

ORDINANCE NUMBER _____

AN ORDINANCE OF HILLSBOROUGH COUNTY, FLORIDA PROHIBITING THE USE OF SIMULATED GAMBLING DEVICES; PROVIDING FOR A TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITION OF SIMULATED GAMBLING DEVICES; PROVIDING FOR EXEMPTIONS; PROVIDING FOR APPLICATION; PROVIDING FOR INTENT; PROVIDING FOR ENFORCEMENT, PENALTIES, AND INJUNCTIVE RELIEF; PROVIDING FOR CONFLICTS OF LAW; PROVIDING FOR INCLUSION IN THE HILLSBOROUGH COUNTY CODE; PROVIDING FOR SEVERABILITY AND APPLICABILITY; PROVIDING FOR FILING OF THE ORDINANCE AND AN EFFECTIVE DATE.

WHEREAS, Article X, Section 7 of the 1968 Florida Constitution prohibits lotteries within Florida, other than the types of pari-mutuel pools authorized by law as of the effective date of the 1968 Florida Constitution; and

WHEREAS, Article X, Section 23, of the Florida Constitution as adopted in a 2004 Amendment to the Florida Constitution, authorizes slot machine gaming only in certain eligible licensed facilities in Broward and Miami-Dade Counties, Florida, and such authorization is subject to the requirements and conditions set forth in Article X, Section 23 of the Florida Constitution and the extensive regulatory requirements of Chapter 551, Florida Statutes; and

WHEREAS, Neither the Florida Constitution nor the Florida Statutes (excepting the agreement with the Seminole Tribe of Florida operating as the Seminole Hard Rock Casino) authorizes or permits slot machine gambling or any activity resembling slot machine gambling or any form of gambling involving computer or other simulations of gambling activity in Hillsborough County; and

WHEREAS, computer or video displays of spinning reels or other simulations of a game or games ordinarily played on a slot machine, or in a casino or otherwise in connection with gambling and which show the results of raffles, sweepstakes, contests, or other promotions (hereinafter collectively referred to in these recitals as “simulated gambling devices”) were not among the types of pari-mutual pools authorized by law as of the effective date of the 1968 Florida Constitution; and

WHEREAS, the technology necessary to facilitate simulated gambling devices effectively did not even generally exist in 1968; and

WHEREAS, there is presently in Hillsborough County an increasing proliferation of establishments that utilize simulated gambling devices for commercial gain; and

WHEREAS, the Board of County Commissioners (BOCC) of Hillsborough County, Florida, desiring to protect individual rights, while at the same time affording opportunity for the fullest development of the individual and promoting the health, safety, and welfare of the people, including the elderly, the economically disadvantaged, and the children of Hillsborough County finds that Hillsborough County has a compelling interest in protecting its citizens, and in particular its elderly, economically disadvantaged, and children from certain activities and influences which can result in irreparable harm, including simulated gambling devices; and

WHEREAS, the BOCC recognizes that while the State of Florida has authorized slot machine gaming at licensed facilities in certain areas within Hillsborough County, it also recognizes that establishments that utilize simulated gambling

devices, including but not limited to devices that simulate slot machines, can deceive members of the public, including the elderly, the economically disadvantaged, and children, into believing that they are engaging in a lawfully permitted gaming activity; and

WHEREAS, the use of simulated gambling devices is therefore inherently deceptive; and

WHEREAS, due to their inherently deceptive nature, establishments that utilize simulated gambling devices and exploit the citizens of Hillsborough County by utilizing simulated gambling devices, are adverse to the quality of life, tone of commerce, and total community environment in Hillsborough County, and have an unreasonable adverse effect upon the elderly, the economically disadvantaged, and other citizens of Hillsborough County; and

WHEREAS, the BOCC is also charged with the responsibility of protecting and assisting its citizens who suffer from compulsive or problem gambling behavior; and

WHEREAS, in order to ensure the uniform enforcement of existing laws, and preserve the public peace and good order, and to safeguard the health, safety, morals, and welfare of the community and citizens thereof, it is necessary and advisable to prohibit the use of simulated gambling devices, unless otherwise exempted by law or ordinance; and

WHEREAS, the Florida Constitution and other laws of Florida do not authorize commercial casino gambling within Hillsborough County except in specific locations authorized by statute or general law; and

WHEREAS, no vote of the electorate of Hillsborough County has authorized the general commercial business of casino gambling or the general use of simulated gambling devices; and

WHEREAS, the use of simulated gambling devices are generally accepted forms of casino gambling; and

WHEREAS, the Board of County Commissioners of Hillsborough County, Florida finds it necessary for the promotion of the public safety and welfare that this ordinance be enacted; and

WHEREAS, implementation of this Ordinance is in the best interest of the citizens of Hillsborough County

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HILLSBOROUGH COUNTY, FLORIDA, THAT:

SECTION 1: The aforementioned recitations are incorporated herein by reference.

SECTION 2: TITLE

This Ordinance shall be known and may be cited as the "Simulated Gambling Device Ordinance"

SECTION 3: DEFINITIONS

(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, manager, or employee 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, and which may deliver or entitle the person or persons playing or operating the device to a payoff. 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, machine, computer, or other device or equipment.

(2) The term “upon connection with” means insertion, swiping, passing in range, or any other technical means physically or electromagnetically connecting an object to a device.

(3) The term “object” means a coin, bill, ticket, token, card, or similar object, 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, any other type of game ordinarily played in a casino, a 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 that actual gambling is involved.

(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” is for convenience of reference only. The term “simulated gambling device” as used in this Ordinance is defined exclusively by this subsection and does not incorporate or imply any legal definition or requirement applicable to gambling that may be found elsewhere.

