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7 **ORDINANCE**
8 **NUMBER 2022-4**
9

10 **AN ORDINANCE OF LEVY COUNTY, FLORIDA, AMENDING THE CODE**
11 **OF ORDINANCES OF LEVY COUNTY, FLORIDA RELATING TO**
12 **SIMULATED GAMBLING DEVICES AND INTERNET CAFES; BY**
13 **CREATING A NEW ARTICLE IV. TITLED “SIMULATED GAMBLING**
14 **DEVICES” WITHIN CHAPTER 22; BY AMENDING SEC. 2-140 TO**
15 **PROVIDE CIVIL PENALTIES FOR VIOLATIONS; ADOPTING FINDINGS**
16 **OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A**
17 **REPEALING CLAUSE; PROVIDING FOR INCLUSION IN THE CODE**
18 **AND PROVIDING DIRECTIONS TO THE CLERK AND AN EFFECTIVE**
19 **DATE.**
20

21
22 **WHEREAS**, Chapter 125, Florida Statutes, confers upon counties the authority to
23 adopt ordinances to protect the public health, safety and welfare; and
24

25 **WHEREAS**, except as authorized by Chapter 550 and Chapter 849, Florida
26 Statutes, gaming and gambling are unlawful in the State of Florida; and
27

28 **WHEREAS**, throughout the State there has been a proliferation of establishments
29 that utilize computer or video display devices offering games, contests, challenges and
30 other electronic simulations which are, or are of the type of, games generally associated
31 with legalized casino or gambling outlets, or which show, or purport to show, the results
32 of raffles, sweepstakes, contests, or business game promotions for commercial or
33 pecuniary gain (such devices being referred to as “simulated gambling devices”); and
34

35 **WHEREAS**, establishments that offer simulated gambling devices for use by the
36 public are commonly referred to as “internet cafes”; and
37

38 **WHEREAS**, the Levy County Board of County Commissioners (the “Board”) is
39 concerned that simulated gambling devices are inherently deceptive as they lead the
40 public into believing that the use of such devices and engagement in such activities are
41 legal and lawfully permitted; and
42

43 **WHEREAS**, the Board is concerned by the reports of surrounding counties that
44 have seen significant amounts of felony criminal activity, including violent crimes, armed

Note: Additions shown underlined, deletions shown ~~stricken~~.

1 robbery, and burglaries at internet cafes; and

2
3 **WHEREAS**, in April 2021, Columbia County recited in Ordinance No. 2021-06 that
4 no fewer than thirty internet cafes were doing business in unincorporated Columbia
5 County, and the frequency of incidents of reported violent crime was measurably higher
6 at internet cafes versus other types of business conducted in Columbia County, to wit
7 there were 1,118 reported incidents among known operating internet cafes, including one
8 homicide, one battery, five burglaries, and eighteen incidents involving robbery, theft, or
9 fraud; and

10
11 **WHEREAS**, in February 2021, Marion County recited in Ordinance No. 2021-03
12 that since 2017, its Unified Drug Enforcement Strike Team had conducted undercover
13 operations at not less than 25 internet cafes, and as a result of each undercover
14 operation, the Unified Drug Enforcement Strike Team established probable cause to
15 believe that the laws against gambling were being violated at the internet cafes through
16 the use of simulated gambling machines. Following those undercover operations, the
17 Unified Drug Enforcement Strike Team and its constituent agencies either executed
18 search warrants at the internet cafes or sent letters to the operators of the internet cafes
19 warning of the possibility of civil asset forfeiture and criminal penalties, both of which
20 resulted in the closure of the internet cafes in question. However, the internet cafes that
21 were closed pursuant to these operations either reopened or were replaced in the
22 marketplace by other establishments providing offering the use of simulated gambling
23 devices, resulting in no appreciable decline in the number of internet cafes operating in
24 Marion County; and

25
26 **WHEREAS**, based on these reports from other counties, the Board finds that a
27 correlation exists between establishments that offer the use of simulated gambling
28 devices and crime or disturbances of the peace and good order of the community and
29 finds that such establishments are injurious to the public health, safety and welfare; and

