such hearing, the licensee and his attorney may present and submit evidence or witnesses in his defense.

('70 Code, § 5.10.070) (Ord. 2543, passed 7-8-82)

§ 110.28 - Restrictions.

- (A) No Class B or C license shall be issued to any person, firm, corporation, or association which intends to operate the coin-operated amusement devices on a premises within 600 feet of any church, elementary or secondary school or playground. For purposes of this subsection, distance shall be determined by measuring between the entry door of the premises on which the coin-operated amusement devices are located and the property line of the premises on which the church, elementary or secondary school or playground is located, using the most direct walking route between the two points of measurement.
- (B) No license issued hereunder shall permit the operation of any coin-operated amusement device at any place or in any manner which will disturb the peace or quiet of persons outside the licensed premises.
- (C) In relation to Class C licenses, at least one employee, above the age of 21, shall be present at all hours during which establishment is open.
- (D) No licensee shall operate an establishment wherein coin-operated devices are located in a manner which will encourage truancy. Each establishment shall monitor its devices to discourage truancy,

and shall prohibit operation of the coin-operated amusement devices by persons under 18 years of age during school hours except where such use is permitted by school authorities during school related functions or where such coin-operated amusement devices are located in hotels, motels or institutions of learning for use by students attending such institutions or for use by guests of the hotel or motel. Hotels and motels must post areas where the coin-operated amusement devices are located with a sign stating "These coin-operated amusement devices are for use only by guests of this establishment".

('70 Code, § 5.10.090) (Ord. 2543, passed 7-8-82; Am. Ord. 2573, passed 1-20-83; Am. Ord. 2659, passed 4-12-84, Ord. 3739, passed 8/5/93)

§ 110.29 - Noncoin-operated amusement devices.

As contained and used in this Chapter, coin-operated amusement devices shall also be defined as including any noncoin-operated amusement device where the operators or users of the noncoin-operated amusement devices pay or give the operator or proprietor any consideration for the privilege of using the noncoin-operated device, provided that the noncoin-operated amusement devices otherwise meet the definition of coin-operated amusement devices save for the insertion of a coin, token, or similar object.

('70 Code, § 5.10.100) (Ord. 2543, passed 7-8-82)

§ 110.30 - Inspections.

Any person who places an application for or seeks a renewal of a license for a coin-operated amusement device agrees to allow the Bureau of Inspectional Services, Community Development Department, Fire Department and Police Department to inspect the premises to ascertain whether or not the premises and coin-operated amusement devices are in compliance with all applicable village codes and ordinances.

('70 Code, § 5.10.120) (Ord. 2543, passed 7-8-82; Am. Ord. 2573, passed 1-20-83; Am. Ord. 3129, passed 2-2-89, Ord. 3739, passed 8/5/93)

THE * GAME * SHOW

Mark Czarnowski
Owner – Emcee Entertainment, LLC
215 N Chicago St
Joliet, IL 60432
5/14/19

Village of Lombard Economic and Community Development Committee
255 E Wilson St.
Lombard, IL 60148

Dear ECDC,

My name is Mark Czarnowski. I am writing to let you know that I am planning to open The Game Show, a classic pinball and vintage arcade at Yorktown Center this summer, and invite you to our new Lombard business, scheduled to open Summer 2019! The Game Show will feature a great mix of old and new arcade games, pinball, foosball, air hockey, and more for one low entry fee. The arcade will be centrally located in the mall surrounded by east, drinks, and shopping, bringing a new mix of customers to Yorktown. For the last several years, I have owned and operated Chicago Street Pinball Arcade, a vintage pinball and arcade experience in Downtown Joliet. I have long planned opening a location in the west suburbs, and I recently signed a lease to open a location at Yorktown. I am also writing to ask you to review the current taxing structure for admission-based entertainment. Specifically, I am asking to streamline and simplify the code so that admission-based entertainment revenues are taxed with the existing Amusement Tax, rather than substituting the coin-operated devices tax in a small number of outlier cases as the code states today.

