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**NOTICE OF MEETING
of the
JUDICIARY COMMITTEE OF THE
BOARD OF TRUSTEES OF THE VILLAGE OF WILMETTE**

**Monday, February 12, 2018 at 1:30 P.M.
Training Room – Second Floor of Wilmette Village Hall
1200 Wilmette Avenue, Wilmette, Illinois**

AGENDA

- I. Call to Order.**
- II. Approval of Minutes.**
Minutes of the Judiciary Committee meeting of September 18, 2017.
- III. Discussion of increasing minimum age for the sale of tobacco products to 21.**
- IV. Discussion of public comment rules per Open Meetings Act.**
- V. Discussion of booting and towing on private property by private entities.**
- VI. New Business.**
- VII. Public Comment.**
- VIII. Adjournment.**

IF YOU ARE A PERSON WITH A DISABILITY AND NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN AND/OR ATTEND A VILLAGE OF WILMETTE PUBLIC MEETING, PLEASE NOTIFY THE VILLAGE MANAGER'S OFFICE AT (847) 853-7509 OR TDD (847) 853-7634 AS SOON AS POSSIBLE.

**MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE OF THE
BOARD OF TRUSTEES OF THE VILLAGE OF WILMETTE, TUESDAY,
SEPTEMBER 18, 2017 AT 1:45 P.M. IN THE TRAINING ROOM, SECOND FLOOR,
WILMETTE VILLAGE HALL, 1200 WILMETTE AVENUE, WILMETTE, IL 60091**

Members Present: Trustee Stephen Leonard
Trustee Julie Wolf

Absent: Trustee Senta Plunkett

Staff Present: Jeffrey Stein, Corporation Counsel

I. Call to Order.

Corporation Counsel Jeffrey Stein called the meeting to order at 1:58 p.m. Committee members Leonard and Wolf were present.

Mr. Stein noted that Chair Senta Plunkett was absent and asked for nominations for a President pro tem.

Trustee Leonard nominated Trustee Wolf. There were no objections and President pro tem Wolf proceeded to preside over the meeting.

II. Approval of Minutes: Judiciary Committee Meeting of September 27, 2016.

Trustee Wolf directed the Committee’s attention to the draft minutes of the Judiciary Committee meeting of February 14, 2017.

Trustee Leonard moved that the Committee approve the minutes, seconded by Trustee Wolf.

No further discussion occurred on the motion. Upon a call of the roll the following voted:

Ayes Trustees Leonard and Wolf.
Nays: None.

The motion carried.

III. Discussion and recommendation to the Village Board of an amendment to the General Penalty provision of the Wilmette Village Code, 1993 as amended

Corporation Counsel Jeffrey Stein said as part of the Village’s set of laws (Wilmette Village Code), there is a General Penalty that applies to all violations within the Village (unless there is a specific penalty provision for a specific violation). As the Village Code reads today that penalty: 1. Can be a fine not to exceed \$750, 2. Can require restitution to the private party, 3. Impose community service and/or 4. Impose counseling/treatment. There are no recommended amendments to the text of those specific penalties; rather, upon review of the Wilmette Village Code, there is a common provision in other municipalities that is not present in the Village’s General Penalty section.

That provision would restrict the issuance of licenses, permits certifications and any other authorization as required by the laws and ordinances of the Village if an applicant (or an interested party to the application) has any debt due and owing to the Village. Such debts can be, but are not limited to, delinquent water billing, business/liquor licensing fees, and adjudicated fines. All of these debts must be due and owing directly to the Village and not to another governmental or private entity.

It is Corporation Counsel’s recommendation that the proposed ordinance be recommended by the Judiciary Committee for approval to the Village Board. Doing so will allow the Village to collect debts that were rightfully imposed and has a potential positive impact upon the Village’s budget.

Trustee Wolf asked if Mr. Stein would be working with the Administrative Services Department regarding the data for billing and fees.

Mr. Stein said he will work with Peter Skiles, Director of Administrative Services to search for any debt owed to the Village by an applicant for a license or permit.

Trustee Leonard asked if there was any down side for the Village with the proposed ordinance.

Mr. Stein said he did not believe there was any downside for the Village.

Trustee Leonard moved to recommend that the Village Board approve an ordinance to amend the Village’s General Penalty to restrict issuances of licenses, permits and certifications for those applicants that have an outstanding debt due and owing to the Village, seconded by Trustee Wolf. No further discussion occurred on the motion. Upon a call of the roll the following voted:

Ayes Trustees Leonard and Wolf.

Nays: None.

The motion carried.

IV. Public Comment

None.

