

ORDINANCE NO. 2021-2211

AN ORDINANCE OF THE CITY OF LAKE CITY, FLORIDA, ADDING ARTICLE IX TO CHAPTER 26 OF THE CITY CODE; PROVIDING FOR THE PROHIBITION OF SIMULATED GAMBLING DEVICES; PROVIDING FOR THE IDENTIFICATION OF SIMULATED GAMBLING ESTABLISHMENTS AS A PUBLIC NUISANCE AND NOXIOUS USE; PROVIDING FOR THE PROHIBITION OF THE USE OF SIMULATED GAMBLING DEVICES FOR CERTAIN CIRCUMSTANCES; PROVIDING FOR THE CREATION OF AN ENFORCEMENT MECHANISM FOR VIOLATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, gaming and gambling are not presently lawful in the City of Lake City, Florida (hereinafter the "City"); and

WHEREAS, presently throughout the state, there is a proliferation of establishments that utilize computer or video displays of games, contests, challenges, and other electronic simulations which are or are of the type of games generally associated with legalized casino or gambling outlets or which show, or purport to show, the results of raffles, sweepstakes, contests, or business game promotions (hereinafter collectively known as "simulated gambling devices") for commercial or pecuniary gain; and

WHEREAS, the City Council of the City of Lake City, Florida (hereinafter the "City Council") finds that establishments that utilize simulated gambling devices can deceive many City residents, including the elderly, the economically disadvantaged, the uneducated, and the unsuspecting into believing such activities are legal and lawfully permitted; and

WHEREAS, the City Council finds that simulated gambling devices are deceptive; and

WHEREAS, due to the inherently deceptive nature of simulated gambling devices, establishments that utilize simulated gambling devices are adverse to the quality of life, tone of commerce, and total community environment in the City; and

WHEREAS, Columbia County, Florida, on April 15, 2021, adopted Ordinance No. 2021-06, which based upon findings banned simulated gambling establishments; and

WHEREAS, Columbia County, Florida, in the referenced Ordinance, detailed criminal activity associated with simulated gambling devices; and

WHEREAS, since the adoption of Ordinance No. 2021-06 by Columbia County, Florida, the number of inquiries or applications submitted to the City for the use of simulated gambling establishments has increased; and

WHEREAS, the City Council has reviewed the findings in Ordinance No. 2021-06 of Columbia County, Florida, and incorporates the findings herein; and

WHEREAS, the City Council finds that a correlation exists between establishments that utilize simulated gambling devices and crime or disturbances of the peace and good order of the community, and those activities are hazardous to the public health, safety, and general welfare of the citizens of the City and constitutes a public nuisance; and

WHEREAS, the City Council has determined that the endangerment of both the public and first responders required to react to this ongoing criminal activity is too significant to allow any public or commercial use of simulated gambling devices to continue; and

WHEREAS, the City Council finds that the operation of simulated gambling establishments constitutes a public nuisance; and

WHEREAS, the City Council finds that the continued operation of simulated gambling establishments create an immediate and ongoing hazard to the public health, safety, and welfare associated with the operation of simulated gambling establishments; and

WHEREAS, the City Council finds that there is a legitimate public purpose in eliminating simulated gambling establishments from operating in the City.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AS FOLLOWS:

SECTION 1. The above recitals are all true and accurate and are hereby incorporated herein and made a part of this resolution.

SECTION 2. That the Code of the City of Lake City, Florida, is hereby amended by adding an article to be numbered IX, to chapter 26, which article reads as follows:

ARTICLE IX. – SIMULATED GAMBLING DEVICES

Sec. 26-401. - FINDINGS AND STATEMENT OF INTENT

- (a) The recitals of this Ordinance are hereby adopted as the City Council's Findings of Fact; and
- (b) The City Council's original intent was to focus on the equipment that appears to violate State law; and it is the intent of the City Council to enact this ordinance to abate a public nuisance and to prohibit the noxious use associated with operation of simulated gambling establishments.

