

INTRODUCED BY:
Mayor Pruette and
Councilor Jolly



ORDINANCE NO. 2011-01

A BILL TO BE ENTITLED

**AN ORDINANCE OF THE CITY OF NEPTUNE BEACH, FLORIDA,
AMENDING THE CODE OF ORDINANCES CHAPTER 5 AMUSEMENTS AND
ENTERTAINMENTS, ARTICLE II. VIDEO GAME PARLORS, AND
PROVIDING AN EFFECTIVE DATE.**

Whereas, the City Council of the City of Neptune Beach, Florida has determined that it is necessary to amend the following:

Now, Therefore, be it ordained by the City Council of Neptune Beach, Florida:

Section 1. Chapter 5 Amusements And Entertainments Article II. ~~Video Game Parlors Adult Arcade Amusement Center, Electronic Game Promotions And Family Amusement Arcade~~ shall be amended as follows:

**ARTICLE II. VIDEO GAME PARLORS ADULT ARCADE AMUSEMENT CENTER,
ELECTRONIC GAME PROMOTIONS AND FAMILY AMUSEMENT ARCADE**

Sec. 5-26 Purpose and intent Definition

~~As used in this article, the term "video game parlor" means any video game establishment, convenience store, sandwich shop or other establishment or store which has a coin or token operated video game, pinball machine or other recreational machine or device available for operation by the public. (Code 1959, § 16-63(a))~~

~~The provisions of these regulations are to regulate adult arcade amusement centers, so as to protect the public health, safety and welfare. and to regulate the use of electronic means to effect giveaways through drawings by chance conducted in connection with the sale of a consumer product or service, sweepstakes, and game promotions that do not otherwise violate Florida law. This regulation includes but is not limited to electronic equipment used to display the results of a drawing by chance conducted in connection with the sale of a consumer product or service or game promotion by simulating a game or games ordinarily played on a slot machine. It also is intended to regulate the use of electronic equipment to conduct drawings by chance conducted in connection with the sale of a consumer product or service and game promotions, and to regulate all Operators (as defined herein) who utilize electronic equipment for that purpose in accordance with the provisions of sections 849.0935 and 849.094, Florida Statutes, regardless of whether said Operators are required to register with the State of Florida pursuant to section 849.094, Florida Statutes.~~

~~Cross references: Definitions and rules of construction generally, § 1-2.~~

~~Sec. 5-27. Operation of games by persons under sixteen. Definitions~~

~~No person under the age of sixteen (16) years shall be allowed or permitted by the operator of a video game parlor to play or operate any coin or token operated game, machine or device on school days during the school year during the hours of 8:00 a.m. to 4:00 p.m. Monday through Friday, unless such person is accompanied by a parent or guardian.
(Code 1959, § 16-63(b))~~

Adult arcade amusement center definition in Chapter 27, article 1

Adult arcade amusement machine or machine means an electronic, mechanical, coin, currency, ticket, token, card or other similarly operated, computer, video or other similar machine, device or game which operates on the insertion of money, coin, or other type of monetary consideration or requires the payment of monetary consideration for its operation and which, whether by application of skill or application of the element of chance or both or by any other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any credit, allowance or thing of value. The presence of a device as described above that requires the payment of monetary consideration for its operation shall result in the presumption that such machine is an adult arcade amusement machine as defined herein. This definition shall not include Electronic Equipment as defined in this Chapter.

Amusement game or game shall mean any individual measure of play as indicated by an adult arcade amusement machine. Multiple games may be played by a single activation of the machine with the machine rendering the results of the games played without the decrementing of additional points or the payment of additional consideration.

Application of skill shall mean the ability of the player, through the application of any of the skill factors listed in this Chapter, to alter the payout percentage of an amusement game by not less than 25% over a completely random outcome determined as provided in this Chapter.

Coupon means a printed instrument that is a representation of points available for merchandise redemption. A coupon may not be redeemed for anything other than merchandise, as defined herein.

Family Amusement Arcade see definition in Chapter 27, article 1

Electronic game promotions see definition in Chapter 27, article 1

Merchandise means an object of value available for sale to the general public on the premises of the adult arcade amusement center or via catalogs or kiosks produced by an adult arcade amusement center other than alcoholic beverages and cash. The general public must be able to discern: (1) the points required to redeem the merchandise; and (2) the purchase price of the merchandise.

Minor means an individual under the age of eighteen (18) years.

Operator means any Person in whose name a drawing by chance conducted in connection with the sale of a consumer product or service, sweepstakes, or game promotion that utilizes Electronic Equipment is conducted.

