

ORDINANCE NO. 2012- 03

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING ARTICLE XXIII ENTITLED "REGULATION OF SIMULATED GAMBLING DEVICES" OF CHAPTER 11 OF THE LEON COUNTY CODE OF LAWS, TO REGULATE THE USE OF SIMULATED GAMBLING DEVICES; AMENDING SECTION 11-801, DEFINITIONS; AMENDING SECTION 11-804, PERMITTING AND FEES; AMENDING SECTION 11-808, LIMITATIONS ON OPERATION OF BUSINESS; AMENDING SECTION 11-809, SAFETY AND SECURITY REQUIREMENTS; AMENDING SECTION 11-814, ENFORCEMENT; PENALTIES; PROVIDING FOR SIMULATED GAMBLING DEVICE AND SERVER MONITORING; PROVIDING FOR ENFORCEMENT, PENALTIES FOR VIOLATIONS AND INJUNCTIVE RELIEF; PROVIDING FOR CONFLICTS OF LAW; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED by the Board of County Commissioners of the County of Leon, Florida, as follows, that:

Section 1. Chapter 11, Article XXIII, Section 11-801 of the Leon County Code of Laws is hereby amended to read as follows:

Sec. 11-801. Definitions.

(f) The term "operating" as used in this Article means to manage and run a Simulated Gambling Facility by doing those things necessary to run a business which may include but are not limited to obtaining a business permit, obtaining a business tax certificate, executing a lease agreement or purchasing contract, leasing or purchasing of simulated gambling devices, hiring employees, or selling a legal consumer product or service.

(f)(g) "Slot machine" has the same meaning as specified in Section 551.102, Florida Statutes or as amended from time to time.

(g)(h) "De Minimis Activity Facility" means a facility operated by an organization exempt from federal taxation under Section 501(c) of the Internal Revenue Code and with five

(5) or fewer electronic or mechanical devices that are used to conduct a drawing by chance, sweepstakes or game promotion utilizing those electronic or mechanical devices, all of which devices were in operation before the passage of this Ordinance at that facility.

~~(h)~~(i) The term “minor” means any individual under the age of 18 years.

~~(i)~~(j) The term "Senior citizen's center" means any public or private center, that is organized and operated exclusively to provide recreational or social services for persons who are fifty-five years of age or older.

~~(j)~~(k) The term "Security personnel" includes any person whose lawful jurisdiction includes Leon County and who either is a sheriff, deputy sheriff, marshal, deputy marshal, or a police officer or any other person authorized by law who holds a Class “G” license issued by the Florida Department of Agriculture & Consumer Services and who is hired to provide security for the simulated gambling facility.

~~(k)~~(l) “County Administrator” shall mean the Leon County Administrator or his or her designee.

~~(l)~~(m) “Operator” means any Person in whose name a drawing by chance is being conducted in connection with the sale of a consumer product or service, sweepstakes, or game promotion that utilizes Electronic Equipment, ~~is conducted.~~

~~(m)~~(n) “Permit Holder” means the Operator in whose name the County Administrator has issued a permit under this Ordinance.

~~(n)~~(o) “Rules” means the restrictions and covenants governing the operation of the drawing by chance, sweepstakes, or game promotion.

Section 2. Chapter 11, Article XXIII, Section 11-804 of the Leon County Code of Laws is hereby amended to read as follows:

Sec. 11-804. Permitting and Fees.

(b) *Initial Permits.* Within sixty (60) days of enactment of this Ordinance, all current Operators who have been operating a simulated gambling facility on or before June 15, 2011, and which are subject to this Ordinance, and which apply for, facially qualify for, and pay required fees for a permit, shall be granted a permit for the facility as provided for in this section. Each such Operator shall, in addition to the requirements set forth herein as part of the application, provide proof satisfactory to the County Administrator that the Operator was lawfully operating a simulated gambling facility, as of June 15, 2011, which such evidence may include a current and valid lease, rental agreement, purchase and sale contract, bill of sale or receipt indicating the purchase, lease or use of simulated gambling devices for that particular facility, or other certificates, permits, licenses, receipts or filings issued by the Federal, State or local government indicating proof of the uses contemplated by this Ordinance.

