ORDINANCE NO. 2012-____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CLAY COUNTY, FLORIDA, ESTABLISHING ARTICLES VIII AND IX OF CHAPTER 12 OF THE CLAY COUNTY CODE REGARDING ADULT ARCADE AMUSEMENT CENTERS AND THE USE OF ELECTRONIC EQUIPMENT IN OPERATING DRAWINGS BY CHANCE CONDUCTED IN CONNECTION WITH THE SALE OF A CONSUMER PRODUCT OR SERVICE, AND GAME PROMOTIONS OR SWEEPSTAKES CONDUCTED IN CONNECTION WITH THE SALE OF A CONSUMER PRODUCT OR SERVICE; MAKING FINDINGS; REGULATING THE OPERATION OF ADULT ARCADE AMUSEMENT CENTERS AND THE USE OF ELECTRONIC EQUIPMENT IN OPERATING DRAWINGS BY CHANCE CONDUCTED IN CONNECTION WITH THE SALE OF A CONSUMER PRODUCT OR SERVICE, AND GAME PROMOTIONS OR SWEEPSTAKES CONDUCTED IN CONNECTION WITH THE SALE OF A CONSUMER PRODUCT OR SERVICE; REFERENCING LEGAL AUTHORIZATION; PROVIDING FOR COUNTYWIDE EFFECT, THE INTENT OF THE ORDINANCE, DEFINITIONS, REGULATIONS FOR PERMITTING AND FEES, INSPECTIONS, SIGNAGE REQUIREMENTS, AND RULES FOR THE OPERATIONS OF THE BUSINESSES; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR VIOLATIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING EFFECTIVE DATES FOR THE ORDINANCE AND FOR SAID ARTICLES VIII AND IX OF CHAPTER 12 OF THE CLAY COUNTY CODE.

Be It Ordained by the Board of County Commissioners of Clay County:

Section 1. In support of the adoption of this ordinance, the Board of County Commissioners (the Board) of Clay County, Florida (the County), makes the following findings:

(a) Section 849.161(1)(a)1, Florida Statutes, authorizes the operation of arcade amusement centers.

(b) The uncontrolled proliferation of adult arcade amusement machines throughout the County may have a detrimental impact on the health, safety and welfare of its citizens and visitors, unless properly regulated, and the Board has the authority to affirmatively eliminate the potential detrimental impact of such a proliferation.

(c) The public welfare will be enhanced if adult arcade amusement machines are confined to highly regulated facilities that meet strict licensing standards.

(d) In accordance with the County's powers and authority provided in Fla. Const. Article VIII, section 1(g), Section 125.01, Florida Statutes, and the Clay County Home Rule Charter, the Board is authorized to permit and regulate the operation of adult arcade amusement
centers for the enjoyment, entertainment and protection of the residents of and visitors to the County.

(e) Sections 849.0935 and 849.094, Florida Statutes, authorize drawings by chance conducted in connection with the sale of a consumer product or service, and game promotions or sweepstakes conducted in connection with the sale of a consumer product or service, effectively granting specific exemptions from the statutory framework prohibiting illegal gambling activities in general.

(f) Confusion has existed for some years as to the interpretation and enforcement of Section 849.0935, Florida Statutes, as applied to drawings by chance conducted in connection with the sale of a consumer product or service, and of Section 849.094, Florida Statutes, as applied to game promotions or sweepstakes conducted in connection with the sale of a consumer product or service utilizing computers or other electronic devices to reveal a prize.

(g) To guard against drawings by chance conducted in connection with the sale of a consumer product or service, and game promotions or sweepstakes conducted in connection with the sale of a consumer product or service utilizing computers or other electronic devices to reveal a prize transitioning to and becoming illegal gambling, strict compliance with the law must be required.

(h) For establishments operated by certain not-for-profit entities with five or fewer computers or other electronic devices used to reveal a prizes awarded for drawings by chance conducted in connection with the sale of a consumer product or service, and game promotions or sweepstakes conducted in connection with the sale of a consumer product or service, less oversight on the part of the county may be appropriate.

(i) The County has evaluated and estimated the costs of permitting and enforcement, and has determined that the permitting fees and revenues will not exceed such costs.

(j) The increased participation in drawings by chance conducted in connection with the sale of a consumer product or service, and game promotions or sweepstakes conducted in connection with the sale of a consumer product or service utilizing electronic equipment has the potential to mislead and confuse unwary citizens if not regulated, and therefore increases the need for regulation.

(k) Regulating the use of electronic equipment in the operation of drawings by chance conducted in connection with the sale of a consumer product or service, and game promotions or sweepstakes conducted in connection with the sale of a consumer product or service will protect the public welfare.

(l) Increased participation by citizens and patrons in drawings by chance conducted in connection with the sale of a consumer product or service, and game promotions or sweepstakes conducted in connection with the sale of a consumer product or service utilizing electronic technology increases the need for a security presence on the premises offering the activity, so as to prevent and deter crimes.
(m) In accordance with the County’s powers and authority provided in Fla. Const. Article VIII, section 1(g), Section 125.01, Florida Statutes, and the Clay County Home Rule Charter, the Board is authorized to permit and regulate the use of electronic equipment in the operation of drawings by chance conducted in connection with the sale of a consumer product or service, and game promotions or sweepstakes conducted in connection with the sale of a consumer product or service.