Payout percentage means the theoretical portion of played points retained by a machine over a period of time as determined by a licensed testing laboratory.

Permit Holder means the Operator in whose name the City has issued a permit under this Chapter.

Points means a unit of entitlement for play of an adult arcade amusement machine created by either: (1) the conversion of coins, bills, tickets, or vouchers when inserted into an adult arcade amusement machine; or (2) the results of a played game.

Premises means the structure, building, edifice, or location, along with its grounds, in or upon which the Operator conducts adult amusement center, drawings by chance conducted in connection with the sale of a consumer product or service, sweepstakes or game promotions using Electronic Equipment.

Promotional points means points that are provided free of charge by the adult amusement arcade center to patrons.

“Rules” means the restrictions and covenants governing the operation of the drawing by chance, sweepstakes, or game promotion.

Slot machine means any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central server system, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any monetary consideration whatsoever, including the use of any electronic payment system, is available to play or operate, the play or operation of which, including any element of chance, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually. Slot machines may use spinning reels, video displays, cathode ray tubes, microprocessors or other similar technology, and have as their object, the presentation or lining up, arrangement, or juxtaposition of symbols, alpha-numeric signs, colors, or figures to determine a result or outcome.

To the extent not defined in this section, the definitions utilized in sections 849.0935 and 849.094, Florida Statutes shall be applicable to all terms used in this Chapter.

~~Sec. 5-28.—Posting of Regulations.~~ **Skill-based Adult Arcade Amusement Machine Operation Requirements.**

~~The operator of a video game parlor shall place a sign of sufficient size and at an adequate location to be read by anyone entering the video game parlor stating the prohibition established by this article.~~

Except as provided in Section 5-28 below, in order for an adult arcade amusement machine authorized by Florida law pursuant to section 849.161(1)(a)1., Florida Statutes, to lawfully exist and operate within the geographical boundaries of Neptune Beach, each such machine must meet the following requirements:

- (a) Be located on the premises, as defined in this Chapter, of an adult arcade amusement center licensed by the City pursuant to this Chapter;
- (b) Operate by means of the insertion of a coin;
- (c) Incorporate into the game the application of skill required by this Chapter; and
- (d) Award only coupons or points to the player.

Adult arcade machines may also operate via the insertion of a token, card, ticket, currency, or other electronic or mechanical contrivance constituting the payment of monetary consideration provided it also operates by means of the insertion of a coin. Any coupons generated by a skill-based machine authorized under this section may only be redeemable for merchandise.

Sec. 5-29. Exemption.

Nothing in this Chapter shall be interpreted to apply to a Family Amusement Arcade.

Sec. 5-30. -Measure and Testing Application of Skill

The application of skill factor required under section 5-27 of this Chapter shall be measured and certified by an independent testing laboratory licensed by the State of Florida pursuant to Chapter 551, Florida Statutes. In measuring a player's ability to alter the percentage through the application of skill for the purposes of this Chapter, the independent testing laboratory shall apply the following procedures:

(a) Measure the payout percentage of the subject game based on a completely random outcome and without any application by the player of any skill factors that the independent testing laboratory will apply in making the measurement under subsection (b) below.

(b) Measure the payout percentage of the subject game through the exercise by the player of all skill factors available to optimize the payout percentage to the player, including but not limited to all applicable skill factors such as complete knowledge of the game, adherence to all probability based strategies, optimum manual dexterity and/or optimum decision making ability.

(c) Measure the percentage decrease in the payout percentage determined under subsection (b) over that determined under subsection (a).

Sec. 5-31. Minors Prohibited from Playing Adult Arcade Amusement Machines.

No person under the age of 18 years shall be permitted to play an adult arcade amusement machine or be on the premises of an adult arcade amusement center. All adult arcade amusement machines on the premises of the adult arcade amusement center shall each bear a sticker, at least three inches in diameter, which clearly and legibly says "Play by Minors Prohibited".

Sec. 5-32. Permitting.

The following shall apply relative to permitting of any adult amusement arcade center:

(a) Permit Required. All adult arcade amusement centers located within the geographic boundaries of Neptune Beach shall obtain an adult arcade amusement center permit issued by the city manager or designee as a prerequisite to the initial operation of an adult arcade amusement center.

(b) Permits Limited. The total number of permits issued pursuant to this Chapter for adult arcade amusement centers and electronic game promotions within the City of Neptune Beach shall be limited to no more than two (2). Each location must be more than eight hundred (800) feet from another permitted location. Measured by following the shortest route of ordinary pedestrian travel along public thoroughfares from the main entrance of the proposed place of business to the other main entrance.

