AN ORDINANCE OF THE CITY OF PALM COAST, FLORIDA, AMENDING CHAPTER 16, CODE OF ORDINANCES OF PALM COAST, FLORIDA, RELATING TO BUSINESSES AND BUSINESS REGULATIONS; SPECIFICALLY CREATING ARTICLE IX ELECTRONIC GAME PROMOTIONS; PROVIDING FOR STATUTORY AUTHORIZATION, ENFORCEMENT AREA TO BE THE INCORPORATED AREAS OF THE CITY OF PALM COAST; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR VIOLATIONS; PROVIDING FOR SEVERABILITY, CODIFICATIONS, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, sections 849.0935 and 849.094, Florida Statutes, authorize drawings by chance and game promotions, which grant exemptions from the statutory framework prohibiting illegal gambling activities; and

WHEREAS, in order to avoid such activity transitioning to and becoming illegal gambling, strict compliance with the law must occur; and

WHEREAS, the uncontrolled proliferation of electronic game promotion establishments throughout Palm Coast may have a detrimental impact on the health, safety and welfare of its citizens and visitors, unless properly regulated, and that the City Council has a duty to take action to eliminate the potential detrimental impact of the proliferation of electronic game establishments; and

WHEREAS, there is often a correlation between establishments that utilize simulated gambling devices and disturbances of the peace and good order of the community; and

WHEREAS, to preserve the public peace and good order, and to safeguard the health, safety, and general welfare of the community, it is necessary to regulate electronic game promotion establishments; and

WHEREAS, there is a direct relationship between electronic game promotion establishments and disturbances such as armed robberies; and

WHEREAS, to protect the patrons of electronic game promotion establishments it is necessary to provide additional security measures such as security cameras, licensed security guards, and a drop safe; and

WHEREAS, to control the impact of parking demand of electronic game promotion establishments on retail centers, it is necessary to limit the number of equipment that may be operated on site; and

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WHEREAS, a likelihood of confusion exists between businesses using electronic equipment to conduct drawings by chance and game promotions or sweepstakes, 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; and

WHEREAS, pursuant to Chapter 166, Florida Statutes, and the Palm Coast Code of Ordinances (the “Code of Ordinances”), the City may regulate this activity for the health, safety and welfare of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA:

SECTION 1. CHAPTER 16, CITY OF PALM COAST CODE OF ORDINANCES, IS AMENDED TO CREATE A NEW ARTICLE IX, ELECTRONIC GAME PROMOTIONS.

Chapter 16 (Businesses and Business Regulations), City of Palm Coast Code of Ordinances, is amended to create a new Article IX (Electronic Game Promotions), to read as follows:

Chapter 16. BUSINESSES

* * *

Article IX

ELECTRONIC GAME PROMOTIONS

Sec. 16-238. Legislative Authorization.

This Article is enacted in the interest of the public health, peace, safety, and general welfare of the citizens and inhabitants of Palm Coast, Florida, pursuant to Fla. Const. Article IX, section 2(b), and Chapter 166, Florida Statutes. It is established 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 otherwise violate Florida law.

Sec. 16-239. Definitions.

(a) “City Manager” shall mean the Palm Coast City Manager or his or her designee.

(b) “De minimis Activity Establishment” means an establishment operated by an organization exempt from federal taxation under Section 501 (c) of the Internal Revenue Code and with five (5) or fewer electronic or mechanical devices that are used to conduct a drawing by chance, sweepstakes, or game promotion utilizing those electronic or mechanical devices.

(c) “Electronic Equipment” means any electronic device provided by or on behalf of the Operator that is used or adapted for use to conduct or reveal the results of, a drawing by
chance conducted in connection with the sale of a consumer product or service, sweepstakes or other game promotion, that displays results by simulating a game or games ordinarily played on a slot machine or other similar games of chance.

(d) “Electronic Game Promotion” means a sweepstakes or other game promotion which utilizes Electronic Equipment or a drawing by chance conducted in connection with the sale of a consumer product or service which utilizes Electronic Equipment that does not otherwise violate State of Florida law.

(e) “Establishment” means the building, edifice, or location, along with its grounds, in or upon which the Operator conducts an Electronic Game Promotion.

