

1 Introduced by Council Member Ferraro:  
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4 **ORDINANCE 2019-209**

5 AN ORDINANCE AMENDING CHAPTER 250 (MISCELLANEOUS  
6 BUSINESS REGULATIONS) TO CREATE A NEW PART 13  
7 (PROHIBITION OF SIMULATED GAMBLING DEVICES) TO  
8 DEFINE AND IDENTIFY SIMULATED GAMBLING DEVICES  
9 AS A PUBLIC NUISANCE AND NOXIOUS USE; TO  
10 PROHIBIT THE USE OF SIMULATED GAMBLING DEVICES  
11 FOR CERTAIN CIRCUMSTANCES; TO CREATE AN  
12 AMORTIZATION PERIOD FOR CERTAIN SIMULATED  
13 GAMBLING ESTABLISHMENTS; AND TO CREATE AN  
14 ENFORCEMENT MECHANISM FOR VIOLATIONS OF PART 13;  
15 PROVIDING AN EFFECTIVE DATE.  
16

17 **WHEREAS**, on November 6, 2018 Florida voters approved a  
18 constitutional amendment allowing citizen initiatives to legalize  
19 gaming and gambling in Florida's communities; and

20 **WHEREAS**, gaming and gambling are not presently lawful in the  
21 City; and

22 **WHEREAS**, presently throughout the City and the state, there is  
23 a proliferation of establishments that utilize computer or video  
24 displays of games, contests, challenges and other electronic  
25 simulations which are or are of the type of games generally associated  
26 with legalized casino or gambling outlets or which show, or purport  
27 to show, the results of raffles, sweepstakes, contests or business  
28 game promotions (hereinafter collectively known as "simulated  
29 gambling devices") for commercial or pecuniary gain; and

30 **WHEREAS**, the Council recognizes that, because other  
31 jurisdictions within the state have authorized legal gambling through

1 simulated gambling devices and because of the recent approval of the  
2 gambling constitutional amendment, establishments that utilize  
3 simulated gambling devices can deceive many Jacksonville residents,  
4 including the elderly, the economically disadvantaged, the  
5 uneducated, and the unsuspecting into believing such activities are  
6 legal and lawfully permitted; and

7 **WHEREAS**, in the calendar year of 2018, Jacksonville and the  
8 "First Coast" received a record number of tourists and visitors to  
9 the area, who may be deceived into thinking simulated gambling  
10 establishments present a legal gambling entertainment option; and

11 **WHEREAS**, the Council finds that simulated gambling devices are,  
12 therefore, inherently deceptive; and

13 **WHEREAS**, due to the inherently deceptive nature of simulated  
14 gambling devices, establishments that utilize simulated gambling  
15 devices are adverse to the quality of life, tone of commerce and  
16 total community environment in the City; and

17 **WHEREAS**, as of September 26, 2018, the City received COU  
18 applications for approximately 140 simulated gambling establishments  
19 in Jacksonville, with approximately 90 establishments being approved  
20 to open; and

21 **WHEREAS**, many more simulated gambling establishments have opened  
22 illegally; and

23 **WHEREAS**, between January 1, 2013 and September 26, 2018, the  
24 Jacksonville Sheriff's Office has reported 28,315 calls for service  
25 associated with the approximately 90 simulated gambling  
26 establishments with valid COUs; and

27 **WHEREAS**, while not all calls for service are associated with the  
28 simulated gambling establishment operating at that address, it is  
29 uncontroverted that many thousands of calls for service are directly  
30 related to the use of properties in Jacksonville as a simulated  
31 gambling establishment; and

1           **WHEREAS**, since January 1, 2018, there have been at least 4  
2 shootings and multiple armed robberies which have occurred at  
3 simulated gambling establishments; and

4           **WHEREAS**, the Council finds that a correlation exists between  
5 establishments that utilize simulated gambling devices and crime or  
6 disturbances of the peace and good order of the community and those  
7 activities are hazardous to the public health, safety and general  
8 welfare of the citizens of Jacksonville and constitutes a public  
9 nuisance; and