(c) Permit Form and Conditions. The application for an adult arcade amusement center permit must be on a form approved by the city manager or designee and City of Neptune Beach Police Department,

and accompanied by satisfactory proof of (1) licensure of the pari-mutuel permittee's premises pursuant to Ch. 550, Florida Statutes, and (2) payment by the applicant of the applicable business tax receipt.

(d) Permit Issuance. Upon the submission of a complete and accurate application complying with the terms of this section, the city manager or designee shall issue an initial permit for the period from the date of the beginning of operations until the following September 30. After the permit for the initial year or partial year of operation, renewal permits with a term of one (1) year shall be issued to the permittee on or before each October 1 upon submission of required documentation and payment of the applicable permit fees.

(e) Certain Convictions Prohibited. No adult arcade amusement center occupational permit shall be issued to an applicant if any person with an ownership interest in the business operating the adult arcade amusement center has been convicted of a violation of a federal, state or local law, statute or ordinance pertaining to gambling or any other crime involving moral turpitude within seven (7) years preceding the date of the filing of the license application.

(f) Review and approval. Except as provided for in subsection (c) above, within sixty (60) days of receipt of an Applicant's completed permit application, the city manager or designee shall grant or deny the application. If any principal, officer, shareholder or director of the Operator has a pending criminal case for an enumerated crime the City may delay its grant or denial of the permit until sixty (60) days after the final judgment in the case. If an Applicant satisfies all permit filing requirements and is not ineligible, the city manager or designee shall approve the application.

(g) Denial of Permit. An Applicant whose permit application is denied may reapply at any time by completing all steps of the application procedure. The decision of the city manager shall constitute final action subject to judicial review. Any appeal of a permitting decision shall be made within fifteen (15) calendar days of denial by filing a written notice of appeal with the city manager or designee. Failure to file written notice of appeal within the prescribed time period constitutes a waiver of the right to appeal.

(h) Revocation of Permit. The City may revoke a permit for violation of any provision of this Chapter. Prior to revocation, the City shall provide to the permit holder, through their individual in Neptune Beach authorized to accept notices from the City, the following:

- (1) A written notice of intent to revoke the permit,
- (2) A fourteen (14) calendar day opportunity to cure the alleged violation, and
- (3) An opportunity to be heard by city council prior to revocation.

Revocation shall not take place before twenty one (21) days after a notice of revocation, opportunity to cure, and opportunity to be heard is delivered to the permit holder. The decision of the city council shall constitute final action subject to judicial review. Any appeal of a revocation decision shall be made within fifteen (15) calendar days of revocation by filing a written notice of appeal with the city manager or designee. Failure to file written notice of appeal within the prescribed time period constitutes a waiver of the right to appeal.

Sec. 5-33. Machine Registration Requirements.

Adult arcade amusement machines, as defined in this Chapter, shall be registered as follows:

(a) The permittee is required to maintain on its premises a complete inventory, along with serial numbers or equivalent identification, as set forth in subsections (d) and (e) below, the adult arcade amusement machines in operation on the premises of the adult arcade amusement center at all times. The initial application for permit shall include a certificate of inspection by the City permitting administrator of the inventory, along with serial numbers or equivalent of identification, as set forth in subsection (d)

and (e) below, of the machines that the permittee intends to put into operation when the adult arcade amusement center begins its business activities.

(b) Each renewal permit application shall contain a certificate of inspection of updated inventory, along with serial numbers or equivalent identification, as set forth in subsection (d) and (e) below, of the machines that the permittee intends to put into operation when the adult arcade amusement center begins its business activities under the renewal license.

(c) Before a new adult arcade amusement machine is put into operation at the adult arcade amusement center, the permittee shall notify the City of the addition of the machine to the inventory and update its inventory accordingly.

(d) Upon review of the inventory of machines under subsections (a), (b) and (c) above, the City shall enter each machine into an adult arcade amusement machine registry that the license administrator shall create. For each machine registered, the permit administrator shall cause to be issued and delivered to permittee for each machine within seven (7) days of the notification required under section (c) a numbered metal or plastic decal. The registration decal for each machine shall be attached thereto and in plain view at all times. Registration decals are not transferable. The failure of any machine to display a current registration decal shall be a violation of this section and subject to enforcement action by the City.