(f) “Operator” means any Person in whose name an Electronic Game Promotion is conducted and in whose name the Certificate of Use is issued under this Ordinance.

(g) “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.

(h) "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, through 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. These cash billets, tickets, tokens or electronic credits are then exchanged for cash or 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.

(i) To the extent not defined in this section, the definitions utilized in Chapter 849, Florida Statutes, shall be applicable to all terms used in this Ordinance.

Sec. 16-240. General Prohibition.

Except as expressly regulated and permitted by this Ordinance, no Person, other than a De minimis Activity Establishment as defined herein, shall conduct a drawing by chance pursuant to s. 849.0935, Florida Statutes, sweepstakes or game promotion pursuant to s. 849.094, Florida Statutes, on Electronic Equipment, as defined herein.
Sec. 16-241. Certificate of Use.

(a) *Certificate of Use Required.* Except for a De minimis Activity Establishment, every Operator conducting an Electronic Game Promotion that otherwise does not violate Florida law shall obtain a Certificate of Use from the City Manager for each Establishment at the time that it seeks issuance or renewal of the local business tax receipt for the business, or at any time that there is a change of owner. The issuance of a Certificate of Use by the City does not constitute a determination that either the use or the location of the use is in accordance with law.

(b) *Initial Certificate of Use.* All Operators who are conducting an Electronic Game Promotion on the date of the adoption of this Ordinance have 45 days from the effective date of this Ordinance to apply for a Certificate of Use. Any such initial Certificate of Use shall have a term or duration until September 30, 2013.

(c) *Certificate of Use Limited.* The City Manager shall limit the total number of active Certificates of Use pursuant to this section to nine (9). All qualifying Operators who receive a Certificate of Use shall be entitled to renew their Certificate of Use if they otherwise qualify and pay required fees.

(d) *Duration of Certificate of Use.* A Certificate of Use (other than an initial Certificate of Use) shall be renewed by the first September 30th one (1) year from the date of issuance and by September 30th each year thereafter.

(e) *Renewal of Existing Certificate of Use.* Existing Certificates of Use shall be renewed upon compliance with this Ordinance, notwithstanding the total number of Certificates of Use issued. The renewal application for the Certificate of Use shall be the same as the original Certificate of Use application, to include all the materials and the application fee required for the issuance of the original Certificate of Use, and shall include evidence of current lawfully existing operations consistent with the requirements of this Ordinance.

Sec. 16-242. Certificate of Use Application Materials; Application Fee.

(a) The Application shall include the following materials:

(1) A complete inventory of Electronic Equipment located on the Establishment, including but not limited to: the manufacturer(s) and the serial number(s) or equivalent identification;

(2) A Level 2 Background Screening For Operator(s) of Establishment. Level 2 Background Screening includes fingerprinting for statewide criminal history checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI) and a criminal records check through local law enforcement. Statutory authority for this activity is provided by F.S. 166.0442;

(3) Certification by an independent testing laboratory through laboratory confirmation report that the computer software used by the Operator to conduct the
Electronic Game Promotion has been tested and that it does not contain a random number generator. The verification shall comply with all applicable state and local laws, including this Ordinance;

(4) A sworn affidavit containing the following:

(A) the identity of the Operator and all of its owners, including names of principals, as opposed to company name, dates of birth and home addresses;

(B) a statement of whether any of the individuals listed have, within the five-year period immediately preceding the date of the application, been convicted of any felony under the laws of Florida, the United States, or any other state, and, if so, the particular criminal act involved and the place of conviction;

(C) a statement certifying that all information on the application and any attachments thereto are true and that the Operator understands that any misstatement of material fact in the application will result in the denial of the Certificate of Use, or, if it has been issued, in the suspension or revocation of the Certificate of Use.

(D) a statement certifying that the establishment and the electronic game promotion comply with all applicable State regulations, including but not limited to, Florida Statutes 849.0935 and 849.094, and any necessary supporting documentation.

(5) Verification demonstrating that closest school, public park, or church exceed 1,000 feet from the Establishment; and

(6) Each Operator shall remit a non-refundable application fee pursuant to the Fee Schedule established for Certificate of Use for Electronic Game Promotions. This fee shall cover the costs for the time and expense of the City Manager in enforcing the provisions herein, reviewing and ruling on the application, and issuing the Certificate.

