



## CITY MANAGER M E M O R A N D U M

**To:** The Honorable Mayor and City Commissioners

**From:** Barbara Lipscomb, City Manager

**Date:** May 9, 2011

**Subject:** Public Hearing: First Reading of Ordinance 11-1350 - Moratorium on Internet Cafes and Similar Uses

**Introduction:** Ordinance 11-1350 provides for consideration on first reading to impose a 180-day moratorium on issuance of City permits or approvals for various game rooms within the City limits.

**Background:** Ordinance 11-1350 puts into abeyance the issuance of any official document that may enable the location of a new arcade, internet café, sweepstakes redemption center, or similar indoor entertainment and amusement activities within the City. Adoption of this ordinance provides time for the resolution of the injunction on the Seminole County legislation prohibiting the use of simulated gambling devices within the County. The Seminole County legislation included the municipalities within the County. Should the injunction be lifted, businesses within the County will be prohibited from using machines that provide a casino-like experience. If that should occur, the City will not need to take further action. Additionally, the State legislature is proposing action relative to the State's gambling requirements to address simulated gambling devices. Based on these potential actions, staff is requesting this moratorium.

The current moratorium expired on May 4, 2011. The City Commission directed staff to initiate this legislation at their April 25, 2011 meeting. This first reading and public hearing was advertised in the *Orlando Sentinel* on April 28, 2011 for the May 9, 2011 meeting.

**Discussion** The moratorium will prohibit staff from issuing any permits or approvals for businesses that include arcades, internet cafés, sweepstakes redemption centers, or similar indoor entertainment and amusement activities. Exceptions to the moratorium are provided if an applicant can show with substantial competent evidence that deferral of action on an application for permit, business tax receipt, development order, or other official action of the City for the duration of the moratorium would impose an extraordinary hardship on a landowner or petitioner.

If approved, the public hearing and second reading for Ordinance 11-1350 will occur on June 13, 2011. This moratorium, if adopted, will be in effect until December 10, 2011. Staff will provide options to the Commission prior to the expiration of the moratorium should the legality of the Seminole County ordinance be overturned or still be unresolved at that time.

**Budget Impact:** There is no impact to the City's budget.

**Recommendation:** The City Manager and the Community Development Director recommend approval of Ordinance 11-1350.

**Prepared by:** Sandra J. Smith, AICP, Chief Planner

**Reviewed by:** Donald Martin, AICP, Community Development Director

**Attachments:** Ordinance 11-1350

**ORDINANCE 11- 1350**

**AN ORDINANCE OF THE CITY OF CASSELBERRY, FLORIDA, IMPOSING A TEMPORARY MORATORIUM FOR 180 DAYS ON THE ISSUANCE OF ANY BUSINESS TAX LICENSE, PERMIT, CONDITIONAL USE APPROVAL, SITE PLAN APPROVAL AND ANY OTHER OFFICIAL ACTION OF THE CITY OF CASSELBERRY HAVING THE EFFECT OF PERMITTING OR ALLOWING THE CONSTRUCTION AND/OR OPERATION OF CERTAIN BUSINESSES WITHIN THE CITY OF CASSELBERRY, RELATED TO , GAME ROOMS, ARCADES, INTERNET CAFES, SWEEPSTAKES REDEMPTION CENTERS AND SIMILAR INDOOR ENTERTAINMENT AND AMUSEMENT ACTIVITIES AS MORE SPECIFICALLY DESCRIBED IN THIS ORDINANCE, EXCLUDING APPROVALS AND PERMITS FOR THE CONTINUANCE OF AN EXISTING BUSINESS; THE TEMPORARY MORATORIUM SHALL APPLY TO ALL REAL PROPERTY LOCATED WITHIN THE CORPORATE LIMITS OF THE CITY OF CASSELBERRY; PROVIDING A PROCEDURE FOR EXTRAORDINARY HARDSHIP; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Casselberry, Florida provides municipal services to its citizens, including regulation and licensing of businesses; and

**WHEREAS**, the appropriate regulation, licensing and permitting of businesses are vital to the public's health, safety, morals and welfare as deficient or inadequate regulations can lead to public harm; and

