

City of South Daytona
Community Development Department

1672 S. Ridgewood Avenue • South Daytona, FL 32121 • 386/322-3022 • Fax 386/322-3018



MEMORANDUM

To: James L. Gillis Jr., City Manager

From: S. Laureen Kornel, AICP,
Community Development Director

Date: June 2, 2021

Re: Ordinance No. 2021-09 Clarifying and strengthening the City's regulations
associated with Amusement Centers

AGENDA ITEM

Item # D20

Date: July 27, 2021

Introduction

This is the Second and Final Reading and Public Hearing for Ordinance 2021-09 regarding Amusement Centers. The City Council approved the First Reading on June 8, 2021. This is a City initiated request to amend Article II, Section 2-2 and Article V, Sections 5.5(J)(2), 5.5(Table 2), 5.7(C)(15) and 5.8 of the Land Development Code (LDC) to clarify the amusement centers use to facilitate administration of land use.

Background

The proposed LDC amendment serves to supplement the Laws of Florida prohibiting gambling and the Code of Ordinances amendment to prohibit simulated gambling devices that is currently under review and adoption by the City. Staff has prepared the attached ordinance to update and strengthen the City's regulations associated with amusement centers to reduce the potential for store front casinos to operate within the City of South Daytona. The proposed amendment is expected to reduce the potential for criminal activity and public nuisances that can result from illegal gambling activities thereby ensuring the public health, safety, general welfare and interests of the citizens and business community of the City of South Daytona.

Analysis

The LDC criteria has been analyzed and provided in the attached Planning and Appeals staff report attached to this Memorandum as Exhibit A. The proposed amendment is consistent with the Comprehensive Plan and meets the criteria of the LDC. The PAB met to discuss this item on May 19, 2021, to discuss this item and unanimously voted (6-0) to recommend approval to the City Council.

Staff Recommendation

Staff recommends amending Article II, Section 2-2 and Article V, Sections 5.5(J)(2), 5.5(Table 2), 5.7(C)(15) and 5.8 of the Land Development Code (LDC) to clarify the amusement centers use to facilitate administration of land use. Attached as Exhibit B is Ordinance 2021-09 which achieves this purpose.

Attachments: Exhibit A – May 19, 2021 Planning and Appeals Board Staff Report
Exhibit B - Ordinance 2021-09

EXHIBIT A
PAB STAFF REPORT

STAFF REPORT

City of South Daytona Community Development Department

DATE: May 12, 2021

SUBJECT: Land Development Code Amendment clarifying regulations related to amusement centers

APPLICANT: City initiated

NUMBER: LDC 2021-11

PROJECT PLANNER: S. Laureen Kornel, AICP, Community Development Department

INTRODUCTION: This is an administrative request to amend Article II, Definitions, and Article V, Zoning Regulations of the Land Development Code (LDC) to clarify the amusement centers use to facilitate administration of land use. The Amusement Centers amendments include the following Sections of the Land Development Code:

LDC Sections	Proposed Amendments
Section 2-2	Add definitions relating to amusement games or machines
Section 5.5(J)(2)	Remove Amusement Centers as a permitted use and to permit amusement centers as a special exception in the Business General Commercial (BGC) zoning district
Section 5.5 (Table 2)	Revise references to amusement centers and amusements arcades
Section 5.7(C)(15)	Revise the criteria for amusement centers permitted as special exceptions
Section 5.8	Remove Amusement Centers as a special use.

BACKGROUND AND ANALYSIS: At the April 21, 2021, Planning and Appeals Board meeting, the Board reviewed and unanimously recommended a Code of Ordinances amendment prohibiting the use or operation of simulated gambling devices within the City of South Daytona. This action was in response to an increased number of requests for business tax receipts that could potentially permit illegal gambling. As part of the review for the Code of Ordinances amendment to prohibit simulated gambling devices, staff reviewed the amusement centers use regulations within the LDC. The proposed amendment serves to supplement the Laws of Florida prohibiting gambling and the Code of Ordinances amendment to prohibit simulated gambling devices. The LDC amendment, attached as Attachment 1, updates and strengthens the City's regulations

associated with amusement centers to reduce the potential for store front casinos to operate within the City of South Daytona.