Sec. 16-243. Review of Certificate of Use Application.

Within sixty (60) days of receipt of a completed Certificate of Use application, the City Manager 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 Manager may delay its grant or denial of the Certificate until sixty (60) days after the final judgment.

Sec. 16-244. Eligibility of Operator.

If an Operator satisfies all Certificate of Use filing requirements and is not ineligible, the City Manager shall approve the application. The City Manager shall deny the Certificate of Use for any of the following reasons:
(a) Within five (5) years of the date of the application, Operator or any owner thereof, has been convicted of, or has entered a plea of nolo contendere to a felony under the laws of Florida;

(b) Within five (5) years of the date of the application, Operator or any owner thereof has been convicted of, or has entered a plea of nolo contendere to a misdemeanor involving exploitation of a vulnerable adult as defined by Florida Statute 415.102;

(c) Within five (5) years of the date of the application, Operator or any owner thereof has been convicted of, or has entered a plea of nolo contendere to a misdemeanor involving any type of fraud;

(d) Within three (3) years of the date of the application, Operator, or any owner thereof, has had a Certificate of Use under this Ordinance revoked; or

(e) The application materials are incomplete or untruthful.

Sec. 16-245. Revocation or Denial of Certificate of Use.

An Operator whose Certificate of Use application is denied may reapply at any time by completing all steps of the application procedure, including payment of a new application fee. The City has the right, for just cause, to revoke a Certificate of Use after written notice to the Operator. The decision to deny or revoke a Certificate of Use shall be considered non-final agency action subject to appellate review to the City Hearing Officer. The decision of the Hearing Officer shall constitute final agency action subject to judicial review. Any appeal of a decision regarding a Certificate of Use shall be made within fifteen (15) calendar days of receipt of a notice of revocation or denial by filing a written notice of appeal with the Hearing Officer, along with an appeal fee pursuant to the Fee Schedule established for Certificate of Use for Electronic Game Promotions. Failure to file written notice of appeal and appeal fee within the prescribed time period constitutes a waiver of the right to appeal.

Sec. 16-246. Transfers of Certificate of Use.

Certificates of Use are not transferable. Establishments changing ownership and/or location shall make application for a Certificate of Use to include all the materials and application fee.

Sec. 16-247. Public Nuisance

An Electronic Game Promotion establishment may be declared a public nuisance when, on more than two occasions within a 6-month period, the Establishment is the site of a founded complaint related to:

(a) F.S. Section 784.011, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery;
(b) F.S. Section 810.02, relating to burglary;
(c) F.S. Section 812.014, relating to dealing in theft;
(d) F.S. Section 812.131, relating to robbery by sudden snatching;
(e) F.S. Section 893.13, relating to the unlawful distribution of controlled substances; or
(f) F.S. Section 896.101, relating to money laundering.

The Electronic Game Promotion Establishment declared a public nuisance maybe abated pursuant to the procedures provided in Chapter 35 of the City of Palm Coast Code of Ordinances. In addition, the City may bring any other action available at law or equity to penalize or enjoin violations of this article.

“Founded Complaint” means that a review of the facts by the City shows by a preponderance of the evidence that a crime has occurred.

**Sec. 16-248. Inspection of Establishments.**

During business hours, the City Manager, the Flagler County Sheriff’s Office, or their agents may enter the Establishments for purposes of inspecting all areas of the Establishments otherwise accessible to the general public, to ensure compliance with the provisions of this Ordinance or any other ordinances within their authority, including but not limited to the right to enter the Establishments and to select and remove any single piece of Electronic Equipment to inspect, test and/or have tested to determine compliance with this Ordinance in accordance with Federal and State law.

**Sec. 16-249. Signage Requirements.**

(a) **Exterior of Establishments.** Window signage shall not be located between the vertical distance of four (4) feet and six (6) feet.

(b) **Interior of Establishments.** The Operator shall conspicuously post in the interior of the Establishments, the following:

(1) The Certificate of Use shall be posted conspicuously at the main counter or at the entrance.