(e) The inventory of machines under subsections (a), (b) and (c) above shall provide the following information: the manufacturer(s); the serial number(s); common name, type or description of the game played on the machine. The registration decal shall contain the inventory number of the machine.

(f) Each inventory of machines submitted under subsections (a), (b) and (c) above shall be accompanied by a certificate issued by an independent testing laboratory licensed by the State of Florida pursuant to Chapter 551, Florida Statutes, certifying that the game played by the skill-based adult arcade amusement machines identified in the inventory meet the application of skill requirement contained in sections 5-27, 5-28 and 5-30 of this Chapter.

Sec. 5-34. Record Keeping Requirements.

The following records shall be maintained in the administrative office of each adult arcade amusement center:

(a) The name, address, telephone numbers, date of birth, driver's license number, and principal occupation of every person with a 10% or greater ownership interest in the business of the adult arcade amusement center;

(b) A copy of the license issued for the pari-mutuel permittee by the State of Florida pursuant to Ch. 550, Florida Statutes;

(c) A current inventory of machines in operation on the premises; and

(d) A current certification of compliance issued by an independent testing laboratory licensed pursuant to Chapter 551, Florida Statutes, for each game played by the skill based machines listed in the inventory.

Sec. 5-35. Enforcement.

(a) The City of Neptune Beach shall have the right to pursue all legal and equitable remedies necessary to ensure full compliance with this Chapter including but not limited to injunctive relief.

(b) Permittees shall have a private right of action to pursue all legal and equitable remedies necessary to ensure full compliance with this Chapter against any other permittee, including but not limited to injunctive relief.

Sec. 5-36. Business Tax Receipt; Adult Arcade Amusement Machine Registration Fees.

The following fees shall be assessed in connection with operation of any adult arcade amusement center:
(a) Notwithstanding any other provision of the Ordinance Code, and in accordance with Chapter 205 Florida Statutes, the exclusive annual business tax receipt for each licensed adult arcade amusement center shall be \$40.00 per day of operation, payable by the licensee on or before October 1 of each year for the following one (1) year operational period beginning on October 1. In any partial year of operation, the annual occupational license tax shall be prorated from the beginning date to the following September 30.

(b) The annual machine registration fee shall be \$50.00 per machine payable by the permittee on or before October 1 of each year for the following one (1) year operational period beginning on October 1. If a machine is registered after October 1, then the annual registration fee shall be prorated from date of registration to the following September 30.

Sec. 5-37. Business License; Adult Arcade Amusement Machine Registration Fees.

The following fees shall be assessed in connection with operation of any adult arcade amusement center:

(a) Notwithstanding any other provision of the Ordinance Code, and in accordance with Chapter 205 Florida Statutes, the exclusive annual business tax receipt for each licensed adult arcade amusement center shall be \$40.00 per day of operation, payable by the licensee on or before October 1 of each year for the following one (1) year operational period beginning on October 1. In any partial year of operation, the annual occupational license tax shall be prorated from the beginning date to the following September 30.

(b) The annual machine registration fee shall be \$50.00 per machine payable by the permittee on or before October 1 of each year for the following one (1) year operational period beginning on October 1. If a machine is registered after October 1, then the annual registration fee shall be prorated from date of registration to the following September 30.

Sec. 5-38. Penalty.

Violation of this Chapter by a licensee or any unlicensed person, company or entity shall be punishable by imposition of a civil penalty not to exceed \$500.00 per machine per day. Each day the violation exists shall constitute a separate violation for the purposes of this Chapter and may be punishable as such.

Sec. 5-39. Right of Entry.

The City of Neptune Beach shall have the right to enter and inspect the public spaces of the premises at any time to ensure compliance with the provisions of this Chapter or any other ordinances within their authority, including but not limited to the right to enter the premises and to select and remove any adult arcade amusement machine(s) to inspect, test and/or have tested to determine compliance with this Chapter.

Sec. 5-40. Severability.

In the event that any portion of this Chapter is declared invalid, unenforceable, unconstitutional or void, or is permanently enjoined, or if the existence of any provision of this Chapter would result in any other portion of any Chapter of the Ordinance Code being held to be invalid, unenforceable, unconstitutional or void, and the court does not sever such invalid portion of this section, then the invalid portion of this Chapter is repealed and invalid. It is the specific intent that the invalidity of any portion of this Chapter shall not affect any other section, subsection, paragraph, subparagraph, sentence, phrase, clause or word of this Chapter or the Ordinance Code.