(n) A likelihood of confusion exists in distinguishing between businesses that use electronic equipment to operate drawings by chance conducted in connection with the sale of a consumer product or service, and game promotions or sweepstakes conducted in connection with the sale of a consumer product or service, with businesses that may use electronic equipment to conduct gambling, as both legitimate and illegal operations use chance to award prizes and often display images associated with traditional slot machines, and fraud and misrepresentation may occur at these businesses because of this confusion unless properly regulated.

(o) Some operations display images of gambling or slot machines in their advertisements and signage suggesting the presence of illegal activity, and those activities should be controlled and regulated.

(p) Desiring to promote the health, safety, education, and welfare of the people, the County has a compelling interest in protecting its citizens from certain activities and influences which can result in irreparable harm if left unregulated. The Board is also charged with the responsibility of protecting and assisting its citizens who suffer from compulsive or problem gambling behavior.

(q) The Board has a legitimate interest in protecting the County’s citizens from unethical business practices, providing safe locations for people to congregate, and protecting the quality and well-being of the County’s neighborhoods.

(r) The imposition of a regulatory scheme for activities conducted pursuant to Sections 849.161(1)(a)1., 849.0935, and 849.094, Florida Statutes, bears a rational relationship to the Board’s responsibilities and interests described in this section.

(s) Adult arcade amusement machines should be confined to highly regulated pari-mutuel facilities that meet strict State of Florida licensing standards.

(t) The Board is authorized to permit and regulate the operation of adult arcade amusement centers for the enjoyment, entertainment and protection of the County’s residents and visitors.

(u) No adult arcade amusement machine should be allowed to operate within the incorporated or unincorporated area of the County unless it is located upon the premises of an adult arcade amusement center permitted in accordance with the operational requirements set forth in Article VIII of Chapter 12 of the Clay County Code created under Section 3 of this ordinance.
(v) The State of Florida has authorized slot machines and other gaming at licensed facilities, and the State of Florida authorizes drawings by chance and game promotions or sweepstakes.

(w) Establishments that utilize electronic equipment to display the results of drawings by chance conducted in connection with the sale of a consumer product or service, and game promotions or sweepstakes conducted in connection with the sale of a consumer product or service by simulating a game or games ordinarily played on a slot machine can deceive members of the public into believing that they are engaging in a licensed gambling activity.

(x) The Board has an obligation and responsibility to protect its citizens from the use of deceptive practices.

(y) In order to ensure the uniform enforcement of existing laws, to preserve the public peace and good order, and to safeguard the health, safety, morals and welfare of the community and citizens thereof, it is necessary and advisable to provide greater regulation of the use of electronic equipment to display the results of drawings by chance conducted in connection with the sale of a consumer product or service, and game promotions or sweepstakes conducted in connection with the sale of a consumer product or service.

(z) No electronic equipment being utilized to display the results of drawings by chance conducted in connection with the sale of a consumer product or service, and game promotions or sweepstakes conducted in connection with the sale of a consumer product or service should be allowed to operate within the incorporated or unincorporated area of the County, other than at a lawful de minimis activity facility, as defined in Article IX of Chapter 12 of the Clay County Code created under Section 4 of this ordinance, unless it is located upon premises that have been permitted in accordance with the operational requirements set forth in said article.

Section 2. This ordinance is enacted in the interest of the public health, peace, safety, morals and general welfare of the County’s citizens, inhabitants and visitors pursuant to the powers and authority provided in Fla. Const. Article VIII, section 1(g), Section 125.01, Florida Statutes, and the Clay County Home Rule Charter.

Section 3. Article VIII of Chapter 12 of the Clay County Code is hereby created and entitled, “Adult Arcade Amusement Centers”. Within said Article VIII are hereby created Secs. 12-151 through 12-161, which shall read in their entireties as follows:

Sec. 12-151. Intent.

The intent of this article is to regulate adult arcade amusement centers so as to protect the public health, safety and welfare.

Sec. 12-152. Definitions.
For purposes of this article, the word "shall" is always mandatory and not merely directory. As used in this article and unless the context clearly requires otherwise, the following terms and phrases and their derivations shall have the meanings herein ascribed:

(a) *Adult arcade amusement center* means a business that

(1) is located on the premises of a facility that is licensed by the State of Florida pursuant to Ch. 550, Florida Statutes, and

(2) operates an adult arcade amusement machine or machines that comply with Section 849.161(1)(a)1., Florida Statutes, and

(3) is permitted under this article.

(b) *Adult arcade amusement machine* means an electronic, mechanical, computer or other device which operates by the insertion of coin and may also operate by the use or insertion of other type of monetary consideration or requires the payment of monetary consideration, ticket, token, or card that activates the play of a game or multiple games which by application of skill may entitle the person operating the machine to receive points representing a unit of game play on the machine or coupons which may be exchanged for merchandise available for sale to the general public on the premises of the adult arcade amusement center or via catalogs or kiosks produced by an adult arcade amusement center, other than alcoholic beverages and cash, provided the value of the merchandise does not exceed the amount set forth in Section 849.161(1)(a)1, Florida Statutes. The presence of a device as described herein that requires the payment of monetary consideration for its operation shall result in the presumption that such machine is an adult arcade amusement machine as defined herein.

