

Chapter 155 - ADULT ARCADE AMUSEMENT CENTER

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Sec. 155.101. - Legislative Authorization.

This Chapter is enacted in the interest of the public health, peace, safety, morals and general welfare of the citizens and inhabitants of Duval County, Florida, pursuant to Fla. Const. Article VIII, section 1(g), F.S. § 125.01, F.S. Ch. 166, Florida Statutes, and the Charter of the City of Jacksonville.

(Ord. 2010-326-E, § 2)

Sec. 155.102. - Area of Enforcement.

The Council is acting herein as the governing body for Duval County, Florida, and this Chapter shall be effective in the General Services District, less Urban Services Districts 2, 3, and 4 which said area includes the entire City of Jacksonville, except the Cities of Jacksonville Beach, Neptune Beach, and Atlantic Beach.

(Ord. 2010-326-E, § 2; Ord. 2011-24-E, § 1)

Sec. 155.103. - Intent.

The intent of the Council acting as the governing body of Duval County, Florida in adopting this Chapter is to regulate adult arcade amusement centers, so as to protect the public health, safety and welfare.

(Ord. 2010-326-E, § 2)

Sec. 155.104. - Definitions.

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

(1) That is located on the "premises" of a facility that is licensed by the State of Florida pursuant

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to F.S. Ch. 550, and

- (2) That operates adult arcade amusement machines and
- (3) That is licensed under this Chapter.

(b) *Adult arcade amusement machine or machine* means an electronic, mechanical, coin, currency, ticket, token, card or other similarly operated, computer, video or other similar machine, device or game which operates on the insertion of money, coin, or other type of monetary consideration or requires the payment of monetary consideration for its operation and which, whether by application of skill or application of the element of chance or both or by any other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any credit, allowance or thing of value. The presence of a device as described above 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. This definition shall not include Electronic Equipment as defined in Section 156.105(d).

(c) *Amusement game or game* shall mean 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* shall mean the ability of the player, through the application of any of the skill factors listed in this Chapter, to alter the payout percentage of an amusement game by not less than 25 percent over a completely random outcome determined as provided in this Chapter.

(e) *Coupon* means a printed instrument that is a representation of points available for merchandise redemption. A coupon may not be redeemed for anything other than merchandise, as defined herein.

(f) *De minimis Activity Facility* means a facility operated by an organization exempt from federal taxation under Section 501(c) of the Internal Revenue Code with ten or fewer adult arcade amusement machines at that facility, all of which were in operation on or before January 1, 2010.

(g) *Family Amusement Arcade* means a business which, in addition to a food and beverage business for which it possesses state and local licenses, also operates an integrated arcade business that complies with F.S. § 849.161(1)(a)1., catering primarily to families and minors.

(h) *Merchandise* means an object of value 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. The general public must be able to discern:

- (1) The points required to redeem the merchandise; and
- (2) The purchase price of the merchandise.

(i) *Payout percentage* means the theoretical portion of played points retained by a machine over a period of time as determined by a licensed testing laboratory.

(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 F.S. Ch. 550

(l) *Promotional points* means points that are provided free of charge by the adult amusement arcade center to patrons.

(Ord. 2010-326-E, § 2)

Sec. 155.105. - Skill-based Adult Arcade Amusement Machine Operation Requirements.

Except as provided in Section 155.106 below, in order for an adult arcade amusement machine authorized by Florida law pursuant to F.S. § 849.161(1)(a)1., to lawfully exist and operate within the geographical boundaries of Duval County, each such machine must meet the following requirements:

(a) Be located on the premises, as defined in this Chapter, of an adult arcade amusement center licensed by the City pursuant to this Chapter;

(b) Operate by means of the insertion of a coin;

(c) Incorporate into the game the application of skill required by this Chapter; and

(d) Award only coupons or points to the player.

Adult arcade machines may also operate via the insertion of a token, card, ticket, currency, or other electronic or mechanical contrivance constituting the payment of monetary consideration provided it also operates by means of the insertion of a coin. Any coupons generated by a skill-based machine authorized under this section may only be redeemable for merchandise.

(Ord. 2010-326-E, § 2)

Sec. 155.106. - Exemption.

Nothing in this Chapter shall be interpreted to apply to either a Family Amusement Arcade or a De minimis Activity Facility, as defined in this Chapter.

(Ord. 2010-326-E, § 2)

Sec. 155.107. - Measure and Testing Application of Skill.

The application of skill factor required under F.S. §§ 155.104(d) and 155.105 of this Chapter shall be measured and certified by an independent testing laboratory licensed by the State of Florida pursuant to F.S. Ch. 551. In measuring a player's ability to alter the percentage through the application of skill for the purposes of this Chapter, the independent testing laboratory shall apply the following procedures:

(a) 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 subsection (b) below.

(b) 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.

(c) Measure the percentage decrease in the payout percentage determined under subsection (b) over that determined under subsection (a).

(Ord. 2010-326-E, § 2)

Sec. 155.108. - Minors Prohibited from Playing Adult Arcade Amusement Machines.