V. New Business

No Report

VI. Adjournment

Trustee Leonard moved, seconded by Trustee Wolf to adjourn. Upon a voice vote, the motion passed unanimously.

Trustee Wolf declared the meeting adjourned at 2:05 p.m.

Respectfully Submitted,

Jeffrey Stein,
Corporation Counsel



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Date: January 30, 2018
To: Village Board Judiciary Committee
From: John Prejzner, Assistant Director of Administrative Services
Jeffrey M. Stein, Corporation Counsel
Subject: **Consideration of Increasing Minimum Age for the Sale of Tobacco Products to 21**

Background

The Village regulates the retail sale of tobacco products and requires those desiring to sell tobacco within the Village limits to obtain a Village license. This prohibition includes a regulation prohibiting the sale of tobacco to persons younger than 18 years of age. The Village only regulates the sale of tobacco, but does not regulate the use or possession of tobacco as that remains under State control. Currently there are approximately 14 business locations in the Village authorized to sell tobacco products. The types of businesses include five gas stations, four convenience stores, two grocery stores, one liquor store, one golf course, and one cigar/tobacco store.

Discussion

In an effort to reduce smoking rates in youth and adolescents, several communities have increased the minimum age for the sale of tobacco from 18 to 21. According to several organizations, nearly 25% of tobacco users in the Midwest are less than 18 years of age. Furthermore, 90% of people who provide tobacco to kids under the age of 18 are under the age of 21. Thus, raising the minimum age to purchase tobacco products to 21 has been shown to reduce smoking in those under 18 by over 50%.

Currently there are 13 municipalities in Illinois who have increased the age to 21. These include:

Municipality				
Berwyn	Deerfield	Highland Park	Mundelein	Vernon
Buffalo Grove	Elk Grove Village	Lincolnshire	Naperville	Hills

Chicago Evanston Maywood Oak Park Lake
County

More information on statistics related to increasing the purchase age to 21 can be found at <https://tobacco21.org/> .

Should the Judiciary Committee reach a consensus to recommend increasing the purchase age of tobacco products, the attached Ordinance will be presented to the Village Board.

Documents Attached

1. Ordinance No. 2018-O-XX

ORDINANCE NO. 2018-O-XX

**AN ORDINANCE AMENDING THE WILMETTE VILLAGE
CODE, 1993, AS AMENDED, AMENDING SECTION 5-2.8.2
UNLAWFUL SALE OR DELIVERY, SALE IN UNLAWFUL
QUANTITIES; SIGNS; SELF-SERVICE DISPLAYS
UNLAWFUL”**

WHEREAS, the President and Board of Trustees of the Village of Wilmette, Cook County, Illinois, find that there is substantial scientific evidence that cigarette smoking and the use of other forms of tobacco and tobacco products are dangerous to human health; and

WHEREAS, the President and Board of Trustees adopted a regulation restricting the sale of tobacco products to persons under the age of 18 in 1997; and

WHEREAS, it is likely that a majority of individuals under the age of 18 obtain tobacco products from people under the age of 21; and

WHEREAS, it is further likely that raising the age the minimum age from 18 to 21 has been shown to reduce smoking in individuals under the age of 18; and

WHEREAS, the President and Board of Trustees further find that the public health, welfare and safety is furthered by preventing the purchase and use of tobacco products by persons under the age of 21 years; and

WHEREAS, the President and Board of Trustees further find that, pursuant to its home rule powers granted by the Constitution of the State of Illinois, the Village of Wilmette is empowered to provide for the licensing and regulation of those individuals and entities engaged in the sale of tobacco products.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES of the Village of Wilmette, Cook County, Illinois:

SECTION 1: The foregoing findings and recitals, and each of them, are hereby made a part of this Ordinance and are incorporated by reference as if set forth verbatim herein.

SECTION 2: The Wilmette Village Code, 1993, as amended, is further amended in Chapter 5, Regulation of Certain Commercial and Quasi-Commercial Activities, by deleting the text of said Subsections 5-2.8.2(a) and (b) in the manner and form shown in strikethrough type below, and inserting new text in the manner and form shown in underlined bold type below, so that said Subsections 5-2.8.2(a) and (b) shall hereafter provide as follows:

5-2.8.2 UNLAWFUL SALE OR DELIVERY; SALE IN UNLAWFUL QUANTITIES; SIGNS; SELF-SERVICE DISPLAYS UNLAWFUL.

(a) It shall be unlawful for any person, including any licensee, to sell, offer for sale, give away or deliver tobacco products to any person under the age of ~~eighteen (18)~~ **twenty-one (21)** years.