CONCLUSION: In accordance with *Section 3.2(J)(1)* of the LDC, there are certain criteria that must be evaluated before adoption of a LDC amendment. The Planning & Appeals Board must consider the following criteria when making their recommendation to amend the LDC:

1. Identifies any provision of the LDC, Comprehensive Plan or other law relating to the proposed change and describes how the proposal relates to them.

The proposed amendments are consistent with the Comprehensive Plan and the LDC. Objective 5 of the Future Land Use Element of the Comprehensive Plan supports reviewing and updating the LDC as needed.

2. States factual and policy considerations pertaining to the recommendation.

The purpose of the amendment is to clarify the amusement centers regulations to reduce the potential for store front casinos to operate within the City of South Daytona and to align the LDC regulations with the Code of Ordinances regulations to prohibit simulated gambling devices. There are no other policy considerations pertaining to the recommendations other than what has been stated in the background and analysis of this report.

3. Includes the written comments, if any, received from the Development Review Committee.

Comments from the Development Review Committee have been incorporated into the proposed amendments.

The proposed amendment is expected to reduce the potential for criminal activity and public nuisances that can result from illegal gambling activities thereby ensuring the public health, safety, general welfare and interests of the citizens and business community of the City of South Daytona.

RECOMMENDATION: It is expected that the amendment will be reviewed by the City Council on June 8, 2021 (1st reading) and July 13, 2021 (2nd reading). It is recommended that the Planning and Appeals Board **APPROVE** LDC 2021-11, to amend the LDC to clarify the amusement centers use to facilitate administration of land use as shown in Attachment 1.

Attachment 1 – Proposed Draft Ordinance

EXHIBIT B

ORDINANCE NO. 2021-09

ORDINANCE NO. 2021-09

AN ORDINANCE OF THE CITY OF SOUTH DAYTONA, FLORIDA, AMENDING THE CITY OF SOUTH DAYTONA LAND DEVELOPMENT CODE TO REVISE REGULATIONS RELATED TO AMUSEMENT CENTERS AND AMUSEMENT GAMES OR MACHINES; AMENDING SECTION 2.2 OF THE LAND DEVELOPMENT CODE TO ADD DEFINITIONS RELATING TO AMUSEMENT GAMES OR MACHINES; AMENDING SECTIONS 5.5(J)(2) AND (3) OF THE LAND DEVELOPMENT CODE TO REMOVE AMUSEMENT CENTERS AS A PERMITTED USE AND TO PERMIT AMUSEMENT CENTERS AS A SPECIAL EXCEPTION IN THE BUSINESS GENERAL COMMERCIAL (BGC) ZONING DISTRICT; AMENDING SECTION 5.5, TABLE 2, OF THE LAND DEVELOPMENT CODE TO REVISE REFERENCES TO AMUSEMENT CENTERS AND AMUSEMENT ARCADES; AMENDING SECTION 5.7(C)(15) OF THE LAND DEVELOPMENT CODE TO REVISE THE CRITERIA FOR AMUSEMENT CENTERS PERMITTED AS SPECIAL EXCEPTIONS; AMENDING SECTION 5.8 OF THE LAND DEVELOPMENT CODE TO REMOVE AMUSEMENT CENTERS AS A SPECIAL USE; AND PROVIDING FOR RECITALS, ADMINISTRATIVE ACTIONS, CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, Chapters 166 and 163, *Florida Statutes*, include authority to enact regulations to protect the health, safety and welfare, and interests of the citizens of the City; and

WHEREAS, currently the City of South Daytona regulates amusement centers in several sections of its *Land Development Code* (“LDC”), which require clarification to facilitate administration of land use in the City; and