(c) *Amusement game* or *game* means any individual measure of play as indicated by an adult arcade amusement machine. Multiple games may be played by a single activation of the machine with the machine rendering the results of the games played without the decrementing of additional points or the payment of additional consideration.

(d) *Application of skill* means the ability of a player, with knowledge of the game, and by use of probability based strategies, manual dexterity and/or decision making to improve his or her level of theoretical success in the game offered by an adult arcade amusement machine by decreasing the game’s advantage by at least 25% over a completely random strategy of play, as measured and certified by an independent laboratory approved by the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation under Section 551.103(1)(c), Florida Statutes,
utilizing the following procedures to measure a player’s ability to alter the percentage through the application of skill:

(1) Measure the payout percentage of the subject game based on a completely random outcome and without any application by the player of any skill factors that the independent testing laboratory will apply in making the measurement under paragraph (2).

(2) Measure the payout percentage of the subject game through the exercise by the player of all skill factors available to optimize the payout percentage to the player, including but not limited to all applicable skill factors such as complete knowledge of the game, adherence to all probability based strategies, optimum manual dexterity and/or optimum decision making ability.

(3) Measure the percentage decrease in the payout percentage determined under paragraph (2) over that determined under paragraph (1).

(e) *County manager* means the county manager of the County or his or her designee.

(f) *Coupon* means a printed instrument that is a representation of points available only for merchandise redemption. A coupon may not be redeemed for anything other than merchandise.

(g) *Family amusement arcade* means a business that, in addition to a food and beverage business for which it possesses state and local licenses and permits, also operates an integrated arcade business that complies with Section 849.161(1)(a)1., Florida Statutes, catering primarily to families and minors.

(h) *Merchandise* means an object of value

(1) that is available for sale to the general public on the premises of an adult arcade amusement center or via catalogs or kiosks produced by an adult arcade amusement center other than alcoholic beverages and cash; and,

(2) regarding which the general public must be able to discern both the points required for its redemption and its purchase price.

(i) *Minor* means an individual under the age of 18 years.

(j) *Points* means a unit of entitlement for play of an adult arcade amusement machine created by either:
(1) the conversion of coins, bills, tickets or vouchers when inserted into an adult arcade amusement machine; or,

(2) the results of a played game.

(k) **Premises** means the legal description of the land and location of the pari-mutuel facility as licensed according to Ch. 550, Florida Statutes.

(l) **Special magistrate** means an attorney engaged by the county to provide the special magistrate services described in this article.

**Sec. 12-153. Skill-based adult arcade amusement machines operation requirements.**

Except as provided in Sec. 12-154, in order for an adult arcade amusement machine authorized by Florida law pursuant to Section 849.161(1)(a)1., Florida Statutes, to lawfully exist and operate within the County’s incorporated or unincorporated area, each such machine must be located on the premises of an adult arcade amusement center permitted by the county manager pursuant to this article.

**Sec. 12-154. Exemption.**

Nothing in this article shall be applicable to a family amusement arcade.

**Sec. 12-155. Minors prohibited from playing adult arcade amusement machines.**

No minor shall be allowed to play an adult arcade amusement machine or be on the premises of an adult arcade amusement center. The holder of a permit issued under Sec. 12-156 that allows a minor to play an adult arcade amusement machine or be on the premises of an adult arcade amusement center shall be deemed in violation of this article. Each adult arcade amusement machine on the premises of an adult arcade amusement center shall bear a sticker, at least three inches in diameter and with a minimum font size of 20-point type, which clearly and legibly states “Play by Minors Prohibited”. In its discretion, the County may elect to issue such sticker and recover the cost thereof from the permit holder, which cost should be included within the permit fee established under Sec. 12-156.

**Sec. 12-156. Permitting.**

(a) **Permit required.** Each adult arcade amusement center located within the County’s incorporated or unincorporated area shall obtain an adult arcade
amusement center permit issued by the county manager as a prerequisite to the initial operation of an adult arcade amusement center.

(b) **Permits limited.** The total number of permits issued under this section for adult arcade amusement centers within the County’s incorporated and unincorporated area together shall be limited to no more than two.

(c) **Permit form and conditions.** The application for a permit under this section must be on a form approved by the county manager and accompanied by satisfactory proof of licensure pursuant to Ch. 550, Florida Statutes of the premises on which the adult arcade amusement center is to be located.

(d) **Permit issuance.** Upon the submission of a complete and accurate application complying with the terms of this section, the county manager shall, within sixty days following receipt thereof, grant or deny the application upon a request by the applicant in writing. If approved the initial permit shall include the period from the date of the beginning of operations until the following September 30. After the permit for the initial year or partial year of operation, renewal permits with a term of one year shall be issued to the permittee on or before each October 1 upon submission of required documentation and payment of the applicable permit fees.

(e) **Permit fee.** Each eligible applicant, before receiving a permit under this section, shall pay an annual permit fee for each adult arcade amusement machine in an amount established by resolution of the county’s board of county commissioners from time to time. If the eligible applicant fails to pay the permit fee on or before the thirtieth day after approval, availability, and notice of the permit authorization, the application shall be deemed denied. The permit fee shall be applied solely to recover the costs and expenses incurred by the sheriff’s office and the county manager in inspecting and examining the premises, adult arcade amusement machines and records of the permit holder to ensure compliance with this article, and otherwise enforcing the provisions of this article. The amount of the permit fee shall be based upon such costs as may reasonably be anticipated.

