

## ARTICLE V. SIMULATED GAMBLING DEVICES AND INTERNET CAFÉS

### Sec. 11-200. Authority; intent; purpose; scope.

- (a) This article is adopted in the interest of the public health, safety, and general welfare of the citizens and inhabitants of the county, pursuant to F.S. Ch. 125 and Florida Constitution Article VIII.
- (b) The intent and purpose of this article is to provide for regulation of simulated gambling devices and internet cafés, decrease the unwanted secondary effects associated with the operation of internet cafés, authorize the use of private property for lawful purposes, and deter illegal gambling. To do this, the county intends 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.
- (c) This article applies in unincorporated Marion County. It does not apply within the cities of Ocala, Belleview, or Dunnellon, or the towns of McIntosh or Reddick.
- (d) Family amusement games or devices are exempt from the provisions of this article.
- (e) Pari-mutuel facilities, operated by a holder of a pari-mutuel permit issued pursuant to F.S. Ch. 550, and Fla. Admin. Code 61D, and devices located therein, are exempt from the provisions of this article.

(Ord. No. 21-03, § 2, 2-2-2021)

### Sec. 11-201. Definitions.

For the purpose of this article, certain terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise.

*COO* shall mean a certificate of occupancy issued pursuant to chapter 5 of this Code.

*Internet café* means any location at which simulated gambling devices are made accessible for use by a person, except those places specifically excluded from this article as set forth in in section 11-203.

*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.

*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,

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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" is for convenience of reference only. The term "simulated gambling device" as used in this part 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.
- (9) For the purpose of determining the number of simulated gambling devices, each seat, terminal, or other interface at which a separate individual may use the device, shall be counted as a separate and distinct device, regardless of whether the device or any seat, terminal, or other interface is functional. For example, if a single table has six (6) chairs at which six (6) separate persons can play a game, on a common screen/display or otherwise, it shall be counted as six (6) devices; if a stand-up game has three (3) terminals or interfaces at which three (3) people can use the device, it shall be counted as three (3) devices.

*Slot machine* has the same meaning as specified in F.S. Ch. 551.

(Ord. No. 21-03, § 2, 2-2-2021)

### **Sec. 11-202. Prohibition of simulated gambling devices.**

- (a) It is unlawful for any person to manage, supervise, maintain, provide, produce, possess, or use a simulated gambling device for commercial, promotional or pecuniary gain or purpose.
- (b) For determining the allowable unit of prosecution, it is the intent of the county that each individual act of managing, supervising, maintaining, providing, producing, possessing, or using a simulated gambling device constitutes a separate violation of this section:

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- (1) For example, if a person possesses five (5) simulated gambling devices, that person would be subject to a separate penalty for each of the five (5) devices;
  - (2) For example, if a person possesses two (2) simulated gambling devices that the person sells to another individual, the person will have committed four (4) acts in violation of this section, and would be subject to a separate penalty for possessing each of the two (2) devices and a separate sanction for providing each of the two (2) devices.
  - (3) For example, if a person employed at an internet café supervises the establishment and the establishment has ten (10) simulated gambling devices, that person would be subject to a separate penalty for each of the ten (10) devices.
- (c) Any establishment or property which was lawfully in possession of either a COO or was operating unlawfully prior to the effective date of this article shall immediately cease the use of simulated gambling devices regulated by this article upon the effective date of this article.

(Ord. No. 21-03, § 2, 2-2-2021)

### **Sec. 11-203. Exemptions.**

- (a) This part 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 part does not prohibit the ownership, possession, play, operation or use of any device expressly permitted by F.S. § 546.10, or other provision of the Florida Statutes, except that devices permitted by Article X, Section 23 of the Florida Constitution and F.S. Ch. 551, in Broward and Miami-Dade County only are not permitted by this part.
- (c) This part does not prohibit a religious or charitable organization from conducting a fund raising activity involving gaming, provided the religious or charitable organization does not conduct the activity more than twice in one (1) calendar year for no more than six (6) hours per fund raising activity, the organization provides advance written notice to the sheriff 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.

(Ord. No. 21-03, § 2, 2-2-2021)

### **Sec. 11-204. Conflict with state law.**

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

(Ord. No. 21-03, § 2, 2-2-2021)

### **Sec. 11-205. Enforcement; penalties; civil remedies.**

- (a) The sheriff and the county code enforcement, as outlined in a written enforcement policy between those agencies, shall have jurisdiction to investigate and enforce the requirements of this article, as follows:
  - (1) By the issuance of a cease-and-desist order. Upon notice from the sheriff, occupancy or operation of any structure or property where any simulated gambling device is being used or operated in violation

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of this section 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 section. Failure to comply with the terms and conditions of a cease and desist order issued pursuant to this section shall constitute an additional violation of this section. Cease and desist orders may be lifted by the sheriff upon demonstration that all simulated gambling devices have been removed and all applicable civil penalties have been paid.

- (2) By citation for civil penalties, as provided in section 2-211 of this Code, as it may be amended. Civil penalties assessed pursuant to this subsection shall be two hundred fifty dollars (\$250.00) per violation per day for each violation.
- (3) A violation of this article that is a civil violation may be reclassified to a misdemeanor of the second degree, punishable by up to sixty (60) days imprisonment in the county jail and a fine of up to five hundred dollars (\$500.00), if, at the time of the violation:
  - a. The violator manages, supervises, maintains, provides, produces, possesses, or uses five (5) or more simulated gambling devices for commercial, promotional, or pecuniary gain or purpose;
  - b. The violator has one (1) or more prior convictions for a violation of this article or has been found, on one (1) or more occasions, to have committed a violation of this article. For the purpose of this subsection, "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered. A person may be found to have committed a violation of this article by any court or board empowered to impose a sanction for violation of this article.
  - c. The violator has one (1) or more prior convictions for a violation of any provision of F.S. Ch. 849. For the purpose of this subsection, "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered;
  - d. The violator has previously entered in any pretrial intervention program or diversion program for any violation of this article, a substantially similar ordinance of another jurisdiction, or any provision of F.S. Ch. 849; or
  - e. The violator is in violation of a cease-and-desist order issued pursuant to this article at the time the violations occur.
- (4) By an action for injunctive relief through a court of competent jurisdiction. An action for injunctive relief may be brought by the board of county commissioners, the state attorney, or any substantially affected person. If such action is successful, a judgment for reasonable attorney's fees and costs may be awarded by the court.
- (5) Any person against whom a civil penalty is assessed pursuant to this article shall be prohibited from applying for any certificate of occupancy for any property until such civil penalty has been paid in full. Prohibitions against application for a certificate of occupancy contemplated in this section shall not become effective until the judgment requiring payment of the civil penalty becomes final.

(Ord. No. 21-03, § 2, 2-2-2021)

**Secs. 11-206—11-220. Reserved.**