WHEREAS, the City of South Daytona Planning and Appeals Board, serving as the local planning agency, held a public hearing on the 19th day of May, 2021 on this proposed amendment to the *Land Development Code* and found the proposed amendment to be consistent with the City of South Daytona *Comprehensive Plan* and recommended approval of this Ordinance to the City of South Daytona City Council; and

WHEREAS, the City of South Daytona City Council finds the proposed amendment to the *Land Development Code* to be consistent with the provisions of the *Comprehensive Plan* of the City of South Daytona, and that the amendment is in the best interest and welfare of the citizens of the City to enact this Ordinance; and

WHEREAS, the City of South Daytona has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance, including but not limited to Section 166.041(3)(c)(2), *Florida Statutes*; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to

the original text, *** shall constitute ellipses to the original text and ~~strike through~~ shall constitute deletions to the original text.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, VOLUSIA COUNTY, FLORIDA THAT:

SECTION 1. Recitals. The foregoing recitals are true and correct and by this reference are hereby incorporated herein and made an integral part hereof as though fully set forth herein, and adopted as findings of the City Council of the City of South Daytona.

SECTION 2. Adding Definitions Relating to Amusement Games or Machines. Section 2.2 of the LDC is amended to read as follows:

12.1 Amusement game or machine means a game or machine operated only for the bona fide entertainment of the general public which a person activates by inserting or using currency or a coin, card, coupon, slug, token, or similar device, and, by the application of skill, with no material element of chance inherent in the game or machine, the person playing or operating the game or machine controls the outcome of the game. As used with respect to such term:

a. Card means a card other than a credit card or debit card:

1. Which is used to activate an amusement game or machine.
2. Which contains a microprocessor chip, magnetic stripe, or other means for storing, retrieving, and transferring information, which may include information regarding coupons or points that are won and that may be redeemed for merchandise.
3. Which is prefunded.
4. For which the prefunded value is reduced by the cost of play.

b. Game play means the process of events beginning with the activation of the amusement game or machine and ending when the results of play are determined without the insertion or the use of any additional currency, coin, card, coupon, slug, token, or similar device to continue play. A free replay is not a separate game played.

c. Material element of chance inherent in the game or machine means that:

1. The possibility of the player succeeding at the game or accomplishing the player's task is determined by the number or ratio of prior wins or prior losses of players playing the game;
2. An award of value is not based solely on the player achieving the object of the game or on the player's score;
3. The number of the coupons or points awarded or the value of the prize awarded for successfully playing the game can be controlled by a source other than the player or players playing the game;
4. The ability of the player to succeed at the game is determined by a game

feature or design that changes the effect of the player's actions and that is not discernible or known by the player;

5. The accomplishment of the player's task requires the exercise of a skill that no player could exercise;
6. A computer-based or mechanical random number generator or other factor that is not discernible, known, or predictable by the player determines the outcome or winner of the game; or
7. The game is designed or adapted with a control device to allow manipulation of the game by the operator in order to prevent a player from winning or to predetermine which player will win.

d. The term *Amusement game or machine* does not include:

1. Any game or machine that uses mechanical slot reels, video depictions of slot machine reels or symbols, or video simulations or video representations of any other casino game, including, but not limited to, any banked or banking card game, poker, bingo, pull-tab, lotto, roulette, or craps.
2. A game in which the player does not control the outcome of the game through skill or a game where the outcome is determined by factors not visible, known, or predictable to the player.
3. A video poker game or any other game or machine that may be construed as a gambling device under the laws of this state.
4. Any game or device defined as a gambling device in 15 U.S.C. s. 1171, unless excluded under 15 U.S.C. s. 1178.