30
31 **WHEREAS**, the Florida Legislature enacted Ch. 2019-167, Laws of Florida,
32 effective October 1, 2019, which reduced the penalty in Section 849.01, Florida Statutes,
33 from a third-degree felony to a second-degree misdemeanor for certain criminal offenses
34 relating to keeping or maintaining gambling rooms, thereby weakening the deterrent effect
35 of laws that previously operated to dissuade persons from committing gambling-related
36 offenses; and

37
38 **WHEREAS**, based on these reports from other counties and the lessening of state
39 law penalties, the Board has determined that the use of law enforcement and public safety
40 resources to investigate, monitor, and dismantle internet cafes that serve as a location
41 for ongoing criminal activity in violation of Chapter 849, Florida Statutes, would divert
42 limited and valuable law enforcement and public safety resources and would not likely
43 appreciably decrease such operations and associated crime; and

44
Note: Additions shown underlined, deletions shown ~~stricken~~.

1 **WHEREAS**, the Board finds that the operation of any simulated gambling
2 establishment constitutes a public nuisance and that there is a legitimate public purpose
3 served by prohibiting simulated gambling devices from being operated in Levy County.
4

5 **NOW THEREFORE, BE IT ORDAINED** by the Board of County Commissioners
6 of Levy County, Florida, that:
7

8 **SECTION 1.** A new Article IV. titled “Simulated Gambling Devices” is created
9 within Chapter 22 of the Levy County Code to read as follows:
10

11 **Chapter 22 – Businesses**

12 **Article IV. – Simulated Gambling Devices**

13 **Sec. 22-110. – Authority; intent; purpose; scope.**

14 (a) This article is adopted to protect the public health, safety, and welfare, pursuant to
15 the county’s authority set forth in Chapter 125, Florida Statutes and Article VIII of the
16 Florida Constitution.
17

18 (b) The intent and purpose of this article is to prohibit simulated gambling devices and
19 internet cafes, avoid the unwanted secondary effects associated with the operation of
20 internet cafes and deter illegal gambling. To do this, the county intends to broadly prohibit
21 the possession or use of simulated gambling devices not authorized for legal use under
22 Florida law, including any related activity or behavior which can be reasonably construed
23 to be the use of simulated gambling devices. Further, the board in prohibiting simulated
24 gambling devices in no way intends to locally approve the use of slot machines, other
25 forms of casino gambling or other types of gambling devices. In addition, this prohibition
26 is aimed directly at devices that simulate gambling activity, regardless of whether the
27 devices or the simulations in and of themselves can be said to constitute gambling as that
28 term may be defined elsewhere.
29

30 (c) This article applies in unincorporated Levy County.
31

32 **Sec. 22-111. Definitions.**
33

34 For the purpose of this article, the following terms shall have the meanings ascribed to
35 them in this section, unless the context clearly indicates otherwise.
36

37 CO shall mean a certificate of occupancy issued by the Levy County Building Department.
38 Internet cafe means any location at which simulated gambling devices are made
39 accessible for use by a person, except those places specifically excluded from this article
40 as set forth in section 22-113.
41

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1 Person means an individual, association, partnership, joint venture, corporation, or any
2 other type of organization, whether conducted for profit or not for profit, or a director,
3 executive, officer or manager of an association, partnership, joint venture, corporation or
4 other organization.

5
6 Simulated gambling device means any device that, upon connection with an object, is
7 available to play or operate a computer simulation of any game, where the play or
8 operation of the device may deliver or entitle the person or persons playing or operating
9 the device to a payoff directly or indirectly from the owner or operator of the device or that
10 person's designee. The following rules of construction apply to this definition of "simulated
11 gambling device":

12
13 (1) The term device means any mechanical or electrical contrivance, computer,
14 terminal, video or other equipment that may or may not be capable of downloading
15 games from a central server system, machine, computer or other device or
16 equipment. The term "device" also includes any associated equipment necessary
17 to conduct the operation of the device.