(c) *Permits Limited.* Unless greater than ten (10) permits have been issued as provided for in subsection (b) above, the County Administrator shall limit the total number of permits issued pursuant to this section to ten (10). After the permits authorized by subsection (b) are issued, no permits for new businesses shall be issued unless the issuance of the permit will not cause the total number of permits issued to exceed ten (10) permits. All qualifying Operators who receive an initial permit as provided for in subsection (b) shall be entitled to renew their permit if they otherwise qualify and pay required fees.

(d) *Application Materials Required for Permit.*

(1) Applicant shall file with the County Administrator the following materials:

(i) a copy of Applicant's proposed Rules governing the drawing by chance, sweepstakes or game promotion which includes the odds of winning and the prize table;

(ii) for a sweepstakes or game promotion operating pursuant to s. 849.094, Florida Statutes, a copy of Applicant's certification of a bond or trust account provided to the Florida Department of Agriculture and Consumer Services, regardless of aggregate prize amount; non-profit organizations operating pursuant to s. 849.0935, Florida Statutes are exempt from this provision.

(iii) a copy of each Simulated Gambling Facility's Surety bond or Statement of Trust Account in an amount equal to the total announced value of prizes offered or \$50,000.00, whichever is less. Non-profit organizations shall not be exempt under this subsection.

A. A Statement of Trust Account must be printed on the official letterhead of the acknowledging financial institution and contain the following information:

1. Account number and date account was opened.
2. Name, location, and phone number of the financial institution.
3. Name of the game promotion and commencement date.
4. Dollar amount held in trust account.
5. Provision that prohibits the money from being withdrawn from the trust account except for verified payments to winners of the listed game promotion.

B. The Surety bond must have Leon County as the obligee on the bond.

~~(iii)~~(iv) a complete list of all products and services offered and the prices charged therefor;

~~(iv)~~(v) for every principal, officer, shareholder, and director of the Operator, a fingerprint card and a letter certifying the results of a national, Level 2 criminal background check, generated by the Leon County Sheriff's Office or Florida Department of Law Enforcement; and

~~(v)~~(vi) A a copy of the certification report issued by an independent testing laboratory verifying that the computer software that is used by the Operator to conduct a drawing by chance or game promotion in connection with the sale of a consumer product or service has been tested by an independent testing laboratory that has verified that it and is not a slot machine as defined by Florida law. The certification report must be provided to the County Administrator directly from the independent testing laboratory; and

(vii) a copy of the certification report issued by an independent testing laboratory that describes and verifies the manner in which the software that is used by the Operator to conduct a drawing by chance or game promotion works. The certification report must be provided to the County Administrator directly from the independent testing laboratory.

(2) Applicant shall provide a sworn affidavit containing the following:

(i) the identity of the Applicant and if the Applicant is:

A. an individual, his name, residence address, and date of birth;

- B. an unincorporated organization, the names, dates of birth, and residence addresses of its principals; or
 - C. a corporation, the corporate name, state of incorporation and the names, dates of birth, and residence addresses of its principal officers, directors, and shareholders; or
 - D. a limited liability company, the company name, state of incorporation and the names, dates of birth, and residence addresses of its members and managers;
- (ii) a description, including the number of simulated gambling devices;
 - (iii) a statement of whether any of the individuals listed has, within the ~~seven~~-five-year period immediately preceding the date of the application, been convicted of any felony under the laws of Florida, the United States, or any other state, and, if so, the particular criminal act involved and the place of conviction;
 - (iv) the street address of the simulated gambling facility;
 - (v) if the Applicant is a branch, chapter, lodge, or other local unit of a charitable organization or corporation, the name of the primary organization and the street address of its principal office; and
 - (vi) the name and address of an individual in Leon County who is authorized to receive notices from the County;
 - (vii) a statement certifying that all information on the application and any attachments thereto is true and that the Applicant understands that any misstatement of material fact in the application ~~will~~-may result in the denial of the permit or, if it has been issued, in the suspension or revocation of the permit; and

~~(3) Applicant shall file with County Administration the following:~~

~~(i) a copy of the sworn affidavit described in subsection (2) above;~~

~~(ii) a complete list of all products and services offered and the prices charged therefor;~~

~~(iii) a verification that the prices charged for the products and/or services constitute a reasonable market value; and~~

~~(iv) a copy of the certification report issued by an independent testing laboratory that describes and verifies the manner in which the software works.~~

(e) *Application Fee.* Each Applicant shall remit a non-refundable application fee of \$500.00.

