

ORDINANCE NO. 2021-01

AN ORDINANCE OF THE TOWN OF WHITE SPRINGS, FLORIDA, RELATING TO SIMULATED GAMBLING DEVICES AND INTERNET CAFÉS; SETTING FORTH FINDINGS OF FACT; SETTING FORTH AUTHORITY; 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; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Legislature of the State of Florida has, in Chapter 166, Florida Statutes, conferred upon counties the authority to adopt regulations designed to promote the public health, safety and general welfare of its citizenry;

WHEREAS, across Florida business establishments offer simulated gambling devices for use by the public, and such devices are frequently located in businesses that are commonly referred to as "Internet Cafés";

WHEREAS, except as authorized by Chapter 550, Florida Statutes, and section 849.086, Florida Statutes, gaming and gambling are not presently lawful in the State of Florida;

WHEREAS, presently throughout 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;

WHEREAS, the Town Council for the Town of White Springs finds that establishments that utilize simulated gambling devices are intended to or are likely

to deceive residents of the Town, including the elderly, the economically disadvantaged, the uneducated, and the unsuspecting into believing such activities are legal and lawfully permitted;

WHEREAS, the Town Council finds that simulated gambling devices are deceptive;

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 Town of White Springs;

WHEREAS, across Florida sheriffs have seen significant amounts 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;

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 across the state;

WHEREAS, the Town 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 White Springs and constitutes a public nuisance;

WHEREAS, the Town Council 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 in the Town of White Springs;

WHEREAS, the Town Council finds that the operation of simulated gambling establishments constitute a public nuisance;

WHEREAS, the Town Council 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 Town Council finds that there is a legitimate public purpose in prohibiting simulated gambling devices from being operated in the Town of White Springs, Florida.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WHITE SPRINGS AS FOLLOWS:

Section 1. Recitals Incorporated. The recitals above are true and correct and are incorporated as the Council's findings in support of this Ordinance.

Section 2. Authority, Intent, Purpose and Scope.

- (a) This Article is adopted in the interest of the public health, safety, and general welfare of the citizens and inhabitants of the Town of White Springs, Florida, pursuant to Chapter 166, Florida Statutes.
- (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 Town 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 Town 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.
- (c) This ordinance applies inside the incorporated town limits of the Town of White Springs and is not intended to apply elsewhere.
- (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.

Section 3. Definitions.

- (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.
- (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.

Section 4. Prohibition of Simulated Gambling Devices.

- (a) It is hereby declared unlawful in the Town of White Springs, Florida, 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 business license or business tax receipt 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.

Section 5. 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.

Section 6. 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.

Section 7. Enforcement. The Sheriff, Town Fire Chief, and Code Inspectors shall have concurrent jurisdiction for the enforcement of this ordinance through issuance of notices of violation under the Town's Code Enforcement system, but in no event shall the penalty for violation of this part be less than \$250 per violation per day. This part shall not be construed to limit the power of the Town, through counsel, to seek and obtain immediate injunctive relief and other civil remedies through a court of competent jurisdiction, including assessment of civil penalties against violations at \$250 per day per violation inclusive of the Town's reasonably incurred attorneys' fees and costs of prosecution.

Section 8. Severability. If any provision or portion of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional or unenforceable, then all remaining provisions and portions of this ordinance shall remain in full force and effect.

Section 9. Conflict. All ordinances or portions of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 10. Authority. This ordinance is adopted pursuant to the authority granted by Section 166.021 Florida Statutes, as amended and the Town Charter for the Town of White Springs, Florida.

Section 11. Effective Date. This ordinance shall become effective upon adoption.

PASSED upon first reading this 19th day of March 2021.

PASSED AND DULY ADOPTED upon second and final reading during regular session this 13th day of April 2021.

TOWN COUNCIL
TOWN OF WHITE SPRINGS, FLORIDA



ANITA RIVERS, Vice Mayor

ATTEST:


Audrey J. Ruise, Town Clerk

APPROVED as to Form and Legality


Joel Foreman, Town Attorney