

ORDINANCE 2011-_____

AN ORDINANCE OF THE CITY OF PALM COAST, FLORIDA, IMPOSING A TEMPORARY MORATORIUM FOR 180 DAYS ON THE ISSUANCE OF ANY BUSINESS TAX LICENSE, PERMIT, CONDITIONAL USE APPROVAL, SITE PLAN APPROVAL AND ANY OTHER OFFICIAL ACTION OF THE CITY OF PALM COAST HAVING THE EFFECT OF PERMITTING OR ALLOWING THE CONSTRUCTION AND/OR OPERATION OF THE FOLLOWING BUSINESSES USING SLOT MACHINES OR SLOT MACHINE LIKE EQUIPMENT OR SIMULATED GAMBLING DEVICES WITHIN THE CITY OF PALM COAST: GAME ROOMS, ARCADES, INTERNET CAFES, SWEEPSTAKES REDEMPTION CENTERS OR ESTABLISHMENTS, AS MORE SPECIFICALLY DESCRIBED IN THIS ORDINANCE, EXCLUDING APPROVALS AND PERMITS FOR THE CONTINUANCE OF AN EXISTING BUSINESS; THE TEMPORARY MORATORIUM SHALL APPLY TO ALL REAL PROPERTY LOCATED WITHIN THE CORPORATE LIMITS OF THE CITY OF PALM COAST; PROVIDING FOR DEFINITIONS, PROVIDING A PROCEDURE FOR EXTRAORDINARY HARDSHIP; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, the City of Palm Coast, Florida provides municipal services to its citizens, including regulation and licensing of businesses; and

WHEREAS, the appropriate regulation, licensing and permitting of businesses are vital to the public's health, safety, morals and welfare as deficient or inadequate regulations can lead to public harm; and

WHEREAS, the City Council has learned of certain activities related to the following businesses using slot machines or slot machine like equipment or simulated gambling devices: game rooms, arcades, internet cafes, sweepstakes redemption centers or establishments within the City of Palm Coast, being proposed or considered, which activities would harm the City's economic and redevelopment activities and otherwise significantly and adversely affect the public health, safety, morals and welfare, since said activities may include forms of gaming or gambling which could lead to illegal activities; and

WHEREAS, the City Council of the City of Palm Coast, Florida, deems it necessary to the public's health, safety, morals and welfare to cause a study to be accomplished relative to the criteria for issuance of permits or other official City action for the following businesses using slot machines or slot machine like equipment or simulated gambling devices: game rooms, arcades, internet cafes, sweepstakes redemption centers or establishments, and to place a temporary moratorium on the issuance of permits, any

other official City action, including the receipt of the business tax for such activities for a period of one hundred and eighty (180) days; and

WHEREAS, the City Council, after holding a public hearing, finds that it is appropriate to impose a temporary moratorium on the licensing and permitting of certain activities related to the following businesses using slot machines or slot machine like equipment or simulated gambling devices: game rooms, arcades, internet cafes, sweepstakes redemption centers or establishments; and

WHEREAS, public hearings were held pursuant to the required published notices at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard; and

WHEREAS, the City's Planning and Regulation Development Board has reviewed this moratorium for consistency with the City's Comprehensive Plan.

NOW, THEREFORE, BE IT ENACTED by the City Council of the City of Palm Coast, Florida:

SECTION 1. PURPOSE AND LEGISLATIVE FINDINGS.

The above recitals are hereby adopted as the legislative purpose of this Ordinance and as the City Council's legislative findings.

SECTION 2. DEFINITIONS. The following definitions shall apply to this ordinance:

(a) "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. 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.

(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 machine, 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 other 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 the convenience of reference only. The term “simulated gambling device” as used in this Section 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.

(b) “Slot machine” has the same meaning as specified in Fla. Stat. § 551.102(8).

SECTION 3. TEMPORARY MORATORIUM UPON THE ISSUANCE OF PERMITS TO THE FOLLOWING BUSINESSES USING SLOT MACHINES OR SLOT MACHINE LIKE EQUIPMENT OR SIMULATED GAMBLING DEVICES: GAME ROOMS, ARCADES, INTERNET CAFES, SWEEPSTAKES REDEMPTION CENTERS OR ESTABLISHMENTS.