(c) **Slot Machine:** means any electrical, mechanical, or electromechanical device which is adapted for use such that by the insertion of coin(s), token(s), or other method of payment the device will allow an operator to play or operate the machine such that the device displays pictures, icons, or other images which may, depending upon the displayed combination of said pictures, icons, or other images, allow the operator to obtain an item or items of value, including but not limited to money, objects, or coupons. Such devices shall be deemed slot machines regardless of whether the operation of the device is affected by chance, by the application of skill, or

by any combination thereof. Examples of slot machines include but are not limited to the games known as "Fruit Paradise", "New Cherry", "Fruit Bonus", "Triple Jack", "Magical Odds", "Mystery J&B", "Klondike", and "Reel of Fortune". Games such as pinball, mechanical grab machines, shooting games, and other similar games are not slot machines.

SECTION 4: APPLICATION

This ordinance shall be applicable in the unincorporated areas of Hillsborough County.

SECTION 5: INTENT

The intent of the BOCC acting as the governing body of Hillsborough County, Florida in adopting this ordinance is to prohibit broadly the possession or use of simulated gambling devices, including any related activity or behavior which can be reasonably construed to be the use of simulated gambling devices. Further, the BOCC 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 constitute gambling.

SECTION 6: PROHIBITION OF SIMULATED GAMBLING DEVICES

It is unlawful in Hillsborough County for any person to design, develop, manage, supervise, maintain, provide, produce, possess, or use one or multiple simulated gambling devices. Each individual act to design, develop,

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 the personal and recreational ownership, possession, play, operation, or use of a device which could be construed to be a simulated gambling devices, provided such ownership, possession, play, operation, or use is not otherwise prohibited by Florida law and provided ownership, possession, play, operation, or use does not constitute a lottery under Article X, Section 7 of the Florida Constitution.

(b) This ordinance does not prohibit the ownership, possession, play, operation, or use of a computer, video display, or the Internet in a retail business setting provided such ownership, possession, play, operation, or use is not a pretext or sham for using such devices as a simulated gambling device.

(c) This ordinance does not prohibit the ownership, possession, play, operation, or use of any device expressly permitted by the Florida Statutes and not otherwise prohibited by the Florida Constitution. Except for the businesses specifically designated as not intended to be regulated by this ordinance in paragraph (e) below, devices permitted by Article X, Section 23 of the Florida Constitution and Chapter 551, Florida Statutes, in Broward and Miami-Dade Counties are not permitted by this ordinance.

(d) This ordinance does not prohibit a charitable organization from conducting a fund raising activity involving gaming, provided the charitable

organization does not conduct the activity more than twice in one (1) calendar year, the organization provides advance written notice to the Hillsborough County Sheriff of the date, time, place, nature of the activity as well as who will be conducting it, and the activity is not otherwise unlawful.

(e) This ordinance is specifically not intended to regulate in any manner the following businesses located in Hillsborough County which are currently regulated by federal law, state statute, and/or local ordinance:

- (1) Seminole Hard Rock Casino;
- (2) Tampa Bay Downs;
- (3) Tampa Greyhound Track;
- (4) Any properly authorized bingo game establishment.
- (5) Any properly authorized arcade amusement center,

amusement machines, and truck stop arcades operated pursuant to section 849.161, F.S.

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, PENALTIES, AND INJUNCTIVE RELIEF

The County's code enforcement officers, law enforcement, or any other person authorized to enforce county ordinances in Hillsborough County may enforce the provisions of this ordinance. Any enforcement action or legal remedy available under controlling state law including, but not limited to, prosecution as a misdemeanor with a fine not exceeding Five-Hundred Dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days or by both fine and imprisonment, may be imposed as a penalty. Nothing contained herein shall prevent the County from taking such other lawful action in law and equity as may be necessary to remedy any violation of, or refusal to comply with, any part of this Ordinance, including but not limited to:

(a) Code Enforcement action pursuant to Hillsborough County Ordinance No. 10-27, as amended.

(b) Pursuit of injunctive and/or declaratory relief in a court of competent jurisdiction;

(c) Initiating an action to recover any and all damages that may result from a violation of, or a refusal to comply with, any part of this Ordinance; or

(d) Utilizing any other action or enforcement method allowable by law.

SECTION 10: INCLUSION IN THE HILLSBOROUGH COUNTY CODE

The provisions of this Ordinance shall be included and incorporated in the Hillsborough County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Hillsborough County Code, once established.

SECTION 11: SEVERABILITY

If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

SECTION 12: FILING OF ORDINANCE AND EFFECTIVE DATE

In accordance with the provisions of §125.66, Florida Statutes, governing ordinances, a certified copy of this Ordinance shall be filed with the Florida Department of State by the Clerk of the Board of County Commissioners. This Ordinance shall take effect upon filing with the Florida Department of State.

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I, PAT FRANK, Clerk of the Circuit Court and Ex Officio Clerk of the Board of County Commissioners of Hillsborough County, Florida, do hereby certify that the above and foregoing is a true and correct copy of an Ordinance adopted by the Board at its regular meeting of October 5, 2011, by a vote of _____ voting yes and _____ voting no, as the same appears in record in Minute Book _____ of the Public Records of Hillsborough County, Florida

WITNESS my hand and official seal this _____ day of _____, 2011.

PAT FRANK
CLERK OF THE CIRCUIT COURT

BY: _____
Deputy Clerk

Approved By County Attorney
As To Form and Legal Sufficiency:

By: _____
Sr. Assistant County Attorney