18
19 (2) The term upon connection with means insertion, swiping, passing in range, or
20 any other technical means of physically or electromagnetically connecting an
21 object to a device, including by the manual input by any person of characters,
22 numbers, or any combination thereof, or other code for the purpose of accessing
23 or activating a device, or any other mechanism or method by which the object
24 provides access to the device.

25
26 (3) The term object means a coin, bill, ticket, token, card, characters, numbers,
27 or any combination thereof, other code, or any other tangible or intangible access
28 mechanism or method, obtained directly or indirectly through payment of
29 consideration, or obtained as a bonus or supplement to another transaction
30 involving the payment of consideration.

31
32 (4) The terms play or operate or play or operation includes the use of skill, the
33 application of the element of chance, or both.

34
35 (5) The term computer simulation includes simulations by means of a computer,
36 computer system, video display, video system or any other form of electronic video
37 presentation.

38
39 (6) The term game includes slot machines, poker, bingo, craps, keno, "fish", any
40 other type of game ordinarily played in a casino, a game involving the display of
41 the results of a raffle, sweepstakes, drawing, contest or other promotion, lotto,
42 sweepstakes, and any other game associated with gambling or which could be
43 associated with gambling, but the term "game" does not necessarily imply
44 gambling as that term may be defined elsewhere.

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1
2 (7) The term *payoff* means cash, monetary or other credit, billets, tickets, tokens,
3 or electronic credits to be exchanged for cash or to receive merchandise or
4 anything of value whatsoever, whether made automatically from the machine or
5 manually.

6
7 (8) The use of the word *gambling* in the term "simulated gambling device" is for
8 convenience of reference only. The term "simulated gambling device" as used in
9 this part is defined exclusively by this subsection and does not incorporate or imply
10 any other legal definition or requirement applicable to gambling that may be found
11 elsewhere.

12
13 (9) For the purpose of determining the number of simulated gambling devices,
14 each seat, terminal, or other interface at which a separate individual may use the
15 device, shall be counted as a separate and distinct device, regardless of whether
16 the device or any seat, terminal, or other interface is functional. For example, if a
17 single table has six chairs at which six separate persons can play a game, on a
18 common screen/display or otherwise, it shall be counted as six devices; if a stand-
19 up game has three terminals or interfaces at which three people can use the
20 device, it shall be counted as three devices.

21
22 *Slot machine* has the same meaning as specified in Chapter 551, Florida Statutes.

23
24 **Sec. 22-112. Prohibition of simulated gambling devices.**

25
26 (a) It is unlawful for any person to manage, supervise, maintain, provide, produce,
27 possess, or use a simulated gambling device for commercial, promotional or pecuniary
28 gain or purpose.

29
30 (b) For determining the allowable unit of prosecution, it is the intent of the county that
31 each individual act of managing, supervising, maintaining, providing, producing,
32 possessing, or using a simulated gambling device constitutes a separate violation of this
33 section:

34
35 (1) For example, if a person possesses five simulated gambling devices, that
36 person would be subject to a separate penalty for each of the five devices.

37
38 (2) For example, if a person possesses two simulated gambling devices that the
39 person sells to another individual, the person will have committed four acts in
40 violation of this section, and would be subject to a separate penalty for possessing
41 each of the two devices and a separate sanction for providing each of the two
42 devices.

43
44 (3) For example, if a person employed at an internet cafe supervises the

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1 establishment and the establishment has ten simulated gambling devices, that
2 person would be subject to a separate penalty for each of the ten devices.
3

4 (c) Any establishment or property which was lawfully in possession of a CO or was
5 operating unlawfully prior to the effective date of this article shall immediately cease the
6 use of simulated gambling devices prohibited by this article upon the effective date of this
7 article.
8

9 **Sec. 22-113. Exemptions.**

10
11 (a) This article does not prohibit an individual's personal, recreational, and non-
12 commercial ownership, possession, play, operation or use of a device which could be
13 construed to be a simulated gambling device.
14