(f) **Denial of permit.** An applicant whose permit application is denied may reapply at any time by completing all steps of the application procedure, including payment of a new application fee. The decision to deny a permit shall be considered non-final agency action subject to administrative appeal on the merits to the special magistrate. The decision of the special magistrate shall constitute final agency action subject to judicial review. An administrative appeal must be commenced by filing a written notice of administrative appeal with the special magistrate within fifteen calendar
days of service of a notice of denial, and by submitting a filing fee in an amount established by resolution of the county’s board of county commissioners from time to time. Failure to file the written notice of administrative appeal and to submit the filing fee within the prescribed time period is jurisdictional and constitutes a waiver of the right to appeal.

(g) **Revocation of permit.**

(1) The county manager may revoke a permit for violation of any provision of this article. Prior to revocation, the county manager shall provide to the permit holder, through the permit holder’s agent within the county authorized to accept notices from the county, the following:

   a. A written notice of intent to revoke the permit;

   b. A fourteen calendar day opportunity to cure the alleged violation; and,

   c. An opportunity to be heard prior to revocation.

(2) Revocation shall not take place before twenty-one calendar days after a notice of revocation, opportunity to cure, and opportunity to be heard is delivered to the permit holder. The decision to revoke a permit shall be considered non-final agency action subject to administrative appeal to the special magistrate. The decision of the special magistrate shall constitute final agency action subject to judicial review. An administrative appeal must be commenced by filing a written notice of administrative appeal with the special magistrate within fifteen calendar days of service of a notice of denial, and by submitting a filing fee in an amount established by resolution of the county’s board of county commissioners from time to time. Failure to file the written notice of administrative appeal and to submit the filing fee within the prescribed time period is jurisdictional and constitutes a waiver of the right to appeal.

Sec. 12-157. **Machine registration requirements.**

(a) **Inventory maintenance.** Each holder of an adult arcade amusement center permit is required to maintain on its premises a complete inventory, along with serial numbers or equivalent identification, as set forth in subsection (d), of all adult arcade amusement machines in operation on the premises at all times. The initial application for permit shall include a certificate of inspection by the applicant of the inventory, along with serial numbers or equivalent of identification, as set forth in subsection (d), of the machines
that the permittee intends to put into operation when the adult arcade amusement center begins its business activities.

(b) Inspection certificate. Each renewal permit application shall contain a certificate of inspection of updated inventory, along with serial numbers or equivalent identification, as set forth in subsection (d), of the machines that the applicant intends to continue or put into operation when the adult arcade amusement center begins its business activities under the renewal permit.

(c) Notification. Before a new adult arcade amusement machine is put into operation at the adult arcade amusement center, the permit holder shall notify the county manager of the addition of the machine to the inventory and update its inventory accordingly.

(d) Inventory requirements. The inventory of machines under subsections (a), (b) and (c) shall provide for each machine the following information: the manufacturer; the serial number; and the common name, type or description of the game played on the machine. The registration list shall contain the inventory number of each machine currently located on the premises.

Sec. 12-158. Record keeping requirements.

The following records shall be maintained in the administrative office of each adult arcade amusement center:

(a) A copy of the license issued for the related pari-mutuel facility by the State of Florida pursuant to Ch. 550, Florida Statutes; and,

(b) A current inventory of machines in operation on the premises.

Sec. 12-159. Authority to enter premises.

The county manager and the members of the sheriff’s office shall have the authority and power to enter and inspect the public spaces of the premises at any time to ensure compliance with the provisions of this article or any other laws within their respective authority.

Sec. 12-160. Enforcement; penalties.

(a) Violation prosecuted as misdemeanor. A person committing a violation of this article shall be guilty of an offense that, pursuant to Section 125.69, Florida Statutes, and any successor thereto, shall be prosecuted in the same manner as misdemeanors are prosecuted, and upon conviction, shall be punished by a fine not to exceed $500 or by imprisonment in the county
jail, not to exceed 60 days, or by both such fine and imprisonment. Each day the violation exists shall constitute a separate violation for the purposes of this article and may be punishable as such.

(b) *Violation prosecuted as civil infraction.* The provisions of Sec. 15-20 may be used to enforce this article as a nonexclusive alternative to enforcement by any other means authorized by law. A violation of any provision of this article shall constitute a civil infraction that, for purposes of Sec. 15-20 and the civil penalties provided thereunder, is designated as a category 10 civil infraction.

(c) *Nuisance.* Any person who has committed or is responsible for the commission or causing of a violation of any provision of this article that constitutes a habitual violation as defined in Sec. 15-20 shall be deemed guilty of maintaining a nuisance within the meaning of Section 823.05, Florida Statutes, if such habitual violation is committed within a period of 180 days following the commission of the first of the predicate violations therefor. Such nuisance, the premises upon which the same is maintained and the person responsible for causing the same shall be subject to abatement and injunction as provided in Sections 60.05 and 60.06, Florida Statutes.

(d) *All remedies.* The county shall have the authority to pursue all legal and equitable remedies necessary to ensure full compliance with this article, including but not limited to injunctive relief.

