

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: May 25, 2021

Re: Second and Final Reading of Ordinance No. 2021-08 Simulated Gambling

AGENDA ITEM

Item # D14

Date: June 8, 2021

Introduction

This is the second and final reading. The first reading was approved on May 11, 2021 by the City Council. This is an administrative request to amend Chapter 3.5 to include a new Article III, of the Code of Ordinances to prohibit the use and operation of “simulated gambling devices” within the City of South Daytona.

Background

The Code of Ordinances does not currently contain regulations prohibiting the use or operation of simulated gambling devices, as defined in the attached ordinance, within the City. While Chapter 849, Fla. Stat., was amended in 2013 by Ch. 2013-2, Laws of Florida, to clarify the State’s prohibition of illegal gambling activities, local regulations are appropriate as a supplement to such legislation to best protect the citizens of South Daytona from illegal gambling activities. For example, the ordinance adds an additional enforcement mechanism (the code enforcement process) to the other remedies currently available (generally, criminal processes and injunctive relief). Staff has prepared the attached ordinance to locally prohibit gambling devices to ensure the public health, safety, general welfare and interests of the citizens of South Daytona is protected.

Analysis

The proposed Code of Ordinances amendment is consistent with the as City’s guiding policy documents as provided in the attached Planning and Appeals Board staff report attached to this Memorandum. The Planning and Appeals Board met on April 21, 2021, to discuss this item and unanimously voted (5-0) to recommend approval to the City Council. The City Council approved the first reading of Ordinance 2021-08 on May 11, 2021.

Staff Recommendation

Staff recommends amending Chapter 3.5 to include a new Article III of the Code of Ordinances to prohibit the use and operation of simulated gambling devices within the City of South Daytona. Attached as Exhibit B is Ordinance 2021-08 which achieves this purpose.

Attachments: Exhibit A - April 21, 2021 Planning and Appeals Board Staff Report
Exhibit B - Ordinance 2021-08

EXHIBIT A
PAB STAFF REPORT

STAFF REPORT

City of South Daytona Community Development Department

DATE: April 14, 2021

SUBJECT: Code of Ordinances Amendment prohibiting Simulated Gambling Devices - *Chapter 3.5 to include a new Article III*

APPLICANT: City initiated

NUMBER: COO 2021-10

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

INTRODUCTION: This is an administrative request to amend Chapter 3.5 to include a new Article III, of the Code of Ordinances to prohibit the use and operation of “simulated gambling devices” within the City of South Daytona.

BACKGROUND AND ANALYSIS: The Code of Ordinances does not currently contain regulations prohibiting the use or operation of simulated gambling devices, as defined in Exhibit A attached to this report, within the City. Recently there has been an increased number of requests for business tax receipts for businesses that could potentially permit illegal gambling. There is concern that if the City does not take action to locally prohibit the use and operation of simulated gambling devices, there could be an increase in calls for service attributable to criminal activity because the use of simulated gambling devices can create an ongoing public nuisance. While Ch. 849, Fla. Stat., was amended in 2013 by Ch. 2013-2, Laws of Florida, to clarify the State’s prohibition of illegal gambling activities, local regulations are appropriate as a supplement to such legislation to best protect the citizens of South Daytona from illegal gambling activities. For example, the new language proposed prohibiting simulated gambling devices adds an additional enforcement mechanism (the code enforcement process) to the other remedies currently available (generally, criminal processes and injunctive relief). The purpose of the proposed amendment is to ensure the public health, safety, general welfare and interests of the citizens of South Daytona are protected.

CONCLUSION: The proposed amendments are consistent with Objective 5 of the Future Land Use Element of the Comprehensive Plan which supports reviewing and updating city policies as needed. The amendment to prohibit simulated gambling devices is an exercise of the City’s Police powers for the benefit of the health, safety and general welfare and interests of the residents of the City of South Daytona. There are no other policy considerations pertaining to the recommendations other than what has been stated in the background and analysis of this report. It is expected that the

proposed LDC amendment will be reviewed by the City Council on May 11, 2021 (1st Reading) and June 8, 2021 (2nd reading).

