

ORDINANCE NO. 2011-37

AN ORDINANCE OF ST. JOHNS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, REGARDING ADULT ARCADE AMUSEMENT CENTERS AND ELECTRONIC GAME PROMOTIONS; MAKING FINDINGS; REGULATING THE OPERATION OF ADULT ARCADE AMUSEMENT CENTERS AND ELECTRONIC GAME PROMOTIONS; PROVIDING FOR STATUTORY AUTHORIZATION, THE COVERED AREA TO BE THE UNINCORPORATED AREAS OF ST. JOHNS COUNTY, THE INTENT OF THE ORDINANCE, DEFINITIONS, REGULATIONS FOR PERMITTING AND FEES, LIMITATIONS ON THE OPERATIONS OF THE BUSINESSES; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR VIOLATIONS; CREATING A NEW LOCAL BUSINESS LICENSE TAX; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA:

RECITALS

WHEREAS, in the last decade, establishments operated pursuant to sections 849.161(1)(a)1, 849.0935, and 849.094, Florida Statutes, have created problematic issues for local law enforcement authorities in Florida, complicated by limitations of resources and difficulty of enforcement of state law; and

WHEREAS, the uncontrolled proliferation of adult arcade amusement machines throughout St. Johns County may have a detrimental impact on the health, safety and welfare of its citizens and visitors, unless properly regulated, and the Board of County Commissioners has a duty to affirmatively eliminate the potential detrimental impact of a proliferation of adult arcade amusement machines; and

WHEREAS, the Board of County Commissioners finds that the public welfare will be enhanced if such adult arcade machines are confined to highly regulated facilities that meet strict licensing standards; and

WHEREAS, the Board of County Commissioners 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; and

WHEREAS, sections 849.0935 and 849.094, Florida Statutes, authorize drawings by chance and game promotions; and

WHEREAS, confusion has existed for some years as to the interpretation and enforcement of these statutes, which grant an exemption from the statutory framework prohibiting illegal gambling activities; and

WHEREAS, the Board of County Commissioners is cognizant of at least one legislative bill proposed for consideration in the upcoming session of the Florida Legislature that seeks to limit and/or make illegal certain electronic gaming activities, simulated gambling devices and/or internet cafes, therefore in no way does this regulatory ordinance approve of any practice that is further restricted by the Legislature or deemed illegal by any court of competent jurisdiction.

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

WHEREAS, the County recognizes that there is a distinction between the costs associated with the permitting game promotions, sweepstakes and drawings by chance conducted in connection with the sale of a consumer product or service utilizing electronic equipment, and not for profit entities which have five (5) or fewer pieces of electronic equipment where less oversight may be appropriate; and

WHEREAS, 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; and

WHEREAS, the increased participation in drawings by chance and game promotions or sweepstakes utilizing electronic equipment has the potential to mislead and confuse unwary citizens if not regulated, and therefore increases the need for regulation; and

WHEREAS, an ordinance to regulate the use of electronic equipment in the conduct of drawings by chance and game promotions or sweepstakes will protect the public welfare; and

WHEREAS, pursuant to Section 125.01, Florida Statutes, and the St. Johns County Code of Ordinances (the "Code of Ordinances"), the County may regulate this activity for the health, safety and welfare of the community; and

WHEREAS, a likelihood of confusion exists of 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, 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.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA:

Section 1. Recitals. The above Recitals are adopted as Findings of Fact in support of this Ordinance.

Section 2. Authority. This Ordinance is enacted in compliance with and pursuant to Section 125.01, Florida Statutes (2010).

Section 3. Legislative Findings. The Board of County Commissioners of St. Johns County, Florida (the "Board") finds as follows:

(a) Desiring to promote the health, safety, education and welfare of the people, St. Johns 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.

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

(c) 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 its interests.

(d) Adult Arcade Amusement Machines should be confined to highly regulated pari-mutuel facilities that meet strict State of Florida licensing standards.

(e) The Board is authorized to permit and regulate the operation of Adult Arcade Amusement Centers for the enjoyment, entertainment and protection of the residents and visitors to the County.

(f) No Adult Arcade Amusement Machine should be allowed unless it is located upon the premises of a permitted Adult Arcade Amusement Center in accordance with the operational requirements set forth in this Ordinance.

(g) That 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. The Board further recognizes that establishments which utilize electronic equipment to display the results of drawings by chance and game promotions or sweepstakes 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.

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

(i) 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 and game promotions.