All activities relating to the acceptance, review and action upon permit applications for the following businesses using slot machines or slot machine like equipment or simulated gambling devices: game rooms, arcades, internet cafes, sweepstakes redemption centers or establishments are temporarily suspended in order for the City of Palm Coast, through its officials and staff, to have adequate time and opportunity to conduct a study or studies and comprehensively analyze the adequacy of application criteria, standards, and other approved processes and procedures related to the issuance of said permits within the City of Palm Coast. Accordingly, based upon the foregoing, there is hereby imposed a temporary moratorium on the receipt and/or acting upon applications for licenses, permits or any other official City action, related to the following businesses using slot machines or slot machine like equipment or simulated gambling devices: game rooms, arcades, internet cafes, sweepstakes redemption centers or establishments.

During the time the temporary moratorium is in effect, the City will accept no applications or act on any pending applications for permits or business tax receipts for such activities and no such new activities shall be permissible within the City. It is unlawful for any person or entity to engage in the activities that are the subjects of the Ordinance without first obtaining a business tax receipt or permit for such activities. During the period of time that the temporary moratorium is in effect, the City shall not accept payments of the business tax for such activities and shall return any funds accepted for pending applications.

SECTION 4. GEOGRAPHIC AREA COVERED.

The temporary moratorium established in this Ordinance shall be effective in the corporate and municipal boundaries of the City of Palm Coast.

SECTION 5. IMPOSITION OF MORATORIUM.

(a) The temporary moratorium set forth in this Ordinance took effect on May 10, 2011, and shall terminate in one hundred and eighty (180) days or November 6, 2011. The City will not accept or act on applications which are subject to the moratorium until the moratorium has expired.

(b) The City Council may extend the temporary moratorium established in this ordinance one (1) time for a period not to exceed ninety (90) days upon a finding by the City Council set forth in the ordinance that the problems giving rise to the need for the temporary moratorium established herein continue to exist and that reasonable progress is being made in carrying out a specific and prompt plan of corrective legislative action, but that additional time is reasonably needed to adequately address the issues facing the City.

SECTION 6. ALLEVIATION OF EXTRAORDINARY HARDSHIP.

(a) The City Council may authorize exceptions to the moratorium imposed by this Ordinance when it finds, based upon substantial competent evidence presented to it, that deferral of action on an application for permit, business tax receipt, development order, or other official action of the City for the duration of the moratorium would impose an extraordinary hardship on a landowner or petitioner.

(b) A request for an exception based upon extraordinary hardship shall be filed with the City Manager or designee, including a non-refundable fee of \$350.00 by the owner/petitioner, or the petitioner with the consent of the owner/petitioner, to cover processing and advertising costs, and shall include a recitation of the specific facts that are alleged to support the claim of extraordinary hardship, and shall contain such other information as the City Manager shall prescribe as necessary for the City Council to be fully informed with respect to the application.

(c) A public hearing on any request for an exception for extraordinary hardship shall be held by the City Council at the first regular meeting of the City Council that occurs after the expiration of the period for publication of notice of the request for an exception.

(d) Notice of the filing of a request for an exception, and the date, time, and place of the hearing thereon shall be published once at least 7 days prior to the hearing in a newspaper of general circulation within the city limits of the City of Palm Coast, Florida.