Sec. 26-402. - LEGISLATIVE AUTHORIZATION

This Article is enacted in the interest of the public health, peace, safety, and general welfare of the citizens, inhabitants and visitors of the City.

Sec. 26-403. - DEFINITIONS

The following definitions apply to this Ordinance:

- (a) "Person" means an individual, association, partnership, joint venture, corporation, or any other type of organization, whether conducted for profit or not for profit, or a director,

executive, officer or manager of an association, partnership, joint venture, corporation or other organization.

(b) “Simulated gambling device” means any device that, upon connection with an object, is available to play or operate a computer simulation of any game, where the play or operation of the device may deliver or entitle the person or persons playing or operating the device to a payoff directly or indirectly from the owner or operator of the device or that person’s designee. The following rules of construction apply to this definition of “simulated gambling device”:

(1) The term “device” means any mechanical or electrical contrivance, computer, terminal, video or other equipment that may or may not be capable of downloading games from a central server system or stored locally or on other hard drives, machine, computer or other device or equipment. The term “device” also includes any associated equipment necessary to conduct the operation of the device.

(2) The term “upon connection with” means insertion, swiping, passing in range, or any other technical means of physically or electromagnetically connecting an object to a device, including by the manual input by any person of characters, numbers, or any combination thereof, or other code for the purpose of accessing or activating a device, or any other mechanism or method by which the object provides access to the device.

(3) The term “object” means a coin, bill, ticket, token, card, characters, numbers, or any combination thereof, other code, or any other tangible or intangible access mechanism or method, obtained directly or indirectly

through payment of consideration, or obtained as a bonus or supplement to another transaction involving the payment of consideration.

(4) The terms “play or operate” or “play or operation” includes the use of skill, the application of the element of chance, or both.

(5) The term “computer simulation” includes simulations by means of a computer, computer system, video display, video system or any other form of electronic video presentation.

(6) The term “game” includes slot machines, poker, bingo, craps, keno, “fish”, any other type of game ordinarily played in a casino, a game involving the display of the results of a raffle, sweepstakes, drawing, contest or other promotion, lotto, sweepstakes, and any other game associated with gambling or which could be associated with gambling, but the term “game” does not necessarily imply gambling as that term may be defined elsewhere.

(7) The term “payoff” means cash, monetary or other credit, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether made automatically from the machine or manually.

(8) The use of the word “gambling” in the term “simulated gambling device” as used in this Article is defined exclusively by this subsection and does not incorporate or imply any other legal definition or requirement applicable to gambling that may be found elsewhere.

(c) "Slot machine" has the same meaning as specified in Chapter 551, Florida Statutes.

Sec. 26-404. - AREA OF ENFORCEMENT

The City Council is acting herein as the governing body for the City, and this Ordinance shall be effective within the boundaries of the City.

Sec. 26-405. - INTENT

The City Council's intent in adopting this Ordinance is to broadly prohibit the possession or use of simulated gambling devices not authorized for legal use under Florida law, including any related activity or behavior which can be reasonably construed to be the use of simulated gambling devices. Further, the Council in prohibiting simulated gambling devices in no way intends to locally approve the use of actual slot machines, other forms of casino gambling or other types of gambling devices. In addition, this prohibition is aimed directly at devices that simulate gambling activity, regardless of whether the devices or the simulations in and of themselves can be said to constitute gambling as that term may be defined elsewhere.

Sec. 26-406. - PROHIBITION OF SIMULATED GAMBLING DEVICES

It is unlawful for any person to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices for commercial, promotional or pecuniary gain or purpose. Each individual act to manage, supervise, maintain, provide, produce, possess or use a simulated gambling device constitutes a separate violation of this Ordinance.

Sec. 26-407. - EXEMPTIONS

(a) This Ordinance does not prohibit an individual's personal, recreational, and non-commercial ownership, possession, play, operation or use of a device which could be construed to be a

simulated gambling device.

(b) This Ordinance does not prohibit the ownership, possession, play, operation or use of any device expressly permitted by Section 546.10 or other provision of the Florida Statutes and is not otherwise prohibited by Article X, Section 23 of the Florida Constitution and Chapter 551, Florida Statutes, in Broward and Miami-Dade County only are not permitted by this Ordinance.

