

TAB 5



City of Palmetto Agenda Item

Meeting Date

August 21, 2012

Presenter: Mark P. Barnebey

Department: City Attorney

Title: Resolution 2012-21 Extending Internet and Sweepstakes Gaming Café Moratorium

BACKGROUND: On January 9, 2012 the City Commission adopted Ordinance 2012-01 which created a Moratorium on the permitting of internet and sweepstakes gaming cafes in the City. The Moratorium is scheduled to expire on September 30, 2012. While the Legislature considered regulation during the last session, no bills passed regarding this subject.

ISSUE: Staff is continuing to review impacts of these types of establishments on the community and reviewing City Code requirements related to the location and regulations of internet and sweepstakes gaming cafes. There are also several court cases ongoing with these type of establishments in other jurisdictions which may provide the City further guidance as to possible regulation. As such, it is recommended that the Moratorium be excluded for six (6) months to March 31, 2013

Budgeted Amount: \$0.00 **Budget Page No(s):** **Available Amount:** \$0.00 **Expenditure Amount:** \$0.00

Additional Budgetary Information:

Funding Source(s): **Sufficient Funds Available:** Yes No **Budget Amendment Required:** Yes No **Source:**

City Attorney Reviewed: Yes No N/A **Advisory Board Recommendation:** For Against N/A **Consistent With:** Yes No N/A

Potential Motion/Direction Requested: I move to Adopt Resolution 2012-21.

Staff Contact: Mark P. Barnebey

Attachments: Ordinance 2012-01
Resolution 2012-21

ORDINANCE NUMBER 2012-01

AN EMERGENCY ORDINANCE OF THE CITY COMMISSION FOR THE CITY OF PALMETTO, FLORIDA DECLARING A MORATORIUM AS TO THE FILING AND/OR APPLICATION FOR THE ESTABLISHMENT OF BUSINESSES KNOWN AS INTERNET OR SWEEPSTAKES CAFES AS DEFINED HEREIN; PROVIDING SUSPENSION OF ANY SUCH ZONING, PERMITTING AND LICENSING; PROVIDING THAT SAID MORATORIUM SHALL BE IN EFFECT FOR A DATE ENDING SEPTEMBER 30, 2012 OR SHALL TERMINATE ON THE EFFECTIVE DATE OF THE CITY'S ADOPTION OF LAND USE AND DEVELOPMENT REGULATIONS TO REGULATE INTERNET/SWEEPSTAKES CAFES; PROVIDING FOR LEGISLATIVE FINDINGS, INTENT AND PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR BOUNDARIES SUBJECT TO THE MORATORIUM; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and,

WHEREAS, pursuant to the referenced provision of the Florida Constitution, a city may exercise any power for municipal purposes except as otherwise provided by law; and,

WHEREAS, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," reinforces the authority granted under the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and,

WHEREAS, computer or video displays of spinning reels or other simulations of a game or games ordinarily played on a slot machine, or in a casino or otherwise in connection with gambling and which show the results of raffles, sweepstakes, contests, or other promotions (hereinafter collectively referred to in these recitals as “simulated gambling devices”) were not among the types of pari-mutual pools authorized by law as of the effective date of the 1968 Florida Constitution; and

WHEREAS, there is presently in the City of Palmetto an increasing proliferation of establishments that utilize simulated gambling devices for commercial gain; and

WHEREAS, Chapter 849, Florida Statutes, does not clearly define whether simulated gambling devices are “slot machines”; and

WHEREAS, the Attorney General of the State of Florida has issued an opinion that simulated gambling devices are “slot machines” as defined in Chapter 849, Florida Statutes; and

WHEREAS, the Courts of the State of Florida have not made a determination as to whether simulated gambling devices are “slot machines” as defined in Chapter 849, Florida Statutes; and