15 (b) This article does not prohibit the ownership, possession, play, operation or use of
16 any device expressly permitted by Section 546.10, Florida Statutes, or other provision of
17 the Florida Statutes, except that devices permitted by Article X, Section 23 of the Florida
18 Constitution and Chapter 551, Florida Statutes, in Broward and Miami-Dade County only
19 are not permitted by this article.
20

21 (c) This article does not prohibit a religious or charitable organization from conducting
22 a fund raising activity involving gaming, provided the religious or charitable organization
23 does not conduct the activity more than twice in one calendar year for no more than six
24 hours per fund raising activity, the organization provides advance written notice to the
25 sheriff of the date, time, place, and nature of such activity and who will be conducting it,
26 and the activity is not otherwise unlawful.
27

28 (d) This article does not apply to pari-mutuel facilities, operated by a holder of a pari-
29 mutuel permit issued pursuant to Chapter 550, Florida Statutes, and Fla. Admin. Code
30 61D, or to any devices or games therein.
31

32 **Sec. 22-114. Conflict with state law.**

33
34 Nothing in this article is intended to conflict with the provisions of the Florida Constitution
35 or Chapter 849, Florida Statutes, concerning gambling. In the event of a direct and
36 express conflict between this part and either the Florida Constitution or Chapter 849,
37 Florida Statutes, then the provisions of the Florida Constitution or Chapter 849, Florida
38 Statutes will control.
39

40 **Sec. 22-115. Enforcement; penalties; civil remedies.**

41 (a) The sheriff and/or the board of county commissioners, through any of their
42 respective deputies, employees, agents and attorneys, shall have concurrent jurisdiction
43 to investigate and enforce the requirements of this article, as follows:
44

Note: Additions shown underlined, deletions shown ~~stricken~~.

1 (1) By the issuance of a cease-and-desist order. Upon notice from the sheriff or
2 the county, occupancy or operation of any structure or property where any
3 simulated gambling device is being used or operated in violation of this article shall
4 immediately cease. Such notice shall be in writing and shall be given to the owner
5 of the property or to his or her agent or to the person operating any establishment
6 where any simulated gambling device is being used or operated in violation of the
7 section. Failure to comply with the terms and conditions of a cease and desist order
8 issued pursuant to this section shall constitute an additional violation of this
9 section. Cease and desist orders may be lifted by the sheriff or the county upon
10 demonstration that all simulated gambling devices have been removed and all
11 applicable civil penalties have been paid.

12
13 (2) By action for civil penalties through a court of competent jurisdiction as follows:

14
15 a. The civil penalty for convictions of violations committed by any person
16 operating or allowing the operation of an internet cafe shall be as follows: i.
17 Two thousand dollars (\$2,000.00) for a first violation; ii. Five thousand
18 dollars (\$5,000.00) for a second violation; and Ten thousand dollars
19 (\$10,000.00) for a third or subsequent violation.

20
21 b. The civil penalty for any person who owns the property, but did not
22 operate the establishment at which the violation of this article occurred shall
23 be one thousand dollars (\$1,000.00) per violation.

24
25 (3) By citation for civil penalties, as provided in section 2-140 of this code. Civil
26 penalties assessed pursuant to this subsection shall be two hundred fifty dollars
27 (\$250.00) per violation per day.

28
29 (4) A violation of this article that is a civil violation may be reclassified to a
30 misdemeanor of the second degree, punishable by up to sixty (60) days
31 imprisonment in the county jail and a fine of up to five hundred dollars (\$500.00),
32 if, at the time of the violation any one of the following conditions exist:

33
34 a. The violator manages, supervises, maintains, provides, produces,
35 possesses, or uses five (5) or more simulated gambling devices for
36 commercial, promotional, or pecuniary gain or purpose;

37
38 b. The violator has one (1) or more prior convictions for a violation of this
39 article or has been found, on one (1) or more occasions, to have committed
40 a violation of this article. For the purpose of this subsection, "conviction"
41 means a determination of guilt that is the result of a plea or a trial, regardless
42 of whether adjudication is withheld or a plea of nolo contendere is entered.
43 A person may be found to have committed a violation of this article by any
44 court or board empowered to impose a sanction for violation of this article.