Electronic Game Promotions

Section 5-41. Intent

To regulate the use of electronic means to effect giveaways through drawings by chance conducted in connection with the sale of a consumer product or service, sweepstakes, and game promotions that do not otherwise violate Florida law. This regulation includes but is not limited to electronic equipment used to display the results of a drawing by chance conducted in connection with the sale of a consumer product or service or game promotion by simulating a game or games ordinarily played on a slot machine. It also is intended to regulate the use of electronic equipment to conduct drawings by chance conducted in connection with the sale of a consumer product or service and game promotions, and to regulate all Operators (as defined herein) who utilize electronic equipment for that purpose in accordance with the provisions of sections 849.0935 and 849.094, Florida Statutes, regardless of whether said Operators are required to register with the State of Florida pursuant to section 849.094, Florida Statutes.

Sec. 5-42. General Prohibition.

Except as expressly regulated and permitted by this Chapter no Person, other than as defined herein, shall conduct a drawing by chance pursuant to s. 849.0935, Florida Statutes, sweepstakes or game promotion pursuant to s. 849.094, Florida Statutes, or any other game of chance on any electronic or mechanical device provided by an operator of the game of chance which displays the result by simulating a game or games ordinarily played on a slot machine.

Sec. 5-43. Permitting and Fees.

(a) Permit Required. Every Operator using Electronic Equipment to conduct a drawing by chance conducted in connection with the sale of a consumer product or service, sweepstakes or game promotion shall obtain a permit from the city manager or designee for each Premises. Each permit is valid only for the Operator and the Premises named in the permit. Each permit is valid for one year.

(b) Permits Limited. The total number of permits issued pursuant to this Chapter for adult arcade amusement centers and electronic game promotions within the City of Neptune Beach shall be limited to no more than two (2). Each location must be more than eight hundred (800) feet from another permitted location. Measured by following the shortest route of ordinary pedestrian travel along public thoroughfares from the main entrance of the proposed place of business to the other main entrance. All applications for the permitting of a new business shall, in addition to all permitting requirements set forth herein, be subject to the following procedures:

(1) Each Applicant shall be allowed to submit only one (1) application for each available permit. An Applicant shall be deemed to be the same as another Applicant and each of their applications shall be disqualified, if such Applicant is the same Person or consists of any variation of the same Person as another Applicant.

(2) The Applicant shall proceed with complying with all other requirements set forth herein. The City's acceptance of the application as provided herein shall not constitute the City's approval of the application, including for example, for purposes of determining the application's completeness.

(c) Application Materials Required for Permit.

(1) Applicant shall file with the City the following materials:

(i) a copy of a current of the City of Neptune Beach and Duval County Business Tax Receipt in the name of the Applicant including the business address;

(ii) a copy of Applicant's proposed Rules governing the drawing by chance, sweepstakes or game promotion which includes the odds of winning and the prize table;

(iii) if the application is for a sweepstakes or game promotion over \$5000, a copy of Applicant's certification of a bond or trust account provided to the Florida Department of Agriculture and Consumer Services, if required; and

(iv) a complete list of all products and services offered and the prices charged therefor.

In addition, for and every principal, officer, shareholder and director of the Operator, a fingerprint card and letter certifying the results of a criminal background check generated by the City of Neptune Beach Police Department or Florida Department of Law Enforcement.

(2) Applicant shall provide a sworn affidavit containing the following:

(i) the identity of the Applicant and if the Applicant is:

A. an individual, his name, residence address, and date of birth;

B. an unincorporated organization, the names, dates of birth, and residence addresses of its principals; or

C. a corporation, the corporate name, state of incorporation and the names, dates of birth, and residence addresses of its principal officers, directors, and shareholders;

D. a limited liability company, the company name, state of incorporation and the names, dates of birth and residence addresses of its members and managers;

(ii) a description, including the number of pieces of the Electronic Equipment;

(iii) a statement of whether any of the individuals listed has, within the five-year period immediately preceding the date of the application, been convicted of any felony under the laws of Florida, the United States, or any other state, or has had adjudication withheld, and, if so, the particular criminal act involved and the place of conviction;

(iv) the street address of the Premises where the drawing by chance conducted in connection with the sale of a consumer product or service, sweepstakes or game promotions are to be conducted;

(v) if the Applicant is a branch, chapter, lodge, or other local unit of a charitable organization or corporation, the name of the primary organization and the street address of its principal office; and

(vi) the name and address of an individual who is authorized to receive notices from the City.

