

ORDINANCE #ORD2014-01

AN ORDINANCE OF THE CITY OF DUNNELLON, FLORIDA, PROHIBITING COMMERCIAL SIMULATED GAMBLING DEVICES IN THE CITY AND PROVIDING EXEMPTIONS FROM SUCH PROHIBITION; PROVIDING DEFINITIONS; PROVIDING THAT ANY LAND USE NOT LISTED IN THE TABLE OF PERMITTED USES SHALL BE CONSIDERED A PROHIBITED USE; PROVIDING FOR SIMILAR AND COMPATIBLE USE DETERMINATIONS; PROVIDING NOTICE REQUIREMENTS FOR QUASI-JUDICIAL LAND DEVELOPMENT DECISIONS BEFORE COUNCIL; PROVIDING LEGISLATIVE FINDINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT ORDINANCES; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Dunnellon desires to amend the Dunnellon Code of Ordinances and the Land Development Regulations of the City of Dunnellon; and

WHEREAS, the City's Planning Commission (Local Planning Agency) held a public meeting, in accordance with state law, and considered all matters that are appropriately considered in accordance with the jurisdiction of that Commission under the codes and ordinances of the City of Dunnellon and state law; and

WHEREAS, there has been, and presently is, an increasing proliferation of establishments that utilize computer or video displays of spinning wheels or other simulations of games ordinarily played on a slot machine or in a casino or otherwise in connection with gambling and which show the results of raffles, sweepstakes, contests or other promotions (hereinafter collectively referred to in these recitals as "simulated gambling devices") for commercial gain; and

WHEREAS, the City Council recognizes that while the State of Florida has authorized slot machine gaming at licensed facilities in certain areas outside of Dunnellon, it also recognizes that establishments that utilize simulated gambling devices can deceive members of the public, including the elderly and the economically disadvantaged, into believing that they are engaging in a lawfully permitted gaming activity; and

WHEREAS, the use of simulated gambling devices is therefore inherently deceptive; and

WHEREAS, due to their inherently deceptive nature, establishments that utilize simulated gambling devices are adverse to the quality of life, tone of commerce, and family environment in Dunnellon, and have an unreasonable adverse effect upon families, the elderly, the economically disadvantaged, and other citizens of Dunnellon; and

WHEREAS, in terms of the negative impact recited herein, there is little or no material difference between the use of slot machines as defined in § 849.16, Florida Statutes, and the use of simulated gambling devices; and

WHEREAS, there is often a correlation between establishments that utilize simulated gambling devices and disturbances of the peace and good order of the community, and the concurrency of these activities have adverse secondary effects and are hazardous to the public health, safety, and general welfare of the citizens of Dunnellon; and

WHEREAS, the Legislature closed up loopholes by its passage of House Bill 155 in the 2013 Legislative Session which, among other changes, amended the definition of slot machines, which are illegal, to include games of skill as well as games of chance; and

WHEREAS, the City Council has become aware of recent attempts by the simulated gaming industry to create what the industry considers “loopholes” but which are illegal lotteries or slot machines; and

WHEREAS, while other jurisdictions in Florida have attempted to rely on existing state laws to close these establishments that utilized simulated gambling devices, it is believed that a local comprehensive prohibition on such simulated gambling devices would close any potential loopholes and enable law enforcement to consistently enforce existing code provisions and statutes and safeguard the public’s welfare; and

WHEREAS, in order to ensure the uniform enforcement of existing laws, to preserve the public peace and good order, and to safeguard the health, safety, and general welfare of the community and citizens thereof, it is necessary and advisable to prohibit the use of simulated gambling devices, unless otherwise exempted by law or ordinance; and

WHEREAS, a comprehensive prohibition against simulated gambling activities and devices is necessary in Dunnellon, a small city, because such activities require an inordinate amount of time, effort, and energy of the limited resources of City, including the Police Department; and

WHEREAS, the City Council of the City of Dunnellon has concluded that other amendments to the City’s Land Development Regulations as set forth in this Ordinance are necessary and desirable and will further enhance the quality of life of the citizens of the City of Dunnellon and result in further high quality development within the City of Dunnellon; and

WHEREAS, the City Council of the City of Dunnellon held all required public hearings in accordance with the provisions of State law in order to solicit input from the public; and

WHEREAS, the City Council of the City of Dunnellon has determined that the land development regulations of this Ordinance are consistent with the objectives, goals and policies and other provisions of the City of Dunnellon Comprehensive Plan.

