

ORDINANCE NO. 2020-_____

**AN ORDINANCE PROHIBITING SIMULATED GAMBLING DEVICES
DEFINING AND IDENTIFYING SIMULATED GAMBLING
ESTABLISHMENTS AS A PUBLIC NUISANCE AND NOXIOUS USE;
PROHIBITING THE USE OF SIMULATED GAMBLING DEVICES FOR
CERTAIN CIRCUMSTANCES; AND CREATE AN ENFORCEMENT
MECHANISM FOR VIOLATIONS; PROVIDING AN EFFECTIVE DATE.**

WHEREAS, gaming and gambling are not presently lawful in Nassau County; and

WHEREAS, presently throughout Nassau County and the state, there is a proliferation of establishments that utilize computer or video displays of games, contests, challenges and other electronic simulations which are or are of the type of games generally associated with legalized casino or gambling outlets or which show, or purport to show, the results of raffles, sweepstakes, contests, or business game promotions (hereinafter collectively known as “simulated gambling devices”) for commercial or pecuniary gain; and

WHEREAS, the Nassau County Board of County Commissioners finds that establishments that utilize simulated gambling devices can deceive many Nassau County residents, including the elderly, the economically disadvantaged, the uneducated, and the unsuspecting into believing such activities are legal and lawfully permitted; and

WHEREAS, in the calendar year of 2019, Nassau County received a record number of tourists and visitors to the area, who may be deceived into thinking simulated gambling establishments present a legal gambling entertainment option; and

WHEREAS, the Nassau County Board of County Commissioners finds that simulated gambling devices are deceptive; and

WHEREAS, due to the inherently deceptive nature of simulated gambling devices, establishments that utilize simulated gambling devices are adverse to the quality of life, tone of commerce and total community environment in Nassau County; and

WHEREAS, as of December 30, 2019, there are approximately twenty-nine (29) simulated gambling establishments in Nassau County; and

WHEREAS, the City of Jacksonville, Florida, on October 8, 2019, adopted Ordinance No. 2019-644-E and on May 28, 2019 adopted Ordinance No. 2019-209-E which, based upon findings in both ordinances, “shut down simulated gambling establishments”; and

WHEREAS, the City of Jacksonville, in the referenced Ordinance, detailed criminal activity associated with simulated gambling devices; and

WHEREAS, the Nassau County Board of County Commissioners has reviewed the findings in the City of Jacksonville Ordinances and incorporates the findings herein; and

WHEREAS, prior to the City of Jacksonville “shutting down” simulated gambling establishments in 2019, there were approximately fourteen (14) simulated gambling establishments in Nassau County; and

WHEREAS, between May 1, 2019 and December 30, 2019, the Nassau County Sheriff’s Office has reported several hundred calls for service associated with the simulated gambling establishments and the frequency of calls has increased since Duval County “shut” them down and the number of establishments in Nassau County has increased; and

WHEREAS, as of December 30, 2019, there are now approximately 29 simulated gambling establishments; and

WHEREAS, the Nassau County Sheriff’s Office has seen a significant amount of violent crimes, increased drug activity, increased burglaries and larcenies in the last few years at simulated gambling establishments; and

WHEREAS, in the last few months, incidents of violent crime including armed robbery have been on the rise, and during the commission of such violent crimes use of force such as brandishing of weapons and discharging a firearm have increased causing an unacceptable risk of death or serious bodily injury to the public; and

WHEREAS, the Nassau County Sheriff’s Office reports that burglaries, employee grand theft, larceny and snatch and grab crimes have also been increasing at an alarming rate; and

WHEREAS, the Nassau County Sheriff’s Office, in order to gather information needed, pulled crime data using Accurint crime analysis; and

WHEREAS, the Nassau County Sheriff’s Office in December, 2019, in cooperation with another law enforcement agency, ran undercover operations at 28 Nassau County simulated gambling establishments; and

WHEREAS, the Nassau County Sheriff’s Office undercover operation continued for approximately 11 days and revealed successful purchases of narcotics in the simulated gambling establishments; and