(vii) a statement certifying that all information on the application and any attachments thereto is true and that the Applicant understands that any misstatement of material fact in the application will result in the denial of the permit or, if it has been issued, in the suspension or revocation of the permit.

(viii) A certification that the computer software that is used by the Operator to conduct a drawing by chance in connection with the sale of a consumer product or service, sweepstakes or game promotion has been tested by an independent testing laboratory that has verified the manner that the software works. That verification of the manner that the software works shall comply with all applicable state and local laws, including this Chapter.

(3) Applicant shall file with the City the following:

(i) A copy of the sworn affidavit described in subsection (2) above;

(ii) A complete list of all products and services offered and the prices charged therefore;

(iii) A verification that the prices charged for the products and/or services constitute a reasonable market value;

(iv) A copy of the certification report issued by an independent testing laboratory that describes and verifies the manner in which the software works.

(e) Application Fee. Each Applicant shall remit a non-refundable application fee of \$500. This fee shall pay for the time and expense of the Jacksonville Sheriff's Office and the City in enforcing the provisions herein, reviewing and ruling on the application, issuing the permit, and, if applicable, hearing any appeals.

(f) Review of Application.

(1) Duration of Review.

(i) By City for Permit. Within sixty (60) days of receipt of an Applicant's completed permit application, the City of Neptune Beach shall grant or deny the application. If any principal, officer, shareholder or director of the Operator has a pending criminal case for an enumerated crime the City may delay its grant or denial of the permit until sixty (60) days after the final judgment in the case.

(ii) By City of Neptune Beach Police Department for Criminal History. Within thirty (30) days of receipt from a principal, officer, shareholder or director of the Operator of a legible copy of fingerprints, social security number, full name, current address, sex, race, recent photograph, and date of birth, the City of Neptune Beach Police Department shall conduct a criminal history check, certify the results in writing,

and provide a copy of the results to the Applicant. If necessary, the City of Neptune Beach Police Department may solicit assistance from other agencies to complete the criminal history check.

(2) Eligibility of Applicant. An Applicant is ineligible for a permit if:

(i) within five years of the date of the application, Applicant has been convicted of any felony under the laws of Florida, the United States, or any other state unless said violation would not constitute a crime in Florida, or has had adjudication for same withheld,

(ii) within three years of the date of the application, has had a permit under this Chapter revoked or been convicted for a violation of this Chapter,

(iii) the prices to be charged for the product(s) or service(s) offered, as listed on the permit application, do not constitute a reasonable market value, or

(iv) the application materials are incomplete or untruthful.

The City shall deny the permit for any of the above reasons. If an Applicant satisfies all permit filing requirements and is not ineligible, the City shall approve the application.

(g) Denial of Permit. An Applicant whose permit application is denied may reapply at any time by completing all steps of the application procedure, including payment of a new application fee. Any appeal of a permitting decision shall be made within fifteen (15) calendar days of denial by filing a written notice of appeal with the city manager or designee. Failure to file written notice of appeal within the prescribed time period constitutes a waiver of the right to appeal.

(h) Permit fees. The eligible Applicant, before receiving the permit, shall pay:

(1) An Electronic Drawing and Game Promotion Fee of \$2,000 for Premises with more than five (5) pieces of Electronic Equipment, or \$200 for Premises with five (5) or fewer pieces of Electronic Equipment. The fee is for one year during which the permit is valid and shall be paid each time the permit is renewed. If an eligible Applicant fails to pay this fee on or before the thirtieth (30th) day after approval, availability, and notice of the permit authorization, the application shall be deemed denied.

(2) An annual fee of \$50 per piece of Electronic Equipment. If the eligible Applicant fails to pay the fee on or before the thirtieth (30th) day after approval, availability, and notice of the permit authorization, the application shall be deemed denied.

The fees collected pursuant to this subsection shall be contributed towards the costs associated with the inspection and examination by the City, Electronic Equipment, and records of the Permit Holder to ensure compliance with this Chapter.

(i) Duration of Permit. A permit shall be valid for one (1) year from the date of issuance.

(j) Renewal of Existing Permit. Existing permits shall be renewed upon compliance with this Chapter, notwithstanding the total number of permits issued. The Permit Holder shall apply for the renewal permit no later than sixty (60) days and no sooner than one-hundred twenty (120) days before the expiration of the current permit. The renewal permit application shall include all the materials and the application fee required for the issuance of an original permit, and shall include evidence of current lawfully existing operations consistent with the requirements of this Chapter. Renewal permit applications shall be processed using the same procedure and standards as required for review of an original permit application but shall be processed within 30 days. Upon approval, Renewal permit applicants shall pay the same fees as set forth in subsection (h) above and said renewals shall be deemed denied if an eligible Applicant fails to pay these fees on or before the thirtieth (30th) day after approval, availability, and notice of the permit authorization.