SECTION 3. Amending the Definition of "*Amusement center*." Section 2.2 of the LDC is amended to read as follows:

~~*Amusement center* means a building or site at which amusement games or machines will be operated, containing facilities for bowling, skating, miniature golf, video games, and similar recreation facilities designed for use by patrons of all ages; the term "amusement center" also includes within its meaning the terms "game room" and "recreation center." Besides the previously referenced activities, amusement center activities may also include the operation of machines which, upon the insertion of a coin, slug, token, plate or disc, may be operated by the public generally for use as a game, entertainment, or amusement, whether or not registering a score, including, but not limited to such devices as marble machines, pinball machines, skill ball, mechanical grab machines, video game machines, game or entertainment simulation machines, and all games, operations or transactions similar thereto, under whatever name that may be indicated.~~

SECTION 4. Removing Amusement Center as a Permitted Use and Permitting Amusement Center as a Special Exception in the Business General Commercial (BGC) District. Sections 5.5(J)(2) and (3) of the LDC are amended to read as follows:

J. Business general commercial (BGC) district.

1. Purpose and intent: This district is intended to provide for retail, service and professional business located along arterial roads. Automotive related uses and certain other types of businesses are permitted as special exceptions. It is intended that automotive uses be located on arterial roads in clusters at intersections with these arterial roads.

2. Permitted Uses:

Permitted Uses	SDOL Code
Advertising and promotions	0101—0105, 0107—0109
Antique dealer (except within the CRA—Community Redevelopment Area Overlay District)	1301—1304
Business agencies	0201—0209, 0211—0226 specifically excluding Code #0210 (dating/escort service)
Schools, studio, instruction i.e. martial arts, dance, gymnastics (non-educational)	0308
Amusement centers	0401, 0403, 0413
Gun shops	0501
Auction sales	0601
Contracting services (office only)	0801—0830
Financial agencies	1001—1007
Merchants wholesale and retail	1301—1304
Restaurants	1401—1403, 1405
Business services	1500—1510, 1512—1515, 1517, 1518 1520—1523
Professional offices	1601—1606/1608—1616
Massage therapist establishments	no code

3. Special Exceptions:

Special Exception	SDOL Code
Antique dealer (within the CRA—Community Redevelopment Area Overlay District)	1301— 1304
Automotive leasing	0701
Automotive sales, service, or repair	0703, 0706
Taxicabs	0708
Bar	0417
Night club	0409
Automobile service station	0707
Automotive parts sales and service	0710
Hotels and motels	1102
Shopping centers	no code
Boat sales with outdoor storage	1301— 1304
Mobile home sales	0705
Laboratories-scientific and industrial	0303
" U-Haul" type trailer rental agency	0709
<u>Amusement centers</u>	<u>0401,</u> <u>0403, 0413</u>

SECTION 5. Amending Section 5.5, Table 2, of the LDC. The specified portion of Section 5.5, Table 2, of the LDC is amended as follows:

Table 2 – Permitted Uses by District

	GC	PO	NC	HC	LI	SU
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Entertainment Amusement centers:						
Adult book stores	SE					
Amusement center arcade	• SE					
Billiard/pool parlor	•					
Bowling alley	•					
Carnival						•
Clubs and lodges						•
Entertainment						•
Golf driving range or miniature course						•
Hall for hire						•
Museum						•
Night club, bar, tavern, pub (includes cabarets, lounges, dancing, entertainment)	SE					
Skating rink – skateboard center						•
Standard golf course						•
Swimming pool (where fee is charged)						•
Theater (including drive-ins)	•					
Vending machine distributor				•	•	

SECTION 6. Revising Criteria for Amusement Centers Permitted as Special Exceptions. Section 5.7(C)(15) of the LDC is amended to read as follows:

15. *Amusement centers/~~game rooms~~*: A special exception may only be granted under the following conditions:

- a. The building or site must be located in the a Business General Commercial zoning district.
- b. The building or site must be located at least 1,000 feet away from any school.
- c. No two amusement centers shall be located closer than 400 feet from one another.
- d. The building or site shall be screened to minimize noise and glare impacts to neighboring residential uses.
- e. Off-street parking shall be provided at the ratio of one space/100 square feet of building space used for the operation of the amusement ~~devices~~ center.
- f. The maximum number of amusement games or machines ~~automatic amusement devices~~ in any amusement center, including any accessory buildings or structures

used for storage or sales, shall be limited to ten (10).one such device per 50 square feet of premises used for their location and operation; the computation shall exclude any portion of the premises used for the storage or sales of the devices or for any business other than their operation. A complete list and description of all amusement games or machines to be installed in the amusement center must be provided with the special exception application.

