

Council Bill/General Ordinance No. 3039-2021

Sponsor: _____

AN ORDINANCE

AMENDING Chapters 4 and 5 of the Moline Code of Code of Ordinances to increase the number of video gaming terminals per licensed premises, eliminate the Class K – Video Gaming Establishment liquor license classification and provide for a five-year amortization period for existing Class K liquor licenses, and to further regulate video gaming and liquor license classifications, including increasing terminal operator fees, clarifying license classifications, and introducing a flexible cap on number of Class B video gaming licensees.

WHEREAS, the City is an Illinois municipal corporation possessing home rule powers under Section 6 of Article VII of the Illinois Constitution; and

WHEREAS, pursuant to its home rule power, the City may exercise any power and perform any function relating to its government and affairs; and

WHEREAS, in 2009, the Illinois General Assembly passed the Video Gaming Act (230 ILCS 40/1 *et seq.*) (the “Video Gaming Act”) permitting video gaming in certain licensed establishments, subject to certain conditions and criteria; and

WHEREAS, Article IV of the Illinois Liquor Control Act of 1934, 235 ILCS 5/4-1, *et seq.* (the “Liquor Control Act”), authorizes the corporate authorities of the City to license and regulate the sale of alcoholic liquor within the City, to determine the number, kind and classification of local liquor licenses, establish fees for such licenses, and to regulate establishments that sell and dispense alcoholic beverages; and

WHEREAS, the City has issued video gaming terminal licenses to qualified establishments in accordance with the State’s and City’s regulations governing the conduct of and eligibility for video gaming in the City; and

WHEREAS, on June 28, 2019, the Subsection 25(e) of the Video Gaming Act, 230 ILCS 40/25(e) was amended to increase the maximum number of video gaming terminals on the premises of a licensed establishment from five (5) to six (6) such video gaming terminals; and

WHEREAS, based on the above-referenced amendment to the Video Gaming Act, the corporate authorities desire to amend the City Code as set forth herein to maintain consistency with the Act; and

WHEREAS, the City’s liquor license classifications presently include a Class K – Video Gaming Establishment liquor license (“Class K License”) for establishments that sell alcoholic liquor for consumption on the premises as incidental to the establishment’s principal purpose of operating video gaming terminals, all as further defined and regulated in Chapters 4 and 5 of the Moline Code of Ordinances; and

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WHEREAS, the City desires to provide for the gradual elimination of the Class K License by terminating the issuance of new Class K Licenses and authorizing a five-year sunset period for existing Class K License holders; and

WHEREAS, the corporate authorities find it to be in the best interest of the City to establish further regulations and clarify existing regulations governing liquor licenses and video gaming terminal licensing as set forth herein to enhance revenue generation, provide flexibility to increase the number of Licensed Establishments eligible for video gaming terminal licenses in certain defined situations, and clarify the parameters of certain existing liquor license categories as more particularly provided herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

Section 1 – Recitals. The foregoing recitals shall be and are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section 1. The findings and recitals herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Section 2 – Increase in Video Gaming Terminals Per Licensed Establishment.

Chapter 5 (“Amusements”), Article I (“Video Gaming”), Section 5-1101(a) of the Moline Code of Ordinances is hereby amended as follows (additions in **bold and underline**; deletions in **~~bold and strikethrough~~**), with those subsections not referenced herein continuing in full force and effect as presently written:

SEC. 5-1101. LICENSE REQUIRED.

(a) No Video Gaming Terminal may be placed in any Licensed Establishment unless the owner of the Licensed Establishment holds a valid license for video gaming from the Illinois Gaming Board and has obtained a Video Gaming Terminal license from the City pursuant to this article. A Licensed Establishment may have a maximum of ~~five (5)~~ **six (6)** terminals on its premises if it meets all rules and regulations for video gaming licensing through the Board and the City. Video Gaming Terminals are not permitted in any other establishment in the City.

...

Section 3 – Increase in Video Gaming Terminals Within Class A and Class AA Liquor Licensees.

Chapter 4 (“Alcoholic Liquor”), Article III (“Retail Licenses”), Division 3 (“Privileges Conferred by Various Classes of Licenses”) of the Moline Code of Ordinances is hereby amended

as follows (additions in **bold and underline**; deletions in ~~**bold and strikethrough**~~), with those subsections not referenced herein continuing in full force and effect as presently written:

SEC. 4-3302. CLASS A RESTAURANT LICENSE AND CLASS AA RESTAURANT-BEER & WINE ONLY LICENSE.