Section 4. Legislative Authorization. This Ordinance is enacted in the interest of the public health, peace, safety, morals and general welfare of the citizens and inhabitants of St. Johns County, Florida, pursuant to Fla. Const. Article VIII, section 1(g) and section 125.01, Florida Statutes.

Section 5. Area of Enforcement. The Board is acting herein as the governing body for St. Johns County, Florida, and this Ordinance shall be effective within the unincorporated areas of St. Johns County, Florida.

Section 6. Adult Arcade Amusement Center. The following regulations are hereby enacted related to the establishment and operation and regulation of Adult Arcade Amusement Centers:

A. Intent.

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

B. Definitions.

(1) "Adult Arcade Amusement Center" means a business (a) that is located on the "premises" of a facility that is licensed by the State of Florida pursuant to Ch. 550, Florida Statutes, and (b) that operates Adult Arcade Amusement Machines that complies with section 849.161(1)(a)1., Florida Statutes. Adult Arcade Amusement Centers do not include Family Amusement Arcades.

(2) "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, 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 (i) points representing a unit of game play on the machine or (ii) 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 "application of skill" shall mean 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 the machine by decreasing the game's advantage by at least 25% over a completely random strategy of play, as certified by an

independent laboratory licensed under Chapter 551, Florida Statutes. 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.

(3) "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.

(4) "County Administrator" shall mean the St. Johns County Administrator or his designee.

(5) "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.

(6) "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: (a) the points required to redeem the merchandise; and (b) the purchase price of the merchandise.

(7) "Family Amusement Arcade" is defined in Article XII of the Land Development Code.

(8) "Points" means a unit of entitlement for play of an Adult Arcade Amusement Machine created by either: (a) the conversion of coins, bills, tickets, or vouchers when inserted into an Adult Arcade Amusement Machine; or (b) the results of a played game.

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

C. Skill-based Adult Arcade Amusement Machine Operation Requirements.

Except as provided in Subsection 6.D below, 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 geographical boundaries of St. Johns County, each such machine must be located on the Premises of an Adult Arcade Amusement Center permitted by the County Administrator pursuant to this Ordinance and the Land Development Code.

D. Exemption.

Nothing in this Ordinance shall be interpreted to apply to a Family Amusement Arcade, as defined in this Ordinance.

E. 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. Each Adult Arcade Amusement Machine located 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 says "Play by Minors Prohibited".

F. Permitting.

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

(1) *Permit Required.* All Adult Arcade Amusement Centers located within the geographic boundaries of St. Johns County shall obtain an Adult Arcade Amusement Center permit issued by the County Administrator as a prerequisite to the initial operation of an Adult Arcade Amusement Center.

(2) *Permits Limited.* The total number of permits issued pursuant to this section for Adult Arcade Amusement Centers within St. Johns County shall be limited to no more than two (2).

(3) *Permit Form and Conditions.* The application for an Adult Arcade Amusement Center permit must be on a form approved by the County Administrator and accompanied by satisfactory proof of (a) licensure of the pari-mutuel permittee's premises pursuant to Ch. 550, Florida Statutes, and (b) payment by the applicant of the applicable Local Business License Tax imposed by the Code of Ordinances.

(4) *Permit Issuance.* Upon the submission of a complete and accurate application complying with the terms of this section, the County Administrator shall, within sixty (60) days of receipt of an applicant's completed permit application, 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 (1) 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.

(5) *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 the County Special Magistrate. 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 (15) calendar days of receipt of a notice of denial by filing a written notice of appeal with the Special Magistrate, along with an appeal fee of \$1500.00. Failure to file written notice of appeal and appeal fee within the prescribed time period constitutes a waiver of the right to appeal.

(6) *Revocation of Permit.* The County Administrator may revoke a permit for violation of any provision of this Ordinance. Prior to revocation, the County Administrator shall

provide to the permit holder, through its individual in St. Johns County authorized to accept notices, the following:

- (a) A written notice of intent to revoke the permit,
- (b) A fourteen (14) calendar day opportunity to cure the alleged violation, and
- (c) An opportunity to be heard prior to revocation.

Revocation shall not take place before twenty one (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 the Special Magistrate. The decision of the Special Magistrate shall constitute final agency action subject to judicial review. Any appeal of a revocation decision shall be made within fifteen (15) calendar days of receipt of a notice of revocation by filing a written notice of appeal with the Special Magistrate, along with an appeal fee of \$1500.00. Failure to file written notice of appeal and appeal fee within the prescribed time period constitutes a waiver of the right to appeal.