(k) Restrictions on Transfers of Permits.

(1) Transfer to Another Entity. Permits may be transferred no more than one time, to another entity, upon written notification and evidence of the conveyance to the city manager or designee. Any change in a majority or controlling interest in any Permit Holder shall be deemed an impermissible transfer of the permit, except in the event of the one-time transfer, upon written notification and evidence of such transfer to the city manager or designee, as provided herein.

(2) Transfer to Another Premises. Permits may be transferred to another premise upon application. The transferred location shall be approved within fifteen (15) days of submittal of a complete application (including all required supplemental information, including but not limited to any required certified maps

depicting applicable locations and distances), if such use is a permitted use in an approved zoning district, as set forth in Chapter 27, Unified Land Development Code and in all other applicable provisions of the Ordinance Code. Otherwise, the application shall be denied.

(1) Revocation of Permit. The City may revoke a permit for violation of any provision of this Chapter or due to a Permit Holder's cessation of the use of Electronic Equipment during its normal business hours for at least fourteen (14) consecutive days. Prior to revocation, the City shall provide to the Permit Holder, through their individual in Neptune Beach authorized to accept notices from the City, the following:

- (1) A written notice of intent to revoke the permit.
- (2) A fourteen (14) calendar day opportunity to cure the alleged violation, and
- (3) An opportunity to be heard by city council prior to revocation.

Revocation shall not take place before twenty one (21) days after a notice of revocation, opportunity to cure, and opportunity to be heard is delivered to the Permit Holder. The council decision shall constitute final action subject to judicial review. Any appeal of a revocation decision shall be made within fifteen (15) calendar days of revocation by filing a written notice of appeal with the city manager or designee. Failure to file written notice of appeal within the prescribed time period constitutes a waiver of the right to appeal.

Sec. 5-44. Inspection of Premises.

During business hours, the City or their agents may enter the Premises for purposes of inspecting all areas of the Premises otherwise accessible to the general public, to ensure compliance with the provisions of this Chapter or any other ordinances within their authority, including but not limited to the right to enter the Premises and to select and remove any piece(s) of Electronic Equipment to inspect, test and/or have tested to determine compliance with this Chapter. The City may issue to the Permit Holder a show cause order requiring the production on Premises of documents or data relating to the game promotion. Production of the records or inventory shall only be for inspection and review to determine compliance with this Chapter. Within three (3) days of receipt of the show cause order the Permit Holder shall produce all requested records and inventory.

Sec. 5-45. Signage Requirements.

(a) Exterior of Premises. Exterior signage shall be limited to the advertisement of the consumer product and/or service sold on the Premises, and that a sweepstakes held in connection with the sale of said consumer product and/or service is offered. No signs shall be posted on the exterior of the Premises that suggest gambling takes place on the Premises or displays any image commonly associated with slot machines. All signage shall be further subject to Article VI, Chapter 27, Unified Land Development Regulations (Advertising Regulations).

(b) Interior of Premises. The Permit Holder shall conspicuously post the name of the Permit Holder, a description of all products and services sold, and the complete rules for all drawings by chance conducted in connection with the sale of a consumer product or service, sweepstakes or game promotions at the Premises' front or main counter. Rules for all game promotions shall include the following language in at least 26 point font: "State and local law prohibits this establishment from requiring an entry fee, payment, or proof of purchase as a condition of participating. No donation or contribution is required. You may obtain free entries upon request from any employee on the premises." The Permit Holder shall also post a sign which shall include the following language in at least 26 point type: "The video displays are for amusement and entertainment only. The video displays do not determine the result of your sweepstakes entries." The Permit Holder shall affix signage that shall include the following language in at least 10 point type on each piece of Electronic Equipment: "The video displays are for amusement and entertainment only. The video displays do not determine the result of your sweepstakes entries." A complete copy of the Rules, prizes, and odds of winning shall be made available on request without cost. Any consumer product or service offered for sale shall be identified by description and price by

conspicuous posting. A copy of the permit shall be posted conspicuously at the main counter or at the entrance.

Sec. 5-46. Limitations on Operation of Business.

(a) Alcoholic Beverages. Permit Holders shall not sell or permit any individual to consume or possess any alcoholic beverages on any Premises with five (5) or more pieces of Electronic Equipment.