No person under the age of 18 years shall be permitted to play an adult arcade amusement machine or be on the premises of an adult arcade amusement center. All adult arcade amusement machines on the premises of the adult arcade amusement center shall each bear a sticker, at least three inches in diameter, which clearly and legibly says "Play by Minors Prohibited".

(Ord. 2010-326-E, § 2)

Sec. 155.109. - Permitting.

The following shall apply relative to permitting of any adult amusement arcade center:

(a) *Permit Required.* All adult arcade amusement centers located within the geographic boundaries of Duval County shall obtain an adult arcade amusement center permit issued by the Department of Environmental and Compliance as a prerequisite to the initial operation of an adult arcade amusement center.

(b) *Permits Limited.* The total number of permits issued pursuant to this section for adult arcade amusement centers within Duval County shall be limited to no more than two.

(c) *Permit Form and Conditions.* The application for an adult arcade amusement center permit must be on a form approved by the Department of Environmental and Compliance and the Office of General Counsel, and accompanied by satisfactory proof of:

(1) Licensure of the pari-mutuel permittee's premises pursuant to F.S. Ch. 550, and

(2) Payment by the applicant of the applicable occupational license tax imposed by Section 772.340, Ordinance Code.

(d) *Permit Issuance.* Upon the submission of a complete and accurate application complying with the terms of this section, the Department of Environmental and Compliance shall issue an initial permit for 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) *Certain Convictions Prohibited.* No adult arcade amusement center occupational permit shall be issued to an applicant if any person with an ownership interest in the business operating the adult arcade amusement center has been convicted of a violation of a federal, state or local law, statute or ordinance pertaining to gambling or any other crime involving moral turpitude within seven years preceding the date of the filing of the license application.

(f) *Review and approval.* Except as provided for in subsection (c) above, within 60 days of receipt of an Applicant's completed permit application, the Department of Environmental and Compliance shall grant or deny the application. If any principal, officer, shareholder or director of the Operator has a pending criminal case for an enumerated crime the City may delay its grant or denial of the permit until 60 days after the final judgment in the case. If an Applicant satisfies all permit filing requirements and is not ineligible, the Department of Environmental and Compliance shall approve the application.

(g) *Denial of Permit.* An Applicant whose permit application is denied may reapply at any time by completing all steps of the application procedure. The decision to deny a permit shall be considered non-final agency action subject to appellate review by a committee (Committee) consisting of the Director of Planning and Development, the Director of Environmental and Compliance (or successor), and the Chair of the Council's Public Health & Safety Committee. The decision of the Committee shall constitute final agency action subject to judicial review. Any appeal of a permitting decision shall be made within 15 calendar days of denial by filing a written notice of appeal with the Director of Environmental and Compliance. Failure to file written notice of appeal within the prescribed time period constitutes a waiver of the right to appeal.

(h) *Revocation of Permit.* The City may revoke a permit for violation of any provision of this Chapter. Prior to revocation, the City shall provide to the permit holder, through their individual in Duval County authorized to accept notices from the City, the following:

- (1) A written notice of intent to revoke the permit,
- (2) A 14 calendar day opportunity to cure the alleged violation, and
- (3) An opportunity to be heard prior to revocation.

Revocation shall not take place before 21 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 appellate review by a committee (Committee) consisting of the Director of Planning and Development, the Director of Environmental and Compliance (or successor), and the Chair of the Council's Public Health & Safety Committee. The decision of the Committee shall constitute final agency action subject to judicial review. Any appeal of a revocation decision shall be made within 15 calendar days of revocation by filing a written notice of appeal with the Director of Environmental and Compliance. Failure to file written notice of appeal within the prescribed time period constitutes a waiver of the right to appeal.

(Ord. 2010-326-E, § 2)

Sec. 155.110. - Machine Registration Requirements.

Adult arcade amusement machines, as defined in this Chapter, shall be registered as follows:

(a) The permittee is required to maintain on its premises a complete inventory, along with serial numbers or equivalent identification, as set forth in subsections (d) and (e) below, the adult arcade amusement machines in operation on the premises of the adult arcade amusement center at all times. The initial application for permit shall include a certificate of inspection by the Department of Environmental and Compliance's permitting administrator of the inventory, along with serial numbers or equivalent of identification, as set forth in subsection (d) and (e) below, of the

machines that the permittee intends to put into operation when the adult arcade amusement center begins its business activities.

(b) 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) and (e) below, of the machines that the permittee intends to put into operation when the adult arcade amusement center begins its business activities under the renewal license.

(c) Before a new adult arcade amusement machine is put into operation at the adult arcade amusement center, the permittee shall notify the Department of Environmental and Compliance's permit administrator of the addition of the machine to the inventory and update its inventory accordingly.

(d) Upon review of the inventory of machines under subsections (a), (b) and (c) above, the Department of Environmental and Compliance's permit administrator shall enter each machine into an adult arcade amusement machine registry that the license administrator shall create. For each machine registered, the permit administrator shall cause to be issued and delivered to permittee for each machine within seven days of the notification required under section (c) a numbered metal or plastic decal. The registration decal for each machine shall be attached thereto and in plain view at all times. Registration decals are not transferable. The failure of any machine to display a current registration decal shall be a violation of this section and subject to enforcement action by the City.