(b) It shall be unlawful for any licensee to allow, employ, engage or permit any person under the age of ~~eighteen (18)~~ **twenty-one (21)** years to sell, offer for sale, give away or deliver any tobacco products.

SECTION 3: Codifier's Authority. The Village's codifier is authorized to adjust section and paragraph numbering as may be necessary to render this ordinance consistent with the numbering of the Village Code.

SECTION 4: If any portion of this Ordinance, or its application to any person or under any circumstances, is adjudged invalid by a court or agency of competent jurisdiction, such adjudication shall not affect the validity of the Ordinance as a whole or any remaining portion of it not adjudged to be invalid.

SECTION 5: This Ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

PASSED by the President and Board of Trustees of the Village of Wilmette, Illinois, on the ____ day of _____, according to the following roll call vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

Clerk of the Village of Wilmette, IL

APPROVED by the President of the Village of Wilmette, Illinois, this ___day of _____

President of the Village of Wilmette, IL

ATTEST:

Clerk of the Village of Wilmette, IL

Published in Pamphlet Form (date)



Law Department

DATE: January 30, 2017
To: Village Board Judiciary Committee
From: [Jeffrey M. Stein](#), Corporation Counsel
SUBJECT: Public Comment Rules Per Open Meetings Act

The Village Board's Rules of Order relating to public comment during public meetings should be updated to not only ensure compliance with the Open Meetings Act, but to ensure all individuals desiring to speak have the opportunity to do so in a fair and equal manner. Per the Open Meetings Act, public comment must be provided to any person wishing to address the public body, which are subject to *written* rules, not the Village's custom and practice. These uniform rules should also apply to subsidiary public bodies of the Village.

Background

Effective January 1, 2011, the General Assembly significantly amended the Illinois Open Meetings Act. Among those amendments was the provision that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." 5 ILCS 120/2.06(g).

In October of 2010, the Village Board made technical amendments to the Rules of Order of the Village Board of Trustees to clarify the Village Board's custom and practice of allowing public comment at its meetings. The nature of the changes made applied to the duration of time a person can comment which was left at the discretion of the Village President, but may be extended by the President or a majority of the Trustees present. However, the changes did not address how many times an individual may speak during public comment or how long the public comment period may last. Furthermore, there is no set of rules at all for the Village's commissions and committees when it comes to Public Comment.

Since 2011, the Public Access Counselor of the Illinois Attorney General ("PAC") has provided some guidance through binding opinions. It has been determined that public comment must be allowed at all meetings, including special meetings and committees and commissions. The PAC has also made very clear that only those rules that are in writing may be enforced. If no such rule is in writing, the PAC has determined that the practice and custom of the public body has no application. The PAC has yet to determine the validity of "discretionary" rules, such as the one the Village has in place; however, from the tone and rulings the PAC has made in the past, it is likely the PAC will disfavor such rules.

With discretionary rules or no such rules in place, all meetings of the Village Board, its commissions and committees may provide for inconsistent opportunities for individual speakers to address the Village's various boards, committees, and commissions. Therefore, the proposed written rules below are intended to ensure all persons have the opportunity to speak, and provide consistency for such speakers across all Village meetings.

Furthermore, these rules are not intended to limit or suppress any public comment; rather, these proposed rules are a floor, which will ensure that everyone that wishes to speak at a public meeting will have the same amount of time as everyone else desiring the same. As with the current rules, it is recommended that the President (or Chair of the committee or commission) or a majority of Trustees (or commissioners), retain the authority to extend both the public comment time as well as individual speaker's time at the podium, but that there be an actual limit codified in case enforcement of such a provision is ever needed.

Accordingly, the language below is proposed to amend the current Village Code section which provides for the written rules applicable to public comment:

Rule 3.

1. At any time a person desires to address the Village Board, its Committees or Commissions, at any point during a public meeting shall comply with the following Rules of Order as they relate to Public Comment.
2. All Village Boards and Commissions shall allow for an agenda item titled "Public Comment" on its agendas during every public meeting. During the Public Comment portion of a meeting, any persons who wish to address the public body on any matter of public business that is not a specific agenda item may request recognition prior to the meeting or during the portion of the public meeting dedicated to Public Comment. Furthermore, any persons who wish to address the public body on any matter of public business that is a specific agenda item may do so during the discussion of that agenda item.
3. During Public Comment or during the specific agenda item being discussed, each person who wishes to address the public body shall have no more than three (3) minutes to do so after they have been recognized by the Chair. No person shall speak more than one time during Public Comment or during the specific agenda item being discussed. The Chair or a majority of the public body members present may extend the limitation of time or grant additional time to individual speakers. The Chair's denial of or limitation on any request for an extension of time may be overruled by a majority of those public body members present. The Chair may also recognize and extend the time limit to speak during a specific agenda item to any directly interested party (or agent of) of that specific agenda item.
4. Public Comment portion of the meeting shall last no more than 30 minutes at each meeting. The Chair or a majority of the public body members present may extend Public Comment beyond 30 minutes, may set the amount of additional

time beyond the initial 30 minutes, and may allow any such additional time to be heard during New Business.

