ORDINANCE 2019-209

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

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

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

WHEREAS, presently throughout the City 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 Council recognizes that, because other jurisdictions within the state have authorized legal gambling through
simulated gambling devices and because of the recent approval of the gambling constitutional amendment, establishments that utilize simulated gambling devices can deceive many Jacksonville residents, including the elderly, the economically disadvantaged, the uneducated, and the unsuspecting into believing such activities are legal and lawfully permitted; and

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

WHEREAS, the Council finds that simulated gambling devices are, therefore, inherently 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 the City; and

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

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

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

WHEREAS, while not all calls for service are associated with the simulated gambling establishment operating at that address, it is uncontroverted that many thousands of calls for service are directly related to the use of properties in Jacksonville as a simulated gambling establishment; and
WHEREAS, since January 1, 2018, there have been at least 4 shootings and multiple armed robberies which have occurred at simulated gambling establishments; and

WHEREAS, the Council 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 Jacksonville and constitutes a public nuisance; and

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

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

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

Section 1. Findings and Statement of Intent.
(a) The above recitals are hereby adopted as the Council’s Findings of Fact; and
(b) It is the intent of the Council to enact this ordinance to abate a public nuisance and to prohibit the noxious use associated with operation of simulated gambling establishments.

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

Chapter 250. Miscellaneous Business Regulations.

Sec. 250.1301. Legislative authorization.
This Part is enacted in the interest of the public health, peace, safety, and general welfare of the citizens, inhabitants and visitors of the City of Jacksonville. The prohibition created in the Part is applicable only within the First Urban Services District.

Sec. 250.1302. Definitions.
The following definitions apply to this Part 13:

(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, "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.

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

(d) “COU” shall mean a certificate of use issued pursuant to Subpart E of Chapter 656.

Sec. 250.1303. Area of enforcement.

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

Sec. 250.1304. Intent.

The Council’s intent in adopting this Part is 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 Council 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.

Sec. 250.1305. Prohibition of simulated gambling devices.

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

Sec. 250.1306. 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 Sheriff of the date, time, place, and nature of such activity and who will be conducting it, and the activity is not otherwise unlawful.

Sec. 250.1307. 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.

Sec. 250.1308. Amortization.

Any establishment or property which was lawfully in possession of a COU prior to the effective date of this ordinance, and which under the terms of the Zoning Code would be a nonconforming use, shall be allowed to continue to operate for one (1) year from the effective date of this ordinance. In the event that a court of competent
jurisdiction should determine the amortization period set forth in this section should be declared invalid for any reason and the City Council should revise the amortization period in subsequent legislation that the amortization period in this section and any subsequent legislation be considered as a single amortization period.

Sec. 250.1309. Enforcement; civil remedies.

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

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

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

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

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

   (1) $2000 for a first violation;
   (2) $5000 for a second violation; and
   (3) $10,000 civil penalty for a third or subsequent violation.

Additionally, the violator shall be prohibited from applying for any certificate of use for any property until such civil penalty awarded pursuant to this section has been paid in full. Prohibitions against application for a certificate of use contemplated in this section shall not become effective until the judgment requiring such
prohibition becomes final; however such certificate of use shall not
be issued unless and until the alleged violation is overturned.

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

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

(b) Upon notice from any agency authorized to enforce this
Part, occupancy or operation of any structure or property where any
simulated gambling device is being used or operated in violation of
this Part 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 this Part.

Failure to comply with the terms and conditions of a cease and desist
order issued pursuant to this Part shall constitute an additional
violation of this Part. 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.

Section 3. Effective Date. This ordinance shall become
effective upon signature by the Mayor or upon becoming effective
without the Mayor’s signature.

Form Approved:
/s/ Shannon Eller

Office of General Counsel

Legislation prepared by: Jason R. Teal

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