



CITY OF CLEWISTON
115 West Ventura Avenue
Clewiston, Florida 33440

CITY COMMISSION WORKSHOP AGENDA

Tuesday, September 26, 2023 – 3:00 p.m.

Call Workshop to Order

Prayer and Pledge of Allegiance

Additions/Deletions/Changes and Approval of the Agenda

Public Comments – At this time, any person will be allowed to speak.

- 1. Outstanding Liens Code Enforcement report**
- 2. RV & Trailer Code Enforcement report**
- 3. Operation of Golf Carts On Designated City Streets**
- 4. Mobile Food Vendors**
- 5. Adult Arcades/Gaming Establishments report**
- 6. Commission Comments and Discussion**

Adjournment

The City of Clewiston is an equal opportunity provider and employer.

City Hall is wheelchair accessible and accessible parking spaces are available. Accommodation requests or interpretive services must be made 48 hours prior to the meeting. Please contact the City Clerk's office at (863) 983-1484, extension 105, or FAX (863) 983-4055 for information or assistance.

If a person decides to appeal any decision made by the City Commission with respect to any matter considered at this meeting, the person will need a record of the proceedings, and that, for such purpose, the person may need to ensure a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

I, the undersigned authority, do hereby certify the above Notice of Meeting of the City Commission of the City of Clewiston is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice at the front and rear entrances of City Hall, a place convenient and readily accessible to the general public at all times.

Mary K. Combass, City Clerk

Property Owner	Address	Case #	Mowing Lien	Violation Date	Hearing Fine	Admin Fee	Accru Date	Compliance Date	# of Days	Accru Amount	Total Accrued	Total Owed	Actual Cost to City	Comments
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	10/10/2008	N/A	N/A	N/A	N/A	N/A	Yes	N/A	227.98	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	7/31/2009	N/A	N/A	N/A	N/A	N/A	Yes	N/A	226.08	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	8/25/2010	N/A	N/A	N/A	N/A	N/A	Yes	N/A	201.62	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	9/9/2010	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	7/10/2010	N/A	N/A	N/A	N/A	N/A	Yes	N/A	4,588.62	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	9/22/2010	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	10/6/2010	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	10/20/2010	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	12/1/2010	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	2/18/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	3/12/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	4/7/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	5/20/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	6/24/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	7/8/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	7/22/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	8/12/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	9/2/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	9/21/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	10/7/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	10/26/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	12/9/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	1/5/2012	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	2/9/2012	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	3/9/2012	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	4/6/2012	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	5/11/2012	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	5/30/2012	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	6/15/2012	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	7/27/2012	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	11/18/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	7/25/2012	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	8/22/2012	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	11/5/2012	N/A	N/A	N/A	N/A	N/A	Yes	N/A	58.00	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	6/27/2013	N/A	N/A	N/A	N/A	N/A	Yes	N/A	64.11	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	9/12/2013	N/A	N/A	N/A	N/A	N/A	Yes	N/A	76.11	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A	Yes	3/19/2014	N/A	N/A	N/A	N/A	N/A	Yes	N/A	64.48	Yes	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	14-0155	NO	12/23/2014	150	150	2/11/2015	9/22/2015	223.00		11,150.00	11,450.00		Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	N/A		8/19/2014	0	100		8/19/2014				138.00	38.00	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	14-0121		11/10/2014	0	100		11/10/2014				138.00	38.00	Property sold to new owner adv of lien amounts 01/30/2017
Kathleen Beaver	421 E Ventura Avenue	14-0155		9/22/2015	0	100		9/22/2015				175.00	75.00	Property sold to new owner adv of lien amounts 01/30/2017
James A. Benson	800 E Ventura Avenue	N/A	Yes		N/A	N/A	N/A	N/A	N/A	Yes	N/A	3,504.55	Yes	
Rosa Moreno	317 E El Paso	N/A	Yes	6/15/2012	N/A	N/A	N/A	N/A	N/A	Yes	N/A	190.75	Yes	House remains in this name no exemptions
Rosa Moreno	317 E El Paso	N/A	Yes	6/8/2012	N/A	N/A	N/A	N/A	N/A	Yes	N/A	105.00	Yes	Same as above
Rosa Moreno	317 E El Paso	N/A	Yes	9/5/2012	N/A	N/A	N/A	N/A	N/A	Yes	N/A	105.00	Yes	Same as above
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	7/22/2010	N/A	N/A	N/A	N/A	N/A	Yes	N/A	265.54	Yes	Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	8/25/2010	N/A	N/A	N/A	N/A	N/A	Yes	N/A	115.00	Yes	Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	9/9/2010	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner lien reduction denied

Property Owner	Address	Case #	Mowing Lien	Violation Date	Hearing Fine	Admin Fee	Accru Date	Compliance Date	# of Days	Accru Amount	Total Accrued	Total Owed	Actual Cost to City	Comments
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	9/22/2010	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	10/6/2010	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	10/20/2010	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	12/1/2010	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	7/22/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	110.59	Yes	Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	8/4/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	8/12/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	9/2/2011	N/A	N/A	N/A	N/A	N/A	Yes	N/A	85.00	Yes	Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	6/27/2013	N/A	N/A	N/A	N/A	N/A	Yes	N/A	91.11	Yes	Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	9/5/2013	N/A	N/A	N/A	N/A	N/A	Yes	N/A	95.00	Yes	Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	9/30/2013	N/A	N/A	N/A	N/A	N/A	Yes	N/A	86.11	Yes	Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	N/A	Yes	3/19/2014	N/A	N/A	N/A	N/A	N/A	Yes	N/A	96.00	Yes	Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	11-0433	NO	10/18/2011	150	150	4/28/2012	6/14/2014	777.00		19,425.00	19,725.00		Property sold to new owner lien reduction denied
Mtag Cust FOR Amhurst Asset	340 W El Paso	13-0055	NO	2/6/2013	150	150	3/27/2013	6/21/2014	451.00		11,275.00	11,575.00		Property sold to new owner lien reduction denied
TC 10U LLC	340 W El Paso	14-0041		7/21/2014	0	100	N/A	7/21/2014	N/A	N/A	N/A	176.00	76.00	Property sold to new owner lien reduction denied
John Payne	340 W El Paso Ave	15-0301;0302		3/16/2016	150		3/16/2016	10/5/2017	568.00	\$50/Day		28,550.00		
Amera Halum	725 E El Paso Avenue	12-0166	NO	8/2/2012	150	150	3/27/2013	On Going	1,281.00		32,025.00	32,325.00		
WAFH Corp of Clewiston	411 W Sugarland Hwy	14-0093	NO	8/19/2014	150	150	2/11/2015	2/26/2015	15.00		750.00	1,050.00		
Helen Dickey Royal TR EST *	720 Royal Palm Avenue	15-0114		1/27/2016	150	150	11/19/2015	2/11/2016	85.00	\$50/Day	4,250.00	4,550.00	150.00	Requested Reduction Hearing 03/16/2016 denied
Helen Dickey Royal TR EST (*)(**)	130 W Crescent/720 Royal Palm	19-0375		8/27/2019		150		9/4/2019	8.00	\$50/Day	1,550.00	1,700.00	150.00	
Helen Dickey EST C/O Leeanne Claridge	130 W Crescent	20-0000		1/2/2020		150	1/2/2020	1/21/2020	19.00	\$75/Day	1,425.00	1,575.00	150.00	
Dickey, Helen EST C/O Leeanne Claridge	720 Royal Palm Avenue	23-0032		1/24/2023		150	1/24/2023	3/15/2023	51.00	\$50/Day	2,550.00	2,700.00	150.00	
Coyne, Dale and Gail	1030 W Sugarland Avenue	18-0420		10/15/2018		150	2/6/2019	4/24/2019	76.00	\$50/Day		3,950.00	150.00	invoice sent august 2019 30 days to pay
Tax Ease Funding 2016-1 LLC	835 E Alverdez	18-0359		8/27/2018		150	1/23/2019	11/4/2020	652.00	\$50/Day	32,600.00	32,750.00		Property to be scheduled for building board by Travis to get order of demolition
Merida Development, LLC	602 E Sugarland Highway	19-0404		9/12/2019		150	2/21/2020	1/29/2021	344.00	\$150/Day	56,100.00	56,250.00	150.00	The reduced amount of \$10,000.00 was not received by or before May 18, 2022 the the original fine amout + the 150.00 is 56250.00
Clewiston Plaza PW LP	975 W Sugarland Hwy	21-0221		7/20/2021		150	10/21/2021	11/5/2021	16.00	\$200/Day	3,200.00	3,350.00	150.00	The 150.00 Fee was paid on 11/08/2021. The fine accrued 3200.00 is still owed.
Skaggs, Darrell G & Skaggs, Paula	119 Balboa Place	22-0135		6/3/2022		150	9/13/2022	Ongoing	127 ongoin	\$50/Day	On Going		150.00	
Clewiston Plaza PW LP	975 W Sugarland Hwy	22-0234		11/17/2022		150	3/21/2023	Ongoing		250/Day	On Going		150.00	16,500 for March 21 thru May 25 at 250 reduced rate of 150\day May 26 until compliance
Almares, Edwin Daniel	709 Seminole Avenue	23-0075		5/31/2023		150	5/31/2023	7/7/2023	38.00	\$50/Day	1,500.00	1,650.00	150.00	



Community Improvement Division



Recreational Vehicle, Commercial Trailer, and Mobile Home Storage on Private Property

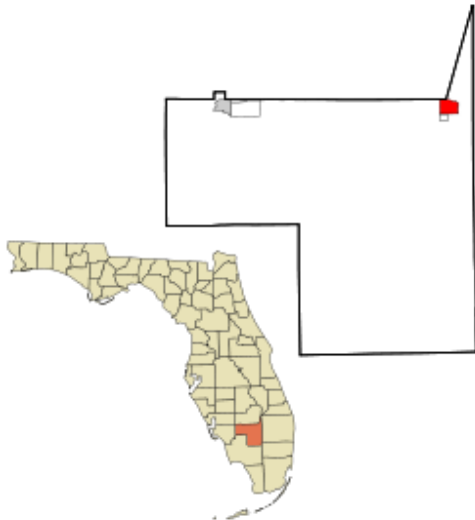
March 6, 2023

Workshop Discussion

Clewiston Code of Ordinances

Chapter 50 - MANUFACTURED HOMES,
MOBILE HOMES, MANUFACTURED HOME
AND MOBILE HOME PARKS, RECREATIONAL
VEHICLES AND RECREATIONAL VEHICLE
PARKS AND COMMERCIAL VEHICLES

ARTICLE I. - IN GENERAL



Sec. 50-1. Purpose.

The intent and purpose of this chapter is to provide regulations governing mobile home parks and recreational vehicle parks as to their location and manner of operation in general; **to provide regulations and zoning restrictions governing individual mobile homes and recreational vehicles as to their location, occupancy and use, when other than in regularly licensed mobile home parks or recreational vehicle parks; and to establish such traffic and parking regulations for all types of mobile homes, recreational vehicle parks and commercial trailers as to promote the public health, safety, and welfare.**

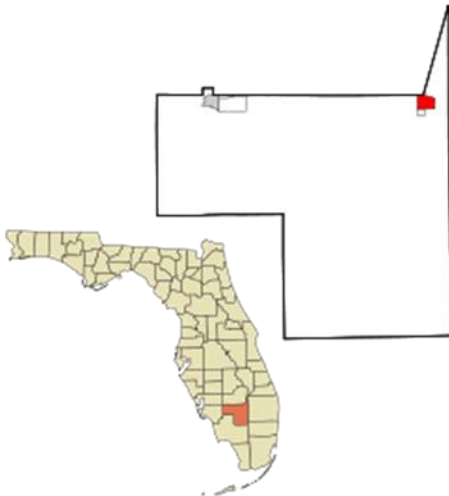
(Code 1982, § 20-1; Code 1999, § 50-1; Ord. No. 94-01, pt. 1(20-1), 12-19-1994)

**Chapter 50 - Chapter 50 - MANUFACTURED
HOMES, MOBILE HOMES, MANUFACTURED
HOME AND MOBILE HOME PARKS,
RECREATIONAL VEHICLES AND
RECREATIONAL VEHICLE PARKS AND
COMMERCIAL VEHICLES
ARTICLE I. - IN GENERAL**

Sec. 50-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

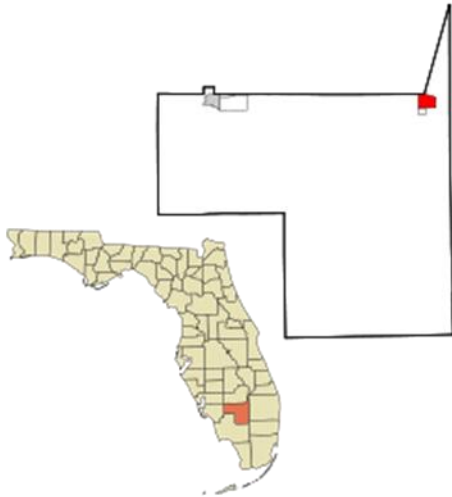
Commercial trailer includes the various types of trailers advertising a business, vehicles commonly known as semitrailers and any type of vehicle used as a temporary office or headquarters for a business. **Small utility trailers used for transporting boats and other vehicles are specifically excluded from this definition.**



Sec. 50-2 Continued.

**Chapter 50 - Chapter 50 -
MANUFACTURED HOMES, MOBILE
HOMES, MANUFACTURED HOME AND
MOBILE HOME PARKS, RECREATIONAL
VEHICLES AND RECREATIONAL
VEHICLE PARKS AND COMMERCIAL
VEHICLES**

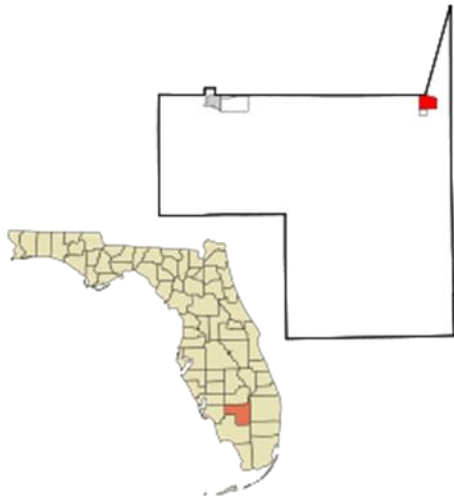
ARTICLE I. - IN GENERAL



Mobile home means a residential structure, transportable in one or more sections, which is eight body feet or more in width, over 35 feet in length, built on an integral chassis, and designed to be used as a dwelling when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.



**Chapter 50 - Chapter 50 -
MANUFACTURED HOMES, MOBILE
HOMES, MANUFACTURED HOME AND
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VEHICLES
ARTICLE I. - IN GENERAL**



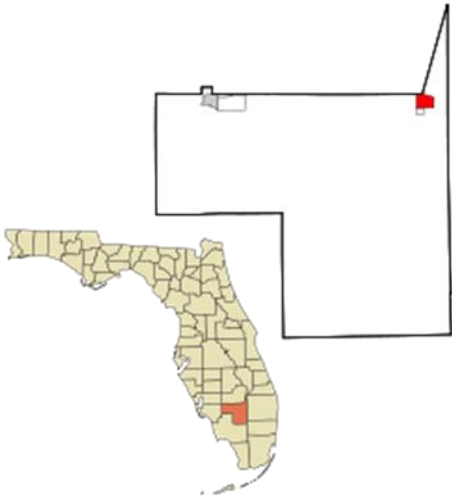
Sec. 50-2 Continued.

Recreational vehicle means a portable vehicular structure which is built on a chassis, designed as a dwelling for travel, recreation, or vacation; with a transportable body width not exceeding 8½ body feet and a length not exceeding 40 feet, and does not qualify as a mobile home. This includes both motor homes which are self-propelled recreational vehicles and travel trailers which are on wheels and are towable.



**Chapter 50 - Chapter 50 -
MANUFACTURED HOMES, MOBILE
HOMES, MANUFACTURED HOME AND
MOBILE HOME PARKS, RECREATIONAL
VEHICLES AND RECREATIONAL
VEHICLE PARKS AND COMMERCIAL
VEHICLES**

ARTICLE I. - IN GENERAL



Sec. 50-2 Continued.

For purposes of this chapter, the term "recreational vehicles" includes the following terms and their definitions:

(1) **Auto camper** means a lightweight, collapsible unit that fits on top of an automobile and into the trunk with the cover removed, and is designed for travel, recreation and vacation uses.



(2) **Camper van** means a vehicle specially equipped for camping.



**Chapter 50 - Chapter 50 -
MANUFACTURED HOMES, MOBILE
HOMES, MANUFACTURED HOME AND
MOBILE HOME PARKS, RECREATIONAL
VEHICLES AND RECREATIONAL
VEHICLE PARKS AND COMMERCIAL
VEHICLES**

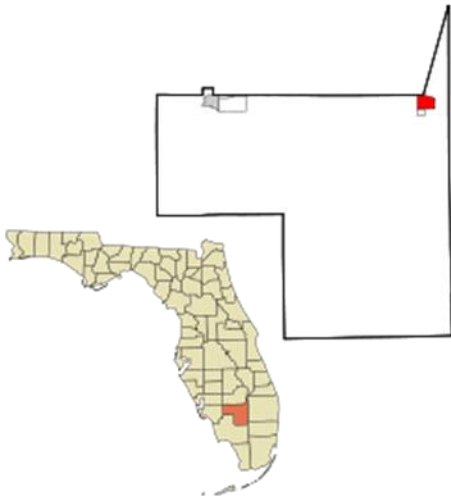
ARTICLE I. - IN GENERAL

Sec. 50-2 Continued.