- g. No ~~automatic amusement device~~ amusement game or machine may be located closer than ten feet from the doorway entrance of the building or structure where premises in which it is located.
- h. Specific hours of operation may be established if the operation of the amusement center use could adversely impacts nearby residential uses.
- i. ~~The sale, dispensing, or consumption of alcoholic beverages on the premises shall be prohibited.~~
- ji. If ~~automatic amusement device operations are contained within a principal building as an accessory use to motels, timeshare facilities, bowling centers, skating centers, or restaurants, they shall not be subject to the preceding special exception requirements.~~ The use of amusement games or machines must be secondary to a principal use for a bowling center, skating center, restaurant, bar, miniature golf, batting cage, or go-kart racing.
- j. Amusement games or machines, upon activation and game play, may not deliver, entitle, or enable a person playing or operating the amusement game or machine to receive cash, billets, tickets, tokens, points, coupons, merchandise, or any other thing of value, including electronic credits to be exchanged for cash, regardless of whether such things are delivered or paid automatically from the machine or manually; provided however, that amusement games and machines may entitle or enable a person to replay the game without the insertion or use of any additional currency, coin, card, coupon, slug, token, or similar device, only if:
 - 1. The amusement game or machine can accumulate and react to no more than 15 such replays;
 - 2. The amusement game or machine can be discharged of accumulated replays only by reactivating the game or device for one additional play for each accumulated replay;
 - 3. The amusement game or machine cannot make a permanent record, directly or indirectly, of any free replay;
 - 4. The amusement game or machine does not entitle the player to receive anything of value other than a free replay;
 - 5. An unused free replay may not be exchanged for anything of value, including merchandise or a coupon or a point that may be redeemed for merchandise; and
 - 6. The amusement game or machine does not contain any device that awards

a credit and contains a circuit, meter, or switch capable of removing and recording the removal of a credit if the award of a credit is dependent upon chance.

SECTION 7. Amending Section 5.8(A) of the LDC. The specified portion of Section 5.8(A) of the LDC is amended as follows:

Sec. 5.8. - Special uses.

- A. Scope. In addition to those uses that may be identified throughout this zoning ordinance as permitted accessory or special exception uses in a particular zoning district, the following uses may be allowed as special uses in any zone pursuant to the substantive and procedural requirements of this article:

Schools, public, private and parochial, including kindergartens, and schools for retarded or exceptional persons; child care centers; private clubs and lodges; ~~amusement centers~~; homes for the aged, delinquent, and homeless; nursing and convalescent homes; adult congregate living facilities, group homes, and life care facilities as defined by Florida law; churches; funeral homes; public buildings; and public and private utility buildings, structures, and uses.

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SECTION 8. Administrative Actions. The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to include, but not be limited to, the adoption of administrative forms, policies, procedures, processes and rules.

SECTION 9. Codification. The provisions of this Ordinance amending or adding to the City of South Daytona Code of Ordinances and/or Land Development Code shall be codified and shall become and be made a part of the City of South Daytona Code of Ordinances and/or Land Development Code, as applicable. The codified portions of this Ordinance may be re-numbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate words. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 9. Conflicts. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 10. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 11. Effective Date. This Ordinance shall take effect immediately upon enactment.

APPROVED upon first reading on the 8th day of June, 2021 at a regular meeting of the City Council of the City of South Daytona.

APPROVED AND ADOPTED upon second and final reading on the 27th day of July, 2021 at the regular meeting of the City of South Daytona City Council.

ATTEST:

CITY OF SOUTH DAYTONA:

James L. Gillis, Jr., City Manager

William C. Hall, Mayor

CERTIFIED AS TO FORM:

Wade C. Vose, City Attorney