

ORDINANCE 2023-11

AN ORDINANCE OF THE CITY OF BELLEVIEW, FLORIDA, RELATING TO SIMULATED GAMBLING DEVICES AND INTERNET CAFÉS; AMENDING CHAPTER 14, ARTICLE IV OF THE CITY OF BELLEVIEW CODE; PROVIDING FOR AUTHORITY AND PURPOSE; SETTING FORTH FINDINGS OF FACT PROVIDING FOR DEFINITIONS; PROVIDING FOR A PROHIBITION OF 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; PROVIDING FOR REPEAL; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING AN EFFECTIVE DATE

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

Whereas, business establishments that offer simulated gambling devices for use by the public are present in the City of Belleview and throughout the State of Florida, are frequently located in businesses that are commonly referred to as “Internet Cafés”; and

Whereas, presently throughout the City of Belleview 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 City of Belleview City Commission finds that establishments that utilize simulated gambling devices can deceive many City of Belleview residents, including the elderly, the economically disadvantaged, the uneducated, and the unsuspecting into believing such activities are legal and lawfully permitted; and

Whereas, the City of Belleview City Commission finds that simulated gambling devices are deceptive; and

Whereas, due to the inherently deceptive nature of simulated gambling devices, establishments that utilize simulated gambling devices are contrary to the quality of life, tone of commerce, and total community environment in the City of Belleview; and

Whereas, beginning in 2017, the Unified Drug Enforcement Strike Team for Marion

City, conducted undercover operations at not less than twenty-five (25) internet cafés, and as a result of each undercover operation, the Unified Drug Enforcement Strike Team established probable cause to believe that the laws against gambling were being violated at the internet cafés through the use of simulated gambling machines; and

Whereas, the City Commission attempted to protect the public welfare while allowing internet cafes in the City under restrictions previously established in Chapter 14, Article IV of the City Code; and

Whereas, recently certain operators of internet cafes located in the City of Belleview have advised the Chief of Police that they have knowingly utilized illegal gambling devices in internet cafes located in the City and further that other internet cafes within the City are offering such illegal gambling devices for use by the public in their establishments; and

Whereas, the Chief of Police has advised the City Commission that his office is without sufficient expertise or manpower to ensure the prevention of the use of such illegal gambling devices in the City; and

Whereas, the Chief of Police has advised the City Commission that given the significant amount of felony criminal activity, including armed robberies and burglaries that occur at internet cafés, and 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; and

Whereas, the Chief of Police further has advised the City Commission that the Police Department does not have sufficient facilities to store illegal gambling devices that might be found and seized, should the presence of such devices be found in the City; and

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 in City of Belleview; and

Whereas, as of August 30, 2023, there are believed to be approximately eighty (8) simulated gambling establishments in the City of Belleview and other business establishments offer for public use devices that may be illegal simulated gambling devices; and

Whereas, the City of Belleview City Commission 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 City of Belleview and constitutes a public nuisance; and

Whereas, the City of Belleview City Commission 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 to continue; and

Whereas, the City of Belleview City Commission has determined that the continued use of law enforcement and public safety resources to investigate, monitor, and dismantle internet cafés that serve as a location for ongoing criminal activity in violation of Chapter 849, Florida Statutes, will not result in an appreciable long-term impact on the number of internet cafés that operate in nearby communities and will divert valuable law enforcement and public safety resources away from the investigation of other criminal activity, including the enforcement of the Florida Comprehensive Drug Abuse Prevention and Control Act; and

Whereas, the City Commission of the City of Belleview finds that the operation of simulated gambling establishments constitutes a public nuisance; and

Whereas, the City Commission of the City of Belleview finds that the continued operation of simulated gambling establishments (internet cafes) in the city will result in an unreasonable expenditure of police resources and public funds to prevent criminal activity that threatens the public safety and welfare; and

Whereas, the City Commission of the City of Belleview finds that the continued operation of simulated gambling establishments creates an immediate and ongoing hazard to the public health, safety, and welfare associated with the continued operation of simulated gambling devices; and

Whereas, the City of Belleview City Commission finds that there is a legitimate public purpose in prohibiting simulated gambling devices from being operated in the City of Belleview.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Belleview as follows:

SECTION 1. RECITALS. The foregoing recitals are true and correct and are incorporated herein, but need not be set forth in the City of Belleview Code.

SECTION 2. Chapter 14, Article IV of the City of Belleview Code shall be amended to read as follows:

Sec. 14-500. - Authority; Intent; Purpose; Scope

- (a) This Article is adopted in the interest of the public health, safety, and general welfare of the citizens and inhabitants of the City of Belleview, Florida, pursuant to Chapter 166, Florida Statutes and Florida Constitution Article VIII.
- (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 City 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 that can be reasonably construed to be the use of simulated gambling devices. Further, the City Commission, 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) Family amusement games or devices are exempt from the provisions of this Article.
- (d) Pari-mutuel facilities, operated by a holder of a pari-mutuel permit that may be issued pursuant to Chapter 550, Florida Statutes, and Fla. Admin. Code 61D, and devices located therein, are exempt from the provisions of this Article.