(3) **Camping trailer** means a vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls which folds for towing by another vehicle and unfold at the campsite to provide temporary living quarters for



(4) **Fifth-wheel recreational trailer** means a vehicular portable unit mounted on wheels of such size and weight as not to require special highway movement permits. It is primarily designed and constructed to provide temporary living quarters for recreational camping or travel use and designed to be connected for towing through the use of a fifth-wheel device. It is of a length and width not exceeding the limitations provided in F.S. § 316.515, as administered by the state department of highway safety and motor vehicles.



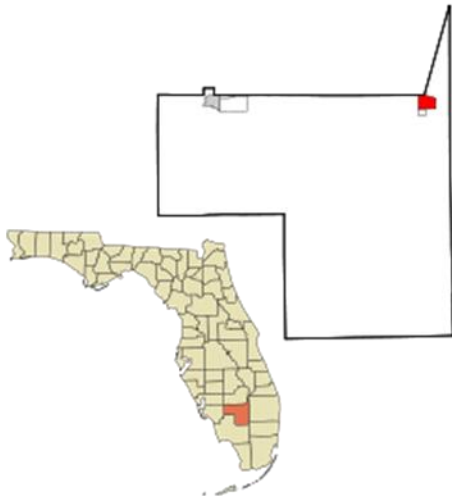
**Chapter 50 - MANUFACTURED
HOMES, MOBILE HOMES,
MANUFACTURED HOME AND MOBILE
HOME PARKS, RECREATIONAL
VEHICLES AND RECREATIONAL
VEHICLE PARKS AND COMMERCIAL
VEHICLES**

ARTICLE I. - IN GENERAL

Sec. 50-2 Continued.

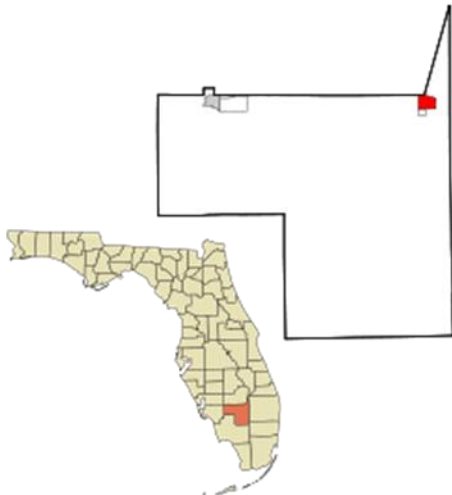
(5) *Motor home* means a vehicular unit, not exceeding length and width limitations provided in F.S. § 316.515 (link below), as administered by the state department of highway safety and motor vehicles, and built on a self-propelled motor vehicle chassis, primarily designed to provide temporary living quarters for recreational, camping, or travel use.

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0300-0399/0316/Sections/0316.515.html



**Chapter 50 - MANUFACTURED
HOMES, MOBILE HOMES,
MANUFACTURED HOME AND MOBILE
HOME PARKS, RECREATIONAL
VEHICLES AND RECREATIONAL
VEHICLE PARKS AND COMMERCIAL
VEHICLES**

ARTICLE I. - IN GENERAL



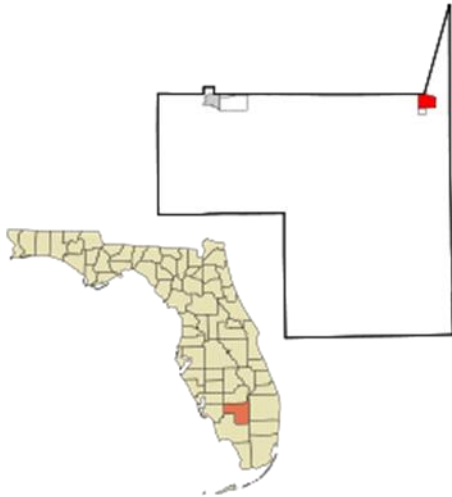
Sec. 50-2 Continued.

(6) **Park model recreational vehicle** means a transportable unit built on a single chassis and designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. The total area of the unit in a setup mode, when measured from the exterior surface of the exterior walls at the level of maximum dimensions and including any bay windows that extend to the floor line will not exceed 500 square feet.



**Chapter 50 - MANUFACTURED
HOMES, MOBILE HOMES,
MANUFACTURED HOME AND MOBILE
HOME PARKS, RECREATIONAL
VEHICLES AND RECREATIONAL
VEHICLE PARKS AND COMMERCIAL
VEHICLES**

ARTICLE I. - IN GENERAL



Sec. 50-2 Continued.

(7) **Travel trailer** means a vehicular portable unit mounted on wheels, of such size or weight as not to require a special highway movement permit when drawn by a motorized vehicle. It is primarily designed and constructed to provide temporary living quarters for recreational, camping, or travel use.

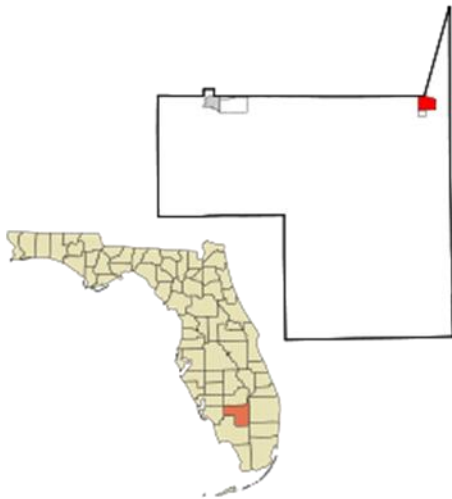


**Chapter 50 - MANUFACTURED
HOMES, MOBILE HOMES,
MANUFACTURED HOME AND MOBILE
HOME PARKS, RECREATIONAL
VEHICLES AND RECREATIONAL
VEHICLE PARKS AND COMMERCIAL
VEHICLES**

ARTICLE I. - IN GENERAL

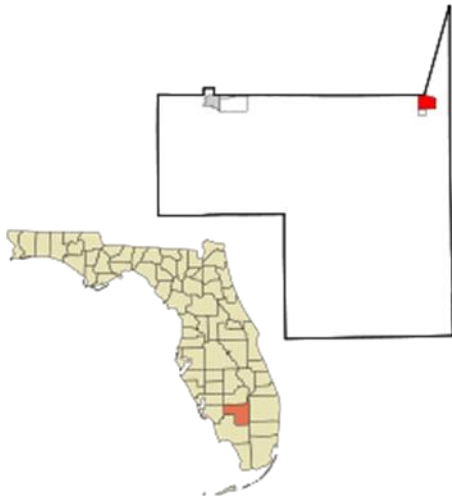
Sec. 50-2 Continued.

(8) **Truck camper** means a portable unit which is designed to be loaded onto or affixed to the bed or chassis of a truck and is constructed to provide temporary living quarters for recreational, camping or travel use.



**Chapter 50 - MANUFACTURED
HOMES, MOBILE HOMES,
MANUFACTURED HOME AND MOBILE
HOME PARKS, RECREATIONAL
VEHICLES AND RECREATIONAL
VEHICLE PARKS AND COMMERCIAL
VEHICLES**

ARTICLE I. - IN GENERAL



Sec. 50-5. Mobile homes prohibited outside mobile home parks; exception.

Except as provided herein, and except in zoning use districts RM-1 and RM-2, no person shall occupy, use or locate a mobile home in any place other than a regularly licensed mobile home park.

(1) This section shall not be construed as prohibiting the occupancy or use of existing mobile homes not located within licensed mobile home parks; provided, however, no existing mobile home which is located outside a regularly licensed mobile home park shall be replaced with another mobile home at such time as the present one is removed or damaged beyond repair or becomes unsafe for habitation.

(2) Occupancy of existing mobile homes as permitted by subsection (1) of this section shall nevertheless be limited to the person in whom legal or equitable title to the real estate on which the mobile home is located is vested.

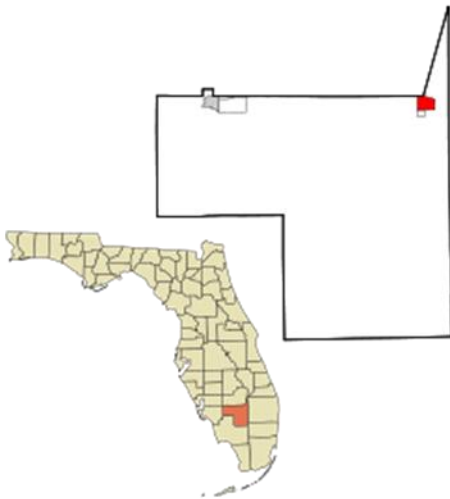
(Code 1982, § 20-4; Code 1999, § 50-5; Ord. No. 94-01, pt. 1(20-4), 12-19-1994)



Sec. 50-6. Parking on streets.

Chapter 50 - MANUFACTURED HOMES, MOBILE HOMES, MANUFACTURED HOME AND MOBILE HOME PARKS, RECREATIONAL VEHICLES AND RECREATIONAL VEHICLE PARKS AND COMMERCIAL VEHICLES

ARTICLE I. - IN GENERAL



Mobile homes, recreational vehicles and trailers of all types covered by this chapter may be parked on a temporary basis upon the streets or public areas available for parking and controlled by the city only upon the following conditions:

- (1) They shall be parked parallel to the curb and within the parking lines and areas indicated upon the pavement or by appropriate signs nearby.
- (2) While the necessity for their temporary parking is recognized, mobile homes, recreational vehicles and trailers parked at the curb require an unusual amount of space and present a hazard to traffic safety, and for that reason they shall not be parked upon any public street for longer than one hour.

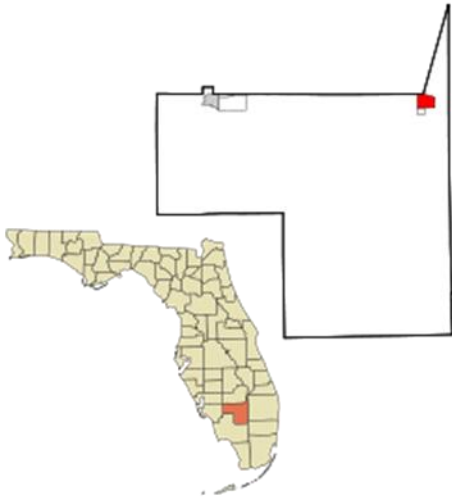


- (3) They shall not be parked on any public street unless attached to the towing vehicle at all times.



**Chapter 50 - MANUFACTURED
HOMES, MOBILE HOMES,
MANUFACTURED HOME AND MOBILE
HOME PARKS, RECREATIONAL
VEHICLES AND RECREATIONAL
VEHICLE PARKS AND COMMERCIAL
VEHICLES**

ARTICLE I. - IN GENERAL



Sec. 50-6. Parking on streets Continued.

(4) They shall not be parked on any public street of the city in such a manner as to interfere with the normal use of such street for traffic, even though such parking may be temporary for the purpose of loading or unloading freight or other commodities.



(5) The chief of police, with the approval of the city manager, is authorized to promulgate, from time to time, additional regulations on the movement and parking of mobile homes and commercial trailers, as may be necessary to carry into effect the intent of this chapter. Such regulations shall be considered promulgated and in effect upon suitable signs being prepared and posted at the place where the regulation applies, setting forth such regulations clearly.

(Code 1982, § 20-5; Code 1999, § 50-6; Ord. No. 94-01, pt. 1(20-5), 12-19-1994)

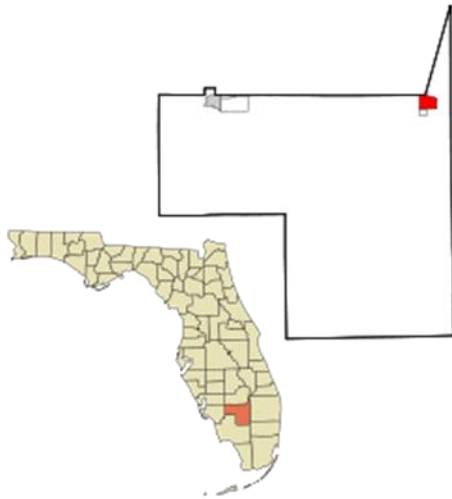
Sec. 50-7. Storage on private property.

**Chapter 50 - MANUFACTURED
HOMES, MOBILE HOMES,
MANUFACTURED HOME AND MOBILE
HOME PARKS, RECREATIONAL
VEHICLES AND RECREATIONAL
VEHICLE PARKS AND COMMERCIAL
VEHICLES**

ARTICLE I. - IN GENERAL

Nothing in this chapter shall be construed to prohibit any resident of the city from storing a recreational vehicle of any type on the same lot as his residence, provided such recreational vehicle complies with the definition of a recreational vehicle, travel trailer or camping trailer and is not occupied or used for any purpose while stored; carries a current vehicle registration tag; and, provided further, that such recreational vehicle is stored at least 60 feet from the front property line and ten feet from all other property lines. All commercial trailers may be stored only in a commercial or industrial district and mobile homes may be stored only in an industrial district and shall be located so as to conform with building setbacks of such district.

(Code 1982, § 20-6; Code 1999, § 50-7; Ord. No. 94-01, pt. 1(20-6), 12-19-1994)



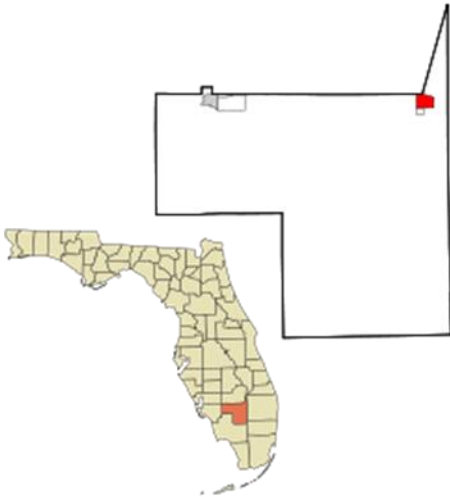
**Chapter 50 - MANUFACTURED
HOMES, MOBILE HOMES,
MANUFACTURED HOME AND MOBILE
HOME PARKS, RECREATIONAL
VEHICLES AND RECREATIONAL
VEHICLE PARKS AND COMMERCIAL
VEHICLES**

ARTICLE I. - IN GENERAL

Sec. 50-8. Use as office or place of business.

No person shall occupy or use a mobile home of any type covered by this chapter for an office or headquarters for a place of business, except that this provision shall not apply to building contractors having an office trailer, which may be located upon a site during the period of active construction.

(Code 1982, § 20-7; Code 1999, § 50-8; Ord. No. 94-01, pt. 1(20-7), 12-19-1994)



SAMPLE CASE PHOTOS



The boat trailer is specifically excluded by Section 50-2 and the enclosed trailer does not meet the definition of a commercial trailer or Recreational Vehicle therefore neither would be a violation of Chapter 50.

“Commercial trailer includes the various types of trailers advertising a business, vehicles commonly known as semitrailers and any type of vehicle used as a temporary office or headquarters for a business. Small utility trailers used for transporting boats and other vehicles are specifically excluded from this definition.”



This vehicle does meet the definition of a commercial vehicle in section 50-2 therefore it would be a violation of Section 50-7.

“Commercial trailer includes the various types of trailers advertising a business, vehicles commonly known as semitrailers and any type of vehicle used as a temporary office or headquarters for a business.”



This trailer is specifically excluded from the definitions in Section 50-2 therefore it is not a violation of Chapter 50.

“Small utility trailers used for transporting boats and other vehicles are specifically excluded from this definition.”



The Recreational Vehicle would meet the definition of Section 50-2 and would be in violation of Section 50-7. The enclosed trailer does not meet the definition of commercial trailer in Section 50-2 and therefore, would not be in violation.

“Commercial trailer includes the various types of trailers advertising a business, vehicles commonly known as semitrailers and any type of vehicle used as a temporary office or headquarters for a business.”

This trailer does not have any advertisement on the outside or within view.



This enclosed trailer would meet the definition of a commercial trailer in Section 50-2 and would be a violation of Section 50-7.

“All commercial trailers may be stored only in a commercial or industrial district and mobile homes may be stored only in an industrial district and shall be located so as to conform with building setbacks of such district.”



This trailer is specifically excluded within Section 50-2 therefore there is no violation of Chapter 50.

“Small utility trailers used for transporting boats and other vehicles are specifically excluded from this definition.”



This would be a violation of Section 50-7 the vehicle meets the definitions provided in Section 50-2 and is not within the specified storage location of 60 feet from the front property line.