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1
2 c. The violator has one (1) or more prior convictions for a violation of any
3 provision of Chapter 849, Florida Statutes. For the purpose of this
4 subsection, "conviction" means a determination of guilt that is the result of
5 a plea or a trial, regardless of whether adjudication is withheld or a plea of
6 nolo contendere is entered;

7
8 d. The violator has previously entered a pretrial intervention program or
9 diversion program for any violation of this article, a substantially similar
10 ordinance of another jurisdiction, or any provision of Chapter 849, Florida
11 Statutes; or

12
13 e. The violator is in violation of a cease-and-desist order issued pursuant to
14 this article at the time the violations occur.

15
16 (5) By an action for injunctive relief through a court of competent jurisdiction. An
17 action for injunctive relief may be brought by the board of county commissioners,
18 the state attorney, or any substantially affected person. If such action is successful,
19 a judgment for reasonable attorney's fees and costs may be awarded by the court.

20
21 (6) Any person against whom a civil penalty is assessed pursuant to this article
22 shall be prohibited from applying for any certificate of occupancy for any property
23 until such civil penalty has been paid in full. Prohibitions against application for a
24 certificate of occupancy contemplated in this section shall not become effective
25 until the judgment requiring payment of the civil penalty becomes final.

26
27
28 **SECTION 2.** Sec. 2-140 titled "Civil penalties" of the Levy County Code is
29 amended to add the following violation. Except as amended herein, the remainder of
30 Sec. 2-140 remains in full force and effect.
31

Code or Ordinance Violated	Civil Penalty	
Chapter 22, Article IV. – Simulated Gambling Devices	Each violation	\$250.00 per day

32
33 **SECTION 3. Findings of Fact.** The Board of County Commissioners of Levy
34 County, Florida, finds and declares that the statements set forth in the whereas clauses
35 of this ordinance are true and correct.
36

37 **SECTION 4. Severability.** If any section, subsection, sentence, clause, phrase,
38 portion or provision of this ordinance is for any reason declared or held invalid or
39 unconstitutional by any court of competent jurisdiction, such section, subsection,

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1 sentence, clause, phrase, portion or provision shall be deemed a separate, distinct and
2 independent provision, and the remainder of this ordinance shall be not affected by such
3 declaration or holding.

4
5 **SECTION 5. Repealing Clause.** All ordinances or parts of ordinances and all
6 resolutions or parts of resolutions of Levy County in conflict with this ordinance are, to the
7 extent of the conflict, hereby repealed.

8
9 **SECTION 6. Inclusion in the Code.** The provisions of Sections 1 and 2 of this
10 ordinance shall become and be made a part of the Levy County Code, and the sections
11 of this ordinance may be renumbered or relettered and the word "ordinance" may be
12 changed to "section," "article," "regulation," or such other appropriate word or phrase in
13 order to accomplish the codification.

14
15 **SECTION 7. Effective Date.** In accordance with Section 125.66, Florida Statutes,
16 the Clerk to the Board of County Commissioners is directed to file this ordinance with the
17 Florida Department of State within 10 days after adoption and upon such filing, this
18 ordinance shall become effective.

19
20 **PASSED AND DULY ADOPTED** this _____ day of February, 2022.

21
22 **BOARD OF COUNTY COMMISSIONERS**
23 **OF LEVY COUNTY, FLORIDA**

24
25 _____
26 Rock Meeks, Chair

27
28 **ATTEST:** Danny J. Shipp, Clerk of
29 the Circuit Court and Ex-Officio Clerk
30 to the Board of County Commissioners

31
32 _____
33 Danny J. Shipp

34
35 Approved as to form and legal sufficiency:

36
37 _____
38 Nicolle M. Shalley, County Attorney

Note: Additions shown underlined, deletions shown ~~stricken~~.