(e) *Private right.* Permit holders shall have a private right of action to pursue all legal and equitable remedies necessary to ensure full compliance with this article against any other permit holder, including but not limited to injunctive relief.

Section 12-161. Applicability.

This article shall be deemed effective throughout the incorporated and unincorporated area of the county.

Section 4. Article IX of Chapter 12 of the Clay County Code is hereby created and entitled, “Electronic Game Promotions”. Within said Article IX are hereby created Secs. 12-171 through 12-180, which shall read in their entireties as follows:

Sec. 12-171. Intent.

The intent of this article is to regulate the use of electronic means to effect giveaways through drawings by chance conducted in connection with the sale of a consumer product or service, sweepstakes, and game promotions that do not violate Florida law. This regulation includes but is not limited to electronic
equipment used to display the results of a drawing by chance conducted in connection with the sale of a consumer product or service or game promotion by simulating a game or games ordinarily played on a slot machine. It also is intended to regulate the use of electronic equipment to conduct drawings by chance conducted in connection with the sale of a consumer product or service and game promotions, and to regulate all operators who utilize electronic equipment for that purpose in accordance with the provisions of Sections 849.0935 and 849.094, Florida Statutes, regardless of whether the operators are required to register with the State of Florida pursuant to Section 849.094, Florida Statutes.

Sec. 12-172. Definitions.

For purposes of this article, the word “shall” is always mandatory and not merely directory. As used in this article and unless the context clearly requires otherwise, the terms and phrases defined in sections 849.0935 and 849.094, Florida Statutes, shall have the meanings therein ascribed, and the following terms and phrases shall have the meanings herein ascribed:

(a) Applicant means the operator for whom a permit application is submitted and in the name of whom, if the permit is granted, the drawing by chance conducted in connection with the sale of a consumer product or service, sweepstakes, or game promotion shall be conducted.

(b) County manager means the county manager of the County or his or her designee.

(c) De minimis activity facility means a facility operated by an organization exempt from federal taxation under Section 501(c) of the Internal Revenue Code containing five or fewer pieces of electronic equipment intended and used for a single player at a time that are used to conduct a drawing by chance, sweepstakes or game promotion utilizing those pieces of electronic equipment.

(d) Electronic game promotion means a sweepstakes or other game promotion which utilizes electronic equipment and a drawing by chance conducted in connection with the sale of a consumer product or service which utilizes electronic equipment.

(e) Electronic equipment means any electronic or mechanical device intended and used for a single player at a time provided by or on behalf of an operator of an electronic game promotion that is used or adapted for use to conduct and/or reveal the results of a drawing by chance conducted in connection with the sale of a consumer product or service, sweepstakes, or game promotion that displays results by simulating a game or games ordinarily played on a slot machine.
(f) *Minor* means an individual under the age of 18 years.

(g) *Operator* means any person in whose name a drawing by chance conducted in connection with the sale of a consumer product or service, sweepstakes, or game promotion that utilizes electronic equipment is conducted.

(h) *Permit holder* means the operator in whose name the county manager has issued a permit under this article.

(i) *Person* means an individual, association, partnership, joint venture, corporation, limited liability company, not-for-profit entity, or entity of any kind authorized to engage in business in Florida.

(j) *Premises* means the house, building, edifice, or location, along with its grounds, in or upon which an operator conducts an electronic game promotion.

(k) *Rules* mean the restrictions and covenants governing the operation of a drawing by chance, sweepstakes, or game promotion regulated under this article.

(l) *Slot machine* means any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central server system, machine, or other device that, upon insertion of a coin, bill, ticket, token or similar object or upon payment of any monetary consideration whatsoever, including the use of any electronic payment system, is available to play or operate, the play or operation of which, including any element of chance, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually. Slot machines may use spinning reels, video displays, cathode ray tubes, microprocessors or other similar technology, and have as their object, the presentation or lining up, arrangement, or juxtaposition of symbols, alpha-numeric signs, colors or figures to determine a result or outcome.

(m) *Special magistrate* means an attorney engaged by the county to provide the special magistrate services described in this article.

Sec. 12-173. General prohibition.
Except as expressly regulated and permitted by this article, no person shall conduct a drawing by chance pursuant to Section 849.0935, Florida Statutes, a sweepstakes or game promotion pursuant to Section 849.094, Florida Statutes, or any other game of chance on any electronic or mechanical device provided by an operator of the game of chance which displays the result by simulating a game or games ordinarily played on a slot machine.

Sec. 12-174. Permitting and fees.

(a) Permit required. Every operator conducting an electronic game promotion shall obtain a permit from the county manager for each premises. Each permit is valid only for the operator and the premises identified in the permit. Each permit is valid for one year.

(b) Initial permits. Within sixty calendar days following the date of the adoption of the ordinance creating this article, all operators which were in business and lawfully conducting an electronic game promotion on specific premises as of said date and which apply for a permit for which they facially qualify and have paid in full the fees required therefor shall be granted a permit for the premises as provided in this section. Operators which were not in business and lawfully conducting an electronic game promotion on specific premises as of the effective date of said ordinance or which apply after such sixty day period may only be issued a permit for such premises in accordance with the provisions of subsection (d).