From: [Thomas Lewis](#)
To: dylan@brandenburglegal.com; [Randy Martin](#)
Cc: [Kathy Combass](#)
Subject: RE: Clewiston Golf Cart Ordinance
Date: Thursday, September 21, 2023 7:30:05 AM
Attachments: [Ordinance Amending Article V - Operation of Golf Carts on Designated Cit....docx](#)
[image001.png](#)
[image004.png](#)

Randy, Dylan,

I reviewed the proposed changes and agree with the content. As far as eliminating the registration, I think that's a good idea. But I suggest the police department maintain a voluntary registration program much like other communities do for bicycle registration. We don't need to have it in ordinance but we can still offer the service to the public if they prefer to have their information on file. The only other item that I saw was in reference to low speed vehicles. The ordinance definition is the same as the state statute and I noted the ordinance prohibits low speed vehicles on city roads (70-98). I wasn't sure if that was in conflict with the state law as some of these vehicles (modified golf carts) can be titled, registered, and have license plates to be operated on any road. If there is a conflict, I would suggest changing the definition of low speed vehicles in the ordinance to read: "*Low speed vehicle* means any four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including neighborhood electric vehicles, that does not have a valid state-issued license plate."

Tom



Thomas P. Lewis, Chief of Police
Clewiston Police Department
300 South Berner Road
Clewiston, Florida 33440
(941) 626-9775 – Cell

"Florida has a very broad public records law. As a result, any written communication created or

received by City of Clewiston employees is subject to disclosure to the public and the media, upon request, unless otherwise exempt. Under Florida law, e-mail addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

From: dylan@brandenburglegal.com [mailto:dylan@brandenburglegal.com]

Sent: Tuesday, September 19, 2023 4:31 PM

To: Randy Martin <randy.martin@clewiston-fl.gov>; Thomas Lewis <thomas.lewis@clewiston-fl.gov>

Cc: Kathy Combass <kathy.combass@clewiston-fl.gov>

Subject: Clewiston Golf Cart Ordinance

Hey Randy, Tom,

Please see attached suggested revisions to the current golf cart ordinance for Tuesday's discussion.

Feel free to include any changes you think necessary.

Dylan

Dylan J. Brandenburg, Esquire



1257 SW Martin Highway PO Box 81

Palm City, Florida 34991

Tel: (561) 281-6428

ARTICLE V. OPERATION OF GOLF CARTS ON DESIGNATED CITY STREETS

Sec. 70-96. Definitions.

As used in this article, the following words and terms shall have the meaning ascribed thereto:

Golf cart means a motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

Hybrid golf cart means a golf cart which shares its electric motive power with another source, such as a gasoline engine.

Low speed vehicle means any four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including neighborhood electric vehicles.

Neighborhood electric vehicle (NEV) means an electrically driven vehicle designed for speeds of 20 to 25 miles per hour. A NEV is considered a low-speed vehicle.

Speed-modified golf cart means a golf cart originally manufactured for at speeds up to 20 miles per hour that has been modified after initial manufacture to travel at speeds over 20 miles per hour.

(Ord. No. 2017-15, § 1, 7-17-2017)

Sec. 70-97. Authorization to operate golf carts on designated city streets.

- (a) The city commission may, by resolution, designate and approve certain city streets as streets authorized for golf cart use (designated city street). The city commission may, at any time, revoke the designation and approval for golf cart use of any designated city street. The following streets, however, shall not be authorized for use by golf carts:

- (1) Sugarland Highway (U.S. Highway 27).
- (2) South Berner Road between Ventura Avenue and Sugarland Highway.
- (3) All of South WC Owen Street.
- (4) All of Sonora Avenue.
- (5) All of South Francisco Street.
- (6) That portion of Aztec Avenue between WC Owen Avenue and Francisco Street.

- (b) Subject to the restrictions and limitations provided herein, golf carts, as defined in section 70-96, shall be authorized for use upon city streets designated and approved pursuant to section 70-97.

(Ord. No. 2017-15, § 1, 7-17-2017)

Sec. 70-98. Restrictions on golf cart modifications and neighborhood electric vehicles.

Speed-modified golf carts and neighborhood electric vehicles or other low speed vehicles are not authorized for use upon any city streets.

(Ord. No. 2017-15, § 1, 7-17-2017)

~~Sec. 70-99. Minimum required equipment.~~

- ~~(a) All golf carts operated on designated city streets (DCS) pursuant to this article shall at a minimum be equipped with the following for daytime use:~~
- ~~(1) Properly functioning brakes;~~
 - ~~(2) Properly functioning steering apparatus;~~
 - ~~(3) Safe tires;~~
 - ~~(4) A rearview mirror;~~
 - ~~(5) Reflectorized warning devices in the rear of the golf cart.~~
- ~~(b) All golf carts operated on DCS in fog, smoke and rain and/or operated earlier than 30 minutes after sunrise or later than 30 minutes before sunset shall at a minimum be equipped with the following:~~
- ~~(1) Two properly functioning headlights;~~
 - ~~(2) Two properly functioning brake lights;~~
 - ~~(3) Properly functioning left and right turn signals;~~
 - ~~(4) An approved windshield; and~~
 - ~~(5) Reflective devices or reflective tape on both sides of the golf cart.~~

(Ord. No. 2017-15, § 1, 7-17-2017)

Sec. 70-100. Additional restrictions.

- ~~(a) No person shall drive a golf cart on a DCS unless such person possesses a valid driver's license.~~
- (a) A golf cart shall not be operated by anyone under 18 years of age unless he or she possesses a valid learner's driver license or valid driver license.
- (b) Anyone operating a golf cart must comply fully with the requirements of Florida Statute 316.212 the provisions of which are adopted and incorporated herein.
- ~~(b)(c) Golf carts shall not be driven on public sidewalks.~~
- ~~(c) All golf carts operated on any city street shall be insured for liability. The required insurance shall be as follows:~~
- ~~(1) \$10,000.00 because of bodily injury to, or death of, one person.~~
 - ~~(2) \$20,000.00 because of bodily injury to, or death of, two or more persons.~~
 - ~~(3) \$10,000.00 because of injury to, or destruction of, property of others.~~
 - ~~(4) While operating a golf cart on DCS, the operator shall comply with and obey all applicable state and local traffic laws. A golf cart operator who violates any traffic law may be ticketed in the same manner as the operator of a motor vehicle.~~

(Ord. No. 2017-15, § 1, 7-17-2017)

Sec. 70-101. Golf cart registration.

- ~~(a) The owner of any golf cart to be operated on any DCS pursuant to this article shall first register the golf cart with the city. The owner registering the golf cart must be at least 18 years of age. The city shall charge an initial registration fee of \$20.00. Regardless of the date of registration, all golf cart registrations shall be valid from January 1 until December 31.~~
- ~~(b) The owner of a golf cart to be operated on DCS pursuant to this article shall be required to renew the golf cart registration prior to January 1 of the year following initial registration. The city shall charge a renewal fee of \$15.00 for each registration renewal. An owner who fails to renew the registration of a golf cart prior to January 1 shall be required to obtain a new registration and pay the initial registration fee of \$20.00.~~
- ~~(c) Properly registered golf carts shall be issued a registration sticker which sticker shall be placed and maintained on the driver's side rear fender of the golf cart or as near as possible depending on the design of the golf cart. The city shall maintain a list of all golf cart registrations.~~

(Ord. No. 2017-15, § 1, 7-17-2017)

Sec. 70-102. Enforcement & Penalties

- ~~(a)~~ It shall be unlawful for any person to violate any of the provisions of this division. This division may be enforced by any means allowed by law. If the citation method authorized under Chapter 26 Article IV of this Code is used to punish violators **any person found to have violated the prohibition contained in this section shall be subject to the following penalties: (1) First violation: A fine of \$25.00, to be paid within 15 days. (2) Second violation: A fine of \$50.00, to be paid within 15 days. (3) Third and subsequent violations: A fine of \$100.00, to be paid within 15 days. (4) Other remedies: In addition to the civil sanctions contained herein, the city may pursue any other penalty or relief available through law or equity.**
- ~~(b) The city may enforce violations of this article through any legal means including prosecuting violations of this article pursuant to F.S. ch. 162, or the procedures for civil citations contained in this Code in sections 26-77 through 26-86.~~
- ~~(b) The operation of an unregistered a golf cart by an unauthorized person, the operation of a golf cart which has been modified so as to no longer comply with the provisions of this article, the operation of a golf cart without minimum required equipment for the conditions, and the operation of any golf cart on non-designated city streets present an immediate threat to the health, safety and welfare. Accordingly, anyone adjudged by a court of competent jurisdiction, a code enforcement board, a code enforcement special magistrate or the city commission, sitting in a quasi-judicial capacity, shall be subject to revocation of golf cart registration.~~

(Ord. No. 2017-15, § 1, 7-17-2017)

Chapter 58 PEDDLERS AND SOLICITORS¹

ARTICLE 1. – CHARITABLE SOLICITATION & HOUSE TO HOUSE SALES

Sec. 58-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Charitable solicitor means any person who requests, directly or indirectly, money, credit, property, financial assistance or other thing of value, or offers or attempts to sell any tangible or intangible thing on the representation that the whole or any part of the proceeds shall be used or go for a charitable or religious purpose.

Peddler or salesman means any person who engages in the business of selling goods, wares or merchandise, or who solicits orders for such goods, wares or merchandise, by going from house to house.

(Code 1960, § 14-1; Code 1982, § 13-1; Code 1999, § 58-1; Ord. No. 78-6, § 1, 6-5-1978)

Sec. 58-2. Registration, permit, business tax receipt required.

Before any person engages in the business of a peddler or salesman or charitable solicitor in the city, he shall register with and be issued a permit by the city, and unless exempted by law, shall pay the business receipts tax.

(Code 1960, § 14-2; Code 1982, § 13-2; Code 1999, § 58-2; Ord. No. 78-6, § 1, 6-5-1978)

Sec. 58-3. Application required.

An application for a registration permit shall be in writing, signed by the person making the application and shall be on a form supplied by the city. The application required shall contain the following information:

- (1) The name, business address, residence or headquarters of the person applying for the permit.

¹State law reference(s)—Restriction on sales from vehicles, F.S. § 337.406; charitable solicitation, F.S. ch. 496; home solicitation, F.S. § 501.021 et seq.; secondhand goods dealers, F.S. ch. 538; peddling at camp meetings restricted, F. S. § 871.03.

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- (2) If the applicant is not an individual, the names and addresses of the applicant's principal officers and managers and written evidence authorizing such selling or charitable solicitation, certified to be a true and correct copy by the official having charge of the applicant's records.
 - (3) A description of the tangible and intangible products being offered for sale and the period of time that such peddler or salesman is to be engaged in such business in the city. If a charitable solicitation, a statement of the purpose for which such solicitation is made, the total amount of funds proposed to be raised thereby, the use or disposition to be made of any receipts therefrom, and the period of time that such solicitor is to be engaged in soliciting in the city.
 - (4) The name and address of the persons by whom the receipts of such solicitation shall be disbursed and the name and address of the persons who will be in direct charge of conducting the solicitation, and the names of all promoters connected or to be connected with the proposed solicitation.
 - (5) A statement that the applicant has never been charged with or convicted of a crime involving moral turpitude, or, if the applicant has been so charged or convicted, the details thereof.
 - (6) A statement to the effect that if a permit is granted, it will not be used or represented in any way as an endorsement by the city, or by any department or officer thereof.
 - (7) If, while any application is pending, or during the term of any permit granted thereon, there is any change in fact, policy or method that would alter the information given in the application, the applicant shall notify the police in writing thereof within 24 hours after such change.
 - (8) An application fee, established by resolution and in appendix A to this Code, shall accompany the sworn application.

(Code 1960, § 14-3; Code 1982, § 13-3; Code 1999, § 58-3; Ord. No. 78-6, § 1, 6-5-1978)

State law reference(s)—Authority to levy regulatory fees, F.S. § 166.221.

Sec. 58-4. Investigation of application.

The chief of police or his designee shall examine the application, and shall make, or cause to be made, such further investigation of the application and the applicant as he shall deem necessary in order for him to perform his duties under this chapter.

(Code 1960, § 14-4; Code 1982, § 13-4; Code 1999, § 58-4; Ord. No. 78-6, § 1, 6-5-1978)

Sec. 58-5. Standards for issuing permit.

The city shall issue the permit applied for under this chapter whenever the following facts exist:

-
- (1) That all the statements made on the application are true.
 - (2) That the control and supervision of the sale or solicitation will be under responsible and reliable persons.
 - (3) That the applicant has not been charged with nor convicted of a crime involving moral turpitude which would adversely affect the activity for which the applicant has made application.

(Code 1960, § 14-5; Code 1982, § 13-5; Code 1999, § 58-5; Ord. No. 78-6, § 1, 6-5-1978)

Sec. 58-6. Permit form; granting not endorsement by city; time limit.

Permits issued under this chapter shall be carried on the person to whom issued, shall bear the name and address of the person to whom it is issued, the number of the permit, the date issued, the dates and times within which the permit holder may solicit or sell, and a statement that the permit does not constitute an endorsement by the city or by any of its departments, officers or employees, of the purpose or of the person conducting the sale or solicitation. No permit may be granted for a period longer than 90 days, but the city may extend any permit for not more than 90 additional days upon a showing that unnecessary hardship would be created by a failure to extend the original 90-day period for such additional days.

(Code 1960, § 14-6; Code 1982, § 13-6; Code 1999, § 58-6; Ord. No. 78-6, § 1, 6-5-1978)

Sec. 58-7. Permit and license nontransferable; return upon expiration.

Any permit or occupational license issued under this chapter shall be nontransferable and shall be returned to the city within two days of its date of expiration.

(Code 1960, § 14-7; Code 1982, § 13-7; Code 1999, § 58-7; Ord. No. 78-6, § 1, 6-5-1978)

Sec. 58-8. Appeal from denial of permit.

Within five days after receiving notification by certified mail that an application for a permit under this chapter has been denied, any applicant may file a written request for a public hearing on the application before the city manager, together with written exceptions to the findings of fact upon which city based its denial of the application. Upon the filing of such request, the city manager shall fix a time and place for the hearing and shall notify the applicant thereof. The hearing shall be held within ten days after the request is filed. At the hearing, the applicant may present evidence in support of his application and exceptions. Any interested person may, in the discretion of the city manager, be allowed to participate in the hearing and present evidence in opposition to the application and exceptions. Within ten days after the conclusion of the hearing, the city manager shall render a written report either granting or denying the application for permit. In his report, the city manager shall state the facts upon which his decision is based, and his ruling upon any exceptions filed in the original findings of

the city. The report shall be filed in the city manager's office for public inspection and a copy shall be served by certified mail upon the applicant.

(Code 1960, § 14-8; Code 1982, § 13-8; Code 1999, § 58-8; Ord. No. 78-6, § 1, 6-5-1978)

Sec. 58-9. Suspension, revocation of permits.

Whenever it shall be shown, or whenever the chief of police or his designee has knowledge, that any person to whom a permit has been issued under this chapter, has violated any of the provisions of this chapter, or any promoter, agent or solicitor of a permit holder has misrepresented the purpose of the solicitation or sale, the chief of police shall immediately suspend the permit and give the permit holder written notice by certified mail of a hearing to be held within five days of such suspension to determine whether or not the permit should be revoked. This statement must contain a statement of the facts upon which the city has acted in suspending the permit. At the hearing, the permit holder, and any other interested person, shall have the right to submit evidence as to the facts upon which the chief of police based the suspension of the permit, and any other facts which may aid the chief of police in determining whether this chapter has been violated and whether the purpose of the solicitation or sale has been misrepresented. If, after such hearing, the city finds that this chapter has been violated or the purpose of the sale or solicitation has been misrepresented, he shall, within two days after the hearing file in the office of the city manager for public inspection and serve upon the permit holder, a written statement of facts upon which he bases such finding and shall immediately revoke the permit. If, after such hearing, the chief of police finds that this chapter has not been violated, and the purposes of the sale or solicitation has not been misrepresented, he shall, within five days after the hearing, give to the permit holder a written statement cancelling the suspension of the permit and stating that no violation nor misrepresentation was found to have been committed. Within ten days after receiving notification by certified mail that his permit has been revoked, the applicant may file a written request for a public hearing on the revocation before the city manager and follow the same procedure set forth in section 58-8.

(Code 1960, § 14-9; Code 1982, § 13-9; Code 1999, § 58-9; Ord. No. 78-6, § 1, 6-5-1978)

Sec. 58-10. Prohibition of outdoor roadside sales of merchandise.

- (a) It shall be unlawful for any person to sell any merchandise within the city from outdoor roadside stands, whether on public or private property.
- (b) The provisions of this section shall not apply to or affect the following:
 - (1) Persons selling goods pursuant to an order or process of a court of competent jurisdiction;
 - (2) Persons acting in accordance with their powers and duties as public officers;
 - (3) The sales of automobiles, recreational vehicles and boats within allowable zoning districts by merchants that currently hold a valid business license for an automobile,

recreational vehicle, or boat dealership within the city; however, no such merchant shall conduct more than three sales per year, with a maximum duration of three days per sale.