NOTE: Underlined words constitute additions to the City of Dunnellon City Code and Land Development Regulations, ~~strikethrough~~ constitutes deletions from the original, and asterisks (***) indicate an omission from the existing text which is intended to remain unchanged.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Dunnellon, Florida, as follows:

SECTION 1. The above recitals (Whereas clauses) are hereby adopted as legislative findings, purpose and intent of the City Council.

SECTION 2. Article VII of Chapter 18, "Businesses" of the Code of Ordinances is hereby created as follows:

ARTICLE VII. – PROHIBITION OF SIMULATED GAMBLING DEVICES

Section 18-225 – Legislative intent and authorization.

This article is enacted in the interest of the public health, peace, safety, and general welfare of the citizens and inhabitants of Dunnellon, Florida, pursuant to Fla. Const. Article IX, section 2(b), and Florida Statutes, ch. 166. The intent of the city council in adopting this article is to prohibit broadly the possession or use of simulated gambling devices, 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 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.

Section 18-226 – Definitions.

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.

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. Simulated gambling device includes game promotion as defined in F.S. § 849.094. This term includes simulated gaming devices in internet cafes, internet sweepstakes cafes, cybercafés, sweepstakes cafés, or any other similar establishments. 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, 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; any game in which a user is given the results of the game before the user ever chooses to play or activate the game; any game in which the user can either know the results of the game before choosing to play or activate the game, or can choose not to know the outcome of the game prior to playing or activating the game; and any other game associated with gambling or which could be associated with gambling. The term "game" does not necessarily imply that actual gambling is involved.
- (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 article 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.

Slot machine has the same meaning as specified in § 849.16, Florida Statutes.

Section 18-227 - Prohibition of simulated gambling devices.

It is unlawful in the City of Dunnellon for any person to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices. Each individual act to manage, supervise, maintain, provide, produce, possess or use a simulated gambling device constitutes a separate violation of this article.

Section 18-228 - 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 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 article.
- (c) This article does not prohibit a non-profit, religious, or charitable organization from conducting a fund raising activity involving gaming, provided the non-profit, religious, or charitable organization does not conduct the activity more than twice in one calendar year, the organization provides advance written notice to the Dunnellon Police Department 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 is specifically not intended to regulate in any manner any properly authorized bingo game establishment.

Section 18-229 - Conflict with state law.

Nothing in this article 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 article 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.

SECTION 3. Sections of Article VII, "District Regulations," of Appendix "A" of the Land Development Regulations are hereby amended as follows:

Section 7.1. - Table of permitted uses.

The following table identifies what uses are permitted without special exception, permitted with conditions, and permitted by special exception in the various zoning districts. The uses are listed on the vertical axis and the zoning districts are listed on the horizontal axis. If a specific use is not listed on the table below, the use shall be considered a prohibited use unless and until an applicant applies for and receives a similar and compatible use permit consistent with this code; provided, however, if a use, device, business, or activity is prohibited by these land development regulations, the code of ordinances, or Florida law, an owner may not seek a similar and compatible use permit. Empty cells signify a prohibited use. Cells containing an "X" signify a permitted use. Cells containing an "SE" signify a use permitted by special exception. Cells containing an "X", a number and a letter (e.g., "X3") signify a permitted use with conditions; the conditions are outlined in the legend. Cells containing an "X" or "SE" and a number (e.g., "X4" or "SE4") signify a permitted use or special exception with conditions; the number is associated with a section number (e.g., section _____) in the legend, and the section number refers to a location in this chapter (appendix) that contains the conditions associated with the permitted

use or special exception.

Permitted use: Defined as a use allowed without exception within a particular zoning district.

Special exception: A special exception may be granted by the ~~board of adjustment council~~ provided the required appropriate conditions and safeguards have been met. The conditions are listed in the supplementary district regulations (article IX of this appendix) of the ~~City of Dummellon~~ Code of Ordinances.

TABLE OF PERMITTED USES																			

EDUCATION- RECREATION- SOCIAL USES	A- 1	R- 1	R1 A	R-2	R3 A	R-3	R-4	R-5	M H	PU D	RB O	B2	B3	B4	B5	B6	P	M 1	M 2
Adult use entertainment establishment																		X	
Antique gallery/art gallery/museum												X	X	X					
Bowling center														X					
Church/place of worship		SE	SE	SE	SE	SE	SE	SE	SE		X		SE	SE			X		
College/University																	X		
Community education center																	X		
Commercial outdoor baseball batting facility														X					
Commercial recreation, indoor														X					