RECOMMENDATION: It is recommended that the Planning & Appeals Board recommend **APPROVAL** amending Chapter 3.5 to include a new Article III of the Code of Ordinances to prohibit the use and operation of simulated gambling devices within the City of South Daytona, attached as Exhibit A which achieves this purpose.

EXHIBIT B

ORDINANCE NO. 2021-08

ORDINANCE NO. 2021-08

AN ORDINANCE OF THE CITY OF SOUTH DAYTONA, FLORIDA, AMENDING THE CITY OF SOUTH DAYTONA CODE OF ORDINANCES TO INCLUDE A NEW ARTICLE III IN CHAPTER 3.5 (AMUSEMENTS AND ENTERTAINMENTS) TO BE ENTITLED SIMULATED GAMBLING; PROVIDING FOR SECTIONS 3.5-125 TO 131 CONTAINING DEFINITIONS, AREA OF ENFORCEMENT, INTENT, PROHIBITION OF SIMULATED GAMBLING DEVICES, AFFIRMATIVE DEFENSES, EXCEPTIONS, CONFLICT WITH STATE LAW, ENFORCEMENT, PENALTIES; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 2, Florida Constitution, and Chapter 166 *Florida Statutes*, the City of South Daytona has 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 does not have regulations within its *Code of Ordinances* that expressly prohibit the use or operation of simulated gambling devices, as defined herein, within the City; and

WHEREAS, while Ch. 849, Fla. Stat., was amended in 2013 by Ch. 2013-2, Laws of Florida, to clarify the State's prohibition of illegal gambling activities, local regulations are appropriate as a supplement to such legislation to best protect the citizens of South Daytona from illegal gambling activities; and

WHEREAS, the City of South Daytona City Council finds the proposed amendment to its *Code of Ordinances* to be in the best interest and welfare of the citizens of the City; 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)(a), *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 ~~striketrough~~ 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 above recitals are true and correct and are incorporated herein by reference.

SECTION 2. Article III, entitled "Simulated Gambling" is hereby created and includes Sections 125 to 131 to read as follows:

Sec. 3.5-125. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commercial or nonprofit establishment means a place, business, lodge, post, or meeting hall operated for commercial or pecuniary gain, or used for the collection of donations or gifts.

Drawings by chance or drawing means an enterprise in which, from the entries submitted by the public to the organization conducting the drawing, one or more entries are selected by chance to win a prize. The term "drawing" does not include those enterprises, commonly known as "matching," "instant winner," or "preselected sweepstakes," which involve the distribution of winning numbers, previously designated as such, to the public.

Game promotion means, but is not limited to, a contest, game of chance, or gift enterprise, conducted within or throughout the state and other states in connection with the sale of consumer products or services, and in which the elements of chance and prize are present.

Person means an individual, association, partnership, joint venture, corporation, entity, or any other type of organization, groups or combinations as defined in Section 1.01(3), *Florida Statutes* whether conducted for profit or not for profit, or a director, executive, officer or manager of an association, partnership, joint venture, corporation or other organization.

Simulated gambling device means any device that, upon connection with an object, is available to play or operate a simulation of any game or gambling, and which may reveal, deliver or entitle any person playing or operating the device to a payoff or something of value; or any device that is used or adopted for use to conduct and/or reveal the results of a drawing by chance conducted by a charitable or nonprofit organization, or a game promotion conducted in connection with the sale of a consumer product or service, or sweepstakes; or any device that is used or adapted for use in any game promotion that displays results by simulating a gambling style game or card game or game ordinarily played on a slot device. 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, device, computer or other device or equipment. The term "device" also includes any associated equipment necessary to conduct the operation of the device, or in the case of a password, inputting the password.

(2) The term "upon connection with an object" means insertion, swiping, passing in range, or any other technical means of physically, electronically, or electromagnetically connecting an object to a device, or inputting or inserting a password, code, account or user number or user name, into a device.

(3) The term "object" means a coin, bill, ticket, token, card, password, account or user number, user name, code, or number, obtained directly or indirectly through payment of consideration or a donation, or obtained as a bonus or supplement to another transaction involving the payment of consideration or a donation.