- (4) Any sale conducted by any merchant, mercantile or other business establishment from or at a place of business wherein such sales would be permitted by the zoning regulations of the city. For purposes of this section, "business establishment" and "place of business" shall mean a location at which retail sales of merchandise have been conducted continuously by the applicant for at least 12 months prior to application for a temporary tent sales permit under this section;
- (5) Any bona fide charitable, educational, cultural or governmental institution or organization, when the proceeds from such sale are used directly for the institution or organization's charitable purposes, and the goods or articles are not sold on a consignment basis, except that no sale shall be held under these provisions until after a permit has been obtained from the city approving the times and location of such sale, for which permit there shall be no fee assessed;
- (6) House to house sales authorized by this chapter; or
- (7) Garage sales authorized by section 110-529.

(Code 1982, § 13-10; Code 1999, § 58-10; Ord. No. 85-7, § 1, 8-5-1985; Ord. No. 2017-16, § 1, 9-18-2017; Ord. No. 2019-05, § 1, 9-23-2019)

Secs. 58-11 – 58-20. – Reserved.

ARTICLE 2. – MOBILE FOOD VENDORS

Sec. 58-21. – Definitions.

As used in this article, the following terms shall be defined as follows:

Mobile food truck shall mean any vehicle that is movable from place to place and is used to vend food and beverage products. 'Mobile food truck' shall include "mobile food dispensing behicle" and "temporary commercial kitchen" as defined under Florida Statute 509.102. Mobile food trucks shall be classified as one of the following:

Class I - Mobile Kitchens. In addition to the vending of products allowed for class II and class III mobile food trucks, these vehicles may cook, prepare and assemble food items on or in the unit, and serve a full menu. These vehicles may be classified as "mobile food dispensing vehicles," as defined by F.S. § 509.102 , if they include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

Class II - Canteen Trucks. These vehicles vend fruits, vegetables, hot dogs, pre-cooked foods, pre-packaged foods and pre-packaged drinks. No preparation or assembly of foods or beverages may take place on or in the vehicle. However, the heating of pre-cooked foods is

allowed. A cooking apparatus or grill top for the heating of pre-cooked foods is permitted so long as it complies with state regulations. These vehicles are limited to providing catering services to employees at a specific location. These vehicles may be classified as "mobile food dispensing vehicles," as defined by F.S. § 509.102 , if they include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

Class III - Ice Cream Trucks. These vehicles vend only pre-packaged frozen dairy or frozen water-based food products, soft serve or hand-dipped frozen dairy or frozen water-based food products and pre-packaged beverages. These vehicles may be classified as "mobile food dispensing vehicles," as defined by F.S. § 509.102 , if they include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

Property owner shall mean the owner of real property on which the mobile food vendor operates.

Vehicle shall mean a motorized vehicle, including a trailer or other portable unit attached to a motorized vehicle, that is intended for use in vending.

Vend shall mean to sell or offer to sell products from a mobile food truck.

City-issued special event permit shall mean a permit issued by the city for special events per the requirements of chapter 10 section 45 of the City code of ordinances.

Sec. 58-22. Business tax receipt required.

Before any person engages in the business of a mobile food vendor he shall register and shall pay the business receipts tax pursuant to Chapter 66 article III of the city code of ordinances.

Sec. 58-23. – Requirements for Mobile Food Vendors.

The following requirements shall apply to all mobile food vendor operations within the City.

- (1) *Food Truck Special Event Requirements.* Gatherings of two or more class I, class II, or class III mobile food trucks on a property at any given time shall be classified as a food truck special event. In order for such events to occur, the property owner shall be required to obtain a city-issued special event permit prior the event taking place. Applications for special event permits shall be made by the property owner to the city in accordance with the requirements of chapter 10 section 45 of the city code of ordinances. Such special event application shall include the details of any outside seating, preparation, or storage requested by the applicant.
- (2) *Health and Safety Regulations; display of state license.* A mobile food truck shall comply with all federal, state, and local health and safety regulations and requirements, and shall obtain and maintain all licenses required by any other health organization or

governmental organization having jurisdiction over mobile food dispensing vehicles. Such licenses shall be firmly attached and visible on the mobile food truck at all times, and shall be produced to a law enforcement officer, or city code enforcement officer upon demand. All mobile food trucks shall when maintained in good repair and in a clean sanitary condition. Routine inspections may be conducted by code enforcement officers, building code inspectors, fire inspectors, or police officers on each mobile food truck to ensure compliance with these provisions.

- (3) *Consent of Property Owner.* A mobile food truck shall not operate on any private property without the written consent of the property owner.
- (4) *Vending, Storage, Outside Seating.* All materials, equipment, and vending shall be self-contained within the mobile food truck unless a special event permit has been approved and obtained by the City. Likewise, outside seating is prohibited unless a special event permit has been approved and obtained by the city.
- (5) *Conducting business near existing retail food establishments.* A mobile food truck shall not be located within 200 feet of any existing retail food establishment during such establishment's hours of operation without prior written permission from the retail food establishment. A copy of such written permission shall be maintained in the mobile food truck at all times, and shall be produced to a law enforcement officer, or city code enforcement officer upon demand.
- (6) *Conducting business near city-sponsored or city-sanctioned special event.* A mobile food truck shall not be located within 200 feet of any city-sponsored or city-sanctioned special event, unless the mobile food truck is permitted by the city to operate at such event.
- (7) *Conducting business in public right-of-way & access.* A mobile food truck, except for class III ice cream trucks, shall not conduct business or operate in the public right-of-way. Mobile food trucks shall not be parked:
 - a. In a fire zone or in an area blocking a fire hydrant.
 - b. In or blocking Americans with Disabilities (ADA) accessible parking spaces or accessible ramps.
 - c. On unimproved services (including but not limited to dirt, sand, grass, gravel, or vacant lots).
 - d. In any driveway aisles, "no parking zones", or "loading only areas".

(8) *Operating days.* A mobile food truck shall not operate on a given property more than two consecutive days per calendar month, and further shall not operate on a given property more than ten days in total per calendar year, unless the property owner has obtained a city-issued special event permit. Except that a mobile food truck or temporary commercial kitchen that is operated on the same premises as and by a separately licensed public food service establishment may operate during the same hours of operation as the separately licensed public food service establishment. If a temporary commercial kitchen is used in conjunction with a permanent food service establishment such operation shall conform to the requirements of Florida statutes section 509.102(3).

(9) *Operating hours.* A mobile food truck shall operate only between the hours of 7:00 a.m. to 9:00 p.m., unless the property owner has obtained a city-issued special event permit.

(10) *Noise Limitations.* Except for class III Ice Cream Trucks, a mobile food truck shall not make sounds, announcements, or amplify music to call attention to its vending or products either while traveling on public or private rights of way, or when stationary. Class III Ice Cream trucks may emit sound on arterial roads between the hours of 5:00 to 7:00 PM. All mobile food trucks including, but not limited to, class III Ice Cream Trucks, shall otherwise comply with the city's noise regulations in chapter 34 article IV of the city code of ordinances.

(11) *Waste disposal.* Mobile food trucks shall:

- a. Provide for their own waste collection and removal such that no waste remains on property they are situated on.
- b. Provide a waste receptacle for public use.
- c. Keep the surrounding area neat and orderly at all times.
- d. Remove all garbage or trash prior to departure of the mobile food truck each day.
- e. Properly discard waste material in accordance with any applicable federal state, county, and municipal laws, rules, regulations, orders, or permits.
- f. Not discharge grease or any waste materials into the stormwater system, tree pits, sidewalks, streets, parking lots, or onto any private or public property.
- g. Not at any time discharge any fluids or toxic pollutants.

Sec. 58-24. Penalties for Violation

It shall be unlawful for any person to violate any of the provisions of this division. This division may be enforced by any means allowed by law, including, but not limited to, code enforcement citation under Chapter 26 Article IV of this Code, or legal action. If the citation method is used to punish

violators, the violation shall be treated as a civil infraction any fine amount shall not to exceed \$500.00 per offense. Each day a violation occurs shall constitute a separate offense and shall be punishable hereunder as a separate offense.

Secs. 58-25 – 58-30 Reserved.



INTER-OFFICE MEMORANDUM

DATE: August 28, 2023

TO: Randy Martin, City Manager

SUBJECT: Adult Gambling Arcades

As you know, the City of Clewiston has four adult gambling arcades. They are the Triple 7 Arcade at 933 West Sugarland Highway, the Good Times Arcade at 211 West Ventura Avenue, Vickie's Arcade at 402 East Sugarland Highway, and the May Arcade at 122 South WC Owen Avenue. The below information is to serve as basic background information related to our upcoming workshop.

Traditionally, Florida gambling laws differentiated 'games of skill' and 'games of chance.' Games of skill, where a player had the ability to affect the outcome, such as Dave and Busters games and Chuckie Cheese games, were considered legal. Games of chance, where a player had no ability to affect the outcome, such as card games and slot machines, were considered illegal. Under that basic premise and within the text of the Florida gambling law, these adult arcades are operating illegally (portion of the law below and hyperlinked).

[849.08 Gambling](#) - Whoever plays or engages in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

At some point, the Florida legislature passed Florida State Statute 849.094 (commonly referred to as the sweepstakes law) which permitted 'game promotions in connection with the sale of consumer products or services.' Per the statutory definition of 'game promotion', this permitted games of chance (pertinent portion below, hyperlinked, and underlined for emphasis).

[849.094 Game promotion in connection with sale of consumer products or services.](#) - (1) As used in this section, the term: (a) "Game promotion" means, but is not limited to, a contest, game of chance, sweepstakes, or gift enterprise, conducted by an operator within or throughout the state and other states in connection with and incidental to the sale of consumer products or services, and in which the elements of chance and prize are present.

FSS 849.094 was enacted to permit such things as the McDonalds' Monopoly game, where people could purchase food/drinks (consumer products) and have the chance to win something. However, adult arcades took advantage of this law and began to offer 'gift cards' to various stores claiming that the game of chance was connected to the sale of consumer products.

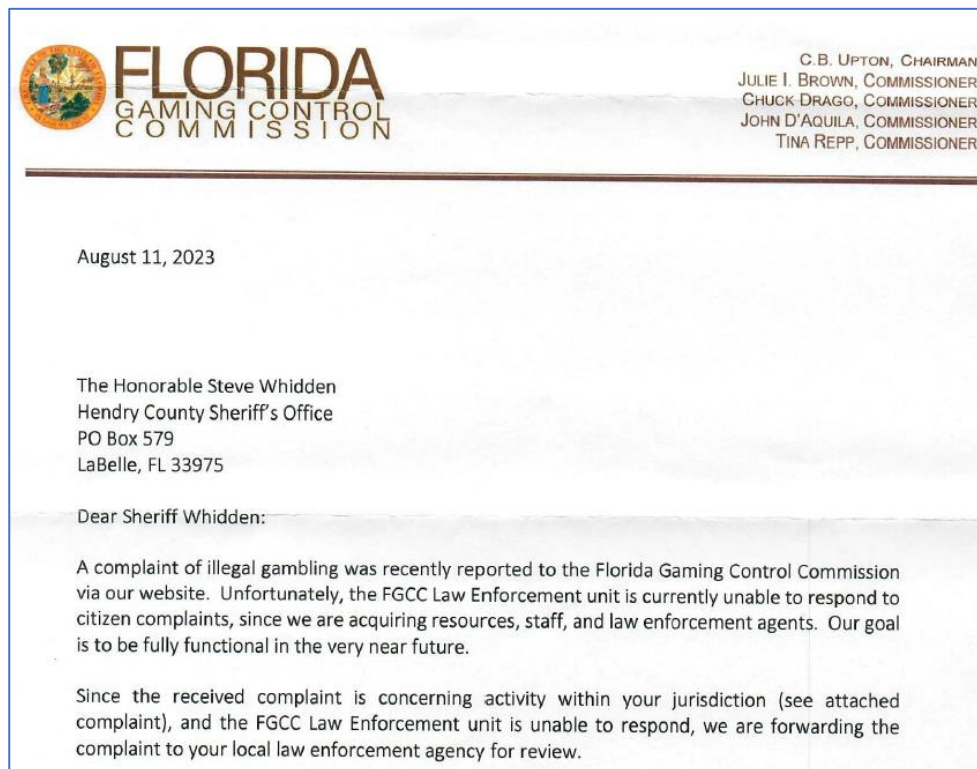
Although the premise started with gift cards, we see today that people win cash and other items that seem to be directly in conflict with the law. In addition, there are specific Florida laws that prohibit slot machines and we can see slot machines in all of the arcades. [FSS 849.15](#) makes it unlawful to own, store, keep, or possess a slot machine, among other prohibitions.

Again, under the premise of FSS 849.15 and within the text of the law, these arcades are operating illegally. However, the legal definition of what constitutes a slot machine is outlined in [Florida State Statute 849.16](#). As

you can see within the arcades, the traditional slot machine which had a mechanical lever that activated the machine after a coin was inserted, has been replaced with a software-based machine. Without having the ability to analyze the software and determine how the machine operates, it is difficult in a court of law to prove these machines meet the statutory definition of a slot machine.

Due to this issue, the local State Attorney's Office (SAO) is unwilling to prosecute under the Florida gaming laws. With the SAO not willing to prosecute, the police department is not able to take criminal enforcement action; to do so would expose the city to civil liability.

Next, you may know the [Florida Gaming Control Commission](#) (FGCC) has formed a law enforcement branch. According to their website, they have a total allocation of 15 personnel (5 personnel allocated for each of their three regions). We have been in contact with the FGCC and learned that they are overwhelmed with requests for help from almost every law enforcement agency. They informed us that they do not have the resources to assist us at this time. Most recently on August 11, 2023, we received a letter, through the Hendry County Sheriff's Office, from the FGCC, which outlined their inability to respond to a local complaint. A snapshot of that letter is below.



Although we are hopeful that the FGCC will be able to assist us at some point in the future, as you can see from the letter, that time is not yet upon us.

More than a year ago, as the department started receiving complaints about illegal gambling, narcotics activity, etc., we conducted undercover operations at all four locations. After seven (7) undercover operations over months-time, we found no evidence that any of the businesses were supporting criminal activity (other than illegal gambling). During these operations, we did observe well-known drug users, homeless, and individuals known to us from previous arrests patronizing the businesses. However, their actions at the time did not justify a legal detention, search, or other enforcement action. Although they were loitering outside of the business at times, the City of Clewiston does not have a prohibition against that. The Florida State law that addresses loitering ([FSS 856.021 – Loitering or Prowling](#)) is specific that it must be “at a time or in a manner not usual for law-abiding individuals.” Each of the individuals was observed outside of an open business in a public place and their behavior didn’t warrant suspicion.



On August 1, 2022, I sat down with the owner of three of the four establishments as well as their legal representative from the Mathis Law Firm, Kelly Mathis (contact information below). As you can imagine, they asserted the business was legal and they wished to partner with the City to develop ordinances that would further legitimize and possibly expand the arcades. Aside from meeting the business owner, nothing of particular note was gained as a result of the meeting.

Kelly B. Mathis, Esquire
Law Offices of Kelly B. Mathis
3577 Cardinal Point Dr.
Jacksonville, FL 32257
(904) 549-5755
www.mathislawfirm.com

With that said, below is some individualized information on each of the adult gambling arcades within the City of Clewiston and a breakdown on the number and nature of calls-for-service that the police department has responded to this calendar year (YTD).

Triple 7 Arcade
933 West Sugarland Highway

Total Calls for Service:	38 Calls
Extra Patrol / Business Check	20
Alarm Calls	7
Theft/Burglary	3
Citizen Assist	2
Investigative Follow-up	2
Vehicle Accident	1
Trespassing	1
Lost/Found Property	1
Shooting/Robbery	1

Good Times Arcade
211 West Ventura Avenue

Total Calls for Service:	3 Calls
Extra Patrol / Business Check	1
Unwanted Guest	1
Information	1

Vickie's Arcade
402 East Sugarland Highway

Total Calls for Service:	63 Calls
Extra Patrol / Business Check	42
Disturbance	4
Traffic Stop	3
Citizen Assist	3
Assist Other Agency	2
Vehicle Accident	2
Unwanted Guest	1
Theft	1
Suspicious Person	1
Investigative Follow-up	1
Information	1
Sick Person	1
Robbery	1

May Arcade
122 South WC Owen Avenue

Total Calls for Service:	94 Calls
Extra Patrol / Business Check	84
Sick Person	2
Investigative Follow-up	2
Disturbance	1
Loitering	1
Theft	1
Vandalism	1
Suspicious Vehicle	1
Information	1

Even though the May Arcade is currently receiving 2 to 4 times the amount of business checks as other arcades, based on the continuing complaints, I continue to direct our patrol officers to increase their presence in the area of the arcade as a deterrent. I also encourage any citizen to call the police department upon seeing anything suspicious so we can have an immediate response to the issue.

If you have any questions at all, just let me know.

/s/

Thomas Lewis, Chief of Police

/TPL

CC: file

783 F.Supp.2d 1197

United States District Court, M.D. Florida,
Orlando Division.