Commercial recreation, indoor, and bingo hall												X	X					
Commercial recreation, outdoor													X9					
Dance/art/music studio											X	X	X					
Day care facility			SE2	SE2	SE2	SE2	SE2	SE2		SE2	SE2	X	X				SE2	
Drive-in theater													X					
Driving range													X					
<u>Establishments with simulated gambling devices</u>																		
Golf course		SE	SE	SE	SE	SE	SE						X					
Library											X	X	X				X	
Miniature golf													X					
Motion picture theaters, except drive-in													X					
Multipurpose facility													X					
Physical fitness center											X	X	X					
Shooting range, indoor													SE X7				SE X7	S E X

adult theater, an adult bookstore, or an adult performance establishment operated for commercial or pecuniary gain, regardless of whether such establishment is licensed under Chapter 10 of the Code of Ordinance. An establishment with an adult entertainment license pursuant to Chapter 10 shall be presumed to be an adult entertainment establishment. For purposes of this definition, the term "operated for commercial or pecuniary gain" shall not depend upon actual profit or loss. An establishment which has a business tax receipt shall be presumed to be operated for commercial or pecuniary gain.

Establishments with simulated gaming devices means any establishment which offers one or more simulated gaming devices, which are unlawful under Chapter 18 of the code of ordinances and are a prohibited use in the City of Dunnellon.

SECTION 4. Section 7.3 of Article VII, "District Regulations," of Appendix "A" of the Land Development Regulations is hereby created as follows:

Section 7.3 – Similar and compatible use determinations.

A use proposed in a zoning district, which is not specifically listed in the zoning regulations or table of permitted uses in this article as a permitted use or special exception, may be allowed if the proposed use is similar and compatible with the uses specifically allowed as permitted or by special exception within the same zoning district. An applicant has the burden of proving by competent substantial evidence that a proposed use is "similar and compatible" with permitted or special exception use or uses within a zoning district. The proposed use is similar and compatible if:

- (1) it is consistent with the comprehensive plan;
- (2) it falls within the same density or intensity requirements of the zoning district;
- (3) it promotes the intent and purposes of the zoning district;
- (4) it has substantially similar public safety (fire and police), transportation, water, solid waste, and other infrastructure impacts; and
- (5) it is not in conflict with and would not adversely affect other allowed or existing uses of surrounding properties.

The application fee for similar and compatible use determinations shall be the same as that for special exception applications. If the applicant proposes that the use is similar and compatible to that of a special exception use, the applicant shall pay two application fees, and the City can consider both applications at public hearings concurrently. Public hearings shall be held before the planning commission and city council on the application. A similar and compatible use determination decision shall be in writing by development order pursuant to Florida law.

SECTION 5. Section 13.15 of Article XIII, "Administration", of Appendix "A" of the Land Development Regulations is hereby amended as follows:

Section 13.15. - Action by city council of Dunnellon on quasi-judicial land development and rezoning cases.

1. All quasi-judicial applications for land development and rezoning authorized under these land development regulations zoning code shall first be submitted to the planning commission. Within 90 days after the date that such application amendment is submitted to the planning commission ~~the at a public hearing, the planning commission,~~ shall submit its a report outlining the planning commission's recommendations to the city council. The recommendations of the planning commission ~~shall be advisory only, and~~ shall not be binding on the city council. If the planning commission does not submit its report within the prescribed time, city council may proceed to act on the amendment without further awaiting the recommendation of the planning commission.

2. The application and planning commission's recommendations shall be considered by city council at a public hearing after notice to the applicant. Notice of the hearing shall be sent to the applicant at the address given on the application and shall be mailed at least 15 days prior to the date of the hearing. Notice of the hearing shall also be sent to adjacent property owners at least 15 days prior to the date of the hearing. These notice requirements shall be in addition to any notice required by Florida Statute.

SECTION 6: Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 7: Repeal of Inconsistent Ordinances. Any Ordinance in conflict with this Ordinance is hereby repealed.

SECTION 8: Inclusion in the Code. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Dunnellon; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

SECTION 9: Effective Date. This Ordinance shall be effective immediately upon adoption at the second public hearing.

Upon motion duly made and carried, the foregoing Ordinance was approved upon the first reading/public hearing on the 9th day of June 2014.

Upon motion duly made and carried, the foregoing Ordinance was approved and passed upon the second and final reading and public hearing on the 14th day of July 2014.

Advertised on May 29, 2014 and July 3, 2014 in the Riverland News.

ATTEST:

CITY OF DUNNELLON

Dawn M. Bowne, M.M.C.
City Clerk

Nathan Whitt, Mayor

Approved as to Form and Legal Sufficiency:

Virginia Cassady, City Attorney

I HEREBY CERTIFY that copies of the foregoing Ordinance were posted at City Hall, the Chamber of Commerce, and the Dunnellon Library, in the City of Dunnellon, Florida, and on the City's Official Website this 23rd day of May 2014.

Dawn M. Bowne M.M.C.
City Clerk