(4) The terms "play or operate" or "play or operation" include any activation of a device whether involving the use of skill, the application of the element of chance, or both, or

neither, or the implementation of an outcome unpredictable to the person activating the device.

(5) The term "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, cards, bingo, craps, keno, any other type of game commonly played in a casino; a game involving the display of the results of a raffle, drawing, contest, game promotion, lotto or sweepstakes; or any other game associated with gambling or which could be associated with gambling. The term "game" does not necessarily imply or require actual 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 device or manually, from the owner or operator of the device, or any affiliate, associate, person, or entity acting in concert or connection with the owner or operator of the device, or from any person, entity, or device at the premises or building where such device is located.

(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 section and does not incorporate or imply any other legal definition or requirement applicable to gambling that may be found elsewhere.

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 consideration whatsoever, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, 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. The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device. Slot machines may use spinning reels, video displays, or both. Slot machine also means any machine or device that may be adapted for use in such a way that, as a result of the insertion of any piece of money, coin, or other object, such machine or device is caused to operate or may be operated and if the user, by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, may:

(1) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or

(2) Secure additional chances or rights to use such machine, apparatus, or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.

Sec. 3.5-126 - Area of enforcement.

This article shall be effective within the boundaries of the City of South Daytona, Florida.

Sec. 3.5-127. - Intent.

The intent of the city council, acting as the governing body of the City of South Daytona, in adopting this article is to prohibit broadly the possession or use of simulated gambling devices, including any related activity or behavior which can be construed to be the use of simulated gambling devices. Further, the council, in prohibiting simulated gambling devices, in no way intends to approve the use of actual slot machines, other forms of casino gambling or other types of gambling devices. In addition, this prohibition is aimed directly at devices that simulate gambling activity, regardless of whether the devices or the simulations in and of themselves can be said to constitute gambling as that term may be defined elsewhere.

Sec. 3.5-128. - Prohibition of simulated gambling devices.

It shall be unlawful in the City of South Daytona for any person to manage, maintain, own, possess, operate or use one or more simulated gambling devices in a commercial or nonprofit establishment, or to knowingly lease, operate or maintain any premises for the use of simulated gambling devices.

Sec. 3.5-129. - Affirmative defenses; exceptions.

It shall be an affirmative defense or an exception to an alleged violation of this section if the alleged violator demonstrates any of the following:

- (1) The alleged violator is an individual and whose ownership, possession, operation or use of a simulated gambling device was solely for personal, recreational, and non-commercial purposes in a personal residence; or
- (2) The alleged violator's ownership, possession, operation or use of a simulated gambling device was expressly permitted by a Florida statute and not otherwise prohibited by another Florida statute or the Florida Constitution, except that this affirmative defense or exception shall not apply to devices permitted in Broward and Miami-Dade counties only under Article X, Section 23 of the Florida Constitution and Chapter 551, *Florida Statutes*.

Sec. 3.5-130. - Conflict with state law.

Nothing in this article shall be intended to conflict with the provisions of the Florida Constitution or Chapter 849, *Florida Statutes* concerning gambling. In the event of a direct and express conflict between this article and either the Florida Constitution or F.S. ch. 849, then the conflicting provision of the Florida Constitution or Chapter 849, *Florida Statutes*, as applicable, shall control.

Sec. 3.5-131. – Enforcement & Penalty.

This Article may be enforced and subject to fines and penalties as provided in Chapter 2, Article VII Code Enforcement, Chapter 162, Florida Statutes and as otherwise permitted by law.

In addition, any violation of this Article is deemed a public nuisance, and shall be subject to abatement by the City, and any person who is found in violation of this Article shall be subject to injunctive relief in a court of competent jurisdiction to enjoin the violation, as well as any other relief permitted by law. All relief specified in this section shall be cumulative.

SECTION 3. 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 4. Codification. The provisions of this Ordinance, including its recitals, shall become and be made a part of the City of South Daytona Land Development Code and the Sections 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 word; provided, however, that Sections 1, 3, 4, 5, and 6 shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 5. Conflicts. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 6. 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 7. Effective Date. This Ordinance shall take effect immediately upon enactment.

APPROVED upon first reading on the 11th day of May, 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 8th day of June, 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