**ALLIED VETERANS OF THE WORLD,
INC. : AFFILIATE 67, Allied Veterans
of the World, Inc.:** Affiliate 74, Plaintiffs,
and
Phone–Sweeps, LLC, Hassan Salem
Malih d/b/a Empire PhoneSweep,
Jack's Business Centers, LLC, and
Darrell Agostino, Intervenor–Plaintiffs,
v.

SEMINOLE COUNTY, Florida, Defendant.

Case No. 6:11–cv–155–Orl–28DAB

May 6, 2011.

Synopsis

Background: Operators of internet centers brought action challenging constitutionality of county ordinance banning simulated gambling devices. Developer of software used by internet centers intervened. Plaintiffs moved for preliminary injunction.

Holdings: The District Court, [John Antoon II](#), J., held that:

[1] operators were not likely to succeed on merits of their First Amendment claim;

[2] developer was not likely to succeed on merits of its First Amendment claim;

[3] ordinance did not violate First Amendment overbreadth doctrine;

[4] ordinance did not violate Equal Protection Clause;

[5] ordinance did not violate dormant Commerce Clause; and

[6] ordinance did not violate Due Process Clause.

Motions denied.

West Headnotes (17)

[1] **Injunction** ⚙️ Grounds in general; multiple factors

In order to obtain preliminary injunction, plaintiff must show that: (1) it has substantial likelihood of success on merits; (2) irreparable injury will be suffered unless injunction issues; (3) threatened injury to movant outweighs whatever damage proposed injunction may cause opposing party; and (4) if issued, injunction would not be adverse to public interest.

[2] **Civil Rights** ⚙️ Preliminary Injunction

Operators of internet centers were not likely to succeed on merits of their claim that county ordinance banning “simulated gambling devices” violated their First Amendment rights, and thus were not entitled to preliminary injunction, even if video games constituted protected speech, where ordinance did not prohibit access to internet, and only playing of games in conjunction with possibility of payoff was banned. [U.S.C.A. Const.Amend. 1](#).

7 Cases that cite this headnote

[3] **Civil Rights** ⚙️ Preliminary Injunction

Developer of computer software used by internet centers was not likely to succeed on merits of its claim that county ordinance banning “simulated gambling devices” violated its First Amendment rights, and thus was not entitled to preliminary injunction, where developer did not use its code to communicate with other programmers, and software alone did not constitute simulated gambling device and therefore was not banned by ordinance. [U.S.C.A. Const.Amend. 1](#).

2 Cases that cite this headnote

[4] **Constitutional Law** ⚙️ Prohibition of substantial amount of speech

For law to be declared invalid under First Amendment overbreadth doctrine, law's application to protected speech must be substantial, not only in absolute sense, but also relative to scope of law's plainly legitimate applications. *U.S.C.A. Const.Amend. 1*.

- [5] **Constitutional Law** 🔑 Invalidation of all enforcement

Constitutional Law 🔑 Limiting construction

Law that violates First Amendment overbreadth doctrine is declared unconstitutional in its entirety even if it could be legitimately enforced in some situations, unless limiting construction or partial invalidation so narrows it as to remove seeming threat or deterrence to constitutionally protected expression. *U.S.C.A. Const.Amend. 1*.

- [6] **Constitutional Law** 🔑 Games in general
Gaming and Lotteries 🔑 Gambling devices

County ordinance banning "simulated gambling devices" did not punish constitutionally protected speech, and thus did not violate First Amendment overbreadth doctrine; ordinance only prohibited conduct, and required that user obtain coin, bill, ticket, token, card or similar object through payment of consideration, that that object then be physically or electromagnetically connected to computer, and that game be of type "ordinarily played in a casino." *U.S.C.A. Const.Amend. 1*.

1 Case that cites this headnote

- [7] **Constitutional Law** 🔑 Certainty and definiteness; vagueness

It is basic principle of due process that enactment is void for vagueness if its prohibitions are not clearly defined. *U.S.C.A. Const.Amend. 5, 14*.

4 Cases that cite this headnote

- [8] **Constitutional Law** 🔑 Certainty and definiteness; vagueness

Statute can be impermissibly vague, in violation of due process, for either of two independent reasons: (1) if it fails to provide people of ordinary intelligence reasonable opportunity to understand what conduct it prohibits, or (2) if it authorizes or even encourages arbitrary and discriminatory enforcement. *U.S.C.A. Const.Amend. 5, 14*.

4 Cases that cite this headnote

- [9] **Constitutional Law** 🔑 Third-party standing in general

Party to whom application of statute is constitutional will not be heard to attack statute on ground that impliedly it might also be taken as applying to other persons or other situations.

- [10] **Constitutional Law** 🔑 Vagueness in General

Under vagueness doctrine, plaintiff who engages in some conduct that is clearly proscribed cannot complain of law's vagueness as applied to conduct of others.

- [11] **Constitutional Law** 🔑 First Amendment in General

Operators of internet centers and developer of computer software used by centers could not raise successful First Amendment vagueness challenge to county ordinance banning "simulated gambling devices," where their conduct was clearly proscribed by ordinance. *U.S.C.A. Const.Amend. 1*.

1 Case that cites this headnote

- [12] **Constitutional Law** 🔑 Gambling and gaming
Gaming and Lotteries 🔑 Gambling devices

County's decision to ban simulated gambling devices to protect public from deceptive nature of commercial electronic simulated gambling devices had rational basis, and thus was not underinclusive, in violation of Equal Protection Clause, due to fact that it did not include

non-commercial or paper simulated gambling.
U.S.C.A. Const.Amend. 14.

- [13] **Commerce** 🔑 Local matters affecting commerce

Commerce 🔑 Preferences and Discriminations

If law discriminates against out-of-state residents on its face, it violates dormant Commerce Clause unless it advances legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives. U.S.C.A. Const. Art. 1, § 8, cl. 3.

- [14] **Commerce** 🔑 Local matters affecting commerce

If regulation is directed equally at interstate and local businesses, and has only indirect effects on interstate commerce, court considering challenge under dormant Commerce Clause must examine whether state's interest is legitimate and whether burden on interstate commerce clearly exceeds local benefits. U.S.C.A. Const. Art. 1, § 8, cl. 3.

- [15] **Commerce** 🔑 Sports, entertainment, and recreation

Gaming and Lotteries 🔑 Gambling devices

County ordinance banning simulated gambling devices did not violate dormant Commerce Clause; ordinance did not discriminate on its face, and ordinance's largest impact was wholly in-state. U.S.C.A. Const. Art. 1, § 8, cl. 3.

- [16] **Constitutional Law** 🔑 Gambling and gaming
Gaming and Lotteries 🔑 Gambling devices

County ordinance banning simulated gambling devices did not impose vicarious liability, and thus did not violate Due Process Clause by failing to require responsible relationship between defendant and person committing prohibited act. U.S.C.A. Const.Amend. 14.

- [17] **Constitutional Law** 🔑 Gambling and gaming
Gaming and Lotteries 🔑 Gambling devices

Lack of mens rea requirement in county ordinance banning simulated gambling devices did not violate Due Process Clause. U.S.C.A. Const.Amend. 14.

Attorneys and Law Firms

*1199 Adam Regar, Kelly B. Mathis, Mathis & Murphy, PA, Jacksonville, FL, Gary S. Edinger, Gary S. Edinger & Associates, PA, Gainesville, FL, for Plaintiffs.

Christopher Charles Skambis, Jr., Kathleen Maloney Skambis, The Skambis Law Firm, Orlando, FL, David G. Shields, *1200 Arnold W. Schneider, Seminole County Attorney's Office, Sanford, FL, for Defendant.

Lawrence G. Walters, Walters Law Group, Altamonte Springs, FL, for Intervenor-Plaintiffs.

ORDER

JOHN ANTOON II, District Judge.

Plaintiffs and Intervenor-Plaintiffs challenge the constitutionality of Ordinance 2011-1 ("the Ordinance"), which was passed by Defendant Seminole County, Florida ("the County") on January 11, 2011 and which bans "simulated gambling devices" in the County. (Ordinance, Ex. A to Doc. 1, at 7). A temporary restraining order was entered on February 1, 2011. (Doc. 8). Currently pending are Plaintiffs' Amended Motion for Preliminary Injunction¹ (Doc. 17) and Intervenor-Plaintiffs' Motion for Preliminary Injunction (Doc. 18).² As discussed below, both motions must be denied.

I. Preliminary Injunction Standard

[1] In order to obtain a preliminary injunction, a plaintiff must show that "(1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction

would not be adverse to the public interest.” *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir.2000).

II. Background

Plaintiffs and Intervenor–Plaintiffs Empire PhoneSweep and Jack's Business Centers (collectively “Operator–Plaintiffs”) operate internet centers in Seminole County, Florida.³ (Doc. 17 at 2; Intervenor Compl., Doc. 22, at 34). The internet centers contain common desktop computers, and Operator–Plaintiffs sell internet time to be used on those computers. (Compl. ¶ 15). When customers purchase internet time, they also receive a proportional number of entries into a sweepstakes. (*Id.* ¶ 22). The customers are then given plastic account cards that contain a “magnetic strip with an electronically encoded, personal identification number (PIN).” (*Id.* ¶ 21).

When a customer swipes the account card at a terminal, “the card electronically transmits the customer’s PIN to the computer” and the customer can then either access the internet or find out whether he won the sweepstakes. (*Id.* ¶¶ 27–28). The customer has three options to find out whether he won the sweepstakes: he can ask the cashier; he can use the “quick reveal” option on the computer, which “simply displays by alphanumeric text the results of each entry without fanfare”; or he can play a video simulation of a casino game—for example a video slot machine. (*Id.* ¶¶ 28–29). Playing the game does not affect the outcome of the sweepstakes; it is merely an entertaining method of delivering the results. (*Id.* ¶ 29). If the customer wins the sweepstakes, he is entitled to a prize.

*1201 In response to the “increasing proliferation” of such internet centers, (Ordinance at 1), the County enacted the Ordinance, which makes it illegal for “any person to design, develop, manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices,” (*id.* at 7). The Ordinance defines a “simulated gambling device” as “any device that, upon connection with an object, is available to play or operate a computer simulation of any game, and which may deliver or entitle the person or persons playing or operating the device to a payoff.” (*Id.* at 5). The Ordinance then goes on to define nearly every word contained in the definition of “simulated gambling device.” The definitions are cumulative; every condition provided must be met for something to qualify as a “simulated gambling device.”

The first part of the definition requires that a person “connect” an “object” to a “device.” A “device” is “any mechanical or electrical contrivance, computer, terminal, video or other equipment that may or may not be capable of downloading games” and includes “any associated equipment necessary to conduct the operation of the device.” (*Id.*). An “object” is “a coin, bill, ticket, token, card or similar object, obtained directly or indirectly through payment of consideration, or obtained as a bonus or supplement to another transaction involving the payment of consideration.” (*Id.*). The “connection” that must be made between the two can be an “insertion, swiping, passing in range, or any other technical means of physically or electromagnetically connecting.” (*Id.*).

Once the connection is made, the device must make “a computer simulation”⁴ of a “game” available to “play or operate.” The definition of “game” under the ordinance includes “slot machines, poker, bingo, craps, keno, [or] any other type of game ordinarily played in a casino,” and “a game involving the display of the results of a raffle, sweepstakes, drawing, contest or other promotion, lotto, [or] sweepstakes” and “any other game associated with gambling or which could be associated with gambling.” (*Id.* at 6). Playing or operating the computer simulation of a game “includes the use of skill, the application of the element of chance, or both.” (*Id.* at 5). Finally, a “payoff” is defined as “cash, monetary or other credit, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether made automatically from the machine or manually.” (*Id.* at 6).

To illustrate, it is helpful to examine how Operator–Plaintiffs’ activities fit within the context of the Ordinance. Operator–Plaintiffs’ computers (devices) are, upon swiping (connecting) an account card (object), available to play (utilizing skill and/or chance) a computer simulation of casino games (for example, a slot machine), which may entitle the player to a payoff (for example, cash) for winning the sweepstakes.

III. Analysis

Plaintiffs and Intervenor–Plaintiffs claim that the Ordinance violates the United States Constitution in several ways and that they will suffer irreparable injury if the County is allowed to enforce the Ordinance. First and foremost, they claim that the Ordinance violates the First Amendment. Plaintiffs and Intervenor–Plaintiffs also argue that the Ordinance is *1202 void for vagueness, violates the dormant Commerce Clause,

and imposes fines and penalties on a strict liability basis without the requisite showing of a “responsible relationship” in violation of the Due Process Clause. (Doc. 17 at 14; *see generally* Doc. 18). As discussed below, Plaintiffs and Intervenor–Plaintiffs have not shown that they have a substantial likelihood of success on the merits of their claim, and therefore the motions for preliminary injunction will be denied.

A. First Amendment

Plaintiffs and Intervenor–Plaintiffs assert that the Ordinance violates the First Amendment as applied to them because it is a content-based restriction on speech and that it violates the First Amendment on its face because it is overbroad. However, the statute regulates conduct rather than speech, and therefore, Plaintiffs and Intervenor–Plaintiffs have not shown a substantial likelihood of success on their First Amendment challenges.

The Temporary Restraining Order issued on February 1, 2011 (Doc. 8) concluded that at least some video games constitute protected speech and that Plaintiffs therefore had made a showing that they were entitled to a temporary restraining order. Although the Order correctly determined that video games can constitute protected speech, a thorough examination of the parties' arguments and of the Ordinance yields the conclusion that the Ordinance does not prohibit that protected speech. Instead, the Ordinance prohibits only conduct.

1. As Applied to the Operator–Plaintiffs

[2] Operator–Plaintiffs argue that along with the video games played at their establishments, their patrons' access to the internet is protected speech and the Ordinance bans such speech. However, the Ordinance in no way prohibits access to the internet; it only regulates the simulated gambling devices. Furthermore, although the games played at Operator–Plaintiffs' establishments may constitute protected speech, the Ordinance only bans the games if all elements of the definition of “simulated gambling device” are present. As noted above, a device must entitle the player to the possibility of a payoff in order to constitute a “simulated gambling device.” None of the video games at issue is banned on its own—only the playing of such a game *in conjunction* with the possibility of a payoff is banned. Therefore, Operator–Plaintiffs are free to provide the video games to their patrons

and their patrons are free to play them—and thus make and receive whatever protected message is communicated by the video game—so long as the games are not associated with the conduct of a payoff.⁵

Operator–Plaintiffs also argue that the Ordinance bans speech that is “associated with gambling.” This argument takes the Ordinance out of context. The “associated with gambling” language is part of the definition of “game.” A “game” as defined by the Ordinance includes games that are, or could be, associated with gambling. The Ordinance in no way bars all speech associated with gambling; it only bans *games* associated with gambling *if* those games also provide the possibility of a payoff.

2. As applied to Phone–Sweeps LLC

Intervenor–Plaintiff Phone–Sweeps LLC (“Phone–Sweeps”) “creates, develops, and maintains the computer software utilized by [Empire PhoneSweep and Jack's *1203 Business Centers].” (Doc. 18 at 2). Phone–Sweeps argues that the computer code used in its computer software is protected speech, which the Ordinance unconstitutionally bans.

[3] As an initial matter, it is unclear whether the computer code contained in PhoneSweeps's software is, indeed, protected speech. Although some courts have determined that computer code can constitute protected speech in certain circumstances, such code is not always protected. Instead, because computer code can communicate both to humans and to computers, the way in which the code is utilized is relevant. There are three general “ways in which a programmer might be said to communicate through code”: (1) to the user of the program, which is not necessarily protected; (2) to the computer, which is never protected; and (3) to other programmers, which is likely protected. *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 449 (2d Cir.2001).

In *Universal City Studios*, the Second Circuit recognized that “[i]nstructions such as computer code, which are intended to be executable by a computer, will often convey information capable of comprehension and assessment by a human being.” *Id.* at 448. For example, “[a] programmer reading a program learns information about instructing a computer ... [and] programmers communicating ideas to one another almost inevitably communicate in code, much as musicians use notes.” *Id.* In such cases, the code is protected speech. However, “where a human's mental faculties do not intercede

in executing the instructions,” there is no First Amendment protection. *Id.* at 448 n. 20 (citing *Commodity Futures Trading Comm’n v. Vartuli*, 228 F.3d 94, 111 (2d Cir.2000)).

Nowhere does Phone–Sweeps assert that it uses its code to communicate with other programmers or even that the user of the software may interpret the code. It appears that Phone–Sweeps utilizes its code only to communicate with the computer.

Moreover, even if Phone–Sweeps’s software were protected speech, the software—alone—does not constitute a simulated gambling device and therefore is not banned by the Ordinance.⁶ The software cannot display itself, and it cannot provide a payoff. If a person utilized the software in conjunction with all of the other elements of a simulated gambling device then that person would be liable under the Ordinance, but the software, in and of itself, cannot constitute a simulated gambling device. Accordingly, because the software on its own is not a simulated gambling device, designing the software is not a violation of the Ordinance.

Phone–Sweeps has not shown a substantial likelihood of success on its as-applied First Amendment challenge.