G. Machine Registration Requirements.

Adult Arcade Amusement Machines, as defined in this Ordinance, shall be registered as follows:

(1) The permittee is required to maintain on its Premises a complete inventory, along with serial numbers or equivalent identification, as set forth in subsections (4) 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 Applicant of the inventory, along with serial numbers or equivalent of identification, as set forth in subsection (4) below, of the machines that the permittee intends to put into operation when the Adult Arcade Amusement Center begins its business activities.

(2) 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 (4) below, of the machines that the permittee intends to continue or put into operation when the Adult Arcade Amusement Center begins its business activities under the renewal permit.

(3) Before a new Adult Arcade Amusement Machine is put into operation at the Adult Arcade Amusement Center, the permittee shall notify the County Administrator of the addition of the machine to the inventory and update its inventory accordingly.

(4) The inventory of machines under subsections (1), (2) and (3) above shall provide the following information: the manufacturer(s); the serial number(s); 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.

H. Record Keeping Requirements.

The following records shall be maintained in the administrative office of each Adult Arcade Amusement Center:

- (1) A copy of the license issued for the pari-mutuel permittee by the State of Florida pursuant to Ch. 550, Florida Statutes; and
- (2) A current inventory of machines in operation on the Premises.

I. Adult Arcade Amusement Machine License Fees.

The annual Machine license fee shall be \$65.00 per Machine payable by the permittee on or before October 1 of each year for the following one (1) year operational period beginning on October 1. If a Machine is registered after October 1, then the annual license fee shall be prorated from date of registration to the following September 30. The County Fee Schedule, adopted as Resolution 2011-274, as previously amended, is hereby amended to add the annual machine license fee for Adult Arcade Amusement Centers.

J. Right of Entry

The County Administrator and the St. Johns County 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 Ordinance 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 Ordinance.

Section 7. Electronic Game Promotions. The following regulations are hereby enacted related to the establishment, operation and regulation of Electronic Game Promotions:

A. Intent.

The intent of the Board acting as the governing body of St. Johns County, Florida in adopting this Ordinance 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 (as defined herein) who utilize electronic equipment for that purpose in accordance with the provisions of sections 849.0935 and 849.094, Florida Statutes, regardless of whether said Operators are required to register with the State of Florida pursuant to section 849.094, Florida Statutes.

B. General Prohibition.

Except as expressly regulated and permitted by this Ordinance, no Person, shall conduct a drawing by chance pursuant to s. 849.0935, Florida Statutes, sweepstakes or game promotion pursuant to s. 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.

C. Definitions.

(1) "County Administrator" shall mean the St. Johns County Administrator or his designee.

(2) "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.

(3) "Electronic Equipment" means any electronic or mechanical device intended and used for a single player at a time provided by or on behalf of the 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 promotions that display results by simulating a game or games ordinarily played on a slot machine.

(4) "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.

(5) "De Minimus Activity Facility" means a facility 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 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 electronic or mechanical devices.

(6) "Minor" means an individual under the age of eighteen (18) years.

(7) "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.

(8) "Premises" means the house, building, edifice, or location, along with its grounds, in or upon which the Operator conducts an Electronic Game Promotion.

(9) "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.

To the extent not defined in this section, the definitions utilized in sections 849.0935 and 849.094, Florida Statutes, shall be applicable to all terms used in this Ordinance.

D. Permitting and Fees.

(1) *Permit Required.* Every Operator conducting an Electronic Game Promotion shall obtain a permit from the County Administrator for each Premises. Each permit is valid only for the Operator and the Premises named in the permit. Each permit is valid for one year.

(2) *Initial Permits.* Within sixty (60) days of enactment of this Ordinance, all current Operators that have a current Local Business License Tax receipt for each piece of Electronic Equipment located on their respective Premises as of December 31, 2010 or have applied for a Certificate for Business Office/Home Office to the Growth Management Department by December 31, 2010 and which apply for, facially qualify for, and pay required fees for a permit, shall be granted a permit for the Premises as provided for in this section.

(3) *De Minimus Activity Facility Permits.* Operators which qualify as a De Minimus Activity Facility which was not in business or operating upon the initial enactment of this Ordinance, may apply for an initial permit at any time hereafter subject to compliance with all of the terms provided herein.