...

(h) A Class A or Class AA licensee may have a maximum of ~~five (5)~~ **six (6)** video gaming terminals on its premises if it meets all rules and regulations for video gaming licensing through the State of Illinois and the City and remains compliant with said rules and regulations.

...

SEC. 4-3303. CLASS B TAVERN LICENSE.

...

(g) A Class B licensee may have a maximum of ~~five (5)~~ **six (6)** video gaming terminals on its premises if it meets all rules and regulations for video gaming licensing through the State of Illinois and the City and remains compliant with said rules and regulations.

...

SEC. 4-3305. CLASS D TAVERN LICENSE.

...

(f) A Class D licensee may have a maximum of ~~five (5)~~ **six (6)** video gaming terminals on its premises if it meets all rules and regulations for video gaming licensing through the State of Illinois and the City and remains compliant with said rules and regulations.

...

SEC. 4-3315. CLASS K VIDEO GAMING ESTABLISHMENT LICENSE.

...

(k) A Class K licensee may have a maximum of six (6) video gaming terminals on its premises if it meets all rules and regulations for video gaming licensing through the State of Illinois and the City and remains compliant with said rules and regulations.

Section 4 – Distinguishing Between Principal and Incidental Purpose of Businesses.

Chapter 4 (“Alcoholic Liquor”), Article I (“In General”), Section 4-1100 (“Definitions”) of the Moline Code of Ordinances is hereby amended as follows (additions in **bold and underline**;

deletions in ~~bold and strikethrough~~), with those subsections not referenced herein continuing in full force and effect as presently written:

...

(9.5) Incidental. Except as otherwise indicated in Section 4-3304(d), (e) and (f), the term “incidental” when describing a secondary business purpose of a liquor licensee shall mean that the licensee derives less than fifty (50) percent of its gross revenue from such secondary pursuit(s) in contrast with the dominant purpose of the business. By way of illustration, a “video gaming establishment,” as defined in this Section, means a licensed establishment in which the sales of alcoholic liquor and/or food aggregate to less than fifty (50) percent of the licensee’s gross revenue.

...

(14.5) Principal Purpose. Except as otherwise indicated in Section 4-3304(d), (e) and (f), the phrase “principal purpose” when describing the business operations of a liquor licensee shall mean that the licensee derives fifty (50) percent or more of its gross revenue from the display, operation or sale of the specified category of good or activity. By way of illustration, businesses who derive fifty (50) percent or more of their gross revenues from the sale of food and who are otherwise defined as a “restaurant” in this Chapter may be eligible for a Class A or AA Restaurant liquor license.

Section 5 – New Video Gaming Definitions.

Chapter 5 (“Amusements”), Article I (“Video Gaming”), Section 5-1100 of the Moline Code of Ordinances is hereby amended as follows (additions in bold and underline; deletions in bold and strikethrough), with those subsections not referenced herein continuing in full force and effect as presently written:

SEC. 5-1100. TERMS DEFINED.

...

“Sales Taxes”: The State and City taxes paid on the retail sale of merchandise, food, alcohol and other tangible personal property from the premises of the Licensed Establishment under the requirements of the Retailers’ Occupation Tax Act, 35 ILCS 120/1 et seq., the Home Rule Municipal Retailers’ Occupation Tax Act, 65 ILCS 5/8-11-1, the City’s Home Rule Sales Tax pursuant to Chapter 31, Article IV of the City Code, and the City’s Prepared Food and Liquor Tax pursuant to Chapter 31, Article VII of the City Code.

“Sales Tax Year”: A fiscal period of twelve (12) consecutive calendar months commencing on January 1 and ending December 31 of the year immediately preceding the commencement of the February 1 – January 31 video gaming terminal licensing term. “Sales

Tax Year” shall be measure the Sales Taxes actually collected, reported and remitted to the Illinois Department of Revenue and the City of Moline during the specified January 1 – December 31 period, even though the taxable transactions may fall outside of the Sales Tax Year. By way of illustration, tax returns and corresponding payments arising out of transactions from December 2021 are not due until January 2022 and such Sales Taxes would therefore be part of the 2022 Sales Tax Year.

Section 6 – Flexible Maximum of Class B Liquor Licensees Licensed for Video Gaming.