WHEREAS, the City Commission for the City of Palmetto, Florida, desiring to protect individual rights, while at the same time affording opportunity for the fullest development of the individual and promoting the health, safety, and welfare of the people, including the elderly, the economically disadvantaged, and the children of the City of Palmetto finds that the City of Palmetto has a compelling interest in protecting its citizens, and in particular its elderly, economically disadvantaged, and children from certain activities and influences which can result in irreparable harm, including the

unregulated growth of Internet/Sweepstakes Cafes that provide simulated gambling devices; and

WHEREAS, the City Commission recognizes that regulation of Internet/Sweepstakes Cafes, along with the simulated gambling devices, needs to be enacted by the Florida Legislature for statewide application and consistency; and

WHEREAS, the use of simulated gambling devices may be inherently deceptive when targeted at the elderly, the economically disadvantaged, and other citizens of the City of Palmetto; and

WHEREAS, due to this inherently deceptive nature, establishments that utilize simulated gambling devices and exploit the citizens of the City of Palmetto by utilizing simulated gambling devices, are adverse to the quality of life, tone of commerce, and total community environment in the City of Palmetto, and have an unreasonable adverse effect upon the elderly, the economically disadvantaged, and other citizens of the City of Palmetto; and

WHEREAS, the City Commission is also charged with the responsibility of protecting and assisting its citizens who suffer from compulsive or problem gambling behavior; and

WHEREAS, in order to ensure the uniform enforcement of existing laws, and preserve the public peace and good order, and to safeguard the health, safety, morals, and welfare of the community and citizens thereof, it is necessary and advisable to enact a temporary moratorium on the use of simulated gambling devices, unless otherwise exempted by law or ordinance; and

WHEREAS, the City Commission for the City of Palmetto, Florida finds it necessary for the promotion of the public safety and welfare that this ordinance be enacted; and

WHEREAS, implementation of this Ordinance is in the best interest of the citizens of the City of Palmetto.

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSIONERS OF CITY OF PALMETTO, FLORIDA, THAT:

SECTION 1: The aforementioned recitations are incorporated herein by reference.

SECTION 2: TITLE

This Ordinance shall be known and may be cited as the “Internet/Sweepstakes Café Moratorium Ordinance”

SECTION 3: DEFINITIONS

(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, manager, or employee of an association, partnership, joint venture, corporation, or other organization.

(b) **Internet/Sweepstakes Café:** (café) means any business or entity that provides one or more simulated gambling devices for use by the public at the business’ or entity’s licensed business location. The use of simulated gambling devices does not have to be the business’ or entity’s primary source of business or income.

(c) **Simulated gambling device:** means 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. 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.

(2) The term “upon connection with” means insertion, swiping, passing in range, or any other technical means physically or electromagnetically connecting an object to a device.

(3) The term “object” means 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.

(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 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 that actual gambling is involved.

(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 Ordinance is defined exclusively by this subsection and does not incorporate or imply any legal definition or requirement applicable to gambling that may be found elsewhere.

(d) **Slot Machine:** means any electrical, mechanical, or electromechanical device which is adapted for use such that by the insertion of coin(s), token(s), or other method of payment the device will allow an operator to play or operate the machine such that the device displays pictures, icons, or other images which may, depending upon the displayed combination of said pictures, icons, or other images, allow the operator to obtain an item or items of value, including but not limited to money, objects, or coupons. Such devices shall be deemed slot machines regardless of whether the operation of the device is affected by chance, by the application of skill, or by any combination thereof. Examples of slot machines include but are not limited to the games known as “Fruit Paradise”, “New Cherry”, “Fruit Bonus”, “Triple Jack”, “Magical Odds”, “Mystery J&B”, “Klondike”, and “Reel of Fortune”. Games such as pinball, mechanical grab machines, shooting games, and other similar games are not slot machines.

SECTION 4: BOUNDARIES SUBJECT TO THE MORATORIUM

This ordinance shall be applicable to all properties located within the boundaries of the City of Palmetto.