(c) De minimis activity facility permits. An operator which qualifies as a de minimis activity facility that was not in business or operating upon the adoption date of the ordinance creating this article may apply for an initial permit at any time hereafter subject to compliance with all of the terms provided herein.

(d) Certain permits limited. Except for de minimis activity facilities, and unless greater than nine permits issued as provided in subsection (b) are then in effect, the county manager shall limit the total number of permits issued and in effect at any one time pursuant to this section to no more than nine. After the permits authorized under subsection (b) are issued, no additional permits shall be issued under this section unless the issuance thereof will not cause the total number of permits issued and in effect under this section to exceed nine. Each operator who receives an initial permit as provided in subsection (b) shall be entitled to renew the permit if the operator otherwise qualifies and pays all required fees therefor. Should the number of permits issued under this section fall below nine, all applications for the permitting of a new premises shall, in addition to all permitting requirements set forth herein, be subject to the following procedures:
(1) The county manager shall publish a notice in a newspaper of
general circulation in a form prescribed by the county manager
regarding the availability of such permit and the prescribed time
period of fifteen calendar days from the date of such publication
within which the county manager will accept applications, and the
location and date of the public meeting at which a random
selection of the application for permit shall take place.

(2) All applications shall be submitted within such provided
timeframe. Any applications not submitted within such timeframe
shall be automatically disqualified. Each operator shall be allowed
to submit only one application for each available permit. An
operator shall be deemed to be the same as another operator and
each of their applications shall be disqualified, if such operator is
the same person or consists of any variation of the same person as
another operator.

(3) Once the time period for submission of applications has expired,
the county manager shall randomly select an application for
consideration of the available permit at a meeting open to the
public by the county manager in the presence of one or more
witnesses at the time and place set forth in the notice.

(4) Once such application is selected, the operator shall proceed with
complying with all other requirements set forth herein. The county
manager’s random selection of an application as provided herein
shall not constitute the county manager’s acceptance or approval of
the application, or of any other matters pertaining to the
application, including but not limited to its completeness. For
purposes of all timelines and time periods set forth in this article,
including but not limited to the duration of review within which
the county or any of its departments or divisions are to conduct
application reviews, such timelines and time periods shall be
extended by the amount of time required to appropriately conduct
the random selection of the application.

(5) The decision to deny a permit shall be considered non-final agency
action subject to appellate review by the special magistrate
identified in this article. The decision of the special magistrate
shall constitute final agency action subject to judicial review. Any
appeal of a permitting decision shall be made within fifteen
calendar days of receipt of a notice of the decision by filing a
written notice of appeal with the special magistrate, and submitting
to the county an appeal fee in an amount established by resolution
of the county’s board of county commissioners from time to time.
Failure to file written notice of appeal and to submit the appeal fee
within the prescribed time period constitutes a waiver of the right to appeal.

(e) **Materials required for application.** An application for a permit under this article must be filed with the county manager by all operators, including de minimis activity facilities, and include the following materials:

1. a copy of the operator's proposed rules governing the drawing by chance, sweepstakes or game promotion which includes the odds of winning and the prize table;

2. a description of the electronic equipment, including the number of pieces thereof;

3. the street address of the premises where the drawing by chance conducted in connection with the sale of a consumer product or service, and sweepstakes or game promotion conducted in connection with the sale of a consumer product or service are to be conducted;

4. if the operator 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;

5. the name and address of an individual located within the county who is authorized to receive notices from the county;

6. a statement certifying that all information on the application and any attachments thereto is true and the operator's understanding that any misstatement of material fact in the application will result in the denial of the permit or, if it has been issued, in the suspension or revocation of the permit;

7. the identification by licensor, name and version of any software program that will used by the operator to conduct any drawing by chance conducted in connection with the sale of a consumer product or service, and sweepstakes or game promotion in connection with the sale of a consumer product or service under the authority of the permit, together with the information issued by such licensor for the public specifying the manner in which the software program operates and the computer operating systems and hardware required at a minimum to properly operate the same;

8. a certificate issued within the twelve month period immediately preceding the application date by an independent testing laboratory approved by the county manager stating that:
a. the software program identified in accordance with paragraph (7) has been tested by the laboratory in accordance with standard industry practices and found to operate in the manner specified by its licensor as set forth in the licensor's information provided in accordance with paragraph (7); and,

b. the use of such software program by the customer and the choice of the manner or method by which the outcome of the drawing by chance, sweepstakes or game promotion is revealed cannot affect the outcome; and,

c. the software program does not cause the electronic equipment to operate as a slot machine.

(f) Application fee. Each operator other than the operator of a de minimis activity facility shall remit a non-refundable application fee in an amount established by resolution of the county's board of county commissioners from time to time. Each operator of a de minimis activity facility shall remit a non-refundable application fee likewise established. The fee shall be applied solely to recover the costs and expenses incurred by the sheriff's office and the county manager in reviewing and ruling on the application and issuing the permit.

(g) Processing of application.

(1) If an operator satisfies all permit application filing requirements and is not ineligible, the operator is entitled to a decision granting or denying the permit within 90 days upon a request by the operator in writing.

(2) An operator is ineligible for a permit if

a. the application materials are incomplete or untruthful; or,

b. the site does not satisfy the requirements of the applicable jurisdiction's zoning regulations and is not otherwise non-conforming thereunder.