Chapter 5 (“Amusements”), Article I (“Video Gaming”), Section 5-1101 of the Moline Code of Ordinances is hereby amended as follows (additions in **bold and underline**; deletions in **~~bold and strikethrough~~**), with those subsections not referenced herein continuing in full force and effect as presently written:

SEC. 5-1101. LICENSE REQUIRED.

(a) No Video Gaming Terminal may be placed in any Licensed Establishment unless the owner of the Licensed Establishment holds a valid license for video gaming from the Illinois Gaming Board and has obtained a Video Gaming Terminal license from the City pursuant to this article. A Licensed Establishment may have a maximum of ~~five (5)~~ **six (6)** terminals on its premises if it meets all rules and regulations for video gaming licensing through the Board and the City. Video Gaming Terminals are not permitted in any other establishment in the City.

(b) No person may act as a Terminal Operator of Video Gaming Terminals in the City unless said person holds a valid license for video gaming from the Illinois Gaming Board and has obtained a Terminal Operator license pursuant to this article.

(c) **Except as otherwise provided, n**~~N~~o more than thirty (30) Licensed Establishments shall be licensed for video gaming at any time. Should there be more than thirty (30) Licensed Establishments licensed for video gaming at the time of passage of this ordinance, those license holders may continue to be licensed as long as they comply with all requirements of state and local law and there is no lapse in the validity of their licenses. No new licenses shall be issued until the number of Licensed Establishments falls below thirty (30).

- (1) Exception to the limit requirements of subsection (c): The license holder of a Video Gaming Terminal license in a Class K Licensed Establishment that wishes to acquire a Class A Restaurant, Class AA Restaurant-Beer & Wine Only or Class B Tavern Licensed Establishment may apply to the City of Moline for approval and issuance of a new Video Gaming Terminal license for the newly-acquired Class A, Class AA or Class B Licensed Establishment. Said licensee must agree to surrender its current licenses to the City as a condition of filing an application with the State of Illinois for a video gaming license at the licensee's new Class A, Class AA or Class B Licensed Establishment. Upon approval by the State of Illinois of a new video gaming license for the newly-

acquired Class A, Class AA or Class B Licensed Establishment, the licensee must: 1) physically surrender said Class K liquor license and the accompanying Video Gaming Terminal license to the City in exchange for the new City of Moline Video Gaming Terminal license; and 2) cease all operations at the formerly Licensed Establishment prior to operating Video Gaming Terminals within the newly-acquired Class A, Class AA or Class B Licensed Establishment.

- (2) **Exception to the limit requirements of subsection (c): Notwithstanding the limitation on issuing new video gaming terminal licenses to new Licensed Establishments when doing so would cause the aggregate number Licensed Establishments licensed for video gaming in the City to exceed thirty (30) set forth in subsection (c), a Class B Tavern Licensed Establishment may apply to the City of Moline for approval and issuance of a new Video Gaming Terminal license. Upon receipt of such application for a video gaming terminal license exceeding the maximum number permissible under subsection (c), the City's accounts and finance office shall promptly notify the mayor prior to processing such application. The mayor may exercise discretion to recommend increasing the maximum number of Licensed Establishments licensed for video gaming at any time by one (1) such license to accommodate the pending Class B Licensed Establishment application for a Video Gaming Terminal License. Such discretion shall be based on factors including but not limited to the concentration of Licensed Establishments featuring video gaming in the vicinity, impact on and compatibility with the surrounding neighborhood, anticipated impact on the applicant's business, available parking, and anticipated economic impact on the City. Upon such favorable recommendation, the City Council may, by majority vote, authorize increasing the limit to accommodate the pending application. Any increase so authorized by the City Council shall automatically sunset upon the denial of the Class B Licensed Establishment's pending video gaming terminal license application by the City under Section 5-1102 without further action.**

Section 7 – Increase Terminal Operator Fees.

Chapter 5 (“Amusements”), Article I (“Video Gaming”), Section 5-1103 of the Moline Code of Ordinances is hereby amended as follows (additions in **bold and underline**; deletions in **~~bold and strikethrough~~**), with those subsections not referenced herein continuing in full force and effect as presently written:

SEC. 5-1103. FEE; TERM, LATE PENALTY.

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(a) A Licensed Establishment shall pay an annual fee of fifty dollars (\$50.00) per year for each Video Gaming Terminal located in the Licensed Establishment.