3. Overbreadth

Plaintiffs and Intervenor–Plaintiffs argue that even if the Ordinance is not unconstitutional as applied to them, it is facially unconstitutional because it is overbroad.

[4] [5] Normally, “to challenge a statute facially, ‘the challenger must establish that no set of circumstances exists under which the Act would be valid.’ ” *Fla. Ass’n of Prof’l Lobbyists, Inc. v. Div. of Legislative Info. Servs. of the Fla. Office of Legislative Servs.*, 525 F.3d 1073, 1079 n. 7 (11th Cir.2008) (quoting *1204 *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)). However, “[t]he First Amendment doctrine of overbreadth is an exception to the normal rules governing facial challenges.” *Id.* at 1079 (citing *Virginia v. Hicks*, 539 U.S. 113, 119, 123 S.Ct. 2191, 156 L.Ed.2d 148 (2003)). For a law to be declared invalid under the overbreadth doctrine, the law’s “application to protected speech [must] be ‘substantial,’ not only in an absolute sense, but also relative to the scope of the law’s plainly legitimate applications.” *Hicks*, 539 U.S. at 119–120, 123 S.Ct. 2191 (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 613, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973)). The Supreme Court has described the overbreadth doctrine

as “strong medicine” and has cautioned that it should be used “sparingly and only as a last resort.” *Broadrick*, 413 U.S. at 613, 93 S.Ct. 2908. This is because an overbroad law is declared unconstitutional in its entirety even if it could be legitimately enforced in some situations “unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression.” *Id.* Also, although the possibility that an overbroad law will chill constitutionally protected speech is an important consideration, “there are substantial social costs *created* by the overbreadth doctrine when it blocks application of a law to constitutionally unprotected speech, **or especially to constitutionally unprotected conduct.**” *Hicks*, 539 U.S. at 119, 123 S.Ct. 2191 (italicized emphasis in original, bold emphasis added). Accordingly, “there comes a point at which the chilling effect of an overbroad law ... cannot justify prohibiting all enforcement of that law—particularly a law that reflects ‘legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct.’ ” *Id.*

[6] Plaintiffs have posited several different scenarios that allegedly demonstrate that application of the Ordinance punishes constitutionally protected speech. However, when each is examined, it is clear that the Ordinance would either not apply in the scenario or its application would be constitutional.

First, Plaintiffs argue that promotions like “my coke rewards”⁷ and games like those played at Chuck E. Cheese⁸ would be prohibited by the Ordinance. Even assuming that these games would constitute simulated gambling devices,⁹ the Ordinance’s application to these games—like its application to Operator–Plaintiffs’ games—only prohibits conduct. Coke and Chuck E. Cheese would still be free to communicate the same messages as long as there was no possibility of a payoff. Plaintiffs seemingly argue that because my coke rewards and Chuck E. Cheese are outside the *conduct* that the County stated *1205 it was intending to regulate, the Ordinance is overbroad. This, however, is obviously not the same kind of “overbreadth” that makes a law violative of the First Amendment.

Next, Plaintiffs claim that the Ordinance would unconstitutionally punish people who play World of Warcraft (“WOW”) and “develop virtual characters for later sale or trade.” (Doc. 17 at 18). WOW is a “Massively Multiplayer Online Role–Playing game” where “players from around the world assume the roles of heroic fantasy characters

and explore a virtual world full of mystery, magic, and endless adventure.” World of Warcraft, Beginner’s Guide, <http://us.battle.net/wow/en/game/guide/> (last visited May 5, 2011). Plaintiffs argue that all elements of a simulated gambling device are present when someone plays WOW and then sells or trades the digital products accumulated while playing. However, it is likely that WOW would fall within the Ordinance’s exemption for “an individual’s personal, recreational, and non-commercial ownership, possession, play, operation or use of a device which could be construed to be a simulated gambling device.” (Ordinance at 7).

Even if it did not fall within the exemption, WOW would not be prohibited by the Ordinance. Although WOW does utilize a “device” because it is played on a computer, Plaintiffs have not shown that the device has to be connected with an “object” in order to play WOW or that WOW itself falls within the definition of “game.” As previously noted, an “object” is “a coin, bill, ticket, token, card or similar object, obtained directly or indirectly through payment of consideration, or obtained as a bonus or supplement to another transaction involving the payment of consideration.” (*Id.* at 5). Plaintiffs apparently would like the Court to ignore the definition provided within the Ordinance and consider the direct entry of a credit card number into a computer in order to play WOW as satisfying the “object” requirement. This is clearly contrary to the plain language of the Ordinance.

Furthermore, the Plaintiffs attempt to separate the consideration aspect from the rest of the definition of “object” and argue that because individuals must pay to play WOW, the “object” requirement is satisfied. The mere fact that an individual must pay to play a game is insufficient to deem the game a simulated gambling device. Rather, an individual must obtain a coin, bill, ticket, token, card or similar object through the payment of consideration, and that coin, bill, ticket, token, card or similar object must then be inserted, swiped, passed in range, or otherwise physically or electromagnetically connected to the computer. Therefore, under the terms of the Ordinance the consideration must relate to obtaining the object—not to playing the game.

Additionally, Plaintiffs argue that WOW falls within the definition of “game” because it involves the elements of chance and skill. However, the elements of chance and skill are part of the definition of “play or operate,” not the definition of game. WOW does not fall within the definition of game because it clearly is not a “slot machine, poker, bingo, craps, keno, or any other type of game ordinarily played in a

casino,” nor is it “a game involving the display of the results of a raffle, sweepstakes, drawing, contest or other promotion, lotto, [or] sweepstakes.” A determination that WOW is a game that is “associated with gambling or which could be associated with gambling” would be an unreasonable reading of the Ordinance.

As their last example, Plaintiffs argue that the Ordinance is unconstitutionally overbroad because it bans viewing the results of the lottery or other sweepstakes, *1206 or communicating about the results of any “game” as defined by the Ordinance, over the internet. Again, Plaintiffs fail to recognize that every element of the definition of “simulated gambling device” must be present in order for an activity to be prohibited. Using a computer to view the results of a lottery or to communicate about the results of a “game” would not constitute using a simulated gambling device because the computer is not simulating any game. Although the definition of “game” includes games that involve “the display of the results” of the lottery, simply viewing the winning lottery numbers is not a *game that displays* the results; it is just the results. Similarly, discussing the results of a game does not constitute playing a game.

Plaintiffs attempt to further confuse the issue by arguing that because the Ordinance regulates “legal” conduct, it is overbroad. All parties concede that the Ordinance regulates more than just gambling, and Plaintiffs assert that—but for this Ordinance—their conduct would be legal because it is not gambling.¹⁰ This assertion is entirely irrelevant. If legislative bodies were prohibited from regulating previously unregulated conduct, nearly every new law would be declared unconstitutional. Such an absurd result is clearly not contemplated by the overbreadth doctrine.

Finally, Intervenor–Plaintiffs argue that this case is controlled by *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 122 S.Ct. 1389, 152 L.Ed.2d 403 (2002). In *Ashcroft*, a statute banning “simulated” child pornography was declared unconstitutional. The Supreme Court held that while “actual” child pornography was obscenity, and therefore unprotected speech, “simulated” child pornography was not obscenity and could not be prohibited merely because of its similarities to “actual” child pornography. Intervenor–Plaintiffs argue that *Ashcroft* applies here and that the County is not allowed to prohibit “simulated” gambling merely because it is allowed to regulate “actual” gambling. However, the use of the word “simulated” is where the similarities between *Ashcroft* and the instant case end. In *Ashcroft*, the simulated child pornography

was not protected merely because it was “simulated”; it was protected because it constituted protected speech. As discussed above, the Ordinance here prohibits conduct—not speech.

B. Vagueness

Plaintiffs also challenge the Ordinance on vagueness grounds.¹¹ They argue that the terms “simulated gambling device,” “game,” “use,” “game ordinarily played in a casino,” and “any other game associated with gambling or which could be associated with gambling” are unconstitutionally vague.

[7] [8] “It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). “A statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement.” *Hill v. Colorado*, 530 U.S. 703, 732, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000) (citing *1207 *Chicago v. Morales*, 527 U.S. 41, 56–57, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999)).

[9] [10] It is also a “well-established rule of constitutional law ... that a party ‘to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations.’” *United States v. Di Pietro*, 615 F.3d 1369, 1371 (11th Cir.2010). This rule “avoids an undesirable foray by federal courts into ‘every conceivable situation which might possibly arise in the application of complex and comprehensive legislation’ ... [and] it ensures that federal courts make informed judgments by limiting their decisions to actual, not hypothetical, cases that carry with them facts and data on which a well-reasoned decision may be based.” *Id.* at 1372 (internal citations omitted). Under the vagueness doctrine, this means that “[a] plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.” *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982). This rule holds true even in the context of a First Amendment challenge. *Holder v. Humanitarian Law Project*, 561 U.S. 1, 130 S.Ct. 2705, 2719, 177 L.Ed.2d 355 (2010) (“[E]ven to the extent a heightened vagueness standard applies, a plaintiff whose speech is clearly proscribed cannot raise a successful

vagueness claim under the Due Process Clause of the Fifth Amendment for lack of notice. And he certainly cannot do so based on the speech of others.”).

[11] In sum, Plaintiffs cannot raise a successful vagueness claim because their conduct is clearly proscribed by the Ordinance. In fact, Plaintiffs do not even attempt to argue that the statute is vague as applied to them. Rather, Plaintiffs argue that the exceptions in the Ordinance—which they do not assert apply to them—are vague and that some of the definitions are vague on their face. (Doc. 17 at 20–21). Plaintiffs also attempt to merge their overbreadth argument with their vagueness argument by stating that the definition of “game” implicates a wide variety of protected speech. (*Id.* at 21). However, “a Fifth Amendment vagueness challenge does not turn on whether a law applies to a substantial amount of protected expression. Otherwise the [vagueness and overbreadth] doctrines would be substantially redundant.” *Humanitarian Law Project*, 130 S.Ct. at 2719 (internal citations omitted).

C. Unconstitutionally Underinclusive

[12] Plaintiffs and Intervenor–Plaintiffs argue that the Ordinance is unconstitutionally underinclusive because it “discriminates against electronic communication in favor of ‘traditional’ paper communication” and because it “discriminates against ‘commercial’ in favor of ‘non-commercial’ behavior.” (Doc. 17 at 22; Doc. 18 at 11). However, because the Ordinance does not infringe on Constitutionally protected rights, the County must only have a rational basis for regulating commercial electronic simulated gambling as opposed to non-commercial or paper simulated gambling. *Romer v. Evans*, 517 U.S. 620, 631, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996) (“[I]f a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end.”). As conceded by Plaintiffs during oral argument, the County’s stated basis—to protect the public from the deceptive nature of commercial electronic simulated gambling devices—satisfies the *1208 rational basis requirement, and therefore the statute is not unconstitutionally underinclusive.

D. Dormant Commerce Clause

[13] [14] “The Dormant Commerce Clause prohibits ‘regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.’” *Cachia v. Islamorada*, 542 F.3d 839, 842 (11th Cir.2008) (quoting *New*

Energy Co. of Ind. v. Limbach, 486 U.S. 269, 273, 108 S.Ct. 1803, 100 L.Ed.2d 302 (1988)). “To determine whether a statutory scheme violates the dormant Commerce Clause, [the Court] employ[s] two tiers of analysis.” *Bainbridge v. Turner*, 311 F.3d 1104, 1108 (11th Cir.2002) (citations omitted). First, the Court “must determine whether the [] law discriminates against out-of-state residents on its face.” *Locke v. Shore*, 634 F.3d 1185, 1192 (11th Cir.2011). If it discriminates facially, “the regulation must be shown to ‘advance[] a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.’” *Cachia*, 542 F.3d at 842 (quoting *Bainbridge*, 311 F.3d at 1109). On the other hand, “[i]f a regulation is directed equally at interstate and local businesses, and has ‘only indirect effects on interstate commerce,’ [the Court] ‘examine[s] whether the State’s interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits.’” *Id.* (quoting *Brown–Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579, 106 S.Ct. 2080, 90 L.Ed.2d 552 (1986)).

The Ordinance does not discriminate on its face. It regulates evenhandedly and applies to local, in-state, and out-of-state interests equally. Therefore, the Court must determine whether the Ordinance has a discriminatory impact.

[15] “The Supreme Court has emphasized several factors which guide [courts] in determining whether a neutrally-worded state law has a discriminatory impact”: (1) “whether the state law ‘exclude[s] a class of predominantly out-of-state [residents],’” *Locke*, 634 F.3d at 1193 (quoting *Exxon Corp. v. Governor of Md.*, 437 U.S. 117, 137, 98 S.Ct. 2207, 57 L.Ed.2d 91 (1978)); (2) “whether the state statute imposes costs on out-of-state residents that in-state residents do not have to bear,” *id.* (citing *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 352–53, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977)); and (3) “whether the state legislature was motivated by protectionist purposes in passing the law at issue,” *id.* (citing *Granholm v. Heald*, 544 U.S. 460, 472, 125 S.Ct. 1885, 161 L.Ed.2d 796 (2005)). None of these factors is present here. Rather than impacting out-of-state interests more than in-state interests, the largest impact of the ordinance is wholly in-state. Intervenor–Plaintiffs argue that the Ordinance unreasonably burdens the dissemination of speech via the internet, but as discussed above, the Ordinance does not impact the dissemination of speech. Accordingly, Plaintiffs and Intervenor–Plaintiffs have failed to show that they have a substantial likelihood of success on the merits of their dormant Commerce Clause claim.¹²

E. “Responsible Relationship” under the Due Process Clause

[16] Plaintiffs and Intervenor–Plaintiffs argue that the Ordinance is unconstitutional because it lacks a mens rea requirement and imposes vicarious liability *1209 without requiring a showing of a “responsible relationship” between the defendant and the person committing the act. However, on its face, the Ordinance does not impose vicarious liability; it only makes individuals liable for their own actions. Plaintiffs’ and Intervenor–Plaintiffs’ reliance on *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir.1999), is inapposite. The ordinance at issue in *Lady J. Lingerie* specifically stated that “[a]ll acts of any servant, agent, or employee, paid or unpaid, of an owner shall be imputed to the owner and be deemed to be an act of the owner if done within the scope of such servant, agent or employee’s scope of authority under the owner.” *Id.* The Ordinance in this case contains no such language. It makes people liable for their own acts of managing, supervising, and maintaining simulated gambling devices, but nowhere does the Ordinance imply that owners or managers will be liable for the acts of third parties. (Ordinance at 7).

[17] Plaintiffs have also failed to show that the Ordinance’s lack of a specific mens rea requirement violates the Due Process Clause. See *Humanitarian Law Project v. U.S. Treasury Dep’t*, 578 F.3d 1133, 1152 (9th Cir.2009) (“[The] civil penalties [at issue] may be imposed without mens rea requirements because they are indeed civil.”); *Northern Wind, Inc. v. Daley*, 200 F.3d 13, 19 (1st Cir.1999) (“As a general matter, scienter is not required to impose civil penalties for regulatory violations when the regulation is silent as to state of mind.”); *State v. Oxx*, 417 So.2d 287, 290 (Fla. 5th DCA 1982) (holding that the criminal statute at issue did not violate the Due Process Clause even though it did not expressly require mens rea because it “describe[d] a crime *malum prohibitum*, not *malum in se*”; it did not “appear to chill a person’s exercise of his or her first amendment rights”; and it “punishes certain affirmative acts, not a failure to act,” and “proof of an act [raises] a presumption that it was knowingly and intentionally done”).

IV. Conclusion

In accordance with the foregoing, it is **ORDERED** that Plaintiffs’ Amended Motion for Preliminary Injunction (Doc. 17) and Intervenor Plaintiffs’ Motion for Preliminary Injunction (Doc. 18) are **DENIED**, and Plaintiffs’ Motion for

Preliminary Injunction (Doc. 3) is **DENIED as moot**. It is further **ORDERED** that the Temporary Restraining Order issued on February 1, 2011, is no longer in effect.

