ORDINANCE NO. 2011-_____

AN ORDINANCE PROHIBITING THE USE OF SIMULATED GAMBLING DEVICES; ESTABLISHING A NEW ARTICLE XXIII ENTITLED "PROHIBITION OF SIMULATED GAMBLING DEVICES" OF CHAPTER 11 OF THE LEON COUNTY CODE OF LAWS, TO PROHIBIT THE USE OF SIMULATED GAMBLING DEVICES; ESTABLISHING EXEMPTIONS; PROVIDING FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF; PROVIDING FOR CONFLICTS OF LAW; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article X, Section 7 of the 1968 Florida Constitution prohibits lotteries within Florida, other than the types of pari-mutuel pools authorized by law as of the effective date of the 1968 Florida Constitution; and,

WHEREAS, Article X, Section 23, of the Florida Constitution, as adopted in a 2004 Amendment to the Florida Constitution, authorizes slot machine gaming only in certain eligible licensed facilities in Broward and Miami-Dade Counties, Florida, and such authorization is subject to the requirements and conditions set forth in Article X, Section 23 of the Florida Constitution and the extensive regulatory requirements of Chapter 551, Florida Statutes; and,

WHEREAS, neither the Florida Constitution or the Florida Statutes authorize or permit slot machine gambling or any activity resembling slot machine gambling or any form of gambling involving computer or other simulations of gambling activity in Leon County, Florida; and,

WHEREAS, computer or video displays of spinning reels or other simulations of a game or games ordinarily played on a slot machine, or in a casino or otherwise in connection with gambling and which show the results of raffles, sweepstakes, contests or other promotions (hereinafter collectively referred to in these recitals as "simulated gambling devices") were not

among the types of pari-mutuel pools authorized by law as of the effective date of the 1968 Florida Constitution; and,

WHEREAS, the technology necessary to facilitate simulated gambling devise effectively did not even generally exist in 1968; and,

WHEREAS, there is presently in Leon County an increasing proliferation of establishments that utilize simulated gambling devices for commercial gain; and,

WHEREAS, the Board of County Commissioners of Leon County, Florida (the "Board"), desiring to protect individual rights, while at the same time affording opportunity for the fullest development of the individual, and promoting the health, safety, education, and welfare of the people, including the elderly and economically disadvantaged, and the children of Leon County who are our most precious and valuable resource, finds that Leon County has a compelling interest in protecting its citizens, and in particular its elderly, economically disadvantaged, and children from certain activities and influences which can result in irreparable harm, including simulated gambling devices; and,

WHEREAS, the Board recognizes that while the State of Florida has authorized slot machine gaming at licensed facilities in certain areas outside of Leon County, it also recognizes that establishments that utilize simulated gambling devices, including but not limited to devices that simulate slot machines, can deceive members of the public, including the elderly, the economically disadvantaged, and children, into believing that they are engaging in a lawfully permitted gaming activity; and,

WHEREAS, the use of simulated gambling devices is therefore inherently deceptive; and,

1 WHEREAS, due to their inherently deceptive nature, establishments that utilize
2 simulated gambling devices and exploit the citizens of Leon County by utilizing simulated
3 gambling devices, are adverse to the quality of life, tone of commerce, and total community
4 environment in Leon County, and have an unreasonable adverse effect upon the elderly, the
5 economically disadvantaged, and other citizens of Leon County; and,

6 WHEREAS, the Board is also charged with the responsibility of protecting and assisting
7 its citizens who suffer from compulsive or problem gambling behavior; and,

8 WHEREAS, there is a direct relationship between these establishments that utilize
9 simulated gambling devices and disturbances of the peace and good order of the community, and
10 the concurrence of these activities is hazardous to the health and safety of the persons in
11 attendance; and,

12 WHEREAS, in order to ensure the uniform enforcement of existing laws, to preserve the
13 public peace and good order, and to safeguard the health, safety, morals and welfare of the
14 community and citizens thereof, it is necessary and advisable to prohibit the use of simulated
15 gambling devices, unless otherwise exempted by law or ordinance; and,