WHEREAS, the Nassau County Sheriff's Office undercover operation revealed that methamphetamine was regularly offered in simulated gambling establishments, along with crack cocaine and heroin pills and on two occasions, the operatives were offered sexual services for money; and

WHEREAS, the Nassau County Sheriff's Office undercover operation also revealed cash being inserted in the gambling devices and cash awards being provided; and

WHEREAS, the Nassau County Board of County Commissioners finds that a correlation exists between establishments that utilize simulated gambling devices and crime or disturbances of the peace and good order of the community and those activities are hazardous to the public health, safety and general welfare of the citizens of Nassau County and constitutes a public nuisance; and

WHEREAS, the Nassau County Board of County Commissioners has determined that the endangerment of both the public and first responders required to react to this ongoing criminal activity is too significant to allow any public or commercial use of simulated gambling devices to continue; and

WHEREAS, the Board of County Commissioners of Nassau County finds that the operation of simulated gambling establishments constitutes a public nuisance; and

WHEREAS, the Board of County Commissioners of Nassau County finds that the continued operation of simulated gambling establishments create an immediate and ongoing hazard to the public health, safety and welfare associated with the operation of simulated gambling establishments; and

WHEREAS, the Nassau County Board of County Commissioners finds that there is a legitimate public purpose in eliminating simulated gambling establishments from operating in Nassau County.

BE IT ORDAINED by the Nassau County Board of County Commissioners:

SECTION 1. FINDINGS AND STATEMENT OF INTENT

- (a) The above recitals are hereby adopted as the Nassau County Board of County Commissioner's Findings of Fact; and
- (b) The Nassau County Board of County Commissioner's original intent was to focus on the equipment that appears to violate State law; and

- (c) It is the intent of the Nassau County Board of County Commissioners to enact this ordinance to abate a public nuisance and to prohibit the noxious use associated with operation of simulated gambling establishments.

SECTION 2. LEGISLATIVE AUTHORIZATION

This Part is enacted in the interest of the public health, peace, safety, and general welfare of the citizens, inhabitants and visitors of Nassau County, Florida

SECTION 3. DEFINITIONS

The following definitions apply to this Ordinance:

- (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, where the play or operation of the device may deliver or entitle the person or persons playing or operating the device to a payoff directly or indirectly from the owner or operator of the device or that person’s designee. 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 or stored locally or on other hard drives, 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, including by the manual input by any person of characters, numbers, or any combination thereof, or other code for the purpose of accessing or activating a device, or any other mechanism or method by which the object provides access to the device.

- (3) The term “object” means a coin, bill, ticket, token, card, characters, numbers, or any combination thereof, other code, or any other tangible or intangible access mechanism or method, obtained directly or indirectly through payment of consideration, or 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 simulations 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, “fish”, 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” as used in this Section 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.

SECTION 4. AREA OF ENFORCEMENT

The Nassau County Board of County Commissioners is acting herein as the governing body for Nassau County, and this Ordinance shall be effective within the unincorporated boundaries of Nassau County, Florida.

SECTION 5. INTENT

The Nassau County Board of County Commissioners' intent in adopting this Ordinance is to broadly prohibit the possession or use of simulated gambling devices not authorized for legal use under Florida law, including any related activity or behavior which can be reasonably construed to be the use of simulated gambling devices. Further, the Commission in prohibiting simulated gambling devices in no way intends to locally 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.

SECTION 6. PROHIBITION OF SIMULATED GAMBLING DEVICES

It is unlawful for any person to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices for commercial, promotional or pecuniary gain or purpose. Each individual act to manage, supervise, maintain, provide, produce, possess or use a simulated gambling device constitutes a separate violation of this Ordinance.