All Citations

783 F.Supp.2d 1197, 22 Fla. L. Weekly Fed. D 617

Footnotes

- 1 Plaintiffs' Motion for Preliminary Injunction (Doc. 3) is denied as moot because it is superseded by Plaintiffs' amended motion.
- 2 The County has filed responses to Plaintiffs' and Intervenor–Plaintiffs' motions (Docs. 26 & 33), and the parties made oral arguments on the motions on February 17, 2011.
- 3 Intervenor–Plaintiff Darrell Agostino is the owner of Jack's Business Centers, and Intervenor–Plaintiff Phone–Sweeps, LLC develops software that is utilized in the sweepstakes games played at internet centers.
- 4 A “ ‘computer simulation’ includes simulations by means of a computer, computer system, video display, video system or any other form of electronic video presentation.” (Ordinance at 5).
- 5 Operator–Plaintiffs also assert that they are engaged in “expressive” conduct, but they do not provide any support for such an argument.
- 6 Neither the Plaintiffs nor the Intervenor–Plaintiffs allege that they design the entire simulated gambling device.
- 7 To play my coke rewards, an individual purchases a qualifying beverage and obtains the code that is printed somewhere on the packaging. My Coke Rewards, How It Works, http://www.mycokerewards.com/howItWorks.do?WT.ac=mnuHIW_PO (last visited May 5, 2011). The individual then creates an account on the website and enters his or her code to get points. *Id.* Those points can then be used to, among other things, enter sweepstakes or instantly win. *Id.*
- 8 The games Plaintiffs refer to are those that require a player to purchase a token, insert the token into the game, and receive tickets for playing. (Charles Lee Black Aff., Ex. I to Compl., ¶¶ 3–7). The tickets can then be redeemed for merchandise. (*Id.* ¶ 7).
- 9 It is unclear whether either of these would constitute a simulated gambling device. The Court is not aware of any games—as defined by the Ordinance—available through my coke rewards. Additionally, the Chuck E. Cheese games may fall within the exception for devices expressly permitted by the Florida Statutes.
- 10 The County disputes this assertion but argues that even if it were true, the Ordinance constitutionally regulates Plaintiffs' and Intervenor–Plaintiffs' conduct.
- 11 Intervenor–Plaintiffs make no separate vagueness argument, but they adopt Plaintiffs' arguments.
- 12 The County also argues that the statute does not apply to interstate commerce because it does not implicate the use of the internet. In light of the discussion in the text, the Court need not address this argument.

PART 2. - PROHIBITION OF SIMULATED GAMBLING DEVICES

Sec. 222.7. - Legislative authorization.

This Part is enacted in the interest of the public health, peace, safety, and general welfare of the citizens and inhabitants of Seminole County, Florida, pursuant to Article VIII, Section 1(g), Florida Constitution and Section 125.01, Florida Statutes (2009).

(Ord. No. 2011-1, § 2, 1-11-2011)

Sec. 222.8. - Definitions.

The following definitions apply to this Chapter 222, Part II:

- (a) *"Person"* means an individual, association, partnership, joint venture, corporation, or any other type of organization, whether conducted for profit or not for profit, or a director, executive, officer or manager of an association, partnership, joint venture, corporation or other organization.
- (b) *"Simulated gambling device"* means any device that, upon connection with an object, is available to play or operate a computer simulation of any game, where the play or operation of the device may deliver or entitle the person or persons playing or operating the device to a payoff directly or indirectly from the owner or operator of the device or that person's designee. The following rules of construction apply to this definition of "simulated gambling device":
 - (1) The term *"device"* means any mechanical or electrical contrivance, computer, terminal, video or other equipment that may or may not be capable of downloading games from a central server system, machine, computer or other device or equipment. The term "device" also includes any associated equipment necessary to conduct the operation of the device.
 - (2) The term *"upon connection with"* means insertion, swiping, passing in range, or any other technical means of physically or electromagnetically connecting an object to a device, including by the manual input by any person of characters, numbers, or any combination thereof, or other code for the purpose of accessing or activating a device, or any other mechanism or method by which the object provides access to the device.
 - (3) The term *"object"* means a coin, bill, ticket, token, card, characters, numbers, or any combination thereof, other code, or any other tangible or intangible access mechanism or method, obtained directly or indirectly through payment of consideration, or obtained as a bonus or supplement to another transaction involving the payment of consideration.
 - (4) The terms *"play or operate"* or *"play or operation"* includes the use of skill, the application of the element of chance, or both.

- (5) The term "*computer simulation*" includes simulations by means of a computer, computer system, video display, video system or any other form of electronic video presentation.
- (6) The term "*game*" includes slot machines, poker, bingo, craps, keno, any other type of game ordinarily played in a casino, a game involving the display of the results of a raffle, sweepstakes, drawing, contest or other promotion, lotto, sweepstakes, and any other game associated with gambling or which could be associated with gambling, but the term "game" does not necessarily imply gambling as that term may be defined elsewhere.
- (7) The term "*payoff*" means cash, monetary or other credit, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether made automatically from the machine or manually.
- (8) The use of the word "*gambling*" in the term "simulated gambling device" is for convenience of reference only. The term "simulated gambling device" as used in this Part is defined exclusively by this subsection and does not incorporate or imply any other legal definition or requirement applicable to gambling that may be found elsewhere.

(c) "*Slot machine*" has the same meaning as specified in Section 222.1 of the Seminole County Code.

(Ord. No. 2011-1, § 2, 1-11-2011; Ord. No. 2013-8, § 2, 1-22-2013)

Sec. 222.9. - Area of enforcement.

The Board is acting herein as the governing body for Seminole County, Florida, and this Part shall be effective within the boundaries of Seminole County, Florida.

(Ord. No. 2011-1, § 2, 1-11-2011)

Sec. 222.10. - Intent.

The intent of the Board acting as the governing body of Seminole County, Florida in adopting this Part is to prohibit broadly the possession or use of simulated gambling devices, including any related activity or behavior which can be reasonably construed to be the use of simulated gambling devices. Further, the Board in prohibiting simulated gambling devices in no way intends to approve the use of actual slot machines, other forms of casino gambling or other types of gambling devices. In addition, this prohibition is aimed directly at devices that simulate gambling activity, regardless of whether the devices or the simulations in and of themselves can be said to constitute gambling as that term may be defined elsewhere.

(Ord. No. 2011-1, § 2, 1-11-2011)

Sec. 222.11. - Prohibition of simulated gambling devices.

It is unlawful in Seminole County for any person to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices. Each individual act to manage, supervise, maintain, provide, produce, possess or use a simulated gambling device constitutes a separate violation of this section.

(Ord. No. 2011-1, § 2, 1-11-2011; Ord. No. 2013-8, § 3, 1-22-2013)

Sec. 222.12. - Exemptions.

- (a) This Part does not prohibit an individual's personal, recreational, and non-commercial ownership, possession, play, operation or use of a device which could be construed to be a simulated gambling device.
- (b) This Part does not prohibit the ownership, possession, play, operation or use of any device expressly permitted by the Florida Statutes and not otherwise prohibited by the Florida Constitution, except that devices permitted by Article X, Section 23 of the Florida Constitution and Chapter 551, Florida Statutes, in Broward and Miami-Dade County only are not permitted by this Part.
- (c) This Part does not prohibit a religious or charitable organization from conducting a fund raising activity involving gaming, provided the religious or charitable organization does not conduct the activity more than twice in one calendar year, the organization provides advance written notice to the Seminole County Sheriff of the date, time, place, and nature of such activity and who will be conducting it, and the activity is not otherwise unlawful.

(Ord. No. 2011-1, § 2, 1-11-2011)

Sec. 222.13. - Conflict with state law.

Nothing in this Part is intended to conflict with the provisions of the Florida Constitution or Chapter 849, Florida Statutes, concerning gambling. In the event of a direct and express conflict between this Part and either the Florida Constitution or Chapter 849, Florida Statutes, then the provisions of the Florida Constitution or Chapter 849, Florida Statutes, as applicable, control.

(Ord. No. 2011-1, § 2, 1-11-2011)

Sec. 222.14. - Applicability to municipalities.

The provisions of this Part are to be applied and enforced within all unincorporated areas of Seminole County as well as within all incorporated areas of Seminole County to the extent that there are no conflicting municipal regulations. In the event a municipal regulation conflicts with this Part then the municipal regulation will prevail within the jurisdiction of that municipality.

(Ord. No. 2011-1, § 2, 1-11-2011)

Sec. 222.15. - Civil penalties and injunctive relief.

- (a) *Civil penalties.* In addition and supplemental to any other penalty provided by law, any person who violates this Part is subject to the fine provisions of Chapter 53 of this Code. Violation of this Part constitutes a Class IV Code violation. Each simulated gambling device, possession or use thereof, constitutes an individual offense for the purpose of Chapter 53.
- (b) *Injunctive relief.* The Seminole County Attorney's Office or special counsel as otherwise authorized, is authorized to pursue temporary or permanent injunctive relief or any other legal or equitable remedy authorized by law in courts of competent jurisdiction to cure, remove or end any activity which violates this Part.

(Ord. No. 2011-1, § 2, 1-11-2011; Ord. No. 2013-8, § 4, 1-22-2013)

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Changes are shown as follows: ~~Strikethrough~~ for deletions and Underline for additions to existing Code sections. The notation “* * *” shall mean that all preceding or subsequent text remains unchanged (excluding any renumbering or relettering that might be needed).

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, FLORIDA; CREATING ARTICLE X, CHAPTER 3, LAKE COUNTY CODE, TO BE ENTITLED *ELECTRONIC GAME ROOM FACILITIES*; REGULATING ELECTRONIC GAME ROOMS AND TECHNOLOGY; PROVIDING FOR LEGISLATIVE AUTHORIZATION; PROVIDING FOR DEFINITIONS; PROVIDING FOR PERMITTING, FEES, AND INSPECTIONS; PROVIDING FOR SAFETY AND SECURITY REQUIREMENTS; PROVIDING FOR ENFORCEMENT PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the uncontrolled proliferation of electronic game rooms throughout Lake County will have a detrimental impact on the health, safety and welfare of its citizens and visitors, unless properly regulated; and

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

WHEREAS, local law enforcement authorities have limited resources with which to police this industry, and a regulatory fee will better fund enforcement efforts and ensure compliance with the law; and

1 **WHEREAS**, the County has evaluated and estimated the costs of permitting and
2 enforcement, and has determined that the permitting fees and revenues will not exceed such costs;
3 and
4

5 **WHEREAS**, the increased participation in electronic game rooms has the potential to
6 mislead and confuse unwary citizens if not regulated, and therefore increases the need for
7 regulation; and
8

9 **WHEREAS**, an ordinance to regulate the use of electronic games which display images
10 associated with slot machines and gambling will protect the public welfare; and
11

12 **WHEREAS**, increased participation by citizens and patrons in electronic game rooms
13 increases the need for a security presence on the premises offering the activity, so as to prevent
14 and/or deter criminal activity; and
15

16 **WHEREAS**, a likelihood of confusion exists of businesses using electronic games to
17 conduct drawings by chance and game promotions or sweepstakes or other lawful uses, with
18 businesses that may use electronic equipment to conduct gambling, as both legitimate and illegal
19 operations often display images associated with traditional slot machines, and fraud and
20 misrepresentation may occur at these businesses because of this confusion unless properly
21 regulated; and
22

23 **WHEREAS**, some operations display images of gambling or slot machines in their
24 advertisements and signage suggesting the presence of illegal activity; and those activities should
25 be controlled and regulated; and
26

27 **WHEREAS**, the Board of County Commissioners has determined that regulating this
28 activity is in the best interests of the health, safety, and welfare of the community.
29

30 **NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of
31 Lake County, Florida, as follows:
32

33 **Section 1. Recitals.** The foregoing recitals are true and correct and incorporated
34 herein by reference.
35

36 **Section 2. Creation.** Article X, Chapter 3, Lake County Code, to be entitled
37 *Electronic Game Room Facilities*, is hereby created to read as follows:
38

39 **ARTICLE X. ELECTRONIC GAME ROOM FACILITIES**
40

41 **Sec. 3-68. Legislative Findings.**

42 **Sec. 3-69. Intent.**

43 **Sec. 3-70. General Prohibition.**

44 **Sec. 3-71. Definitions.**

45 **Sec. 3-72. Permitting and Fees.**

46 **Sec. 3-73. Inspection of Premises.**

47 **Sec. 3-74. Signage Requirements.**

48 **Sec. 3-75. Limitation on Operation of Business.**

1 Sec. 3-76. Safety and Security Requirements.

2 Sec. 3-77. Violations.

5 Sec. 3-68. Legislative Findings.

7 The County Commission finds as follows:

9 (a) Desiring to protect individual rights, while at the same time affording opportunity for the
10 fullest development of the individual, and promoting the health, safety, education, and welfare of
11 the people, Lake County has a compelling interest in protecting its citizens from certain activities
12 and influences which can result in irreparable harm if left unregulated.

14 (b) The Commission has a legitimate interest in protecting its citizens from unethical business
15 practices, ensuring operators of regulated establishments are of good moral character, providing
16 safe locations for people to congregate, and protecting the quality and well-being of its
17 neighborhoods.

19 (c) It is necessary and in the public interest to ensure that businesses portray themselves in a
20 manner not likely to mislead the public.

22 (d) The imposition of a regulatory scheme for electronic game rooms bears a rational
23 relationship to the public interest and welfare.

25 (e) That the State of Florida authorizes drawings by chance, game promotions, sweepstakes,
26 and other electronic games. The Commission further recognizes that establishments that utilize
27 electronic equipment to display the results of drawings by chance and game promotions or
28 sweepstakes by simulating a game or games ordinarily played on a slot machine can deceive
29 members of the public into believing that they are engaging in a licensed gambling activity if left
30 unregulated.

32 (f) That the Commission has an obligation and responsibility to protect its citizens from the
33 use of deceptive practices.

35 (g) In order to ensure the uniform enforcement of existing laws, to preserve the public peace
36 and good order, and to safeguard the health, safety, morals and welfare of the community and
37 citizens thereof, it is necessary and advisable to provide greater regulation of the use of electronic
38 equipment to display the results of drawings by chance and game promotions.

40 (h) This Chapter is enacted in the interest of the public health, peace, safety, morals and general
41 welfare of the citizens and inhabitants of Lake County, Florida, pursuant to Fla. Const. Article
42 VIII, section 1(g), and Section 125.01, Florida Statutes. It is established to regulate the use of
43 electronic game rooms, including giveaways through drawings by chance conducted in connection
44 with the sale of a consumer product or service, sweepstakes, game promotions and other electronic
45 games that do not otherwise violate Florida law.

1 **Sec 3-69. Intent.**

2
3 The intent of the Commission acting as the governing body of Lake County, Florida, in
4 adopting this Article is to regulate electronic game rooms, including the use of electronic means
5 to effect giveaways through drawings by chance conducted in connection with the sale of a
6 consumer product or service, sweepstakes, and game promotions that do not otherwise violate
7 Florida law. This regulation is intended to include all locations that utilize electronic games that
8 simulate a game or games ordinarily played on a slot machine or other images associated with
9 gambling, including those used to display the results of a drawing by chance conducted in
10 connection with the sale of a consumer product or service, game promotion or sweepstakes. It
11 also is intended to regulate all Operators (as defined herein) who operate electronic game rooms.
12

13 **Sec. 3-70. General Prohibition.**

14
15 Except as expressly regulated and permitted by this Article no Person, shall operate an
16 electronic game room, including those that conduct drawings by chance pursuant to Section
17 849.0935, Florida Statutes, sweepstakes or game promotion pursuant to Section 849.094, Florida
18 Statutes, or any other game of chance on any electronic or mechanical device provided by an
19 operator of the game room which displays the result by simulating a game or games ordinarily
20 played on a slot machine or other image associated with gambling.
21

22 **Sec. 3-71. Definitions.**

23
24 Person means an individual, association, partnership, joint venture, corporation, limited liability
25 company, not-for-profit entity, or entity of any kind authorized to engage in business in Florida.
26

27 Applicant means the Operator for whom a permit application is submitted and in the name of
28 whom, if the permit is granted, the electronic game room shall be operated.
29

30 Conviction means a determination of guilt in a criminal case by a court of competent jurisdiction,
31 regardless of whether the defendant pled guilty, no contest, or *nolo contendere*, was found guilty
32 by a judge or jury, or had adjudication withheld.
33

34 Electronic Equipment means any electronic or mechanical device provided by or on behalf of the
35 Operator that is used or adapted for use to conduct game play and/or to reveal the results of a
36 drawing by chance conducted in connection with the sale of a consumer product or service,
37 sweepstakes or game promotions that display results by simulating a game or games ordinarily
38 played on a slot machine or associated with gambling. For any server based or internet based
39 electronic game, each player station shall be deemed a separate Electronic Equipment device.
40

41 Electronic Game Room means a Premises at which electronic games are provided, to members or
42 the general public, that utilize Electronic Equipment for entertainment, amusement, or prize
43 giveaways.
44

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

46 Operator means any Person in whose name a drawing by chance conducted in connection with the
47 sale of a consumer product or service, sweepstakes, game promotion, or other electronic game that
48 utilizes Electronic Equipment is conducted.

Permit Holder means the Operator in whose name the County has issued a permit under this Chapter.

Premises means the house, building, edifice, or location, along with its grounds, in or upon which the Operator operates an Electronic Game Room.

Rules means the restrictions and covenants governing the operation of any drawing by chance, sweepstakes, or game promotion.

Sec. 3-72. Permitting and Fees.

(a) Permit Required. Every Operator operating an Electronic Game Room shall obtain a permit from the County 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.

(b) Initial Permits. Within thirty (30) days of enactment of this Ordinance, those Operators that have been operating an Electronic Game Room as of February 23, 2021, at a Premises, 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. Each such Operator shall, in addition to the requirements set forth herein as part of the application, provide proof satisfactory to the County that the Operator was lawfully operating an Electronic Game Room as of February 23, 2021, which such evidence may include a current and valid lease, rental agreement, purchase and sale contract, bill of sale or receipt indicating the purchase, lease or use of Electronic Equipment on the Premises, or other certificates, permits, licenses, receipts or filings issued by the Federal, State or local government indicating proof of the uses contemplated by this Ordinance on the Premises.