5. These Public Comment rules do not apply to those persons wishing to address a board or commission as part of a required public hearing.
6. Any failure to adhere to the provisions of this section, and any such restriction or limitation upon any speaker, shall not impair or affect any ordinance, resolution, motion, or other action of the Village Board.



Law Department

DATE: January 30, 2017
To: Village Board Judiciary Committee
From: [Jeffrey M. Stein](#), Corporation Counsel
SUBJECT: Booting and Towing on Private Property by Private Entities

SUBJECT

Discussion of potential regulations regarding vehicle immobilization (commonly referred to as “booting”) and vehicle towing from privately owned commercial and multi-family parking lots.

SCOPE

The regulations discussed below will apply to privately owned parking lots that want to limit their parking to customer/residence parking. These property owners have the right to ensure that the parking on their property is provided to their patrons or residents. Accordingly, there are two methods by which private property owners ensure their parking lots are used for those purposes – booting and towing. This memorandum is intended to give the Village some guidance and direction on the regulating of booting and towing.

The Village currently has regulations for towing of vehicles from Village owned property, Village right-of-way, or in any circumstance when at the direction of a sworn village police officer; therefore, those regulations are not intended to be discussed by this memorandum.

PURPOSE

The Village’s Police Department has received complaints from both Wilmette residents and visitors to the Village, regarding their negative experiences involving “booting” of their vehicles while patronizing certain Wilmette businesses. While these individuals were parking in locations they were not patronizing and therefore did not have the permission to do so from the property owner, their complaints were in regards to a lack of signage, lighting, as well as the cost of removal of the boot. The Village can regulate these aspects (and more) of such occupations to ensure fairness for all parties involved.

BACKGROUND

Accordingly, as a Home Rule unit, the Village has the power, but not the obligation, to regulate booting and towing. The Village options for booting are to do nothing, regulate certain or all aspects of booting, or ban booting all together. The Village’s options for towing are a bit limited as compared to booting in that the Village cannot ban towing of vehicles completely, but it can provide certain regulations that do not directly limit or conflict with State of Illinois regulations already in existence.

Booting Regulations:

No Regulations

If the Village does not desire to regulate booting, then the Village need not adopt any changes to the Village Code. The effect of doing nothing, would keep the *status quo* and private companies would not be restricted from placing a boot on a vehicle and charge an amount to have the boot removed. Furthermore, there would be no regulations regarding signage or notice prior to a boot being installed upon a vehicle.

If an individual vehicle owner desired to challenge the booting of the vehicle, they would do so through the Circuit Court of Cook County on their own in a private cause of action. The Village would not be able to prosecute the complained of activity in either the Circuit Court or the Village's Administrative Adjudication. Furthermore, absent a criminal act, the Village's Police Department would not have any jurisdiction over the company booting of a vehicle or the property owner.

Complete Ban

If the Village desired to institute a complete ban on booting activities within the Village, it has the authority to do so. If such an ordinance were adopted, the Village would have the ability to issue citations against any company/individual that installed a boot upon a vehicle. The penalty for such a violation would be a fine, restitution and an injunction. This matter could be prosecuted in the Village's Administrative Adjudication or Circuit Court by the Corporation Counsel's office. Furthermore, the Village could impose this restriction upon the property owner authorizing or engaging such booting activities. This regulation would not restrict a private cause of action that an individual has as if there was no Village regulation.

It is possible that a complete ban on booting may have the unintended consequence of more towing of vehicles from private property, since that will be the only method by which property owners can ensure availability of parking for their patrons/residents.

Licensing and Regulatory Provisions

An effective method of regulation for a specific occupation is licensure. A licensing requirement allows the Village to know what companies are operating such a business, where and how. A license applies directly to the company and puts the requirements and restrictions upon said company, all the while said company ensures that the Village's standards are met and assumes responsibility for the actions or inactions of its employees. If the Village chooses to license companies that boot vehicles, each company would have to apply in writing with the Village, meet any prerequisites the Village imposes and pay any fees to the Village in furtherance of carrying out the inspections and enforcement of these business activities.