(e) The inventory of machines under subsections (a), (b) and (c) above shall provide the following information: the manufacturer(s); the serial number(s); common name, type or description of the game played on the machine. The registration decal shall contain the inventory number of the machine.

(f) Each inventory of machines submitted under subsections (a), (b) and (c) above shall be accompanied by a certificate issued by an independent testing laboratory licensed by the State of Florida pursuant to F.S. Ch. 551, certifying that the game played by the skill-based adult arcade amusement machines identified in the inventory meet the application of skill requirement contained in Sections 155.104(d), 155.105 and 155.107 of this Chapter.

(Ord. 2010-326-E, § 2)

Sec. 155.111. - Record Keeping Requirements.

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

(a) The name, address, telephone numbers, date of birth, driver's license number, and principal occupation of every person with a ten percent or greater ownership interest in the business of the adult arcade amusement center;

(b) A copy of the license issued for the pari-mutuel permittee by the State of Florida pursuant to F.S. Ch. 550

(c) A current inventory of machines in operation on the premises; and

(d) A current certification of compliance issued by an independent testing laboratory licensed pursuant to F.S. Ch. 551, for each game played by the skill based machines listed in the inventory.

(Ord. 2010-326-E, § 2)

Sec. 155.112. - Enforcement.

(a) The City of Jacksonville shall have the right to pursue all legal and equitable remedies necessary to ensure full compliance with this Chapter. Except as otherwise provided herein, the requirements of this Chapter may be enforced by the Department of Environmental and Compliance (or its successor) and/or the Jacksonville Sheriff's Office as follows:

- (1) Through the Municipal Code Enforcement Board or the Special Magistrate pursuant to the authority granted by F.S. Ch. 162, Part I, and Ch. 91, Ordinance Code;
- (2) Through the judicial system by citation for civil penalties pursuant to the authority granted by F.S. Ch. 162, Part II, and Ch. 609, *Ordinance Code*;
- (3) Through the judicial system by civil complaint filed by the City for civil penalties in a court of competent jurisdiction;
- (4) By civil action for injunctive relief through a court of competent jurisdiction; and/or
- (5) By all other means available in law or equity.

(b) Civil penalty payments recovered pursuant to this Chapter shall be used to fund administration and enforcement efforts under this Chapter. Upon successful prosecution of any violation of this Chapter wherein the City has filed suit in a court of competent jurisdiction to recover a civil penalty and/or obtain injunctive relief, the City shall be authorized to recover its reasonable attorneys' fees and costs.

(c) Permittees shall have a private right of action to pursue all legal and equitable remedies necessary to ensure full compliance with this Chapter against any other permittee, including but not limited to injunctive relief.

(Ord. 2010-326-E, § 2; Ord. 2011-386-E, § 1)

Sec. 155.113. - Occupational License Tax; Adult Arcade Amusement Machine Registration Fees.

The following taxes and fees shall be assessed in connection with operation of any adult arcade amusement center:

- (a) Notwithstanding any other provision of the Ordinance Code, and in accordance with F.S. Ch. 205, the exclusive annual occupational license tax for each licensed adult arcade amusement center shall be \$40 per day of operation, payable by the licensee on or before October 1 of each year for the following one-year operational period beginning on October 1. In any partial year of operation, the annual occupational license tax shall be prorated from the beginning date to the following September 30.
- (b) The annual machine registration fee shall be \$50 per machine payable by the permittee on or before October 1 of each year for the following one-year operational period beginning on October 1. If a machine is registered after October 1, then the annual registration fee shall be prorated from date of registration to the following September 30.

(Ord. 2010-326-E, § 2)

Sec. 155.114. - Penalty.

Each violation of this Chapter by a licensee or any unlicensed person, company or entity shall constitute a Class E offense, as defined in Chapter 609, Ordinance Code per machine per day. Each day the violation exists, and each individual machine found to be in violation on that day, shall constitute a separate violation for the purposes of this Chapter and may be punishable as such.

(Ord. 2010-326-E, § 2; Ord. 2011-386-E, § 2)

Sec. 155.115. - Right of Entry.

The City of Jacksonville and the Jacksonville Sheriff's Office shall have the right to enter and inspect the public spaces of the premises at any time to ensure compliance with the provisions of this Chapter or any other ordinances within their authority, including but not limited to the right to enter the premises and to select and remove any adult arcade amusement machine(s) to inspect, test and/or have tested to determine compliance with this Chapter.

(Ord. 2010-326-E, § 2)

Sec. 155.116. - Severability.

In the event that any portion of this Chapter is declared invalid, unenforceable, unconstitutional or void, or is permanently enjoined, or if the existence of any provision of this Chapter would result in any other portion of any Chapter of the Ordinance Code being held to be invalid, unenforceable, unconstitutional or void, and the court does not sever such invalid portion of this section, then the invalid portion of this Chapter is repealed and invalid. It is the specific intent that the invalidity of any portion of this Chapter shall not affect any other section, subsection, paragraph, subparagraph, sentence, phrase, clause or word of this Chapter or the Ordinance Code.

(Ord. 2010-326-E, § 2)