(4) *Permits Limited.* Except for De Minimus Activity Facilities, unless greater than nine (9) permits have been issued as provided for in subsection (2) above, the County Administrator shall limit the total number of permits issued pursuant to this section to nine (9). After the permits authorized by subsection (2) are issued, no permits for new businesses shall be issued unless the issuance of the permit will not cause the total number of permits issued to exceed 9 permits. All qualifying Operators who receive an initial permit as provided for in subsection (2) shall be entitled to renew their permit if they otherwise qualify and pay required fees. In the event that a permit becomes available, all applications for the permitting of a new business shall, in addition to all permitting requirements set forth herein, be subject to the following procedures:

(a) The County Administrator shall publish a notice in a newspaper of general circulation in a form prescribed by the County Administrator regarding the availability of such permit and the prescribed time period of fifteen (15) calendar days from the date of such publication within which the County Administrator will accept applications, and the location and

date of the public meeting at which the random selection of the application for permit shall take place.

(b) 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 (1) 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 is the same Person or consists of any variation of the same Person as another Operator.

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

(d) Once such application is selected, the Operator shall proceed with complying with all other requirements set forth herein. The County Administrator's random selection of an application as provided herein shall not constitute the County Administrator's acceptance or approval of the application, including for example, for purposes of determining the application's completeness. For purposes of all timelines and time periods set forth in this Ordinance, 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.

(e) The decision to deny a permit shall be considered non-final agency action subject to appellate review by the County Special Magistrate referenced below. 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 (15) calendar days of receipt of a notice of denial by filing a written notice of appeal with the County Special Magistrate, along with an appeal fee of \$1,500.00. Failure to file written notice of appeal and appeal fee within the prescribed time period constitutes a waiver of the right to appeal.

(5) *Application Materials Required for Permit.*

(a) All Operators, including De Minimus Activity Facilities, shall file with the County Administrator the following materials:

(i) a copy of Operator's proposed rules governing the drawing by chance, sweepstakes or game promotion which includes the odds of winning and the prize table;

(ii) a description, including the number of pieces of the Electronic Equipment;

(iii) the street address of the Premises where the drawing by chance conducted in connection with the sale of a consumer product or service, sweepstakes or game promotions are to be conducted;

(iv) 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; and

(v) the name and address of an individual in St. Johns County who is authorized to receive notices from the County;

(vi) a statement certifying that all information on the application and any attachments thereto is true and that the Operator understands 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; and

(vii) a certification that the computer software that is used by the Operator to conduct a drawing by chance in connection with the sale of a consumer product or service, sweepstakes or game promotion has been tested by an independent testing laboratory that has verified the manner that the software works. That verification of the manner that the software works shall comply with all applicable state and local laws, including this Ordinance.

(6) *Application Fee.* Each Operator shall remit a non-refundable application fee of \$2,000.00 ; or a non-refundable application fee of \$250.00 for Premises which qualify as a De Minimus Activity Facility. This fee shall help offset for the time and expense of the St. Johns County Sheriff's Office and the County Administrator in enforcing the provisions herein, reviewing and ruling on the application, and issuing the permit.

(7) *Review of Application.*

(a) Duration of Review.

(i) If an Operator satisfies all permit filing requirements and is not ineligible, the Operator is entitled to a decision of grant or denial within 90 days upon a request by the Operator in writing.

(b) Eligibility of Operator. An Operator may be ineligible for a permit if:

(i) the application materials are incomplete or untruthful.

(ii) the site has not received a valid Special Use Permit pursuant to Section 2.03 of the Land Development Code, if required.

(8) *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 appellate review by the County Special Magistrate. 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 (15) calendar days of receipt of a notice of denial by filing a written notice of appeal with the Special Magistrate, along with an appeal fee of \$1500.00. Failure to file written notice of appeal and appeal fee within the prescribed time period constitutes a waiver of the right to appeal.

(9) *Permit fees.* The eligible Operator, or De Minimus Activity Facility, before receiving the permit, shall pay:

(a) An annual fee of \$50.00 per piece of Electronic Equipment. If the eligible Operator fails to pay the fee on or before the thirtieth (30th) day after approval, availability, and notice of the permit authorization, the application shall be deemed denied.

(b) The County Fee Schedule, adopted as Resolution 2011-274, as previously amended, is hereby amended to add the above permit fees for Electronic Game Promotions.

The fees collected pursuant to this subsection shall be contributed towards the costs associated with the inspection and examination by the County Administrator or the St. Johns County Sheriff's Office of the Premises, Electronic Equipment, and records of the Operator to ensure compliance with this Ordinance.

(10) *Duration of Permit.* A permit shall be valid for one (1) year from the date of issuance.