16 WHEREAS, the Florida Constitution and other laws of Florida do not currently authorize
17 casino gambling within Leon County and no vote of the electorate of Leon County authorizing
18 casino gambling in Leon County has taken place; and,

19 WHEREAS, the use of simulated gambling devices are generally forms of casino
20 gambling; and

21 WHEREAS, in terms of the negative impact recited herein, there is little or no material
22 difference between the effect of allowing slot machines and allowing the use of simulated
23 gambling devices;

1 BE IT ORDAINED by the Board of County Commissioners of Leon County, Florida, as
2 follows, that:
3 **Section 1.** Chapter 11 of the Leon County Code of Laws, is hereby amended by adding a
4 New Article XXIII to be entitled "Prohibition of Simulated Gambling Devices," which shall read
5 as follows:
6 PROHIBITION OF SIMULATED GAMBLING DEVICES
7 Sec. 11-800. Legislative Authorization. This part is enacted in the interest of the public
8 health, peace, safety, morals and general welfare of the citizens and inhabitants of Leon County,
9 Florida, pursuant to Article VIII, Section 1(g), Florida Constitution and Section 125.01, Florida
10 Statutes (2009), and the Charter of Leon County, Florida..
11 Sec. 11-801. Definitions. The following definitions apply to this Chapter 11, Article
12 XXIII:
13 (a) "Person" means an individual, association, partnership, joint venture, corporation,
14 or any other type of organization, whether conducted for profit or not for profit, or a director,
15 executive, officer or manager of an association, partnership, joint venture, corporation or other
16 organization.
17 (b) "Simulated gambling device" means any device that, upon connection
18 with an object, is available to play or operate a computer simulation of any game, and which may
19 deliver or entitle the person or persons playing or operating the device to a payoff. The
20 following rules of construction apply to this definition of "simulated gambling device":
21 (1) The term "device" means any mechanical or electrical contrivance,
22 computer, terminal, video or other equipment that may or may not be capable of downloading
23 games from a central server system, machine, computer or other device or equipment. The term

1 "device" also includes any associated equipment necessary to conduct the operation of the
2 device.
3 (2) The term "upon connection with" means insertion, swiping, passing in
4 range, or any other technical means of physically or electromagnetically connecting an object to
5 a device.
6 (3) The term "object" means a coin, bill, ticket, token, card or similar object,
7 obtained as a bonus or supplement to another transaction involving the payment of consideration.
8 (4) The terms "play or operate" or "play or operation" includes the use of
9 skill, the application of the element of chance, or both.
10 (5) The term "computer simulation" includes simulation by means of a
11 computer, computer system, video display, video system or any other form of electronic video
12 presentation.
13 (6) The term "game" includes slot machines, poker, bingo, craps, keno, any
14 other type of game ordinarily played in a casino, a game involving the display of the results of a
15 raffle, sweepstakes, drawing, contest or other promotion, lotto, sweepstakes, and any other game
16 associated with gambling or which could be associated with gambling, but the term "game" does
17 not necessarily imply gambling as that term may be defined elsewhere.
18 (7) The term "payoff" means cash, monetary or other credit, billets, tickets,
19 tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of
20 value whatsoever, whether made automatically from the machine or manually.
21 (8) The use of the word "gambling" in the term "simulated gambling device"
22 is for convenience of reference only. The term "simulated gambling device" as used in this Part

1 is defined exclusively by this subsection and does not incorporate or imply any other legal
2 definition or requirement applicable to gambling that may be found elsewhere.
3 (c) "Slot machine" has the same meaning as specified in Section 551.102_____,
4 Florida Statutes or as may be amended from time to time.
5 Sec. 11-802. Area of Enforcement. The Board is acting herein as the governing body
6 for Leon County, Florida, and this Part shall be effective within the boundaries of Leon County,
7 Florida.
8 Sec. 11-803. Intent. The intent of the Board acting as the governing body of Leon
9 County, Florida in adopting this Part is to prohibit broadly the possession or use of simulated
10 gambling devices, including any related activity or behavior which can be reasonably construed
11 to be the use of simulated gambling devices. Further, the Board in prohibiting simulated
12 gambling devices in no way intends to approve the use of actual slot machines, other forms of
13 casino gambling or other types of gambling devices. In addition, this prohibition is aimed
14 directly at devices that simulate gambling activity, regardless of whether the devices or the
15 simulations in and of themselves can be said to constitute gambling as that term may be defined
16 elsewhere.
17 Sec. 11-804. Prohibition of Simulated Gambling Devices. It is unlawful in Leon County
18 for any person to design, develop, manage, supervise, maintain, provide, produce, possess or use
19 one or multiple simulated gambling devices. Each individual act to design, develop, manage,
20 supervise, maintain, provide, produce, possess or use a simulated gambling device constitutes a
21 separate violation of this Section.