(2) The complete rules for all Electronic Game Promotions at the Establishment’s front or main counter and a complete copy of the Rules, prize tables, and odds of winning shall be made available on request without cost.

(3) A sign which includes the following language in at least 26-point font: “State and local law prohibits this establishment from requiring an entry fee, payment, or proof of purchase as a condition of participating. No donation or contribution is required. You may obtain free entries upon request from any employee on the Establishment.”
Sec. 16-250. Limitations on Operation of Business.

(a) Alcoholic Beverages. Operators shall not sell, serve, or permit any individual to consume or possess any alcoholic beverages at the Establishment.

(b) Minors. Operators shall not permit anyone under 18 years of age to enter the Establishment.

(c) Conditions of Alternative Means of Entry. Entries that do not require purchase or financial donations shall be made available on request. The Operator shall not impose any condition on the provision of such entries other than proof of identity by government issued identification from any state. The Operator shall not limit the number of such entries offered per day per individual to less than the equivalent amount of entries that Operator provides to individuals who make a donation, or purchase of a product or service valued at least $1.00.

(d) Limitation on Electronic Equipment. Operators shall not operate more than one hundred (100) pieces of Electronic Equipment except that Operators conducting an Electronic Game Promotion on the adoption date of this ordinance may not operate more pieces of Electronic Equipment than were in operation on the date of adoption of this Ordinance. Replacing an existing piece of Electronic Equipment due to a defect or upgrade shall not be deemed a reduction pursuant to this subsection, provided that such replacement occurs within thirty (30) days.

(e) Hours of Operation. An Operator conducting an Electronic Game Promotion shall be required to limit hours of operation between 8 a.m. to 2 a.m., seven days a week.

Sec. 16-251. Safety and Security Requirements.

Operators shall maintain the following security devices and standards on Establishments:

(a) A security camera system operating during business hours and capable of recording and retrieving an identifiable image;

(b) A drop safe or cash management device for restricted access to cash receipts where there are more than five (5) pieces of Electronic Equipment on the Establishment;

(c) A silent alarm system capable of notifying law enforcement;

(d) Establishments shall have at least one licensed security guard during nighttime hours starting at 6:00 p.m. The fact that a licensed security guard may not be required is not intended to immunize or forgive an Operator from any statutory or common law obligation to maintain reasonably safe Establishments at any time; and

(e) Window signage and tinting shall allow a clear and unobstructed view from outside the building and in a normal line of sight between the vertical distance of 4 and 6 feet across the facade of the establishment.
Establishments are required to comply with this section of the Code within (60) sixty days of the adoption of this Ordinance.

Sec. 16-252. Area of Enforcement.

In the event a county regulation conflicts with this Ordinance, this Ordinance shall prevail within the City.

Sec. 16-253. Enforcement; Penalties.

(a) Violation of this Article by an Operator or any unpermitted person, company or entity shall be punishable by imposition of a civil penalty not to exceed $500.00 per violation. Each day the violation exists shall constitute a separate violation for the purposes of this Ordinance and shall be punishable as such.

(b) Palm Coast shall have the right to pursue all legal and equitable remedies necessary to ensure full compliance with this Ordinance, including but not limited to injunctive relief.

SECTION 2. SEVERABILITY.

If any provision of this Ordinance or the application thereof is finally determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be deemed to be severable and the remaining provisions shall continue in full force and effect provided that the illegal, invalid or unenforceable provision is not material to the logical and intended interpretation of this Article.

SECTION 3. CODIFICATION.

It is the intention of the City Council of the City of Palm Coast, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinance of the City of Palm Coast, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, “Ordinance” may be changed to “Section,” “Article,” or other appropriate word.

SECTION 4. CONFLICTS.

All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 5. EFFECTIVE DATE.

Section 16-251 will take effect 60 days from the date of adoption; all other sections take effect immediately.
APPROVED on first reading the 17th day of April 2012, at a public hearing.
ADOPTED on the second reading the 1st day of May 2012, at a public hearing.

ATTEST:                  CITY OF PALM COAST

________________________   ________________________
Virginia A. Smith, City Clerk    Jon Netts, Mayor

Approved as to form and legality

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William E. Reischmann, Jr., Esquire