**WHEREAS**, the City Commission has learned of certain activities related to game rooms, arcades, internet cafes, sweepstakes redemption centers and similar indoor entertainment and amusement activities within the City of Casselberry being proposed or considered, which activities would harm the City's economic and redevelopment activities and otherwise significantly and adversely affect the public health, safety, morals and welfare, since said activities may include forms of gaming or gambling which could lead to illegal activities; and

**WHEREAS**, the City Commission of the City of Casselberry, Florida, deems it necessary to the public's health, safety, morals and welfare to cause a study to be accomplished relative to the criteria for issuance of permits for game rooms, arcades, internet cafes, sweepstakes redemption centers and similar indoor entertainment and amusement facilities, and to place a temporary moratorium on the issuance of permits and the receipt of the business tax for such activities for a period of one hundred and eighty (180) days; and

**WHEREAS**, the City Commission, after holding a public hearing, finds that it is appropriate to impose a temporary moratorium on the licensing and permitting of certain activities related to game rooms, arcades, internet cafes, sweepstakes redemption centers and similar indoor entertainment and amusement facilities; and

**WHEREAS**, public hearings were held pursuant to the required published notices at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard; and

**WHEREAS**, the City's Planning and Zoning Commission has reviewed this moratorium for consistency with the City's Comprehensive Plan.

**NOW, THEREFORE, BE IT ENACTED** by the City Commission of the City of Casselberry, Florida:

**SECTION 1. PURPOSE AND LEGISLATIVE FINDINGS.**

The above recitals are hereby adopted as the legislative purpose of this Ordinance and as the City Commission's legislative findings.

**SECTION 2. TEMPORARY MORATORIUM UPON THE ISSUANCE OF GAME ROOMS, ARCADES, INTERNET CAFES, SWEEPSTAKES REDEMPTION CENTERS AND SIMILAR INDOOR ENTERTAINMENT AND AMUSEMENT ACTIVITY PERMITS.**

All activities relating to the acceptance, review and action upon permit applications for game rooms, arcades, internet cafes, sweepstakes redemption centers and similar indoor entertainment and amusement facilities are temporarily suspended in order for the City of Casselberry, through its officials and staff, to have adequate time and opportunity to conduct a study or studies and comprehensively analyze the adequacy of application criteria, standards, and other approved processes and procedures related to the issuance of said permits within the City of Casselberry. Accordingly, based upon the foregoing, there is hereby imposed a temporary moratorium on the receipt and/or acting upon applications for licenses related to game rooms, arcades, internet cafes, sweepstakes redemption centers and similar indoor entertainment and amusement type activities.

During the time the temporary moratorium is in effect, the City will accept no applications or act on any pending applications for permits or business tax receipts for such activities and no such new activities shall be permissible within the City. It is unlawful for any person or entity to engage in the activities that are the subjects of the Ordinance without first obtaining a business tax receipt or permit for such activities. During the period of time that the temporary moratorium is in effect, the City shall not accept payments of the business tax for such activities and shall return any funds accepted for pending applications.

**SECTION 3. GEOGRAPHIC AREA COVERED.**

The temporary moratorium established in this Ordinance shall be effective in the corporate and municipal boundaries of the City of Casselberry.

#### **SECTION 4. IMPOSITION OF MORATORIUM.**

(a) The temporary moratorium set forth in this Ordinance shall take effect immediately upon the effective date of this Ordinance and shall terminate one hundred and eighty (180) days after said effective date. The City will accept no applications or act on pending applications which are subject to the moratorium until the moratorium has expired.

(b) The City Commission may extend the temporary moratorium established in this ordinance one (1) time for a period not to exceed ninety (90) days upon a finding by the City Commission set forth in the ordinance that the problems giving rise to the need for the temporary moratorium established herein continue to exist and that reasonable progress is being made in carrying out a specific and prompt plan of corrective legislative action, but that additional time is reasonably needed to adequately address the issues facing the City.

#### **SECTION 5. ALLEVIATION OF EXTRAORDINARY HARDSHIP.**

(a) The City Commission may authorize exceptions to the moratorium imposed by this Ordinance when it finds, based upon substantial competent evidence presented to it, that deferral of action on an application for permit, business tax receipt, development order, or other official action of the City for the duration of the moratorium would impose an extraordinary hardship on a landowner or petitioner.