(11) *Renewal of Existing Permit.* Existing permits shall be renewed upon compliance with this Ordinance, notwithstanding the total number of permits issued. The Operator shall apply for the renewal permit no later than sixty (60) days and no sooner than one-hundred twenty (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 Ordinance. Renewal permit applications 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 approval, Renewal permit applicants shall pay the same fees as set forth in subsection (8) above and said renewals shall be deemed denied if an eligible Operator fails to pay these fees on or before the thirtieth (30th) day after approval, availability, and notice of the permit authorization.

(12) *Restrictions on Transfers of Permits.*

(a) *Transfer of Permits.* Permits may be transferred no more than one time, to another entity, upon submittal of a transfer application by the proposed transferee to the County Administrator. There shall be a transfer fee of \$500.00. Any change in a majority or controlling interest in any Permit Holder shall be deemed a transfer of the permit. The transferee applicant

must meet all the requirements and qualifications of this Ordinance and provide all documents and materials required for application for a permit.

(b) **Transfer to Another Premises.** Permits may be transferred to another premises upon application and the payment of a \$500.00 transfer fee premises, but any such transfer must comply with the Land Development Code prior to approval of the transfer including the issuance of all required permits.

(13) *Revocation of Permit.* The County Administrator may revoke a permit for violation of any provision of this Ordinance or due to an Operator's cessation of the use of Electronic Equipment during its normal business hours for at least fourteen (14) consecutive days. Prior to revocation, the County Administrator shall provide to the Operator, through their individual in St. Johns County authorized to accept notices from the County, the following:

- (a) A written notice of intent to revoke the permit,
- (b) A fourteen (14) calendar day opportunity to cure the alleged violation, and
- (c) An opportunity to be heard prior to revocation.

Revocation shall not take place before twenty one (21) days after receipt of 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 appellate review by the Special Magistrate. The decision of the Special Magistrate shall constitute final agency action subject to judicial review. Any appeal of a revocation decision shall be made within fifteen (15) calendar days of receipt of a notice of revocation by filing a written notice of appeal with the Special Magistrate, along with an appeal fee of \$1500.00. Failure to file written notice of appeal and appeal fee within the prescribed time period constitutes a waiver of the right to appeal.

E. Inspection of Premises.

During business hours, the County Administrator, the St. Johns County Sheriff's Office, or their agents may enter the Premises for purposes of inspecting all areas of the Premises 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 Premises and to select and remove any piece of Electronic Equipment to inspect, test and/or have tested to determine compliance with this Ordinance. The County Administrator or the St. Johns County 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 Ordinance. Within three (3) days of receipt of the show cause order the Operator shall produce all requested records and inventory.

F. Signage Requirements.

(1) *Exterior of Premises.* Exterior signage shall be subject to Article VII, Land Development Code (Signs).

G. Limitations on Operation of Business.

(1) *Alcoholic Beverages.* Operators shall not sell or permit any individual to consume or possess any alcoholic beverages on any Premises with six (6) or more pieces of Electronic Equipment.

(2) *Minors.* Operators shall not permit Minors to enter the Premises.

(3) *Limitations on Operation of Business.* Any Operator who conducted an Electronic Game Promotion prior to December 31, 2010 shall not operate more pieces of Electronic Equipment than in actual operation on December 31, 2010. Any Operator who has submitted an Application/Affidavit for Certificate of Business Office/Home Office to the Growth Management Department by December 31, 2010 and whose application is subsequently approved shall not operate more pieces of Electronic Equipment than indicated as part of the application. Any other Operator shall be limited to operating no more than fifty (50) pieces of Electronic Equipment.

(4) *Zoning.* Electronic Game Promotions shall be permitted or permissible by special use, as applicable, as set forth in Article II, Land Development Code, subject to all applicable requirements, restrictions and limitations set forth in the Code of Ordinances.

H. Safety and Security Requirements.

On Premises, the Permit Holder shall maintain the following security devices and standards:

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

(2) 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 Premises;

(3) a conspicuous notice at all public entrances to Premises stating cash register contains limited amount of cash;

(4) at exits to Premises, height markers displaying height measures;

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

Section 8. Enforcement; Penalties.

(1) Violation of section 6 of this Ordinance by an Adult Arcade Amusement Center permittee or any unpermitted person, company or entity shall be punishable by imposition of a civil penalty not to exceed \$500.00 per Machine per day. Each day the violation exists shall constitute a separate violation for the purposes of this Ordinance and may be punishable as such.