(3) If an applicant satisfies all permit filing requirements and is not ineligible, the county manager shall approve the application.

(h) Denial of permit. An operator whose permit application is denied may reapply at any time by completing all steps of the application procedure, including payment of a new application fee. The decision to deny a permit
shall be considered non-final agency action subject to administrative appeal on the merits to the special magistrate. The decision of the special magistrate shall constitute final agency action subject to judicial review. An administrative appeal must be commenced by filing a written notice of administrative appeal with the special magistrate within fifteen calendar days of service of a notice of denial, and by submitting a filing fee in an amount established by resolution of the county’s board of county commissioners from time to time. Failure to file the written notice of administrative appeal and to submit the filing fee within the prescribed time period is jurisdictional and constitutes a waiver of the right to appeal.

(i) Permit fee. Each eligible operator, including a de minimis activity facility operator, before receiving a permit under this section, shall pay an annual permit fee for each piece of electronic equipment in an amount established by resolution of the county’s board of county commissioners from time to time. If the eligible operator fails to pay the permit fee on or before the thirtieth day after approval, availability, and notice of the permit authorization, the application shall be deemed denied. The permit fee shall be applied solely to recover the costs and expenses incurred by the sheriff’s office and the county manager in inspecting and examining the premises, electronic equipment and records of the operator to ensure compliance with this article, and otherwise enforcing the provisions of this article. The amount of the permit fee shall be based upon such costs as may reasonably be anticipated.

(j) Duration of permit. A permit shall be valid for one year from the date of issuance.

(k) Permit renewal. Permits shall be renewed upon compliance with this article, notwithstanding the total number of permits issued. The operator shall apply for the renewal permit no later than 60 days and no sooner than 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 article. Each renewal permit application 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 application approval, renewal permit operators shall pay the same permit fees as set in accordance with subsection (i) and said renewals shall be deemed denied if an eligible operator fails to pay the same on or before the thirtieth day after approval, availability, and notice of the permit authorization.

(l) Restrictions on transfers of permits.
(1) Permits may be transferred no more than one time to another person or entity upon submittal of a transfer application and fee to the county manager. The amount of the transfer fee shall be established by resolution of the county’s board of county commissioners from time to time. Any change in a majority or controlling interest in any permit holder shall be deemed a transfer of the permit. The transferee operator must meet all the requirements and qualifications of this article and provide all documents and materials required for application for a permit.

(2) Permits may be transferred to another premises upon submittal of a transfer application and fee to the county manager. The amount of the transfer fee shall be established by resolution of the county’s board of county commissioners from time to time.

(m) Revocation of permit.

(1) The county manager may revoke a permit for violation of any provision of this article or due to an operator’s cessation of the use of electronic equipment during its normal business hours for at least fourteen consecutive calendar days. Prior to revocation, the county manager shall provide to the operator, through the operator’s agent within the county authorized to accept notices from the county, the following:

a. A written notice of intent to revoke the permit;

b. A fourteen calendar day opportunity to cure the alleged violation; and,

c. An opportunity to be heard prior to revocation.

(2) Revocation shall not take place before twenty-one calendar days after a notice of revocation, opportunity to cure, and opportunity to be heard is delivered to the operator. The decision to revoke a permit shall be considered non-final agency action subject to administrative appeal to the special magistrate. The decision of the special magistrate shall constitute final agency action subject to judicial review. An administrative appeal must be commenced by filing a written notice of administrative appeal with the special magistrate within fifteen calendar days of service of a notice of denial, and by submitting a filing fee in an amount established by resolution of the county’s board of county commissioners from time to time. Failure to file the written notice of administrative appeal and to submit the filing fee within the prescribed time
period is jurisdictional and constitutes a waiver of the right to appeal.

Sec. 12-175. Inspection of premises.

The county manager and the members of the sheriff’s office shall have the authority and power to enter and inspect the public spaces of the premises at any time to ensure compliance with the provisions of this article or any other laws within their respective authority. Such authority and power shall include the selection and removal from the premises of any piece of electronic equipment to inspect, test and/or have tested to determine compliance with this article. By accepting a permit issued under Sec. 12-174, an operator shall be deemed to have consented to such authority, power and entry. The county manager or the sheriff’s office may issue to the operator a show cause order requiring the production on premises of documents or data relating to the game promotion. Production of the records or inventory shall only be for inspection and review to determine compliance with this article. Within three days of receipt of the show cause order the operator shall produce all requested records and inventory.

Sec. 12-176. Exterior signage requirements.

Exterior signage shall be subject to the sign regulations of the applicable jurisdiction. No exterior signs shall refer to activities on the premises that are illegal.

Sec. 12-177. Rules for operation of business.

(a) *Alcoholic beverages.* Operators shall not sell or permit any individual to consume or possess any alcoholic beverages on any premises with six or more pieces of electronic equipment.

(b) *Minors.* No minor shall be allowed to enter the premises. An operator who allows a minor enter the premises shall be deemed in violation of this article.

(c) *Electronic equipment limitations.* Any operator who conducted an electronic game promotion prior to the adoption date of the ordinance creating this article shall not operate more pieces of electronic equipment on any premises than in actual operation on said date. Any other operator shall be limited to operating no more than 50 pieces of electronic equipment on any premises.

