

ORDINANCE 21 -__

**AN ORDINANCE OF MARION COUNTY, FLORIDA,
RELATING TO SIMULATED GAMBLING DEVICES AND
INTERNET CAFÉS; TO CREATE CHAPTER 11, ARTICLE
V, SECTIONS 11-200 THROUGH 11-205 OF THE MARION
COUNTY CODE; SETTING FORTH FINDINGS OF FACT;
SETTING FORTH AUTHORITY, INTENT, SCOPE, AND
PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING
FOR A PROHIBITION AGAINST THE USE OF
SIMULATED GAMBLING DEVICES; PROVIDING FOR
EXEMPTIONS; PROVIDING FOR CONFLICTS WITH
STATE LAW; PROVIDING FOR VIOLATION,
ENFORCEMENT, PENALTIES, AND REMEDIES;
PROVIDING FOR CONFLICTS; PROVIDING FOR
SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING
FOR INCLUSION IN CODE; AND PROVIDING AN
EFFECTIVE DATE**

Whereas, the Legislature of the State of Florida has, in Chapter 125, Florida Statutes, conferred upon counties the authority to adopt regulations designed to promote the public health, safety and general welfare of its citizenry; and

Whereas, business establishments that offer simulated gambling devices for use by the public are present in Marion County and throughout the State of Florida, are frequently located in businesses that are commonly referred to as “Internet Cafés”; and

Whereas, except as authorized by Chapter 550, Florida Statutes, and section 849.086, Florida Statutes, gaming and gambling are not presently lawful in Marion County; and

Whereas, presently throughout Marion County and the state, there is a proliferation of establishments that utilize computer or video displays of games, contests, challenges and other electronic simulations which are or are of the type of games generally associated with legalized casino or gambling outlets or which show, or purport to show, the results of raffles, sweepstakes, contests, or business game promotions (hereinafter collectively known as “simulated gambling devices”) for commercial or pecuniary gain; and

Whereas, the Marion County Board of County Commissioners finds that establishments that utilize simulated gambling devices can deceive many Marion County residents, including the elderly, the economically disadvantaged, the uneducated, and the unsuspecting into believing such activities are legal and lawfully permitted; and

Whereas, the Marion County Board of County Commissioners finds that simulated gambling devices are deceptive; and

Whereas, due to the inherently deceptive nature of simulated gambling devices,

establishments that utilize simulated gambling devices are adverse to the quality of life, tone of commerce, and total community environment in Marion County; and

Whereas, the Marion County Sheriff's Office has seen a significant amount of felony criminal activity, including armed robberies and burglaries at internet cafés, and that because crimes of this nature that occur at internet cafés may go unreported to law enforcement, the true amount of crime that occurs at internet cafés is greater than is reflected in law enforcement records; and

Whereas, since 2017, the Unified Drug Enforcement Strike Team has conducted undercover operations at not less than twenty-five (25) internet cafés, and as a result of each undercover operation, the Unified Drug Enforcement Strike Team established probable cause to believe that the laws against gambling were being violated at the internet cafés through the use of simulated gambling machines; and

Whereas, following these undercover operations, the Unified Drug Enforcement Strike Team and its constituent agencies either executed search warrants at the internet cafés or sent letters to the operators of the internet cafés warning of the possibility of civil asset forfeiture and criminal penalties, both of which resulted in the closure of the internet cafés in question;

Whereas, the internet cafés that were closed pursuant to these operations either reopened or were replaced in the marketplace by other establishments that provided for the use of simulated gambling devices, resulting in no appreciable decline in the number of internet cafés operating in Marion County; and

Whereas, in the 2019 legislative session, the Florida Legislature enacted Ch. 2019-167, Laws of Fla., which, effective October 1, 2019, reduced from third-degree felonies to second-degree misdemeanors certain criminal offenses relating to keeping or maintaining gambling rooms, thereby weakening the deterrent effect of laws that previously operated to dissuade persons from committing gambling-related offenses and leading to a proliferation of internet cafés in Marion County; and

Whereas, as of December 1, 2020, there are believed to be approximately 42 simulated gambling establishments in Marion County, though the true number may be higher; and

Whereas, the Marion County Board of County Commissioners finds that a correlation exists between establishments that utilize simulated gambling devices and crime or disturbances of the peace and good order of the community and those activities are hazardous to the public health, safety and general welfare of the citizens of Marion County and constitutes a public nuisance; and

Whereas, the Marion County Board of County Commissioners has determined that the endangerment of both the public and first responders required to respond to this ongoing criminal activity is too significant to allow any public or commercial use of simulated gambling devices to continue; and

Whereas, the Marion County Board of County Commissioners has determined that the continued use of law enforcement and public safety resources to investigate, monitor, and dismantle internet cafés that serve as a location for ongoing criminal activity in violation of Chapter 849, Florida Statutes, will not result in an appreciable long-term impact on the number of internet cafés that operate in Marion County and will divert valuable law enforcement and public safety resources away from the investigation of other criminal activity, including the enforcement of the Florida Comprehensive Drug Abuse Prevention and Control Act; and