(b) Terminal Operators shall pay an annual fee of one thousand ~~two~~ **eight** hundred dollars (~~\$1,200.00~~ **\$1,800**) per year for each Video Gaming Terminal located within the City.

(c) The term of each license shall be February 1 to January 31. A license issued pursuant to this article is good only for the term in the license, and the City may, at any time, choose to prohibit video gaming within the City entirely upon expiration of the current license term. A license issued in accordance with this article shall not vest any type of interest with the licensee other than for the term of the existing license. A license issued in accordance with this article shall expire immediately upon the voluntary surrender or revocation of the licensee's video gaming license issued by the Illinois Gaming Board or the Licensed Establishment's state or local liquor license. No license shall be issued or renewed where the applicant owes a debt, fine, fee, or penalty to the City or has violated any City ordinance, including, but not limited to, the liquor code, sign code, or any other of the requirements of this article.

(d) Any licensee licensed by any part of the Moline Code of Ordinances or other act of the City Council who fails to renew applicable licenses by the due date will be charged a reinstatement fee equal to the amount of the license or two hundred dollars (\$200.00), whichever is less. If a licensee does not renew its license within thirty (30) days after the renewal date, the license will be considered to be voluntarily surrendered and shall not be renewed.

(e) Any Licensed Establishment or Terminal Operator liable for the collection, reporting and remittance of the Sales Tax shall be entitled to a credit against the fee otherwise due for Video Gaming Terminal licenses in an amount equal to the greatest aggregate amount of Sales Taxes paid during any one of the three (3) Sales Tax Years preceding the applicable video gaming terminal license term (the "Credit"). Notwithstanding the foregoing, the Credit shall only be applied towards Video Gaming Terminal license fees in excess of \$50.00 per Video Gaming Terminal.

Section 8 – Class K Sunset Period. Chapter 4 (“Alcoholic Liquor”), Article III (“Retail Licenses”), Division 1 (“In General”) of the Moline Code of Ordinances is hereby amended as follows (additions in bold and underline; deletions in bold and strikethrough), with those subsections not referenced herein continuing in full force and effect as presently written:

SEC. 4-3101. THE CLASSES OF LICENSES ESTABLISHED.

There shall be the following classes of liquor licenses available to qualified applicants in the City of Moline, Illinois.

Class	Description
Class	Description
Class A	Restaurant

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Class AA	Restaurant-Beer & Wine Only
Class B	Tavern
Class C	Packaged Sales Only-Primary
Class CC	Packaged Sales Only-Secondary
Class CCC	Packaged Sales of Wine and Beer Only-Secondary
Class D	Clubs/Fraternal or Veterans Organization
Class E	Rental Hall
Class F	Hotel/Motel
Class FF	Hotel/Motel Limited
Class G	Entertainment/Recreational/Service Facility
Class H	Civic Center
Class I	Special Event Not for Profit
Class II	Special Event Hosted Bar
Class III	Special Event Homebrewer
Class J	Park Concession
Class K*	Video Gaming Establishment

*** License classification terminating on January 31, 2027.**

Section 9 – Class K Sunset Period. Chapter 4 (“Alcoholic Liquor”), Article III (“Retail Licenses”), Division 1 (“In General”) of the Moline Code of Ordinances is hereby amended as follows (additions in bold and underline; deletions in bold and strikethrough), with those subsections not referenced herein continuing in full force and effect as presently written:

SEC. 4-3104. NUMBER OF LICENSES.

A. The total number of liquor licenses and options to be issued at any time is limited to:

<u>License Class or Option</u>	<u>Number</u>
<u>License Class or Option</u>	<u>Number</u>
<u>Class A: Restaurant</u>	<u>No limit</u>
<u>Class AA: Restaurant—Beer & Wine Only</u>	<u>No limit</u>
<u>Class B: Tavern</u>	<u>30</u>
<u>Class C: Packaged Sales Only— Primary</u>	<u>1</u>
<u>Class CC: Packaged Sales Only— Secondary</u>	<u>35</u>
<u>Class CCC: Packaged Sales Beer & Wine Only— Secondary</u>	<u>1</u>
<u>Class D: Clubs/Fraternal or Veterans Organization</u>	<u>No limit</u>
<u>Class E: Rental Hall</u>	<u>No limit</u>
<u>Class F: Hotel/Motel</u>	<u>No limit</u>
<u>Class FF: Hotel/Motel Limited</u>	<u>No limit</u>
<u>Class G: Entertainment/Recreational/Service Facility</u>	<u>No limit</u>
<u>Class H: Civic Center</u>	<u>No limit</u>
<u>Class I: Special Event Not for Profit</u>	<u>No limit</u>
<u>Class II: Special Event Hosted Bar</u>	<u>No limit</u>
<u>Class III: Special Event Homebrewer</u>	<u>No limit</u>
<u>Class J: Park Concession</u>	<u>No limit</u>