(2) Violation of Section 7 of this Ordinance by an Electronic Game Promotion permittee or any unpermitted person, company or entity shall be punishable by imposition of a civil penalty not to exceed \$500.00 per Machine per day. Each day the violation exists shall constitute a separate violation for the purposes of this Ordinance and shall be punishable as such.

(3) St. Johns County 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.

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

Section 9. Taxes. There is hereby created a new Local Business License Tax as follows:

(1) A permittee engaged in the business of operating an Adult Arcade Amusement Center as contemplated by Section 6 of this Ordinance shall pay a Local Business License Tax of \$1,000.00 per year, which shall entitle him to maintain one place of business.

(2) A permittee engaged in the business of conducting an Electronic Game Promotion as contemplated by Section 7 of this Ordinance shall pay a Local Business License Tax of \$62.00, which shall entitle him to maintain one place of business.

(3) The County Fee Schedule, adopted as Ordinance 87-30, as previously amended, is hereby amended to add the new Local Business License Taxes set forth in this Section.

Section 10. 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 Ordinance.

Section 11. Effective Date. This Ordinance shall take effect upon its adoption.

PASSED AND ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, THIS 4th day of October, 2011.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

BY: _____
J. Ken Bryan, Chairperson

Rendition Date

ATTEST: CHERYL STRICKLAND, CLERK

BY: _____
Deputy Clerk

EFFECTIVE DATE: _____

ORDINANCE NO. 2011-_____

AN ORDINANCE OF ST. JOHNS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AMENDING AND SUPPLEMENTING, ADDING AND REPEALING PARTS OF ARTICLE II - ZONING DISTRICTS AND SPECIAL USES; ARTICLE VI - DESIGN STANDARDS AND IMPROVEMENT REQUIREMENTS; ARTICLE X - INTERPRETATIONS, EQUITABLE RELIEF AND ENFORCEMENT; AND ARTICLE XII DEFINITIONS; OF THE ST. JOHNS COUNTY LAND DEVELOPMENT CODE AS PREVIOUSLY AMENDED. THIS ORDINANCE MAKES CHANGES INCLUDING AND RELATING TO: AMENDING ARTICLE II ZONING DISTRICTS AND SPECIAL USES SPECIFICALLY PART 2.02.00 USES ALLOWED WITHIN ZONING DISTRICTS AND PART 2.03.00 SPECIAL USES; AMENDING ARTICLE VI DESIGN STANDARDS AND IMPROVEMENT REQUIREMENTS SPECIFICALLY PART 6.05.00 PARKING AND LOADING; AMENDING ARTICLE X INTERPRETATIONS, EQUITABLE RELIEF AND ENFORCEMENT SPECIFICALLY PART 10.03.00 NONCONFORMING LOTS, USES AND STRUCTURES; AND AMENDING ARTICLE XII DEFINITIONS PART 12.01.00 DEFINITIONS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, that:

Section 1. St. Johns County Ordinance No. 99-51, as previously amended, is hereby amended by deleting Section 2.02.01.G in its entirety and by adding and substituting the following in its stead:

G. Highway Commercial Uses

1. Business Uses generally require accesses to an Arterial or Major Collector or have close proximity to Major Intersections. Highway Commercial Uses are those which serve the traveling public and are oriented to vehicular travel; however, they are distinguished from High Intensity Uses by scale and intensity. These Uses are typically not of an overall size or Building mass, as an activity center. Development generally includes one-story and low-rise Buildings and Uses tend to be in individual Structures. In addition, not all Uses are allowable by right in every zoning district. Refer to Section 2.03.00 which describes Uses by zoning district.
2. Typical Uses in this category include, but are not limited to the following:

Service Stations with or without retail food sales; automobile oil change facilities limited to three (3) enclosed service bays; automobile service and repair facilities performing similar activities as Service Stations and limited to three (3) enclosed service bays with no outdoor storage of automobile parts; car wash facilities; Restaurants, with or without drive-through facilities; agricultural stands, temporary or permanent; outdoor plant sales; Recreational Vehicle Campgrounds; Marinas; Hotels and Motels; Adult Arcade Amusement Centers; Electronic Game Promotions; indoor activities allowed by or on the premises of a licensed pari-mutuel permit holder; Retreats; Fish Camps; Convenience Stores, with or without gasoline sales; Truck Stops; retail sales of items catering to tourists; and other substantially similar facilities and Uses.