Sec. 14-501. - Definitions.

For the purpose of this Article, certain terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise.

- (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 as set forth in Sec. 14-503.
- (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*" include 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.
- (e) "COO" shall mean a certificate of occupancy issued pursuant to Chapter 22 of the City of Belleview Code.

Sec. 14-502- Prohibition of simulated gambling devices

- (a) It is unlawful 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 City Commission 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 commercial establishment or property that was lawfully in possession of either a COO 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.

Sec. 14-503 - 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 provisions 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 City 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.

Sec. 14-504 - 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.

Sec. 14-505. – Enforcement; Penalties; Civil remedies.

- (a) The Police department and the Code Enforcement office, through any of their respective officers, employees, and agents shall have concurrent jurisdiction to investigate and enforce the requirements of this Article, as follows:
- (1) By the issuance of a cease-and-desist order. Upon notice from any agency or individual authorized to enforce this section, occupancy or operation of any structure or property where any simulated gambling device is being used or operated in violation of this section 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 the section. Failure to comply with the

terms and conditions of a cease and desist order issued pursuant to this section shall constitute an additional violation of this section. 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.

- (2) By citation for civil penalties, as provided in the City of Bellevue Code, as it may be amended. Civil penalties assessed pursuant to this subsection shall be \$250.00 per violation per day for each violation.
- (3) A violation of this Article that is a civil violation may be reclassified to a misdemeanor of the second degree, punishable by up to 60 days imprisonment in the City jail and a fine of up to five hundred dollars (\$500.00), if, at the time of the violation:
 - a. The violator manages, supervises, maintains, provides, produces, possesses, or uses five or more simulated gambling devices for commercial, promotional, or pecuniary gain or purpose;
 - b. The violator has one or more prior convictions for a violation of this article or has been found, on one or more occasions, to have committed a violation of this Article. For the purpose of this subsection, "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered. A person may be found to have committed a violation of this article by any court or board empowered to impose a sanction for violation of this Article.
 - c. The violator has one or more prior convictions for a violation of any provision of Chapter 849, Florida Statutes. For the purpose of this subsection, "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered;
 - d. The violator has previously entered in any pretrial intervention program or diversion program for any violation of this Article, a substantially similar ordinance of another jurisdiction, or any provision of Chapter 849, Florida Statutes; or
 - e. The violator is in violation of a cease-and-desist order issued pursuant to this Article at the time the violations occur.
- (4) By an action for injunctive relief through a court of competent jurisdiction. An action for injunctive relief may be brought by the City Commission, the State Attorney, or any substantially affected person. If such action is successful, a judgment for reasonable attorney's fees and costs may be awarded by the court.
- (5) Any person against whom a civil penalty is assessed pursuant to this Article shall be prohibited from applying for any certificate of occupancy for any property until such civil penalty has been paid in full. Prohibitions against an application for a certificate of occupancy contemplated in this section shall not become effective until the judgment requiring such prohibition becomes final.

SECTION 3. CONFLICTS. In the event that the provisions of this ordinance are in conflict with any other City ordinance, then the provisions of this Ordinance shall prevail.

SECTION 4. SEVERABILITY. It is hereby declared to be the intent of the City Commission of the City of Belleview that if any section, subsection, clause, phrase, or provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this ordinance.

SECTION 5. REPEAL OF ORDINANCES. All ordinances or parts of ordinances, in conflict with this ordinance are, to the extent of such conflict, hereby repealed.

SECTION 6. INCLUSION IN CITY CODE. It is the intention of the City Commission that the provisions of this ordinance shall become and be made a part of the Code of Ordinances for the City of Belleview, Florida; that the sections of this ordinance may be renumbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section," "article," or other appropriate designation.

SECTION 7. EFFECTIVE DATE. This Ordinance shall become effective immediately upon adoption.

CERTIFICATE OF ADOPTION AND APPROVAL

The above and foregoing ordinance was duly read and approved upon **First Reading** by a _____ vote of the City Commission of the City of Belleview, Florida, at a Regular Meeting held on September 5, 2023. Said ordinance was duly read, passed, and adopted upon **Final Reading** by a _____ vote of the City Commission of the City of Belleview, Florida at a Public Hearing held on September 9, 2023.

CHRISTINE DOBKOWSKI
Mayor

Attest:

MARIAH MOODY
City Clerk
Approved as to Form and Legal Sufficiency
For the use and Benefit of the City of Belleview Only:

FREDERICK E. LANDT, III
City Attorney

CERTIFICATE OF ADVERTISING

I HEREBY CERTIFY that foregoing Ordinance was advertised for a Public Hearing in the September

7th edition of the Voice of South Marion newspaper in accordance with Florida Statutes.

Mariah Moody
City Clerk