(c) This Ordinance does not prohibit a religious or charitable organization from conducting a fund raising activity involving simulated gambling, provided the religious or charitable organization does not conduct the activity more than twice in one calendar year for no more than six (6) hours per fund raising activity, the organization provides advance written notice to the Police Department of the date, time, place, and nature of such activity and who will be conducting it, and the activity is not otherwise unlawful.

(d) This article does not apply to pari-mutuel facilities, operated by a holder of a pari-mutuel permit issued pursuant to F.S. ch. 550, and Fla. Admin. Code 61D, or to any devices or games therein.

Sec. 26-408. - CONFLICT WITH STATE LAW

Nothing in this Ordinance is intended to conflict with the provisions of the Florida Constitution or Chapter 849, Florida Statutes, concerning gambling. In the event of a direct and express conflict between this Ordinance and either the Florida Constitution or Chapter 849, Florida Statutes, then the provisions of the Florida Constitution or Chapter 849, Florida Statutes, as applicable, control.

Sec. 26-409. - ENFORCEMENT; CIVIL REMEDIES

(a) The Growth Management Department, the Fire Department, and the Police Department shall have concurrent jurisdiction to enforce the requirements of this Ordinance as follows:

- (1) By the Lake City Code Enforcement Board pursuant to the authority granted by Florida Statutes, Chapter 162, and Article X, Chapter 26, of the City Code. However, in no instance shall a civil penalty less than \$250 per violation per day for a first violation be imposed and not less than \$500 per day for a repeat violation;
- (2) By citation for civil penalties pursuant to the authority granted by Florida Statutes, Chapter 162 and Article X, Chapter 26, of the City Code, however, in no instance shall a civil penalty less than \$250 per violation per day for a first violation be imposed and not less than \$500 per day for a repeat violation;
- (3) By action for civil penalties through a court of competent jurisdiction as provided for in Part II, Chapter 162, Florida Statutes;
- (4) By an action for injunctive relief through a court of competent jurisdiction.

(b) Upon notice from any agency authorized to enforce this Ordinance, occupancy or operation of any structure or property where any simulated gambling device is being used or operated in violation of this Ordinance shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property or to his or her agent or to the person operating any establishment where any simulated gambling device is being used or operated in

violation of the Ordinance. Visiting, operating, or managing a location in violation of a cease and desist order constitutes a second degree misdemeanor, trespass after warning, in violation of Chapter 810, Florida Statutes. Failure to comply with the terms and conditions of a cease and desist order issued pursuant to this Ordinance shall constitute an additional violation of this Ordinance. Cease and desist orders may be lifted by the issuing agency upon demonstration that all simulated gambling devices have been removed and all applicable civil penalties have been paid.

(c) The provisions of this Ordinance may also be enforced through a private cause of action for injunctive relief filed by any adversely affected person, including the Office of the State Attorney. If such action is successful, a judgment for reasonable attorney's fees and costs may be awarded by the Court.

SECTION 3. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 4. All ordinances, resolutions, official determinations or parts thereof previously adopted or entered by the City or any of its officials and in conflict with this ordinance are hereby repealed to the extent inconsistent herewith.

SECTION 5. It is the intention of the City Council of the City of Lake City, Florida, that the provisions of this ordinance shall become and be made a part of the Code of the City of Lake City, Florida, and the sections may be renumbered in order to accomplish such intentions.

SECTION 6. This ordinance shall take effect immediately upon its adoption.

PASSED upon first reading this _____ day of _____ 2021.

NOTICE PUBLISHED on this _____ day of _____ 2021.

PASSED AND ADOPTED on the second and final reading this _____ day of _____ 2021.

CITY OF LAKE CITY, FLORIDA

By: _____
Stephen M. Witt, Mayor

ATTEST:

APPROVED AS TO FORM AND
LEGALITY:

By: _____
Audrey E. Sikes, City Clerk

By: _____
Frederick L. Koberlein, Jr.,
City Attorney