Section 2. St. Johns County Ordinance No. 99-51, as previously amended, is hereby amended by deleting Section 2.02.01.H in its entirety and by adding and substituting the following in its stead:

H. High Intensity Commercial Uses

1. Business Uses generally require access to an Arterial or Major Collector or have close proximity to Major Intersections or interchanges with limited access facilities. These Uses are characterized by outdoor activity and outdoor storage, and large demand for parking. High Intensity Commercial Uses are those which are major employment centers, or which serve the traveling public and are oriented to vehicular travel; however, they are distinguished from regional Uses by scale. These Uses are intense as measured by the impacts to adjacent properties, but are typically not of an overall size or Building mass as a regional activity center. These Uses often have an actual or potential negative impact on surrounding properties due to late hours of operation, noise, and or light. Uses may be located in several Buildings, as in shopping centers or business parks, or may be located in a single Building, such as a discount supercenter, or big box retailer. In addition, not all Uses are allowable by right in every zoning district. Refer to Section 2.03.00 which describes Uses by zoning district.
2. Typical Uses in this category include, but are not limited to the following: all types of vehicle sales, rental, service, repair, and storage, including Truck Stops, body shops, road services, car wash facilities, and the sales, rental, repair and service of new or used automobiles, boats, buses, farm and garden equipment, motorcycles, trucks, Recreational Vehicles, and Manufactured/Mobile Homes; Service Stations, Convenience Stores with or without gas pumps, large scale discount centers, supercenters, large scale Building supply centers and do-it-yourself centers, big-box retailers; outdoor plant and garden supply sales; Professional Offices, general office, government offices, newspaper printing operations and distribution

centers; free-standing taverns, Bars, lounges, Night Clubs, and dance halls; psychics in accordance with St. Johns County Ordinance 98-18, as may be amended; financial institutions with or without drive-through facilities; Restaurants with or without drive-through facilities; commercial recreation; vocational, technical and trade schools; facilities operated by a licensed pari-mutuel permit holder; Adult Arcade Amusement Centers; Electronic Game Promotions; indoor activities allowed by or on the premises of a licensed pari-mutuel permit holder; agricultural stands, temporary or permanent; outdoor arenas, rodeo grounds, livestock auction facilities, race tracks (auto, dog, go-kart, horse, motorcycle), indoor shooting and firing ranges; Recreational Vehicle Campgrounds; Ports, Marinas; veterinary offices and Animal hospital with outside Kennels; Kennels and other Animal boarding facilities; storage yards for equipment, machinery, dry storage for boats, and supplies for Building and trades contractors, garbage haulers; extermination and pest control services; Flea Markets or similar outdoor or indoor/outdoor sales complexes, whether temporary or permanent; Hotels and Motels; and other substantially similar facilities and Uses.

Section 3. St. Johns County Ordinance No. 99-51, as previously amended, is hereby amended by deleting Table 2.03.01 Table of Special Uses in Zoning Districts in its entirety and by adding and substituting Table 2.03.01 Table of Special Uses in Zoning Districts attached hereto as Exhibit 1, and incorporated herein by reference in its stead.

Section 4. St. Johns County Ordinance No. 99-51, as previously amended, is hereby amended by adding the following Section to Part 2.03.00 Special Uses:

Sec. 2.03.48 Electronic Game Promotions, Adult Arcade Amusement Centers and Indoor Activities on the Premises of a Licensed Pari-mutuel Permit Holder

Electronic Game Promotions, Adult Arcade Amusement Centers and Indoor Activities on the Premises of a Licensed Pari-mutuel Permit Holder may be permitted as a Special Use within the districts defined in Section 2.03.01, and whether permitted by right or by special use shall also be subject to the following conditions and limitations to ensure compatibility with adjacent Uses and the surrounding neighborhood. Notwithstanding the provisions of this Section, a De Minimus Activity Facility that is accessory to a primary use is not considered Electronic Game Promotions for the purposes of complying with these provisions, nor to determine the appropriate category of Use as provided in Section 2.02.

- A. Electronic Game Promotions, Adult Arcade Amusement Centers and Indoor Activities on the Premises of Licensed Pari-mutuel Permit Holder establishments shall not operate within a minimum of one hundred (100) feet of residentially zoned property or residential portions of Planned Unit Developments.
- B. If the facility is placed in a freestanding building, the parking standards provided

in Table 6.17 shall apply.