10           **WHEREAS**, the Council finds that there is a legitimate public  
11 purpose in eliminating simulated gambling establishments from  
12 operating in Jacksonville; and

13           **WHEREAS**, the Council also finds that, because some simulated  
14 gambling establishments have applied for and received COUs to legally  
15 begin operating, those simulated gambling establishments in  
16 possession of a validly issued and effective COU shall be allowed to  
17 continue operating for an appropriate period of time in order to  
18 recoup their initial start-up investment; now, therefore,

19           **BE IT ORDAINED** by the Council of the City of Jacksonville:

20           **Section 1. Findings and Statement of Intent.**

21           (a) The above recitals are hereby adopted as the Council's  
22 Findings of Fact; and

23           (b) It is the intent of the Council to enact this ordinance to  
24 abate a public nuisance and to prohibit the noxious use associated  
25 with operation of simulated gambling establishments.

26           **Section 2. Amending Chapter 250 (Miscellaneous Business**  
27 **Regulations), Ordinance Code to create a new Part 13 (Prohibition of**  
28 **Simulated Gambling Devices).** Chapter 250 (Miscellaneous Business  
29 Regulations), *Ordinance Code* is hereby amended to create a new Part  
30 13 (Simulated Gambling Establishments) to read as follows:

31                           **Chapter 250. Miscellaneous Business Regulations.**

2 **Part 13. Prohibition of Simulated Gambling Devices.**

3 **Sec. 250.1301. Legislative authorization.**

4 This Part is enacted in the interest of the public health,  
5 peace, safety, and general welfare of the citizens,  
6 inhabitants and visitors of the City of Jacksonville. The  
7 prohibition created in the Part is applicable only within  
8 the First Urban Services District.

9 **Sec. 250.1302. Definitions.**

10 The following definitions apply to this Part 13:

11 (a) "*Person*" means an individual, association, partnership, joint  
12 venture, corporation, or any other type of organization, whether  
13 conducted for profit or not for profit, or a director, executive,  
14 officer or manager of an association, partnership, joint venture,  
15 corporation or other organization.

16 (b) "*Simulated gambling device*" means any device that, upon  
17 connection with an object, is available to play or operate a computer  
18 simulation of any game, where the play or operation of the device may  
19 deliver or entitle the person or persons playing or operating the  
20 device to a payoff directly or indirectly from the owner or operator  
21 of the device or that person's designee. The following rules of  
22 construction apply to this definition of "simulated gambling device":

23 (1) The term "*device*" means any mechanical or electrical  
24 contrivance, computer, terminal, video or other equipment that may  
25 or may not be capable of downloading games from a central server  
26 system, machine, computer or other device or equipment. The term  
27 "*device*" also includes any associated equipment necessary to conduct  
28 the operation of the device.

29 (2) The term "*upon connection with*" means insertion, swiping,  
30 passing in range, or any other technical means of physically or  
31 electromagnetically connecting an object to a device, including by

1 the manual input by any person of characters, numbers, or any  
2 combination thereof, or other code for the purpose of accessing or  
3 activating a device, or any other mechanism or method by which the  
4 object provides access to the device.

5 (3) The term "*object*" means a coin, bill, ticket, token, card,  
6 characters, numbers, or any combination thereof, other code, or any  
7 other tangible or intangible access mechanism or method, obtained  
8 directly or indirectly through payment of consideration, or obtained  
9 as a bonus or supplement to another transaction involving the payment  
10 of consideration.

11 (4) The terms "*play or operate*" or "*play or operation*" includes  
12 the use of skill, the application of the element of chance, or both.

13 (5) The term "*computer simulation*" includes simulations by means  
14 of a computer, computer system, video display, video system or any  
15 other form of electronic video presentation.