(f) *Review of Application.*

(1) *Duration of Review.* Within sixty (60) days of receipt of an Applicant's completed permit application, the County Administrator or a designee shall grant or deny the application. If any principal, officer, shareholder or director of the Operator has a pending criminal case for an enumerated crime the County Administrator may delay its grant or denial of the permit until sixty (60) days after the final judgment.

(2) ~~Eligibility of Applicant. An Applicant is ineligible for a permit if: An application may be denied if, during the course of its review, the County Administrator determines that:~~

(i) within ~~seven~~ five (5) years of the date of the application, Applicant has been convicted of any felony under the laws of Florida, the United States, or any other state unless said violation would not constitute a crime in Florida;

(ii) within three (3) years of the date of the application, has had a permit under this Ordinance revoked or been convicted for a violation of this Ordinance;

(iii) the prices to be charged for the product(s) or service(s) offered, as listed on the permit application, do not constitute a reasonable market value; or

(iv) the application materials are incomplete or contain a misstatement of material fact untruthful;

~~The County Administrator shall deny the permit for any of the above reasons. If an Applicant satisfies all permit filing requirements and is not ineligible, the County Administrator shall approve the application.~~

(g) *Denial of Permit.* An Applicant whose permit application is denied may reapply at any time within thirty (30) days by completing all steps of the application procedure, including payment of a new application fee.

(h) *Permit fees.* The permit fee for simulated gambling facility shall be in accordance with the following schedule:

- (1) 1 to 20 devices - \$2,500.00
- (2) 21 to 40 devices - \$5,000.00
- (3) 41 to 60 devices - \$7,500.00
- (4) 61 to 80 devices - \$10,000.00
- (5) 81 to 100 devices - \$12,500.00

(i) *Inspection fee.* \$50.00 per simulated gambling device will be assessed annually.

(j) *Renewal of Existing Permit.* Existing permits shall be renewed upon compliance with this Ordinance, notwithstanding the total number of permits issued. The Permit Holder shall apply for the renewal permit no later than sixty (60) days and no sooner than one-hundred

twenty (120) days before the expiration of the current permit. The renewal permit application shall include all the materials and the application fee required for the issuance of an original permit, and shall include evidence of current lawfully existing operations consistent with the requirements of this Ordinance. Renewal permit applications shall be processed using the same procedure and standards as required for review of an original permit application but shall be processed within 30 days. Upon approval, Renewal permit applicants shall pay the same fees as set forth in subsection (h) above and said renewals shall be deemed denied if an eligible Applicant fails to pay these fees on or before the thirtieth (30th) day after approval, availability, and notice of the permit authorization.

(k) *Lost or destroyed permit.* The fee for a replacement permit shall be fifty dollars (\$50.00)

(l) *Revocation of Permit.* The County Administrator or a designee may revoke a permit for violation of any provision of this Ordinance, or if it is determined that the application contained a misstatement of material fact, or due to a Permit Holder's cessation of the use of simulated gambling devices during its normal business hours for at least fourteen (14) consecutive days. Prior to revocation, the County Administrator shall provide to the Permit Holder, through their individual in Leon County authorized to accept notices from the County, the following:

- (1) A written notice of intent to revoke the permit,
- (2) A fourteen (14) calendar day opportunity to cure the alleged violation, and
- (3) An opportunity to be heard prior to revocation.

Revocation shall not take place before ~~twenty one (21)~~ thirty (30) days after receipt of a notice of revocation is delivered to the Permit Holder and opportunities to cure and to be heard

are provided. The decision to revoke a permit shall be considered non-final agency action subject to appellate review by the Board of Adjustment and Appeals (“BOAA”). The decision of the BOAA shall constitute final agency action subject to judicial review. Any appeal of a revocation decision shall be made within ~~fifteen (15)~~ thirty (30) calendar days of receipt of a notice of revocation by filing a written notice of appeal with the Board of Adjustment and Appeals, along with an appeal fee of ~~\$960.00~~150.00. Failure to file written notice of appeal and appeal fee within the prescribed time period constitutes a waiver of the right to appeal.