SECTION 5: INTENT

(A) The intent of the City Commission acting as the governing body of the City of Palmetto, Florida in adopting this ordinance is to inhibit the unregulated growth of Internet/Sweepstakes Cafes within the City of Palmetto until:

- (1) the State Legislature enacts such regulation with statewide application; or
- (2) the Courts of the State of Florida make a determination as to whether simulated gambling devices are “slot machines” as defined in Chapter 849, Florida Statutes.

(B) It is specifically not the intent of the City Commission by the adoption of this ordinance, to condone or approve the use of simulated gambling devices.

SECTION 6: TEMPORARY MORATORIUM

The City Commission finds that the proliferation of Internet/Sweepstakes Cafes, along with the questionable legality of the simulated gambling devices in use by the cafes, requires regulation and further interpretation of the statues regulating gambling. The interest of the citizens of the City of Palmetto and the State of Florida will be better served if such regulation and statutory interpretation is provided uniformly by the state legislature and the state court system. In an effort to limit the expansion of such questionable business activity until the legislature or courts act, a temporary moratorium is established for the licensing of any new Internet/Sweepstakes Cafes which are not established and conducting business as of the effective date of this Ordinance. This

temporary moratorium shall be in place from the effective date of this Ordinance through September 30, 2012. The City Commission may rescind or extend this moratorium for periods of up to six months by resolution.

SECTION 7: EXEMPTIONS

(a) This ordinance does not prohibit the personal and recreational ownership, possession, play, operation, or use of a device which could be construed to be a simulated gambling devices, provided such ownership, possession, play, operation, or use is not otherwise prohibited by Florida law and provided ownership, possession, play, operation, or use does not constitute a lottery under Article X, Section 7 of the Florida Constitution.

(b) This ordinance does not prohibit the ownership, possession, play, operation, or use of a computer, video display, or the Internet in a retail business setting provided such ownership, possession, play, operation, or use is not a pretext or sham for using such devices as a simulated gambling device.

(c) This ordinance 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 for the businesses specifically designated as not intended to be regulated by this ordinance in paragraph (e) below, devices permitted by Article X, Section 23 of the Florida Constitution and Chapter 551, Florida Statutes, in Broward and Miami-Dade Counties are not permitted by this ordinance.

(d) This ordinance does not prohibit a charitable organization from conducting a fund raising activity involving gaming, provided the charitable organization does not conduct the activity more than twice in one (1) calendar year, the organization provides

advance written notice to the Palmetto Police Chief of the date, time, place, nature of the activity as well as who will be conducting it, and the activity is not otherwise unlawful.

(e) This ordinance is specifically not intended to regulate in any manner the following businesses located in the City of Palmetto which are currently regulated by federal law, state statute, and/or local ordinance:

(1) Any properly authorized recreation and amusement services including amusement arcades and bingo halls operated pursuant to Sections 3.2 and 6.22 of the City of Palmetto Code of Ordinances.

(2) Any properly authorized arcade amusement center, amusement machines, and truck stop arcades operated pursuant to section 13 849.161, F.S.

SECTION 8: CONFLICT WITH STATE LAW

Nothing in this ordinance 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 ordinance 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.

SECTION 9: ENFORCEMENT, PENALTIES, AND INJUNCTIVE RELIEF

The City's code enforcement officers, law enforcement, or any other person authorized to enforce county ordinances in the City of Palmetto may enforce the provisions of this ordinance. Any enforcement action or legal remedy available under controlling state law including, but not limited to, prosecution as a misdemeanor with a fine not exceeding Five-Hundred Dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days or by both fine and imprisonment, may be imposed as a

penalty. Nothing contained herein shall prevent the City from taking such other lawful action in law and equity as may be necessary to remedy any violation of, or refusal to comply with, any part of this Ordinance, including but not limited to:

(a) Code Enforcement action pursuant to City of Palmetto Ordinances;

(b) Pursuit of injunctive and/or declaratory relief in a court of competent jurisdiction;

(c) Initiating an action to recover any and all damages that may result from a violation of, or a refusal to comply with, any part of this Ordinance; or

(d) Utilizing any other action or enforcement method allowable by law.