16 (6) The term "*game*" includes slot machines, poker, bingo, craps,  
17 keno, "fish", any other type of game ordinarily played in a casino,  
18 a game involving the display of the results of a raffle, sweepstakes,  
19 drawing, contest or other promotion, lotto, sweepstakes, and any  
20 other game associated with gambling or which could be associated with  
21 gambling, but the term "game" does not necessarily imply gambling as  
22 that term may be defined elsewhere.

23 (7) The term "*payoff*" means cash, monetary or other credit,  
24 billets, tickets, tokens, or electronic credits to be exchanged for  
25 cash or to receive merchandise or anything of value whatsoever,  
26 whether made automatically from the machine or manually.

27 (8) The use of the word "*gambling*" in the term "simulated gambling  
28 device" is for convenience of reference only. The term "simulated  
29 gambling device" as used in this Part is defined exclusively by this  
30 subsection and does not incorporate or imply any other legal

1 definition or requirement applicable to gambling that may be found  
2 elsewhere.

3 (c) "*Slot machine*" has the same meaning as specified in Chapter  
4 551, Florida Statutes.

5 (d) "COU" shall mean a certificate of use issued pursuant to  
6 Subpart E of Chapter 656.

7 **Sec. 250.1303. Area of enforcement.**

8 The Council is acting herein as the governing body for the  
9 City of Jacksonville, and this Part shall be effective  
10 within the boundaries of the First Urban Services District.

11 **Sec. 250.1304. Intent.**

12 The Council's intent in adopting this Part is to broadly prohibit  
13 the possession or use of simulated gambling devices not authorized  
14 for legal use under Florida law, including any related activity or  
15 behavior which can be reasonably construed to be the use of simulated  
16 gambling devices. Further, the Council in prohibiting simulated  
17 gambling devices in no way intends to locally approve the use of  
18 actual slot machines, other forms of casino gambling or other types  
19 of gambling devices. In addition, this prohibition is aimed directly  
20 at devices that simulate gambling activity, regardless of whether the  
21 devices or the simulations in and of themselves can be said to  
22 constitute gambling as that term may be defined elsewhere.

23 **Sec. 250.1305. Prohibition of simulated gambling devices.**

24 It is unlawful for any person to manage, supervise, maintain,  
25 provide, produce, possess or use one or multiple simulated  
26 gambling devices for commercial, promotional or pecuniary  
27 gain or purpose. Each individual act to manage, supervise,  
28 maintain, provide, produce, possess or use a simulated  
29 gambling device constitutes a separate violation of this  
30 section.

31 **Sec. 250.1306. Exemptions.**

1 (a) This Part does not prohibit an individual's personal,  
2 recreational, and non-commercial ownership, possession,  
3 play, operation or use of a device which could be construed  
4 to be a simulated gambling device.

5 (b) This Part does not prohibit the ownership, possession, play,  
6 operation or use of any device expressly permitted by the Florida  
7 Statutes and not otherwise prohibited by the Florida Constitution,  
8 except that devices permitted by Article X, Section 23 of the Florida  
9 Constitution and Chapter 551, Florida Statutes, in Broward and Miami-  
10 Dade County only are not permitted by this Part.

11 (c) This Part does not prohibit a religious or charitable  
12 organization from conducting a fund raising activity involving  
13 gaming, provided the religious or charitable organization does not  
14 conduct the activity more than twice in one calendar year, the  
15 organization provides advance written notice to the Sheriff of the  
16 date, time, place, and nature of such activity and who will be  
17 conducting it, and the activity is not otherwise unlawful.

18 **Sec. 250.1307. Conflict with state law.**

19 Nothing in this Part is intended to conflict with the  
20 provisions of the Florida Constitution or Chapter 849,  
21 Florida Statutes, concerning gambling. In the event of a  
22 direct and express conflict between this Part and either  
23 the Florida Constitution or Chapter 849, Florida Statutes,  
24 then the provisions of the Florida Constitution or Chapter  
25 849, Florida Statutes, as applicable, control.