(d) *Hours.* No operator shall allow any pieces of electronic equipment to be used by patrons on any premises between the hours of 12:00 a.m. and 10:00 a.m.
(e) *Free entries.* Each operator shall provide drawing or sweepstakes entries with no purchase necessary promptly upon the request of any patron who is not a minor. The minimum number of entries so provided per day shall be equal to the number of entries awarded for the purchase of one dollar’s worth of the consumer product or service being promoted.

(f) *Interior signs.* At least two signs 22 inches by 34 inches shall be conspicuously posted and maintained on separate interior walls in the patron area of the premises on white card paper and in black uppercase letters printed in a minimum font size of 72-point type that each read:

THE RESULTS OF ALL DRAWING, GAME PROMOTION OR SWEEPSTAKES ENTRIES ARE PREDETERMINED AT THE TIME THEY ARE DISTRIBUTED TO THE PATRON, AND ARE NOT AFFECTED BY THE MANNER IN WHICH THE PATRON CHOOSES TO REVEAL THEM. THE “GAME” CHOSEN BY THE PATRON TO REVEAL THE RESULT OF AN ENTRY IS A PURE SIMULATION, AND DOES NOT AFFECT THE OUTCOME. PATRONS ARE NOT ACTUALLY PLAYING SLOT MACHINES OR OTHER GAMES OF CHANCE. IN THIS REGARD, A PATRON CAN CHOICE TO REVEAL ALL ENTRY OUTCOMES INSTANTLY AND AT ONE TIME WITHOUT THE USE OF A GAME SIMULATION, AND THE RESULT WILL BE THE SAME AS IF THE GAME SIMULATION HAD BEEN USED TO REVEAL THE PREDETERMINED OUTCOME.

At least one of the signs must be posted in plain view of patrons at each point of sale.

(g) *Zoning.* Electronic game promotions shall be permitted or permissible only in accordance with the terms of the applicable jurisdiction’s zoning regulations, subject to all applicable requirements, restrictions and limitations set forth therein.

(h) *Software program operation.* The electronic equipment used for the electronic game promotions offered on the permitted premises must be operated using only the software program certified under Sec. 12-174(e)(8), and must use the computer operating systems and conform to the hardware required at a minimum to properly operate the same as identified in accordance with Sec. 12-174(e)(7).

Sec. 12-178. Safety and security requirements.

Each operator shall maintain the following security devices and standards at each permitted premises:
(a) a drop safe or cash management device for restricted access to cash receipts where there are more than five pieces of electronic equipment on the premises;

(b) a conspicuous notice at all public entrances to the premises stating that the cash register contains a limited amount of cash;

(c) height markers displaying height measures at all premises exits;

(d) a cash management policy limiting cash on hand;

(e) a silent alarm system monitored on a 24-hour basis; and,

(f) a limitation on the full opacity of any windows at the front of the premises to a height of no more than four feet.

Sec. 12-179. Enforcement; penalties.

(a) *Violation prosecuted as misdemeanor.* A person committing a violation of this article shall be guilty of an offense that, pursuant to Section 125.69, Florida Statutes, and any successor thereto, shall be prosecuted in the same manner as misdemeanors are prosecuted, and upon conviction, shall be punished by a fine not to exceed $500 or by imprisonment in the county jail, not to exceed 60 days, or by both such fine and imprisonment. Each day the violation exists shall constitute a separate violation for the purposes of this article and may be punishable as such.

(b) *Violation prosecuted as civil infraction.* The provisions of Sec. 15-20 may be used to enforce this article as a nonexclusive alternative to enforcement by any other means authorized by law. A violation of any provision of this article shall constitute a civil infraction that, for purposes of Sec. 15-20 and the civil penalties provided thereunder, is designated as a category 10 civil infraction.

(c) *Nuisance.* Any person who has committed or is responsible for the commission or causing of a violation of any provision of this article that constitutes a habitual violation as defined in Sec. 15-20 shall be deemed guilty of maintaining a nuisance within the meaning of Section 823.05, Florida Statutes, if such habitual violation is committed within a period of 180 days following the commission of the first of the predicate violations therefor. Such nuisance, the premises upon which the same is maintained and the person responsible for causing the same shall be subject to abatement and injunction as provided in Sections 60.05 and 60.06, Florida Statutes.
(d) *All remedies.* The county shall have the authority to pursue all legal and equitable remedies necessary to ensure full compliance with this article, including but not limited to injunctive relief.

(c) *Private right.* Permit holders shall have a private right of action to pursue all legal and equitable remedies necessary to ensure full compliance with this article against any other permit holder, including but not limited to injunctive relief.

Sec. 12-180. Applicability.

This article shall be deemed effective throughout the incorporated and unincorporated area of the county.

Section 5. If any section, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 6. This ordinance shall become effective as provided under Florida general law. Articles VIII and IX of Chapter 12 of the Clay County Code created under Sections 3 and 4 of this ordinance shall take effect on February 15, 2012.

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**Duly Adopted** by the Board of County Commissioners of Clay County, Florida, this 10th day of January, 2012.

BOARD OF COUNTY COMMISSIONERS
CLAY COUNTY, FLORIDA

By: __________________________
Douglas P. Conkey
Its Chairman

ATTEST:

______________________________
S. C. Kopelousos
County Manager and Clerk of the
Board of County Commissioners