SECTION 10: REPEAL OF LAWS IN CONFLICT

All Ordinances or parts of Ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 11: SEVERABILITY

If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

SECTION 12: EFFECTIVE DATE


This Ordinance shall take effect as provided for by law and by City Charter, Section 14, upon execution by the Mayor or, if disapproval occurs, upon reconsideration by the City Commission and passing of the Ordinance by at least four (4) votes.

PASSED AND DULY ADOPTED, BY THE CITY COMMISSION OF THE
CITY OF PALMETTO, FLORIDA, with a quorum present and voting, in regular session
assembled, this 9th day of January, 2012.

CITY OF PALMETTO, FLORIDA,
BY AND THROUGH THE CITY
COMMISSION OF THE CITY OF
PALMETTO

By: 
SHIRLEY GROOVER BRYANT
MAYOR

ATTEST:

By: 
James R. Freeman, City Clerk

**1. Codified in Chapter 19 as
Article VII, Sec. 19-201 through Sec. 19-208**

RESOLUTION 2012-21

A RESOLUTION OF THE CITY COMMISSION FOR THE CITY OF PALMETTO, FLORIDA EXTENDING THE MORATORIUM AS TO THE FILING AND/OR PROCESSING OF APPLICATIONS FOR THE ESTABLISHMENT OF BUSINESSES KNOWN AS INTERNET OR SWEEPSTAKES GAMING CAFES ADOPTED PURSUANT TO ORDINANCE 2012-01; PROVIDING THAT SAID MORATORIUM SHALL BE IN EFFECT UNTIL MARCH 31, 2013 OR SHALL TERMINATE ON THE EFFECTIVE DATE OF THE CITY'S ADOPTION OF LAND USE AND DEVELOPMENT REGULATIONS TO REGULATE INTERNET/SWEEPSTAKES CAFES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and,

WHEREAS, pursuant to the referenced provision of the Florida Constitution, a city may exercise any power for municipal purposes except as otherwise provided by law; and,

WHEREAS, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," reinforces the authority granted under the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact resolutions in furtherance thereof; and,

WHEREAS, the City Commission adopted Ordinance 2012-01 establishing a moratorium on the filing or processing of applications for the establishment of businesses known as internet or sweepstakes cafes ("Moratorium"); and

WHEREAS, the Moratorium established in the Moratorium Ordinance is scheduled to expire on September 30, 2012; and

WHEREAS, the City is still in the process of reviewing the impacts of such resolution and codes to determine whether amendments to its various planning and regulatory codes are appropriate; and

WHEREAS, Section 6 of Ordinance 2012-01 provides for an extension of the Moratorium for a period of six months by adoption of a resolution; and

WHEREAS, the City Commission for the City of Palmetto, Florida finds extending the Moratorium necessary for the promotion of the public safety and welfare that this ordinance be enacted; and

WHEREAS, extension of the Moratorium is in the best interest of the citizens of the City of Palmetto.

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF CITY OF PALMETTO, FLORIDA, THAT:

SECTION 1: The aforementioned recitations are incorporated herein by reference.

SECTION 2: The Moratorium established pursuant to Ordinance 2012-01 is hereby extended for a period of six (6) months to March 31, 2013.

SECTION 3: This Resolution shall take effect as provided for by law and by City Charter, Section 14, upon execution by the Mayor or, if disapproval occurs, upon reconsideration by the City.

PASSED AND DULY ADOPTED, BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, with a quorum present and voting, in regular session assembled, this ____, day of _____, 2012.

By: _____

Shirley Groover-Bryant, Mayor

ATTEST:

By: _____

James R. Freeman, City Clerk