

MEMORANDUM

Agenda Item No. 4(A)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: January 23, 2013

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance prohibiting the use of
simulated gambling devices;
creating Article XI.5 of Chapter
21 of the Code

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman and Co-Sponsor Commissioner Juan C. Zapata.



R. A. Cuevas, Jr.
County Attorney

RAC/smm



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(Revised)

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Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(A)
1-23-13

ORDINANCE NO. _____

ORDINANCE PROHIBITING THE USE OF SIMULATED GAMBLING DEVICES; CREATING ARTICLE XI.5 OF CHAPTER 21 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; ESTABLISHING EXEMPTIONS; PROVIDING FOR PENALTIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, there is presently in Miami-Dade County an increasing proliferation of establishments that have computer or video displays of spinning reels 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”); and

WHEREAS, the use of simulated gambling devices is generally considered a form of casino gambling; and

WHEREAS, the Board of County Commissioners in promoting the health, safety, education, and welfare of the people of Miami-Dade County finds that Miami-Dade County has a compelling interest in protecting its residents, and in particular its elderly, economically disadvantaged residents and children from certain activities and influences which can result in irreparable harm, including simulated gambling devices; and

WHEREAS, Article X, Section 23 of the Florida Constitution was adopted at a statewide vote in 2004, and authorizes slot machine gaming only at certain eligible licensed facilities in Miami-Dade and Broward Counties, and such authorization is subject to the requirements and conditions set forth in Article X, Section 23 of the Florida Constitution, as well as in Chapter 551, Florida Statutes; and

WHEREAS, neither the Florida Constitution nor Florida Statutes currently authorize or permit slot machine gambling, simulated gambling devices, any other activity resembling slot machine gambling or any form of gambling involving computers in locations other than parimutuel facilities in Miami-Dade and Broward Counties; and

WHEREAS, the Board recognizes that establishments that have simulated gambling devices, including but not limited to devices that simulate slot machines, can deceive members of the public, including the elderly, the economically disadvantaged, and children, 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 have simulated gambling devices are adverse to the quality of life, commerce and community environment in Miami-Dade County; and

WHEREAS, in terms of the negative affects recited herein, there is little or no material difference between the effects of allowing slot machines and allowing the use of simulated gambling devices; and

WHEREAS, this Board must also protect residents who suffer from compulsive or problem gambling behavior; and

WHEREAS, there is often a correlation between establishments that have simulated gambling devices and disturbances of the peace and good order of the community, and the concurrence of these activities is hazardous and detrimental to the public health, safety and general welfare of the residents of Miami-Dade County; and

WHEREAS, some jurisdictions have attempted to use existing state laws to prohibit simulated gambling devices, but a local prohibition on such simulated gambling devices would strengthen regulation and close any alleged loopholes that may exist in state law, providing local law enforcement the best tools to 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, morals and welfare of the community and citizens thereof, it is necessary and advisable to prohibit the use of simulated gambling devices, except at licensed parimutuel facilities where slot machines are authorized by state law, or where otherwise exempted by law or ordinance; and

WHEREAS, this ordinance is enacted under the constitutional home rule authority of Miami-Dade County to preserve the peace and good order and safeguard the health, safety and general welfare of the residents of Miami-Dade County, and is intended to apply in both the incorporated and unincorporated area of Miami-Dade County,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing findings are incorporated by reference into this Ordinance and are approved.

Section 2. Article XI.5 of Chapter 21 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

XI.5. SIMULATED GAMBLING DEVICES

Sec. 21-140. Definitions. The following definitions shall apply to this part:

- (a) "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;
- (b) "Simulated gambling device" means any device that, upon connection with an object, is available to play or operate a computer simulation of any game, and which may deliver or entitle the person or persons playing or operating the device to a payoff. The following rules of construction apply to this definition of "simulated gambling device";
 - (1) The term "device" means any mechanical or electrical contrivance, computer, terminal, video or other equipment that may or may not be capable of downloading games from a central server system, machine, computer or other device or equipment. The term "device" also includes any associated equipment necessary to conduct the operation of the device.
 - (2) The term "upon connection with" means insertion, swiping, passing in range or any other technical means of physically or electromagnetically connecting an object to a device.
 - (3) The term "object" means a coin, bill, ticket, token, card or similar object obtained 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 simulation 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, 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 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.
- (c) "Slot machine" has the same meaning as specified in Chapter 551, Florida Statutes, as such may be amended from time to time.

Sec. 21-141. Intent. The intent of the Board in adopting this Article is to prohibit the possession, provision, use, management and supervision 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 Board 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, except at licensed parimutuel facilities or where otherwise authorized. 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.

Sec. 21-142. Applicability. This Article shall be applicable to incorporated and unincorporated areas of Miami-Dade County, with enforcement in the unincorporated area being the responsibility of Miami-Dade County and in the incorporated area being the responsibility of the municipalities.

Sec. 21-143. Prohibition of Simulated Gambling Devices. It is unlawful for any person to possess, provide, maintain, use, manage or supervise one or multiple simulated gambling devices in Miami-Dade County. Each individual act to possess, provide, maintain, use, manage or supervise each simulated gambling device constitutes a separate violation of this section.

Sec. 21-144. Exemptions. This Article does not prohibit:

- (a) 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) The ownership, possession, play, operation or use of any device expressly permitted by Florida law and not otherwise prohibited by the Florida Constitution.
- (c) Slot machines at licensed parimutuel facilities as authorized by Article X, Section 23 of the Florida Constitution and Chapter 551, Florida Statutes.
- (d) A religious or charitable organization from conducting fundraising activity involving gaming, provided the activity is not otherwise unlawful, and further provided that the religious or charitable organization does not conduct the activity more than twice in one (1) calendar year, the organization provides advance written notice to the Miami-Dade County Police Department of the date, time, place and nature of such activity and who will be conducting it.

Sec. 21-145. Conflict with State Law. Nothing in this Article is intended to conflict with the provisions of the Florida Constitution or Chapter 849, Florida Statutes, related to gambling. In the event of a conflict between this Article and the Florida Constitution or Chapter 849, then the provisions of the Florida Constitution or Chapter 849, Florida Statutes, as applicable, shall control.

Sec. 21-146. Penalties. A person who violates this Article shall be punished by a fine not to exceed \$500.00 or imprisonment in the County jail for not more than 60 days, or by both such fine and imprisonment.

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:



Jess M. McCarty

Prime Sponsor: Commissioner Sally A. Heyman

Co-Sponsor: Commissioner Juan C. Zapata