(b) Minors. Permit Holders shall not permit Minors to enter the Premises except Minors employed at Premises where there are five (5) or fewer pieces of Electronic Equipment.

(c) Conditions of Alternative Means of Entry. Entries that are available without purchase or financial donations shall be made available on request. The Permit Holder shall not impose any condition on the provision of such entries other than proof of identity by government issued identification from any state. The Permit Holder shall not limit the number of such entries offered per day per individual to less than the equivalent amount of entries that Permit Holder provides to individuals who make a donation, or purchase of a product or service valued at least \$1.00.

(d) Limitation on Electronic Equipment. Permit Holders shall not operate more than fifty (50) pieces of Electronic Equipment except that Permit Holders operating a drawing by chance offered in connection with the sale of a consumer product or service, sweepstakes or other game promotion using Electronic Equipment. Replacing an existing piece of Electronic Equipment due to a defect or upgrade shall not be deemed a reduction pursuant to this subsection, provided that such replacement occurs within thirty (30) days.

(e) Zoning. Game promotions utilizing Electronic Equipment shall be permitted or permissible by special exception, as applicable, as set forth in Chapter 27, Unified Land Development Code, subject to all applicable requirements, restrictions and limitations set forth in the Ordinance Code.

(f) Additional Restrictions. No drawing by chance in connection with the sale of a consumer product or service, sweepstakes or game promotion shall:

_____ (1) design, engage in, promote, or conduct a game wherein the winner may be predetermined or the game may be manipulated or rigged;

_____ (2) arbitrarily remove, disqualify, disallow, or reject any entry;

_____ (3) fail to award any prize offered;

_____ (4) print, publish, or circulate literature or advertising material which is false, deceptive, or misleading; or

_____ (5) require an entry fee, payment, or proof of purchase as a condition of entering.

(g) Additional Requirements. An Operator conducting a drawing by chance in connection with the sale of a consumer product or service, sweepstakes or game promotion shall be required to:

_____ (1) maintain a list of the names and addresses of all persons who have won prizes which have a value of more than \$25 for one (1) year.

_____ (2) maintain a trust account or bond in an amount equal to the total announced value of the prizes offered or \$50,000, whichever is less.

Sec. 5-47. Safety and Security Requirements.

(a) On Premises, the Permit Holder shall maintain the following security devices and standards: a security camera system operating during business hours and capable of recording and retrieving an identifiable image;

(b) a drop safe or cash management device for restricted access to cash receipts where there are more than five (5) pieces of Electronic Equipment on the Premises;

(c) a conspicuous notice at all public entrances to Premises stating cash register contains limited amount of cash;

(d) at exits to Premises, height markers displaying height measures;

(e) a cash management policy limiting cash on hand;

(f) a silent alarm system capable of notifying law enforcement; and

(g) during nighttime hours when the Premises is open for business and where there are more than five (5) pieces of Electronic Equipment on the Premises, at least one licensed, armed security guard. The fact that a licensed armed security guard may not be required, is not intended to immunize or forgive a Permit Holder from any statutory or common law obligation to maintain reasonably safe premises at any time.

Sec. 5-48. Violations.

It shall be unlawful for any Person, Operator, Manager, or Permit Holder to violate any of the provisions of this Chapter.

Violations of different provisions of this Chapter shall constitute separate offenses. Each day a violation occurs shall constitute a separate offense.

A first violation of any of the provisions of this Chapter constitutes a civil infraction punishable by up to a \$300 fine. Any subsequent violation of any provision of this Chapter shall be punishable by up to a \$500 fine.

Sec. 5-49. Severability.

If any portion of this Chapter is determined to be invalid for any reason by a final nonappealable order of any court of competent jurisdiction, then it shall be severed from this act. All other provisions of this act shall remain in full force and effect.

Section 2. The Ordinance shall become effective immediately upon its final passage and adoption by the City Council.

VOTE RESULTS OF EMERGENCY READING:

Mayor Harriet Pruette	Yes
Vice Mayor Kara Tucker	Yes
Councilor Richard Arthur	Yes
Councilor John Jolly	Yes
Councilor Eric Pardee	No

Passed on First Reading this 24th day of January, 2011.



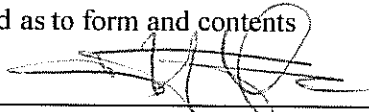
Harriet Pruette
Mayor

ATTEST:



Lisa Volpe, CMC
City Clerk

Approved as to form and contents



Christopher A. White, City Attorney