(b) A request for an exception based upon extraordinary hardship shall be filed with the City Manager or designee, including a non-refundable fee of \$350.00 by the owner/petitioner, or the petitioner with the consent of the owner/petitioner, to cover processing and advertising costs, and shall include a recitation of the specific facts that are alleged to support the claim of extraordinary hardship, and shall contain such other information as the City Manager shall prescribe as necessary for the City Commission to be fully informed with respect to the application.

(c) A public hearing on any request for an exception for extraordinary hardship shall be held by the City Commission at the first regular meeting of the City Commission that occurs after the expiration of the period for publication of notice of the request for an exception.

(d) Notice of the filing of a request for an exception, and the date, time, and place of the hearing thereon shall be published once at least 7 days prior to the hearing in a newspaper of general circulation within the city limits of the City of Casselberry, Florida.

(e) In reviewing an application for an exception based upon a claim of extraordinary hardship, the City Commission shall consider, at a minimum, the following criteria:

- (1) The extent to which the applicant has, prior to the Effective Date of this Ordinance, received City of Casselberry permits or approvals for the game room, arcade, internet café, sweepstakes redemption center or similar indoor entertainment and amusement activity.
  - (2) The extent to which the applicant has, prior to the Effective Date of this Ordinance, made a substantial expenditure of money or resources in reliance upon permits or other approvals of the City of Casselberry directly associated with the operation of the game room, arcade, internet café, sweepstakes redemption center or similar indoor entertainment and amusement activity.
  - (3) Whether the applicant, prior to the Effective Date of this Ordinance, has contractual commitments in reliance upon permits or other approvals of the City of Casselberry to operate the game room, arcade, internet café, sweepstakes redemption center or similar indoor entertainment and amusement activity.
  - (4) Whether the applicant, prior to the Effective Date of this Ordinance, has in reliance upon permits or other approvals of the City of Casselberry incurred financial obligations to a lending institution which, despite a thorough review of alternative solutions, the applicant cannot meet unless the game room, arcade, internet café, sweepstakes redemption center or similar indoor entertainment and amusement activity is permitted or allowed.
  - (5) Whether the moratorium will expose the applicant to substantial monetary liability to third persons; or would leave the applicant completely unable, after a thorough review of alternative solutions, to earn a reasonable investment backed expectation on the real property that is affected by this Ordinance.
- (f) At a minimum, the City Commission shall consider the following non-exclusive factors under the criteria set forth in subsection (e) above:
- (1) The history of the property;
  - (2) The history of the commercial, business or any use on the property.
- (g) At the conclusion of the Public Hearing and after reviewing the evidence and testimony placed before it, the City Commission shall act upon the request either to approve, deny, or approve in part and deny in part the request made by the applicant.

**SECTION 6. PENALTIES.**

(a) Any person, firm, corporation or agent who shall violate any provision of this Ordinance or who fails to comply therewith, or with any of the requirements thereof, shall be fined in an amount not exceeding five hundred dollars (\$500.00) or be imprisoned for a period not exceeding sixty (60) days. Either or both penalties may be imposed. Each day during which any violation occurs constitutes a separate offense.

(b) Nothing herein contained shall prevent the City from taking such other lawful action including, but not limited to, equitable legal action, as it deems necessary to prevent or remedy any violation of this Ordinance.

**SECTION 7. SEVERABILITY.** If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

**SECTION 8. CONFLICTS.** This ordinance shall stand repealed as of 12:01 a.m. on December 10, 2011, unless sooner repealed; provided, however, nothing herein shall prevent the re-adoption or ratification of this Ordinance in the same or similar form.

**SECTION 9. EFFECTIVE DATE.** This Ordinance shall become effective immediately upon passage and adoption.

**FIRST READING** this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2011.

**SECOND READING AND ADOPTION** this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2011.

ATTEST:

\_\_\_\_\_  
Donna G. Gardner, City Clerk

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Charlene Glancy, Mayor/Commissioner