Whereas, the Board of County Commissioners of Marion County finds that the operation of simulated gambling establishments constitute a public nuisance; and

Whereas, the Board of County Commissioners of Marion County finds that the continued operation of simulated gambling establishments create an immediate and ongoing hazard to the public health, safety, and welfare associated with the continued operation of simulated gambling devices; and

Whereas, the Marion County Board of County Commissioners finds that there is a legitimate public purpose in prohibiting simulated gambling devices from being operated in Marion County;

NOW THEREFORE, BE IT ORDAINED by the County Commission of the Marion County as follows:

SECTION 1. RECITALS. The foregoing recitals are true and correct and are incorporated herein, but need not be set forth in the Marion County Code.

SECTION 2. Chapter 11, Article V of the Marion County Code shall be amended to read as follows:

Sec. 11-200. - Authority; Intent; Purpose; Scope

- (a) This Article is adopted in the interest of the public health, safety, and general welfare of the citizens and inhabitants of Marion County, Florida, pursuant to Chapter 125, Florida Statutes and Florida Constitution Article VIII.
- (b) The intent and purpose of this Article is to provide for regulation of Simulated Gambling Devices and Internet Cafés, decrease the unwanted secondary effects associated with the operation of Internet Cafés, authorize the use of private property for lawful purposes, and deter illegal gambling. To do this, the County intends to broadly prohibit the possession or use of simulated gambling devices not authorized for legal use under Florida law, including any related activity or behavior which can be reasonably construed to be the use of simulated gambling devices. Further, the Board of County Commissioners, in prohibiting simulated gambling devices in no way intends to locally 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.

- (c) This Article applies in unincorporated Marion County. It does not apply within the cities of Ocala, Belleview, or Dunnellon, or the towns of McIntosh or Reddick.
- (d) Family amusement games or devices are exempt from the provisions of this Article.
- (e) Pari-mutuel facilities, operated by a holder of a pari-mutuel permit issued pursuant to Chapter 550, Florida Statutes, and Fla. Admin. Code 61D, and devices located therein, are exempt from the provisions of this Article.

Sec. 11-201. - Definitions.

For the purpose of this Article, certain terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise.

- (a) "*Internet Café*" means any location at which simulated gambling devices are made accessible for use by a person, except those places specifically excluded from this ordinance as set forth in in Sec. 11-203.
- (b) "*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.
- (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, 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, "fish", 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.
- (9) For the purpose of determining the number of simulated gambling devices, each seat, terminal, or other interface at which a separate individual may use the device, shall be counted as a separate and distinct device, regardless of whether the device or any seat, terminal, or other interface is functional. For example, if a single table has six chairs at which six separate persons can play a game, on a common screen/display or otherwise, it shall be counted as six devices; if a stand-up game has three terminals or interfaces at which three people can use the device, it shall be counted as three devices.
- (d) "*Slot machine*" has the same meaning as specified in F.S. Ch. 551.
- (e) "*COO*" shall mean a certificate of occupancy issued pursuant to Chapter 5 of the Marion County Code.

Sec. 11-202. - Prohibition of simulated gambling devices

- (a) It is unlawful for any person to manage, supervise, maintain, provide, produce, possess, or use a simulated gambling device for commercial, promotional or pecuniary gain or purpose.
- (b) For determining the allowable unit of prosecution, it is the intent of the Board of County Commissioners that each individual act of managing, supervising, maintaining, providing, producing, possessing, or using a simulated gambling device constitutes a separate violation of this section:
 - (1) For example, if a person possesses five (5) simulated gambling devices, that person would be subject to a separate penalty for each of the five (5) devices;
 - (2) For example, if a person possesses two (2) simulated gambling devices that the person sells to another individual, the person will have committed four (4) acts in violation of this section, and would be subject to a separate penalty for possessing each of the two (2) devices and a separate sanction for providing each of the two (2) devices.
 - (3) For example, if a person employed at an internet café supervises the establishment
- (c) Any establishment or property which was lawfully in possession of either a COO or was operating unlawfully prior to the effective date of this ordinance shall immediately cease the

use of simulated gambling devices regulated by this ordinance upon the effective date of this ordinance.

Sec. 11-203 - Exemptions.

- (a) This Article 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 Article does not prohibit the ownership, possession, play, operation or use of any device expressly permitted by F.S. § 546.10, or other provision of the Florida Statutes, except that devices permitted by Article X, Section 23 of the Florida Constitution and F.S. Ch. 551, in Broward and Miami-Dade County only are not permitted by this Part.
- (c) This Article 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 for no more than six hours per fund raising activity, the organization provides advance written notice to the Sheriff of the date, time, place, and nature of such activity and who will be conducting it, and the activity is not otherwise unlawful.
- (d) This Article does not apply to pari-mutuel facilities, operated by a holder of a pari-mutuel permit issued pursuant to Chapter 550, Florida Statutes, and Fla. Admin. Code 61D, or to any devices or games therein.