26 **Sec. 250.1308. Amortization.**

27 Any establishment or property which was lawfully in possession of  
28 a COU prior to the effective date of this ordinance, and which under  
29 the terms of the Zoning Code would be a nonconforming use, shall be  
30 allowed to continue to operate for one (1) year from the effective  
31 date of this ordinance. In the event that a court of competent

1 jurisdiction should determine the amortization period set forth in  
2 this section should be declared invalid for any reason and the City  
3 Council should revise the amortization period in subsequent  
4 legislation that the amortization period in this section and any  
5 subsequent legislation be considered as a single amortization period.

6 **Sec. 250.1309. Enforcement; civil remedies.**

7 (a) The Building Inspection Division, the Property Safety  
8 Division, the Fire Chief and the Sheriff shall have concurrent  
9 jurisdiction to enforce the requirements of this Part as follows:

10 (1) By the Municipal Code Enforcement Board or Special Master  
11 pursuant to the authority granted by F.S. Ch. 162, Part I, and Ch.  
12 91, Ordinance Code, however, in no instance shall a civil penalty  
13 less than \$250 per violation per day of violation be imposed;

14 (2) By citation for civil penalties pursuant to the authority  
15 granted by F.S. Ch. 162, Part II, and Ch. 609, Ordinance Code,  
16 however, in no instance shall a civil penalty less than \$250 per  
17 violation per day of violation be imposed;

18 (3) By action for civil penalties through a court of competent  
19 jurisdiction as follows:

20 (i) The civil penalty for convictions of violations committed  
21 by any person operating or allowing the operation of a simulated  
22 gambling establishment shall be as follows:

23 (1) \$2000 for a first violation;

24 (2) \$5000 for a second violation; and

25 (3) \$10,000 civil penalty for a third or  
26 subsequent violation.

27 Additionally, the violator shall be prohibited from applying for  
28 any certificate of use for any property until such civil penalty  
29 awarded pursuant to this section has been paid in full. Prohibitions  
30 against application for a certificate of use contemplated in this  
31 section shall not become effective until the judgment requiring such

1 prohibition becomes final; however such certificate of use shall not  
2 be issued unless and until the alleged violation is overturned.

3 (ii) Civil penalties assessed against property owners who did  
4 not operate the illegal use themselves in violation of this chapter  
5 shall be \$1000 per violation. Additionally, the violator shall be  
6 prohibited from applying for any certificate of use for any property  
7 until such civil penalty awarded pursuant to this section has been  
8 paid in full. Prohibitions against application for a certificate of  
9 use contemplated in this section shall not become effective until the  
10 judgment requiring such prohibition becomes final; however such  
11 certificate of use shall not be issued unless and until the alleged  
12 violation is overturned.

13 (4) By an action for injunctive relief through a court of  
14 competent jurisdiction.

15 (b) Upon notice from any agency authorized to enforce this  
16 Part, occupancy or operation of any structure or property where any  
17 simulated gambling device is being used or operated in violation of  
18 this Part shall immediately cease. Such notice shall be in writing  
19 and shall be given to the owner of the property or to his or her  
20 agent or to the person operating any establishment where any simulated  
21 gambling device is being used or operated in violation of this Part.  
22 Failure to comply with the terms and conditions of a cease and desist  
23 order issued pursuant to this Part shall constitute an additional  
24 violation of this Part. Cease and desist orders may be lifted by the  
25 issuing agency upon demonstration that all simulated gambling devices  
26 have been removed and all applicable civil penalties have been paid.

27 **Section 3. Effective Date.** This ordinance shall become  
28 effective upon signature by the Mayor or upon becoming effective  
29 without the Mayor's signature.

30  
31 Form Approved:

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2 /s/ Shannon Eller

3 Office of General Counsel

4 Legislation prepared by: Jason R. Teal

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