

VILLAGE OF NORTH PALM BEACH
OFFICE OF THE VILLAGE MANAGER

TO: Honorable Mayor and Council

FROM: Jamie Titcomb, Village Manager



BY: Leonard G. Rubin, Village Attorney

DATE: August 25, 2011

SUBJECT: ORDINANCE – Second Reading for adoption of Moratorium on Adult Arcade Amusement Facilities

Issue Background:

Many municipalities throughout the State of Florida have enacted moratoria on the issuance of development permits, business tax receipts or other approvals for adult arcade amusement facilities. These facilities, which are identified as adult arcades, game rooms, internet cafes or sweepstakes redemption centers, use slot machines, simulated gambling devices or similar equipment and are proliferating throughout the entire state. Currently, the most popular type of facility is the internet café.

While these establishments may sell internet time or phone cards, the simulated gambling brings the customers through the door. Upon purchase of internet time or phone cards, the establishment loads sweepstakes or entries onto a card or account. The customers then use on-site computers or slot-like cabinets that have the appearance of video gaming machines to see whether they have won a cash prize.

These businesses have taken advantage of a gray area in the law which raises doubt as to whether the activity can be criminally prosecuted as illegal gambling. The operators of the businesses claim that the games are promotions pursuant to Section 849.094, Florida Statutes or charitable drawings under Section 849.0935, Florida Statutes. Neither statute explicitly authorizes or prohibits conducting promotions or drawings through the use of electronic devices. These types of games are not actively overseen by any state agency, and to date, no Florida appellate court has examined their legality. Seminole County enacted an ordinance banning all simulated gambling devices, which is currently being challenged in the court system.

Two bills were introduced during the most recent session of the Florida Legislature to prohibit the use of simulated gambling devices in connection with a game promotion, sweepstakes, drawing, raffle or any game of chance. See HB 217 (“Simulated Gambling Prohibition and Community Protection Act”) and SB 576 (“Electronic Machines and Devices for Sweepstakes Prohibited Act”). Both bills died in committee.

In addition to legal concerns, such facilities may have secondary effects, thereby exposing the surrounding neighborhood to illegal, unsafe or unhealthy activities and negatively impacting property values.

Your Village Attorney has drafted an Ordinance enacting a one-year moratorium on adult arcade amusement facilities, thereby allowing Village Staff a opportunity to analyze the impacts of this use within the Village, evaluate the appropriate locations (if any) for this use, and determine whether the Village should incorporate special standards for these facilities into its zoning regulations. The moratorium ordinance is currently scheduled for review by the Planning Commission in July, after which it will be brought back for Council's consideration at two publicly announced hearings. The adoption of a zoning in progress would prevent persons from filing applications for approval of such establishments prior to the effective date of the moratorium ordinance.

Latest Action:

At its June 23rd regular meeting, the council implemented a "Zoning in Progress" designation on this matter to prevent any new applications or operations moving forward in the Village system. This item was presented to the Planning Commission on July 5, 2011 where they voted unanimously to approve as submitted. On July 28th Council unanimously passed this ordinance on first reading.

Recommendation:

Village Administration recommends that the Council move to adopt on second reading this ordinance establishing a moratorium on the acceptance of any application, or request for approval, of adult arcade amusement facilities.

1 Section 2. For the purpose of this Ordinance, an adult arcade amusement facility is any
2 facility, whether identified as an arcade, game room, internet café or sweepstakes redemption
3 center, that utilizes slot machines, simulated gambling devices or similar equipment. A
4 simulated gambling device means any device that, upon connection with an object (coin, bill,
5 ticket, token card or similar object), is available to play or operate a computer simulation of any
6 game, and which may deliver or entitle the person or persons playing or operating the device to a
7 payoff, including money, credit, tickets or tokens to be exchanged for cash or to receive
8 merchandise or any other thing of value. This Ordinance shall only apply to establishments
9 marketed to adults and shall not apply to traditional game rooms or arcades generally targeted to
10 minors that do not utilize slot machines, simulated gambling devices or similar equipment.
11

12 Section 3. Effective as of June 23, 2011, the date the Village Council adopted a Zoning in
13 Progress, the Village Council hereby imposes a moratorium upon the acceptance of applications
14 for and the issuance of any development permits, business tax receipts or other approvals for
15 adult arcade amusement facilities. The Village Council directs Village Staff to study and
16 analyze the impacts of such facilities and evaluate the appropriate locations (if any) for such uses
17 within the Village and determine whether the Village should incorporate special standards for
18 such facilities into its zoning regulations.
19

20 Section 3. The moratorium shall remain in effect for a period of one year from the effective
21 date of this Ordinance or until the effective date of an ordinance amending the zoning regulations
22 to address adult arcade amusement facilities, whichever first occurs.
23

24 Section 4. All ordinances and resolutions, or parts of ordinances and resolutions, in conflict
25 herewith are hereby repealed to the extent of such conflict.
26

27 Section 5. If any section, paragraph, sentence, clause, phrase or word of this Ordinance is
28 for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative or
29 void, such holding shall not affect the remainder of the Ordinance.
30

31 Section 6. This Ordinance shall become effective immediately upon adoption.
32

33
34 PLACED ON FIRST READING THIS 28th DAY OF JULY, 2011.

35
36 PLACED ON SECOND, FINAL READING AND PASSED THIS _____ DAY OF
37 _____, 2011.
38

39
40 (Village Seal)

MAYOR

41
42
43 ATTEST:

44
45 _____
46 VILLAGE CLERK
47

48 APPROVED AS TO FORM AND
49 LEGAL SUFFICIENCY:

50
51 _____
52 VILLAGE ATTORNEY