Sec. 11-204 - Conflict with state law.

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

Sec. 11-205. – Enforcement; Penalties; Civil remedies.

- (a) The Sheriff and the Board of County Commissioners, through any of their respective deputies, employees, agents, and attorneys, shall have concurrent jurisdiction to investigate and enforce the requirements of this Article, as follows:
 - (1) By the issuance of a cease-and-desist order. Upon notice from any agency or individual authorized to enforce this section, occupancy or operation of any structure or property where any simulated gambling device is being used or operated in violation of this section shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property or to his or her agent or to the person operating any establishment where any simulated gambling device is being used or operated in violation of the section. Failure to comply with the terms and conditions of a cease and desist order issued pursuant to this section shall constitute an additional violation of this section. Cease and desist orders may be lifted by the issuing agency upon demonstration that all simulated gambling devices have been removed and all applicable civil penalties have been paid.
 - (2) By action for civil penalties through a court of competent jurisdiction as follows:

- a. The civil penalty for convictions of violations committed by any person operating or allowing the operation of an internet café shall be as follows:
 - i. Two thousand dollars (\$2,000.00) for a first violation;
 - ii. Five thousand dollars (\$5,000.00) for a second violation; and
 - iii. Ten thousand dollars (\$10,000.00) for a third or subsequent violation.
 - b. Civil penalties assessed against property owners who did not operate the establishment at which illegal use in violation of this section occurred shall be one thousand dollars (\$1,000.00) per violation.
- (3) By citation for civil penalties, as provided in section 2-211 of the Marion County Code, as it may be amended. Civil penalties assessed pursuant to this subsection shall be \$250.00 per violation per day for each violation.
- (4) A violation of this Article that is a civil violation may be reclassified to a misdemeanor of the second degree, punishable by up to 60 days imprisonment in the county jail and a fine of up to five-hundred dollars (\$500.00), if, at the time of the violation:
 - a. The violator manages, supervises, maintains, provides, produces, possesses, or uses five or more simulated gambling devices for commercial, promotional, or pecuniary gain or purpose;
 - b. The violator has one or more prior convictions for a violation of this article or has been found, on one or more occasions, to have committed a violation of this Article. For the purpose of this subsection, “conviction” means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered. A person may be found to have committed a violation of this article by any court or board empowered to impose a sanction for violation of this Article.
 - c. The violator has one or more prior convictions for a violation of any provision of Chapter 849, Florida Statutes. For the purpose of this subsection, “conviction” means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered;
 - d. The violator has previously entered in any pretrial intervention program or diversion program for any violation of this Article, a substantially similar ordinance of another jurisdiction, or any provision of Chapter 849, Florida Statutes; or
 - e. The violator is in violation of a cease-and-desist order issued pursuant to this Article at the time the violations occur.
- (5) By an action for injunctive relief through a court of competent jurisdiction. An action for injunctive relief may be brought by the Board of County Commissioners, the State Attorney, or any substantially affected person. If such action is successful, a judgment for reasonable attorney's fees and costs may be awarded by the court.
- (6) Any person against whom a civil penalty is assessed pursuant to this Article shall be prohibited from applying for any certificate of occupancy for any property until such civil penalty has been paid in full. Prohibitions against application for a certificate of occupancy contemplated in this section shall not become effective until the judgment requiring such prohibition becomes final; however such certificate

of occupancy shall not be issued unless and until the alleged violation is overturned.

SECTION 3. CONFLICTS. In the event that the provisions of this ordinance are in conflict with any other county ordinance, then the provisions of this Ordinance shall prevail.

SECTION 4. SEVERABILITY. It is hereby declared to be the intent of the Board of County Commissioners of Marion County that if any section, subsection, clause, phrase, or provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this ordinance.

SECTION 5. REPEAL OF ORDINANCES. All ordinances or parts of ordinances, in conflict with this ordinance are, to the extent of such conflict, hereby repealed.

SECTION 6. INCLUSION IN COUNTY CODE

It is the intent of the Board of County Commissioners of Marion County, Florida, and it is hereby provided that the provisions of this ordinance be incorporated into the Marion County Code of Ordinances, that the sections of this ordinance may be re-numbered or re-lettered to accomplish such intent.

SECTION 7. EFFECTIVE DATE.

A certified copy of this ordinance shall be filed with the Secretary of State by the Clerk within ten days after enactment by the Board of County Commissioners, and shall take effect upon such filing as provided in F.S. §125.66(2)(b).

DULY ADOPTED this ____ day of _____, 2021.

BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA

JEFF GOLD, Chairman

ATTEST:

GREG HARRELL,
CLERK