1 Sec. 11-805. Exemptions.

2 (a) This Part does not prohibit an individual's personal, recreational, and non-
3 commercial ownership, possession, play, operation or use of a device which could be construed
4 to be a simulated gambling device.

5 (b) This Part does not prohibit the ownership, possession, play, operation or use of
6 any device expressly permitted by the Florida Statutes and not otherwise prohibited by the
7 Florida Constitution, except that devices permitted by Article X, Section 23 of the Florida
8 Constitution and Chapter 551, Florida Statutes, in Broward and Miami-Dade County only are not
9 permitted by this Part.

10 (c) This Part does not prohibit a religious or charitable organization from conducting
11 a fund raising activity involving gaming, provided the religious or charitable organization does
12 not conduct the activity more than twice in one (1) calendar year, the organization provides
13 advance written notice to the Leon County Sheriff of the date, time, place, and nature of such
14 activity and who will be conducting it, and the activity is not otherwise unlawful.

15 Sec. 11-806. Conflict with State Law. Nothing in this Part is intended to conflict with
16 the provisions of the Florida Constitution or Chapter 849, Florida Statutes, concerning gambling.
17 In the event of a direct and express conflict between this Part and either the Florida Constitution
18 or Chapter 849, Florida Statutes, then the provisions of the Florida Constitution or Chapter 849,
19 Florida Statutes, as applicable, control.

20 Sec. 11-807. Applicability to Municipalities. The provisions of this Part are to be
21 applied and enforced within all unincorporated areas of Leon County as well as within all
22 incorporated areas of Leon County to the extent that there are no conflicting municipal

1 regulations. In the event a municipal regulation conflicts with this Part then the municipal
2 regulation will prevail within the jurisdiction of that municipality.
3 Sec. 11-808. Civil Penalties and Injunctive Relief.
4 (a) Civil Penalties. Any person who violates this Part is subject to the fine provisions
5 of Chapter 11 of this Code. Each simulated gambling device, possession or use thereof,
6 constitutes an individual offense for the purpose of Chapter 53.
7 (b) Injunctive Relief. The Leon County Attorney's Office is authorized to pursue
8 temporary or permanent injunctive relief or any other legal or equitable remedy authorized by
9 law in courts of competent jurisdiction to cure, remove or end any activity which violates this
10 Part.
11 **Section 2. Conflicts.**
12 All ordinances or parts of ordinances in conflict with the provisions of this ordinance are
13 hereby repealed to the extent of such conflict, except to the extent of any conflicts with the
14 Tallahassee-Leon County 2010 Comprehensive Plan as amended, which provisions shall prevail
15 over any parts of this ordinance which are inconsistent, either in whole or in part, with the said
16 Comprehensive Plan.
17 **Section 3. Severability.**
18 If any provisions or portion of this Ordinance is declared by any court of competent
19 jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and
20 portions of this Ordinance shall remain in full force and effect.
21 **Section 4. Effective Date.**
22 This ordinance shall have effect upon becoming law.
23

DONE, ADOPTED AND PASSED by the Board of County Commissioners of Leon County, Florida this _____ day of _____, 2011.

LEON COUNTY, FLORIDA

By:_____
John Dailey, Chairman
Board of County Commissioners

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

By:_____
Bob Inzer, Clerk of Court
Leon County, Florida

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

By:_____
Herbert W. A. Thiele, Esq.
County Attorney