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Class K: Video Gaming Establishment	5-0
Option 1: Outdoor Use	No limit
Option 2: Additional Bar Station	No limit
Option 3: Caterer's Retail	No limit
Option 4: Restaurant Alternative	15
Option 5: Extended Hours 3 A.M.	15
Option 6: Retailer's Off-Site Special Use (Public Property)	No limit
Option 7: Retailer's On-Site Outdoor Special Use	No limit
Option 8: Retailer's On-Site Pouring	No limit
Option 9: Cocktails and Single-Serve Wine To-Go	No limit

B. In the event any one of the Class C, Class CC, or Class CCC licenses provided for herein shall lapse, be revoked or terminated in any manner, or the Class C, Class CC, or Class CCC licensed establishment has closed or relocated, the maximum number of licenses or options in that classification shall be automatically reduced, without further action by the Mayor and City Council.

C. **Amortization of Class K Liquor Licenses. No new Class K Liquor Licenses shall be issued following the effective date of this Ordinance, but existing Class K Licensees holding a valid Class K video gaming establishment license and operating as of January 11, 2022 may continue to be licensed and apply for renewal thereof through the term ending January 31, 2027 (the "Amortization Period"), unless sooner terminated or revoked due to noncompliance with the requirements of state and local law, including, but not limited to, Chapters 4 and 5 of the Moline Code of Ordinances or a lapse in the validity of their licenses. Immediately following the conclusion of the Amortization Period, all Class K liquor licenses shall be deemed null and void and ineligible for renewal under said classification.**

D. **Early Termination. From the effective date of this Ordinance through the conclusion of the Amortization Period, any existing Class K licenses shall be deemed to have terminated immediately (prior to the end of the Amortization Period) without further action by the Local Liquor Control Commissioner, Mayor or City Council upon:**

- 1. A change in liquor license classification following application and qualification for an available liquor license classification, at which time former Class K liquor licensee must physically surrender Class K liquor license and the accompanying Video Gaming Terminal licenses to the City in exchange for new City of Moline Video Gaming Terminal licenses if eligible under the new liquor license classification; or**
- 2. A change in the business or corporate name of the licensee; or**
- 3. A lapse of Class K License by failure to timely apply for, pay for or demonstrate eligibility for renewal; or**
- 4. The closure or relocation of a Class K licensed establishment; or**

- 5. The death or bankruptcy of the licensee; provided, however, that executors or administrators of the estate of any deceased licensee and the trustee of any insolvent or bankrupt licensee, when the estate consists in part of an alcoholic beverage license, may continue the business of the sale of alcoholic liquor under order of an appropriate court, and may exercise the privileges of the deceased or insolvent or bankrupt licensee after said licensee's death or declaration of insolvency or bankruptcy by a court, but not longer than six (6) months after the death, bankruptcy or insolvency of the licensee, at which time the license shall be deemed null and void without further action by the by the Local Liquor Control Commissioner, Mayor or City Council.

Section 10 –All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed to the extent necessary to give effect to the provisions of this Ordinance.

Section 11 – This Ordinance and every provision thereof shall be considered severable. If any word, phrase, clause, sentence, paragraph, provision, section, or part of this Ordinance is found to be void, unconstitutional, or otherwise unenforceable, all remaining portions of this Ordinance not so declared void, unconstitutional, or unenforceable shall remain in full force and effect.

Section 12 – This Ordinance will be in full force and effect upon passage, approval and publication in pamphlet form in the manner provided by law.

CITY OF MOLINE, ILLINOIS

DocuSigned by:

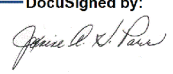

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 January 11, 2022

 Date

Passed: _____ January 11, 2022 _____

Approved: _____ January 25, 2022 _____

Attest: _____
 DocuSigned by:


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