As part of the regulations, the Village could impose all or some of the following specific regulations (which are currently imposed in other jurisdictions):

1. Company identification
 - a. Company information and contact information must be prominently displayed on site;
 - b. Company information and contact information be provided to the Police Department;
 - c. Employee information and photo identification be provided to the Police Department;
 - d. Company vehicles must be clearly identified and marked as such;

2. Company Requirements
 - a. Company owners cannot be felons within the last three (3) years at the time of application;

- b. Employees be provided identification badges with their names, position and company name;
- c. A 24 hour/365 day phone service with a live operator be established and maintained;
- d. Employees be provided portable credit card readers to accept payment;
- e. Company must file with the Village Police Department a copy of a written agreement between the booting company and the property owner authorizing the booting company to perform services at the specific property.

3. Onsite Requirements

- a. Signage and lighting be provided indicating that unauthorized vehicles parked may be booted;
- b. Phone service number be prominently displayed on site;
- c. Employees wear provided identification badges with their names, position and company name;
- d. Employee with the ability to accept payment and remove the applied boot remain onsite for up to thirty (30) minutes after the application of the boot. If employee leaves after thirty (30) minutes, an employee must return within an hour of receiving a call to have the boot removed; **or**
- e. Boots only allowed on vehicles when an employee is present and if employee leaves, he or she must remove all boots;
- f. Copy of insurance be kept onsite and with employees;
- g. Copy of relevant Village regulations be kept onsite and with employees;
- h. Place on the windshield a copy of a Village drafted Consumer Bills of Rights or the like.

4. Fees

- a. Cash, debit cards, and credit cards be accepted onsite to fulfill payment;
- b. Limit fee amount (\$75- \$140 is the range from other jurisdictions);
- c. Provide a receipt for any payment;
- d. Remove the boot immediately upon payment being made;

5. General Limitations

- a. Restriction that the property owner cannot also be engaged in booting services for the same property;
- b. Insurance requirements;
- c. Indemnification and hold harmless to the Village as well as cost of defense to be paid by licensee;
- d. Responsibility for the conduct of employees;
- e. No booting of vehicles running with an occupant inside the vehicle that can move the vehicle;
- f. Submission to inspection of records, equipment and facilities;
- g. Government owned vehicles cannot be immobilized.

In addition to the restrictions placed upon a licensee, certain requirements can be placed upon property owners who allow for or contract for booting services for their property. Such regulations could entail that a property owner shall not allow booting services to commence upon its property without the required signage and lighting and a written agreement with an independent licensed vendor that complies with the Village's regulations.

Towing Regulations:

No Regulations

If the Village does not desire to regulate towing of vehicles, then the Village need not adopt any changes to the Village Code. The effect of doing nothing, would keep the *status quo* and private companies would be only regulated by the Illinois Commerce Commission. The Illinois Commerce Commission has the following relevant regulations in regards to its license for tow operators:

1. Tow operators must have the express written consent of the property owner to operate and Vehicles that are authorized to park cannot be relocated;
2. Vehicles must be directly relocated from the initial point of tow to a licensed facility controlled by the tow operator and that facility must be within 10 miles from the private property serviced by the tow operator;
3. No law enforcement vehicles may be towed;
4. Signs must be posted at least 24 hours in advance of any vehicle relocating commencing;
5. Signs must identify the relocation facility the vehicle will be relocated to; and such vehicle must remain at that facility;
6. A vehicle when the owner or agent of the owner with the ignition key arrives to immediately remove the vehicle must not be relocated;
7. Fee regulations, including storage fees;
8. Private property owners cannot collect or obtain fees;
9. Vehicle identification requirements;
10. Insurance requirements;
11. Notification of a relocation to law enforcement agency;
12. Record preservation and right of ICC to inspect books

Licensing and Regulatory Provisions

A village license for Towing companies (not under contract with the Village for public towing) would be very similar, in both purpose and operation, as a “booting” license. The one major difference between the booting license and the towing license would be the fact that the State of Illinois has its own license procedures as shown above. The Village’s regulations could mirror the State’s regulations for the most part. Furthermore, the Village could also impose certain responsibilities upon the property owners that authorize towing, just like the booting license.

STAFF RECOMMENDATION

Staff recommends that both booting and towing be regulated by the Village. There is a need to regulate booting activities within the Village limits. It then makes sense, and does not require a large additional amount of effort, to regulate towing as well. By regulating both occupations, the Village’s requirements could be consistently applied to not only the entities performing the services, but also the property owners that wish to utilize such entities. A fair regulation would ensure the safety of the public, but also allow property owners to ensure their property is not misused.