

AN ORDINANCE AMENDING CHAPTER 8
OF THE MUNICIPAL CODE OF THE VILLAGE OF ARLINGTON HEIGHTS
REGARDING NEGATIVE USE RESTRICTIONS

WHEREAS, the Village of Arlington Heights is a home rule municipal corporation in accordance with Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and

WHEREAS, the Village has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs; and

WHEREAS, Chapter 8 of the Municipal Code of Arlington Heights, Illinois, 1995, as amended ("*Village Code*"), regulates gambling and other gaming uses within the Village; and

WHEREAS, the Village finds that authorized uses of real property allowed under the Village Code promote the public health, safety, and welfare, preserve the overall quality of life of residents, maintain and promote economic development and growth in the Village, and allow the Village to maintain orderly and compatible land use and development; and

WHEREAS, the Village President and Board of Trustees recognize that, while private parties are able to impose restrictions on private property that are greater than those set forth in the Village Code, private parties are not free to enter into agreements, or otherwise impose restrictions on private property, that are against public policy; and

WHEREAS, although Section 8-304 of the Village Code generally prohibits gambling in the Village, Section 8-306 of the Village Code authorizes participants to engage in certain gaming activities that are not considered gambling for purposes of the Village Code, including, without limitation, offers of prizes, award or compensation to the actual contestants in any bonafide contest for the determination of skill, speed, strength or endurance, or to the owners of animals or vehicles entered in such contest, and pari-mutuel betting as authorized by the State of Illinois (collectively, "*Gaming Uses*"); and

WHEREAS, the President and Board of Trustees find that the purposes of the Village Code , and the public health, safety, and welfare, are compromised, and the benefits of competition in the marketplace are lost, when private parties impose recorded negative use restrictions upon real property in the Village which prohibit or have the economic or practical effect of prohibiting the use of real property for Gaming Uses in a manner compliant with the Village Code and state law after the previous owner or operator of the property has terminated operations at the site, which negative use restrictions are in conflict with, and purport to limit, the uses that would otherwise be permitted under the Village Code ("*Negative Use Restrictions*"); and

WHEREAS, the President and Board of Trustees further find that such Negative Use Restrictions concerning Gaming Uses are separate and distinct from non-compete clauses that may be included in an agreement between private parties whereby one party may agree with another party that conducts the same type of use to not conduct such use within a specified geographic area during a defined period of time; and

WHEREAS, the President and Board of Trustees find, by contrast, that Negative Use Restrictions, which allow a prior owner or operator of real property that has used the site for Gaming Uses, after terminating operations at a site, to prevent any subsequent owner or operator from operating Gaming Uses at such site in the future, serve no public purpose, but instead have significant deleterious effects on the public health, safety, and welfare; and

WHEREAS, the Village finds that because real property used in compliance with Section 8-306 of the Village Code can consist of large tracts of land historically used for such purposes in compliance with applicable law, the continued ability to use such tracts of land in a manner consistent with Section 8-306 of the Village Code serves as a catalyst to other development and advances the public health, safety, and welfare of the residents of the Village; and

WHEREAS, the President and Board of Trustees have determined that it will serve and be in the best interests of the Village and its residents to amend the Village Code pursuant to this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF ARLINGTON HEIGHTS:

SECTION 1. RECITALS. The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

SECTION 2. NEGATIVE USE RESTRICTIONS. Article III, titled "Gambling," of Chapter 8, titled "Public Safety, Morals, and Welfare," of the Village Code is hereby amended to add a new Section 8-309, titled "Negative Use Restrictions Prohibited," to read as follows:

"Article III Gambling

* * *

8-309 Negative Use Restrictions Prohibited.

a. Definition. For purposes of this Section 8-309, "Negative Use Restrictions" means a restrictive covenant or other restrictions recorded against real property that is zoned in any B Zoning District that prohibit or have the economic or practical effect of prohibiting the use of such real property for purposes permitted pursuant to Section 8-306 of this Code after an owner or operator conducting activities permitted pursuant to Section 8-306 of this Code has terminated operations at the site, which negative use restrictions are in conflict with, and purport to limit, the uses that would otherwise be permitted under this Code.

b. Scope of Negative Use Restriction Prohibition. Any private agreement, deed restriction, lease, restrictive covenant, restriction or any other instrument that purports to impose recorded Negative Use Restrictions, for a period longer than one year, upon real property in the Village so as to prohibit or have the economic or practical effect of prohibiting the use of such real property for activities permitted under Section 8-306 of this Code after an owner or operator has terminated operations at a site where activities permitted under Section 8-306 of this Code were conducted, when such uses would otherwise be permitted under this Code (whether as a permitted or special use) are hereby declared against public policy, void and unenforceable, and subject to the Village's remedial and enforcement powers under this Section and the laws of the State of Illinois. Further, a current owner of a site that is subject to such Negative Use Restrictions has the right to enforce this provision by seeking an injunction or other remedy in a court of competent jurisdiction.

c. Exceptions. The prohibition in Section 8-309(b) will not apply to the owner or operator of a site which terminates operations at a site for the purposes of

relocating such operations into a comparable or larger site located within the Village and within one-half mile of the site at which operations have terminated, provided such relocation and the commencement of operations at the new site occurs within two years and the Negative Use Restriction imposed does not have a term in excess of three years.

SECTION 3. SEVERABILITY. If any provision of this Ordinance or part thereof is held invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance are to remain in full force and effect, and are to be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Ordinance to the greatest extent permitted by applicable law.

SECTION 4. EFFECTIVE DATE. This Ordinance will be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

AYES:

NAYS:

PASSED AND APPROVED THIS 3rd day of May, 2021.

Village President

ATTEST:

Village Clerk