Section 3. Chapter 11, Article XXIII, Section 11-808 of the Leon County Code of Laws is hereby amended to read as follows:

Sec. 11-808. Limitations on Operation of Business.

~~(e)~~(d) *Hours of Operation.* No simulated gambling facility shall be open for business between the hours of 2:00 a.m. and 7:00 a.m.

~~(e)~~(e) *Additional Restrictions.* No simulated gambling facility shall:

- (1) design, engage in, promote, or conduct a game wherein the winner may be predetermined or the game may be manipulated or rigged;
- (2) arbitrarily remove, disqualify, disallow or reject any entry;
- (3) fail to award any prize offered;
- (4) print, publish, or circulate literature or advertising material which is false, deceptive or misleading;
- (5) require an entry fee, payment or proof of purchase as a condition of entering any sweepstakes or game promotion; or
- ~~(6) cover facility windows with opaque or reflective window tinting.~~

~~(g)~~(f) *Additional Requirements.* An Operator of a simulated gambling facility shall:

(1) maintain a list of the names and addresses of all persons who have won prizes which have a value of more than \$25.00, the value of such prizes, and the dates when the prizes were won and keep the list at the facility for one (1) year;

~~(2) maintain a trust account or bond in an amount equal to the total announced value of the prizes offered or \$50,000.00, whichever is less.~~

~~(3)~~(2) display at the point of sale contact information related to gambling addiction treatment.

~~(h)~~(g) *Felony Convictions.* No person who has at any time in the previous 75 years been convicted of, or is currently under indictment or information for, any felony, shall be eligible to operate or manage a simulated gambling facility.

Section 4. Chapter 11, Article XXIII, Section 11-809 of the Leon County Code of Laws is hereby amended to read as follows:

Sec. 11-809. Safety and Security Requirements.

(f) Monday thru Friday during the hours of 5 p.m. to close and during the entire business day on Saturday and Sunday, maintain at least one armed security person, as defined in Sec. 11-801 of this Article licensed, armed security guard holding a Class "G" license issued by the Florida Department of Agriculture & Consumer Services; and

(g) Permit Holder must maintain reasonable safety standards, including but not limited to, lighted parking areas.

(h) may not cover facility windows with opaque or reflective window tinting, posters, flyers, or anything else that obstructs the exterior view into the interior of the facility.

(i) Ultraviolet (UV) windows, factory tinted windows and privacy windows are acceptable, provided that the interior of the facility is visible at all times from the exterior of the facility to include the curtilage.

Section 5. Chapter 11, Article XXIII, Section 11-814 of the Leon County Code of Laws is hereby amended to read as follows:

Sec. 11-814. Enforcement; Penalties.

(a) Any person who violates this article shall be punished as provided in section 1-9 of the Leon County Code of Laws. Each day the violation exists shall constitute a separate violation for the purposes of this Ordinance and shall be punishable as such.

(b) The Leon County Attorney's Office is authorized to pursue temporary or permanent injunctive relief or any other legal or equitable remedy authorized by law in courts of competent jurisdiction to cure, remove or end any activity which violates this article.

~~(c) Permittees shall have a private right of action to pursue all legal and equitable remedies necessary to ensure full compliance with this Ordinance against any other permittee, including but not limited to injunctive relief.~~

Secs. 11-815 – 11-825. Reserved.

Section 6. **Conflicts.**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, except to the extent of any conflicts with the Tallahassee-Leon County Comprehensive Plan as amended, which provisions shall prevail over any parts of this ordinance which are inconsistent, either in whole or in part, with the said Comprehensive Plan.

Section 7. **Severability.**

If any provisions or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.

Section 8. Effective Date. This ordinance shall have effective upon becoming law.

DONE, ADOPTED AND PASSED by the Board of County Commissioners of Leon County, Florida this 24th day of January, 2012.

LEON COUNTY, FLORIDA



By: Akin S. Akinyemi
Akin S. Akinyemi, Chairman
Board of County Commissioners

ATTESTED BY:
BOB INZER, CLERK OF THE COURT
LEON COUNTY, FLORIDA

By: [Signature]
Bob Inzer, Clerk of Court
Leon County, Florida

APPROVED AS TO FORM:
COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA

By: [Signature]
Herbert W. A. Thiele, Esq.
County Attorney