(c) Permits Limited. Unless greater than twenty-five (25) permits have been issued as provided for in subsection (b) above, the County shall limit the total number of permits issued pursuant to this section to twenty-five (25). After the permits authorized by subsection (b) 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 twenty-five (25) permits. All qualifying Operators who receive an initial permit as provided for in subsection (b) shall be entitled to renew their permit if they otherwise qualify and pay required fees.

(d) Application Materials Required for Permit.

(1) Applicant shall file with the County the following materials:

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

(ii) If the application is for a sweepstakes or game promotion over \$5000, a copy of Applicant's certification of a bond or trust account provided to the Florida Department of Agriculture and Consumer Services, if required;

1 (iii) A complete list of all products and services offered and the prices charged
2 therefore;

3
4 (iv) For every principal, officer, and director of the Operator, a fingerprint card and
5 letter certifying the results of a criminal background check generated by the Lake
6 County Sheriff's Office or Florida Department of Law Enforcement;

7
8 (v) A sworn affidavit containing the following:

- 9
10 (A) the identity of the applicant;
11 (B) a description, including the number of pieces, of the Electronic
12 Equipment;
13 (C) a statement of whether any of the individuals listed has, within the
14 five-year period immediately preceding the date of the application,
15 been convicted of any felony under the laws of Florida, the United
16 States, or any other state, or has had adjudication withheld, and, if
17 so, the particular criminal act involved and the place of conviction;
18 (D) the street address of the Electronic Game Room;
19 (E) the name and address of an individual in Lake County who is
20 authorized to receive notices from the County; and
21 (F) a statement certifying that all information on the application and any
22 attachments thereto is true and that the Applicant understands that
23 any misstatement of material fact in the application will result in the
24 denial of the permit or, if it has been issued, in the suspension or
25 revocation of the permit.

26
27 (d) Application Fee. Each Applicant shall remit a non-refundable application fee as established by
28 the board of county commissioners.

29
30 (e) Review of Application.

31
32 (1) Duration of Review. Within sixty (60) days of receipt of an Applicant's completed
33 permit application, the County shall grant or deny the application.

34
35 (2) Eligibility of Applicant. The permit shall be denied for any of the following reasons:

36
37 (i) The application contains false information or is incomplete;

38
39 (ii) The Applicant has failed to comply with a provision of the state statutes,
40 including Chapter 607, Florida Statutes (regarding corporations), Chapter 620,
41 Florida Statutes (regarding partnerships), or section 865.09, Florida Statutes
42 (regarding fictitious names);

43
44 (iii) The Applicant had a license under this Article that has been suspended or
45 revoked, or was a partner in a partnership, or an officer, director or principle
46 stakeholder of a corporation which had a license suspended or revoked during the
47 previous five (5) years;
48

1 (iv) The Applicant, within five (5) years of the date of the application, has been
2 convicted of any felony under the laws of Florida, the United States, or any other
3 state unless said violation would not constitute a crime in Florida unless the
4 applicant has had adjudication withheld; or

5
6 (v) The Applicant has been found to be in violation of any provision of this Article,
7 other provision of the Lake County Code or Land Development Regulations by the
8 Lake County Code Enforcement Special Master when such violation occurs on the
9 premises licensed hereunder.

10
11 (f) Denial of Permit; Reapplication. Any decision of the county manager or designee pursuant to
12 the granting or denying of a license under this Article may be reviewed as a matter of right by the
13 circuit court upon the filing of the appropriate pleading by the aggrieved party within thirty (30)
14 days of the date of the written decision. If an applicant reapplies for a permit at a particular location
15 within a period of one (1) year from the date of denial of a previous application at the same
16 location, and there has not been an intervening change in the circumstances which will lead to a
17 different decision regarding the application, the application shall be rejected.

18
19 (g) Permit fees. The eligible Applicant, before receiving the permit, shall pay:

20
21 (1) An Electronic Game Room Fee for the Premises as set by resolution of the board
22 of county commissioners. The fee is for one year during which the permit is valid and shall be paid
23 each time the permit is renewed. If an eligible Applicant fails to pay this fee on or before the
24 thirtieth (30th) day after approval, availability, and notice of the permit authorization, the
25 application shall be deemed denied.

26
27 (2) An annual fee per piece of Electronic Equipment as set by resolution of the board
28 of county commissioners. If the eligible Applicant fails to pay the fee on or before the thirtieth
29 (30th) day after approval, availability, and notice of the permit authorization, the application shall
30 be deemed denied.

31
32 The fees collected pursuant to this subsection shall be contributed towards the costs associated
33 with the inspection and examination by the County or the Lake County Sheriff's Office of the
34 Premises, Electronic Equipment, and records of the Permit Holder to ensure compliance with this
35 Chapter.

36
37 (h) Duration of Permit. A permit shall be valid for one (1) year from the date of issuance.

38
39 (i) Renewal of Existing Permit. Existing permits shall be renewed upon compliance with this
40 Article, notwithstanding the total number of permits issued. The Permit Holder shall apply for the
41 renewal permit no later than sixty (60) days and no sooner than one-hundred twenty (120) days
42 before the expiration of the current permit. The renewal permit application shall include all the
43 materials and the application fee required for the issuance of an original permit. Renewal permit
44 applications shall be processed using the same procedure and standards as required for review of
45 an original permit application. Upon approval, Renewal permit applicants shall pay the same fees
46 as set forth in subsection (h) above and said renewals shall be deemed denied if an eligible
47 Applicant fails to pay these fees on or before the thirtieth (30th) day after approval, availability,
48 and notice of the permit authorization.

1
2 (j) *Revocation of Permit.* The County may revoke a permit for violation of any provision of this
3 Article. Prior to revocation, the County shall provide to the Permit Holder, through their individual
4 authorized to accept notices from the County, the following:

5
6 (1) A written notice of intent to revoke the permit,

7
8 (2) A fourteen (14) calendar day opportunity to cure the alleged violation, and

9
10 (3) An opportunity to be heard prior to revocation.

11
12 Revocation shall not take place before twenty-one (21) days after a notice of revocation,
13 opportunity to cure, and opportunity to be heard is delivered to the Permit Holder. The decision
14 to revoke a permit shall be considered non-final agency action subject to appellate review. The
15 decision of the County shall constitute final agency action subject to judicial review. Any appeal
16 of a revocation decision shall be made within fifteen (15) calendar days of revocation by filing a
17 written notice of appeal. Failure to file written notice of appeal within the prescribed time period
18 constitutes a waiver of the right to appeal.

19
20 (k) *Transfer of Permits Not Permitted.* Permits shall not be transferred to another premises nor
21 shall Permits be transferred to another entity. Any change in majority or controlling interest in
22 any corporate Permit Holder shall be deemed a transfer to another entity and the Permit shall be
23 automatically revoked as of the date such change was made.

24 25 26 **Sec. 3-73. Inspection of Premises.**

27
28 During business hours, the County, the Lake County Sheriff's Office, or their agents may
29 enter the Premises for purposes of inspecting all areas of the Premises otherwise accessible to the
30 general public, to ensure compliance with the provisions of this Article or any other ordinances
31 within their authority, including but not limited to the right to enter the Premises and to select and
32 remove any piece(s) of Electronic Equipment to inspect, test and/or have tested to determine
33 compliance with this Article. The County or the Lake County Sheriff's Office may issue to the
34 Permit Holder a show cause order requiring the production on Premises of documents or data
35 relating to the electronic games. Production of the records or inventory shall only be for inspection
36 and review to determine compliance with this Article. Within three (3) days of receipt of the show
37 cause order the Permit Holder shall produce all requested records and inventory.

38 39 40 **Sec. 3-74. Signage Requirements.**

41
42 (a) *Exterior of Premises.* Exterior signage shall be limited to the advertisement of the
43 consumer product and/or service sold on the Premises, and the name of the Electronic Game Room.
44 No signs shall be posted on the exterior of the Premises that suggest gambling takes place on the
45 Premises or displays any image commonly associated with slot machines. All signage shall be
46 further subject to Code requirements.

1 **(b) Interior of Premises.** The Permit Holder shall conspicuously post the Permit at the
2 entrance or main counter. The Permit Holder shall also conspicuously post the name of the Permit
3 Holder, a description of all products and services sold, and the complete rules for all drawings,
4 sweepstakes or game promotions at the Premises' front or main counter. Rules for all game
5 promotions shall include the following language in at least 26-point font: "State and local law
6 prohibits this establishment from requiring an entry fee, payment, or proof of purchase as a
7 condition of participating. No donation or contribution is required. You may obtain free entries
8 upon request from any employee on the premises." The Permit Holder shall also post a sign which
9 shall include the following language in at least 26-point type: "The video displays are for
10 amusement and entertainment only. The video displays do not determine the result of your
11 sweepstakes entries." The Permit Holder shall affix signage that shall include the following
12 language in at least 10-point type on each piece of Electronic Equipment: "The video displays are
13 for amusement and entertainment only. The video displays do not determine the result of your
14 sweepstakes entries." A complete copy of the Rules, prizes, and odds of winning shall be made
15 available on request without cost. Any consumer product or service offered for sale shall be
16 identified by description and price by conspicuous posting.
17

18
19 **Sec. 3-75. Limitations on Operation of Business.**
20

21 **(a) Alcoholic Beverages.** Permit Holders shall not sell or permit any individual to consume or
22 possess any alcoholic beverages on any Premises.
23

24 **(b) Tobacco.** Permit Holders shall not sell tobacco at any Premises.
25

26 **(c) Minors.** Permit Holders shall not permit Minors to enter the Premises.
27

28 **(d) Conditions of Alternative Means of Entry.** Entries that are available without purchase or
29 financial donations shall be made available on request. The Permit Holder shall not impose any
30 condition on the provision of such entries other than proof of identity by government issued
31 identification from any state. The Permit Holder shall not limit the number of such entries offered
32 per day per individual to less than the equivalent amount of entries that Permit Holder provides to
33 individuals who make a donation, or purchase of a product or service valued at least \$1.00.
34

35 **(e) Employee Background Checks.** Permit Holders shall ensure that a criminal background check
36 is conducted on all employees within thirty (30) days of hire and that such documentation is
37 maintained on the Premises.
38

39 **(f) Additional Requirements.** An Operator conducting a drawing by chance in connection with
40 the sale of a consumer product or service, sweepstakes or game promotion shall be required to:
41

42 **(1) maintain a list of the names and addresses of all persons who have won prizes which**
43 **have a value of more than \$25 for one (1) year.**
44

45 **(2) maintain a trust account or bond in an amount equal to the total announced value of the**
46 **prizes offered or \$50,000, whichever is less.**
47

Sec. 3-76. Safety and Security Requirements.

The Premises of the Electronic Game Room shall maintain the following security devices and standards:

(a) A security camera system operating during business hours and capable of recording and retrieving an identifiable image for both the interior and exterior of the Premises;

(b) A sign or posted notice that the premises are under surveillance;

(c) A drop safe or cash management device for restricted access to cash receipts;

(d) A conspicuous notice at all public entrances to Premises stating cash register contains limited amount of cash and that the manager does not have access to the safe;

(e) At exits to Premises, height markers displaying height measures;

(f) A cash management policy limiting cash on hand;

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

(h) During nighttime hours when the Premises is open for business at least one licensed, armed security guard.

Sec. 3-77. Violations.

It shall be unlawful for any Person, Operator, Manager, or Permit Holder to violate any of the provisions of this Chapter. Violations of different provisions of this Chapter shall constitute separate offenses. Each day a violation occurs shall constitute a separate offense. A first violation of any of the provisions of this Chapter constitutes a civil infraction punishable by up to a \$100 fine. Any subsequent violation of any provision of this Chapter shall be punishable by up to a \$200 fine.

Section 3. Inclusion in Code. It is the intent of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Lake County Code and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section", "article", or such other appropriate word "or phrase in order to accomplish such intentions.

Section 4. Severability. If any section, sentence, clause, phrase or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holding or invalidity shall not affect the remaining portions of this Ordinance; and it shall be construed to have been the Commissioners' intent to pass this Ordinance without such unconstitutional, invalid or inoperative part therein; and the remainder of this Ordinance, after the exclusion of such part or parts shall be deemed and held to be valid, as if such parts had not been included herein; or if this Ordinance or any provisions thereof shall be held inapplicable to any

1 person, groups of persons, property, kind of property, circumstances or set of circumstances, such
2 holding shall not affect the applicability thereof to any other person, property or circumstances.
3

4 **Section 5. Filing with the Department of State.** The Clerk shall be and is hereby
5 directed forthwith to send an electronic copy of this Ordinance to the Secretary of State for the
6 State of Florida in accordance with Section 125.66, Florida Statutes.
7

8 **Section 6. Effective Date.** This ordinance shall become effective as provided for by
9 law.
10

11
12 ENACTED this day of 23rd day of February, 2021.
13

14 FILED with the Secretary of State the 23rd day of February, 2021.
15
16
17

18
19 ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF LAKE COUNTY, FLORIDA

20
21
22
23
24 Gary J. Cooney, Clerk
25 Board of County Commissioners of
26 Lake County, Florida
27
28
29



30
31
32
33
34 Sean M. Parks, Chairman
This 23 day of February, 2021.

Approved as to form and legality:

Melanie Marsh
Melanie Marsh, County Attorney



FLORIDA DEPARTMENT of STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

February 24, 2021

Mr. Gary J. Cooney
Clerk of the Circuit Court and Comptroller
Lake County
550 West Main Street
P. O. Box 7800
Tavares, Florida 32778-7800

Attention: Josh Pearson

Dear Mr. Cooney:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge your electronic copy of Lake County Ordinance No. 2021-4, which was filed in this office on February 23, 2021.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb

Sec. 110-528. - Automatic amusement centers/game rooms restrictions: land use commercial or industrial.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Automatic amusement centers/game rooms means where the principal business operated on the premises is the operation of games of skill which upon the insertion of a coin, slug, token, plate, or disc, may be operated by the public generally for the use as a game, entertainment, or amusement, whether or not registering a score, including, but not limited to, such devices as marble machines, pin ball machines, skill ball, mechanical grab-machines, and all games, operations or transactions similar thereto under whatever name they may be indicated. The term "automatic amusement centers/game rooms" includes video type games or machines, or similar devices that can use a display screen for points, lines and dots of light, that can be manipulated to simulate games or other types of entertainment; it shall not include nor apply to music playing devices or non-competitive devices.

- (b) *Use regulations.*

- (1) When the business operated on the premises is the operation of any automatic amusement devices, said premises must be located more than 1,000 feet from any school, house of worship, public park or youth activity building. No two amusement centers shall be located closer than 1,000 feet from one another. The distance shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of the premises wherein the automatic amusement devices are located to the main entrance of the said school, house of worship or youth activity building.
- (2) Each automatic amusement device shall be located at least ten feet from the entranceway to the premises in which located and placed so that it does not obstruct or interfere with the free and unfettered passage of patrons or users of the premises.
- (3) The maximum number of automatic amusement devices shall be limited to one amusement device per 50 square feet of premises used for the operation of such devices. The computation shall exclude any portion of the premises used for the storage or sale of automatic amusement devices or the conduct of any business other than the operation of automatic amusement devices.
- (4) Specific hours of operation may be established if the use may impact adjacent or nearby residential uses.
- (5) The amusement center/game room shall be screened per section 102-119 as to minimize noise and glare impacts to neighboring residential uses.
- (6) No person shall in any automatic amusement center permit gambling in connection with the playing of any automatic amusement device.

- (7) Automatic amusement centers shall provide a current inventory of all games kept on the premises, including the name of the game which appears on the screen when the automatic amusement device is in attract mode, the manufacturer, serial number, the actual owner of the machine with owner's address and phone number, and attachment of license to each machine.
- (8) The inventory required in subsection (b)(7) of this section shall be kept on file with the planning department as part of the approved development order. Any change whatsoever in games or machines on the premises must be so indicated on an updated inventory which shall be provided to the planning department within ten business days of such changes.
- (9) The general public shall be allowed in all automatic amusement centers. No automatic amusement center shall restrict access to the site by the use of age restrictions or membership to the center.
- (10) No automatic amusement center shall offer prizes, tickets, or other merchandise over \$5.00 in value. Automatic amusement centers shall not allow customers to maintain a running tally of points for prizes or other goods.
- (11) Automatic amusement centers shall be prohibited from offering gift certificates, gift cards, or other cash substitutes.
- (12) There shall be no alcohol beverages, dispensed, sold, or otherwise consumed, on the premises.
- (13) Automatic amusement devices are prohibited from having switchable, programmable, or random generator devices to allow a rate of return to business operators or machine owners.
- (14) All applicable state permits shall be submitted to the community development department.
- (15) Prior to the issuance of an operation license, law enforcement and city officials shall inspect the automatic amusement devices for compliance with F.S. ch. 849.
- (16) Once an operation license has been issued, the automatic amusement center operator shall allow law enforcement and city officials to inspect the automatic amusement devices on a routine basis.

(Ord. No. 2007-04, § 110-440, 5-21-2007)