(e) In reviewing an application for an exception based upon a claim of extraordinary hardship, the City Council shall consider, at a minimum, the following criteria:

- (1) The extent to which the applicant has, prior to the Effective Date of this temporary moratorium, received City of Palm Coast permits or approvals for the following businesses using slot machines or slot machine like equipment or simulated gambling devices: game room, arcade, internet café, sweepstakes redemption center or establishment.
- (2) The extent to which the applicant has, prior to the Effective Date of this temporary moratorium, made a substantial expenditure of money or resources in reliance upon permits or other approvals of the City of Palm Coast directly associated with the operation of the following businesses using slot machines or slot machine like equipment or simulated gambling devices: game room, arcade, internet café, sweepstakes redemption center or establishment.
- (3) Whether the applicant, prior to the Effective Date of this temporary moratorium, has contractual commitments in reliance upon permits or other approvals of the City of Palm Coast to operate the following businesses using slot machines or slot machine like equipment or simulated gambling devices: game room, arcade, internet café, sweepstakes redemption center or establishment.
- (4) Whether the applicant, prior to the Effective Date of this temporary moratorium, has in reliance upon permits or other approvals of the City of Palm Coast incurred financial obligations to a lending institution which, despite a thorough review of alternative solutions, the applicant cannot meet unless the following businesses using slot machines or slot machine like equipment or simulated gambling devices: game room, arcade, internet café, sweepstakes redemption center or establishment are permitted or allowed.
- (5) Whether the temporary moratorium will expose the applicant to substantial monetary liability to third persons; or would leave the applicant completely unable, after a thorough review of alternative

solutions, to earn a reasonable investment backed expectation on the real property that is affected by this Ordinance.

(f) At a minimum, the City Council shall consider the following non-exclusive factors under the criteria set forth in subsection (e) above:

- (1) The history of the property;
- (2) The history of the commercial, business or any use on the property.

(g) At the conclusion of the Public Hearing and after reviewing the evidence and testimony placed before it, the City Council shall act upon the request either to approve, deny, or approve in part and deny in part the request made by the applicant.

SECTION 7. PENDING APPLICATIONS AND EXISTING BUSINESSES.

(a) This temporary moratorium will not affect any business set forth in Section 3 herein, which had a permit application pending as of May 10, 2011, as long as the business and property are in compliance with all applicable local, county, state and federal laws.

(b) This temporary moratorium will not affect any businesses, as set forth in Section 3, herein, currently operating within the City, pursuant to a validly issued business tax receipt or other license or permit, as long as the business and property are in compliance with all applicable local, county, state, and federal laws.

SECTION 8. NEW BUSINESS RECEIPTS OR OTHER OFFICIAL CITY ACTION.

Except as provided in Section 7, applications for business tax receipts, City licenses or permits, or any other official City action, for the operation of internet cafes, or other establishments as set forth in Section 3, received after May 10, 2011, shall be held in abeyance until the conclusion of the moratorium.

SECTION 9. RENEWAL OF BUSINESS TAX RECEIPTS.

The City Manager or his designee is authorized to renew the business tax receipt of any existing internet café or other businesses as described in Section 3 herein, affected by this moratorium, with a valid business tax receipt, in the event such receipt expires before the expiration of this moratorium, upon a finding that said business has not otherwise violated any local, state, county or federal law.

SECTION 10. PENALTIES.

(a) Any person, firm, corporation or agent who shall violate any provision of this Ordinance or who fails to comply therewith, or with any of the requirements thereof, shall be fined in an amount not exceeding five hundred dollars (\$500.00) or be imprisoned for a

period not exceeding sixty (60) days. Either or both penalties may be imposed. Each day during which any violation occurs constitutes a separate offense.

(b) Nothing herein contained shall prevent the City from taking such other lawful action including, but not limited to, equitable legal action, as it deems necessary to prevent or remedy any violation of this Ordinance.

SECTION 11. SEVERABILITY. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

SECTION 12. CONFLICTS. This Ordinance shall stand repealed as of November 6, 2011, unless extended or sooner repealed; provided, however, nothing herein shall prevent the re-adoption or ratification of this Ordinance in the same or similar form.

SECTION 13. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption by the City Council of the City of Palm Coast, Florida.

Approved on first reading this _____ day of _____, 2011.

Adopted on second reading this _____ day of _____, 2011.

ATTEST:

CITY OF PALM COAST, FLORIDA

Virginia A. Smith, City Clerk

Jon Netts, Mayor

APPROVED AS TO FORM AND LEGALITY:

William E. Reischmann, Jr., Esquire
City Attorney

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