SECTION 7. EXEMPTIONS

- (a) This Ordinance does not prohibit 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) This Ordinance does not prohibit the ownership, possession, play, operation or use of any device expressly permitted by Section 546.10 or other provision of the Florida Statutes and is not otherwise prohibited by Article X, Section 23 of the Florida Constitution and Chapter 551, Florida Statutes, in Broward and Miami-Dade County only are not permitted by this Ordinance.
- (c) This Ordinance does not prohibit a religious or charitable organization from conducting a fund raising activity involving simulated gambling, provided the religious or charitable organization does not conduct the activity more than twice in one calendar year for no more than six (6) hours per fund raising activity, the organization provides advance written notice to the Sheriff of the date, time, place, and nature of such activity and who will be conducting it, and the activity is not otherwise unlawful.

SECTION 8. CONFLICT WITH STATE LAW

Nothing in this Ordinance is 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 Ordinance and either the Florida Constitution or Chapter 849, Florida Statutes, then the provisions of the Florida Constitution or Chapter 849, Florida Statutes, as applicable, control.

SECTION 9. ENFORCEMENT; CIVIL REMEDIES

(a) The Building Department, the Code Enforcement Department, the Fire Chief and the Sheriff shall have concurrent jurisdiction to enforce the requirements of this Ordinance as follows:

- (1) By the Code Enforcement Board pursuant to the authority granted by Florida Statutes, Chapter 162, and Ordinance No.: _____, however, in no instance shall a civil penalty less than \$250 per violation per day of violation be imposed, pursuant to Florida Statutes, §162.09(3)(d), the Code Enforcement Board or Special Magistrate or both have the authority to impose the fines in excess of the limits set forth in paragraph 9(a)(1); specifically such fines shall not exceed \$1,000 per day per violation for a first violation, \$5,000 per day for a repeat violation and up to \$15,000 per violation if the Code Enforcement Board or Special Magistrate finds the violation to be irreparable or irreversible in nature;
- (2) By citation for civil penalties pursuant to the authority granted by Florida Statutes, Chapter 162 and Ordinance No.: _____, however, in no instance shall a civil penalty less than \$250 per violation per day of violation be imposed;
- (3) By action for civil penalties through a court of competent jurisdiction as follows:
 - (i) The civil penalty for convictions of violations committed by any person operating or allowing the operation of a simulated gambling establishment shall be as follows:
 - a. \$2,000 for a first violation;
 - b. \$5,000 for a second violation; and
 - c. \$10,000 civil penalty for a third or subsequent violation.

- (ii) Civil penalties assessed against property owners who did not operate the illegal use themselves in violation of this Ordinance shall be \$1,000 per violation.

(4) By an action for injunctive relief through a court of competent jurisdiction.

- (b) Upon notice from any agency authorized to enforce this Ordinance, occupancy or operation of any structure or property where any simulated gambling device is being used or operated in violation of this Ordinance shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property or to his or her agent or to the person operating any establishment where any simulated gambling device is being used or operated in violation of the Ordinance. Visiting, operating, and/or managing a location in violation of a cease and desist order constitutes a second degree misdemeanor, trespass after warning, in violation of Chapter 810, Florida Statutes. Failure to comply with the terms and conditions of a cease and desist order issued pursuant to this Ordinance shall constitute an additional violation of this Ordinance. Cease and desist orders may be lifted by the issuing agency upon demonstration that all simulated gambling devices have been removed and all applicable civil penalties have been paid.
- (c) The provisions of this Ordinance may also be enforced through a private cause of action for injunctive relief filed by any adversely affected person, including the Office of the State Attorney. If such action is successful, a judgment for reasonable attorney's fees and costs may be awarded by the Court.

SECTION 10. INVALID SECTION

Should a Court of competent jurisdiction determine that any section of this Ordinance is invalid, that determination shall not invalidate the entire Ordinance.

EFFECTIVE DATE.

This ordinance shall become effective upon its being filed in the office of the Secretary of State.

DULY ADOPTED this _____ day of _____, 2020.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA

DANIEL B. LEEPER
Its: Chairman

ATTEST AS TO CHAIRMAN'S SIGNATURE:

JOHN A. CRAWFORD
Its: Ex-Officio Clerk

Approved as to form by the Nassau County Attorney:

MICHAEL S. MULLIN