- C. If the facility is located in a shopping center, or other building with shared parking, parking for the Electronic Game Promotions, Adult Arcade Amusement Centers and Indoor Activities on the Premises of Licensed Pari-mutuel Permit Holder establishments may not be included in the assessment of shared parking and adequate parking shall be demonstrated for the facility based on a parking ratio provided in Table 6.17. This demonstration shall include evidence that the remaining shopping center and/or building areas meet the standards for parking as provided in Table 6.17 excluding the use of the facility.
- D. The consumption, possession, dispensation, or sale of alcohol shall be prohibited within Electronic Game Promotions establishments, but may be allowed within Adult Arcade Amusement Centers and Indoor Activities on the Premises of Licensed Pari-mutuel Permit Holder establishments.
- E. Electronic Game Promotions, Adult Arcade Amusement Centers and Indoor Activities on the Premises of a Licensed Pari-mutuel Permit Holder establishments shall not operate within one thousand (1,000) feet of a church, park or school, unless such establishment was in operation prior to the church, park or school locating nearby. With respect to the distance between such an establishment and an established church, park, or school, the distance shall be measured by from property line to property line, without regard to the route of travel.
 - 1. The word "school" as used in this Part shall mean an establishment that is licensed as a general education or vocational facility under the jurisdiction of the Florida Department of Education, or an establishment that offers general or vocational education which includes courses of general education accepted by the Florida Department of Education for transfer to a school under its jurisdiction. Day care centers, day nurseries, nursery schools, and kindergartens that do not or do not include general education or vocational programs along with conventional child care activities are considered "schools" as defined in this Section.
 - 2. Subsequent Establishment of Church, Park or School: Whenever an Electronic Game Promotion operator has procured a permit and has commenced the business of operating an Electronic Game Promotions, Adult Arcade Amusement Centers and/or an Indoor Activities on the Premises of Licensed Pari-mutuel Permit Holder establishment at a properly zoned location and thereafter a Church, park or school shall be established within a distance otherwise prohibited by this Code, the establishment of such Church, park or school shall not be cause for the discontinuance of the business of such licensee at that location nor shall

the business be considered nonconforming as defined in Part 10.03.00 of this Code.

Section 5. St. Johns County Ordinance No. 99-51 as previously amended, is hereby amended by deleting Table 6.17 Off Street Parking Requirements in its entirety and by adding and substituting Table 6.17 Off Street Parking Requirements attached hereto as Exhibit 2, and incorporated herein by reference in its stead.

Section 6. St. Johns County Ordinance No. 99-51, as previously amended, is hereby amended by adding paragraph M to Section 10.03.02:

M. Where an establishment conducting Electronic Game Promotions exists lawfully in any zoning district as of the passage of this Ordinance, or has submitted an Application/Affidavit for Certificate of Business Office/Home Office to the Growth Management Department by December 31, 2010 and whose application is subsequently approved, such use may be continued anywhere on such property or site, or within such center, as a nonconforming use subject to all restrictions, limitations and requirements set forth in Section 10.03.02, Land Development Code, and all other applicable provisions of the Code of Ordinances; except that businesses qualifying under this provision which commence Electronic Game Promotions operations on the premises on or after December 31, 2010 shall meet the parking requirements as provided in Table 6.17 of this Code.

Section 7. St. Johns County Ordinance No. 99-51, as previously amended, is hereby amended by adding the following definitions to Article 12, Part 12.01.00:

Adult Arcade Amusement Center: A business (a) that is located on the "premises" of a facility that is licensed by the State of Florida pursuant to Ch. 550, Florida Statutes, and (b) that operates Adult Arcade Amusement Machines that complies with section 849.161(1)(a)1, Florida Statutes. Adult Arcade Amusement Centers do not include Family Amusement Arcades.

Adult Arcade Amusement Machine: 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, 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 (i) points representing a unit of game play on the machine or (ii) 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 "application of skill" shall mean 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 the machine by decreasing the game's advantage by at least 25% over a completely random strategy of play, as certified by an independent laboratory licensed under Chapter 551, Florida Statutes. 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.

De Minimus Activity Facility means a facility 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.

Electronic Equipment: Any electronic or mechanical device provided by or on behalf of the 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 promotions that display results by simulating a game or games ordinarily played on a slot machine.

Electronic Game Promotion: 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.

Family Amusement Arcade: A business which, 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.

Section 8. Severance Clause. It is the intent of the Board of County Commissioners of St. Johns County, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

Section 9. Effective Date. This Ordinance shall take effect on _____, 2011 or upon its being filed with the Department of State of Florida, which ever is later.

PASSED AND ENACTED by the Board of County Commissioners of St. Johns County, Florida, this _____ day of _____, 2011.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: _____
J. Ken Bryan, Chairman

ATTEST: Cheryl Strickland, Clerk of Court

By: _____
Deputy Clerk

Effective Date: _____