In reviewing the current taxing, Lombard is one of the only towns I have found that has a provision for an up-front flat tax on coin-operated devices. While many vintage games originally operated using coins or other “pay per play” type systems, most arcade business plans today (including mine) call for an admission-based experience, where patrons pay an entrance fee and can play unlimited games. The games do not accept or require coins or money for each play. However, there is a clause in the current Lombard code which says that if the business generates revenue in any way and the machine otherwise would be considered coin operated, the coin-op tax applies. The coin-op tax is a flat, up-front, non-refundable annual fee for each machine in operation, starting at several hundred dollars per machine, and gradually goes down from there based on the machine count.

Currently, operations subject to the coin-operated device tax are not subject to the Lombard Amusement Tax (a 5% tax levied on all amusement activities). I believe it would be more appropriate, and a win-win for residents and the Village, to modernize the code so that admission based businesses are taxed the same using the existing Lombard Amusement Tax, rather than the coin-operated tax.

As an entrepreneur looking to open a new business, having 100% of the fee owed up front before earning a single dollar of revenue is a hardship fairly unique to opening in Lombard. This discourages new types of businesses like mine from opening. An existing area arcade looked into Lombard when scouting locations several years ago, but ended up choosing Downtown Lisle as their location, which does not have a coin-operated device or Amusement Tax. Businesses also cannot transparently pass this tax to customers, as is allowed with percentage based taxes. Finally, there is a notion of fairness, as the admission-based arcade business model thrives on having a large variety of vintage machines that generate less revenue per machine. Businesses in Lombard such as FunFlatables (coincidentally will be located next door at Yorktown) use the same admission-based revenue model, similarly provide electrical apparatus for amusement, and are taxed using the Amusements tax. The notion that the taxing should be different because one type of game could be configured to accept coins seems unintentional, as the admission-based arcade model that has become popular in recent years did not exist when the code was created. Admission-based arcade owners naturally look to have the widest selection of games as possible. The upfront fee per machine is a limiting factor in this decision-making process.

For Lombard, aside from being more business-friendly, the percentage-based tax is projected to actually generate more tax revenues for the Village overall. For example, if sales in Year 1 are \$200,000, a 5% Amusement Tax would generate \$10,000 in revenue. The coin-operated tax for ~50 machines (which exempts me from paying the percentage tax) would yield the Village \$5000. Applying the Amusements tax is more friendly to the business owner and also yields more revenues to the Village.

Finally, there are generally higher costs to the Village to implement the proper controls and oversight for any per device tax, some of which may not be in place. For example, Lombard's vehicle sticker program (eliminated several years ago) came with the associated costs of printing stickers, mailing applications, and indirect costs of staff time and enforcement. The State of Illinois has a per machine coin-operated device tax and issues similar decals for each machine to display to users that the machine is compliant. Lombard does not issue stickers/decals or have a way for operators or patrons of coin-operated devices to be aware of the coin operated device tax, or to know if it has been

paid. Here again, streamlining to one Amusement Tax would eliminate the need for these extra controls, saving money for the village, and simplifying the code, increasing understanding and compliance.

For your review, I have listed some area arcades operating with a similar business model, and their associated municipal taxes or fees.

Business Name	Location	Description	Upfront Tax or Fees	Amusement Tax
Galloping Ghost Arcade	Brookfield	700 machines on free play w/admission	No	No
Galloping Ghost Pinball Arcade	Brookfield	30 machines on free play w/admission	No	No
Chicago St. Pinball Arcade	Joliet	40+ machines on free play w/admission	No	No
Pixel Blast Arcade	Lisle	100+ machines on free play w/admission	No	No
The Game Show (Planned)	Lombard	50+ machines on free play w/admission	YES	No
Underground Retrocade	W. Dundee	150 machines on free play w/admission	No	Yes

I understand that any review process, if started, will take some time, and I do not want to delay opening my business in Lombard. Therefore, I am writing to request that I pay the existing coin-operated device tax up front, but that this annual tax be refunded if it the Village decides to streamline and apply the percentage based Amusement Tax to my business within the first year of my opening date. We are already set up to report sales to a third party per our agreement with Yorktown, and are ready to calculate and pay amusement-based tax on these sales, should my proposal come to fruition.

I look forward to your response, and to having everyone come and visit The Game Show at Yorktown Center this summer. Please feel free to call with any questions!

Sincerely,



Mark Czarnowski

Emcee Entertainment, LLC

(312) 620-2443