

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

In re: Petition for Declaratory Statement

Case No. 2012-041
DS 2012-041

JACKSONVILLE KENNEL CLUB, INC.,
and JGR SERVICES, INC.,

Petitioners.

NOTICE OF ADMINISTRATIVE APPEAL

NOTICE is given that Jacksonville Kennel Club, Inc., and JGR Services, Inc., appeal to the First District Court of Appeal the Declaratory Statement rendered October 26, 2012, a conformed copy of which is attached.

JOHN M. LOCKWOOD
Florida Bar Number: 028056
JOHN M. LOCKWOOD, P.A.
200 West College Avenue, Suite 307
Tallahassee, Florida 32301
Telephone: (850) 727-5009
Facsimile: (850) 270-2610
Email: john@lockwoodlawfirm.com

And

DONNA E. BLANTON
Florida Bar Number: 948500
Radey Thomas Yon & Clark, P.A.
301 South Bronough, Suite 200
Tallahassee, Florida 32301
Telephone: (850) 425-6654
Facsimile: (850) 425-6694
Email: dblanton@radeylaw.com

By: 

John M. Lockwood
FBN 028056

COUNSEL FOR THE APPELLANTS

RECEIVED
NOV 19 2012
DBPR Agency Clerk

CERTIFICATE OF SERVICE

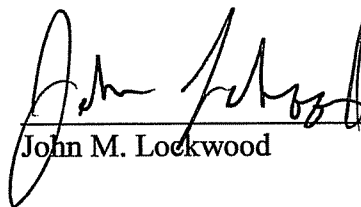
I HEREBY CERTIFY that the original and one copy of this Notice of Appeal was HAND DELIVERED for filing this 19th day of November 2012, to Agency Clerk, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399; a copy with filing fee was filed with the Florida First District Court of Appeal, 2000 Drayton Drive, Tallahassee, Florida 32399-0950; and a copy by U.S. Mail to the following:

Barry Richard, Esq.
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, Florida 32301

James M. DuRant, Jr., Esq.
Boyd, DuRant & Sliger, P.L.
1407 Piedmont Drive East
Tallahassee, Florida 32308

J. Stephen Menton, Esq.
Rutledge & Ecenia, P.A.
P.O. Box 551
Tallahassee, Florida 32302-0551

David S. Romanik, Esq.
David S. Romanik, P.A.
P.O. Box 650
Oxford, Florida 34484



John M. Lockwood

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

FILED	
<small>Department of Business and Professional Regulation Deputy Agency Clerk</small>	
CLERK	Brandon Nichols
Date	10/26/2012
File #	2012-06975

In re: Petition for Declaratory Statement

**JACKSONVILLE KENNEL CLUB, INC.,
and JGR SERVICES, INC.,**

Case #: 2012022177

Petitioners.

DS 2012-041

DECLARATORY STATEMENT

The Jacksonville Kennel Club, Inc. ("JKC") and JGR Services, Inc. ("JGR") filed a Petition for Declaratory Statement ("the Petition") on May 4, 2012, seeking guidance on whether the installation of certain machines at JKC's facility would subject the licenses held by JKC and JGR to discipline. Because the questions presented by JKC and JGR implicate three different divisions within the Department of Business and Professional Regulation ("DBPR" or "the Department"), the instant Declaratory Statement is jointly rendered by the Division of Pari-Mutuel Wagering, the Division of Alcoholic Beverages and Tobacco, and the Division of Hotels and Restaurants.¹

PRELIMINARY STATEMENT REGARDING INTERVENTION

On June 8, 2012, Petitions to Intervene were filed by the Florida Greyhound Association, the City of Gretna, and Daytona Beach Kennel Club, Inc. The Department did not receive any objection to the Petitions to Intervene. On June 18, 2012, the Department granted intervention to those three parties. However, the Petitioners filed a Motion for Reconsideration on June 22,

¹ JKC and JGR will be referred to collectively as "the Petitioners."

2012, requesting reconsideration of the order allowing the Florida Greyhound Association to intervene.

On June 21, 2012, the Seminole Tribe of Florida (“the Seminole Tribe”) moved to intervene. The Petitioner filed a Response in Opposition on July 2, 2012.

Argument of counsel regarding the intervention of the Florida Greyhound Association and the Seminole Tribe was considered during the hearing held on July 10, 2012.

Given the broad nature of the questions presented regarding the Department’s jurisdiction and after consideration of the oral and written arguments regarding intervention, the Department hereby grants the Seminole Tribe’s Motion to Intervene. Also, the Department denies the Petitioner’s Motion for Reconsideration of the earlier decision to allow the Florida Greyhound Association to intervene.

FINDINGS OF FACT

1. JKC’s corporate offices are located at 455 Park Avenue, Orange Park, Florida 32073, and JKC holds a license issued by the Division of Pari-Mutuel Wagering to conduct cardroom and pari-mutuel wagering performances at a facility located at 201 Monument Road, Jacksonville, Florida 32225.²

2. JGR’s corporate offices are also located at 455 Park Avenue, Orange Park, Florida 32073, and JGR holds a license issued by the Division of Alcoholic Beverages and Tobacco to sell alcoholic beverages at JKC’s Jacksonville facility. JGR also holds a food service license issued by the Division of Hotels and Restaurants to serve food at JKC’s Jacksonville facility.

² The Petition is incorporated by reference into the instant Declaratory Statement. The Department’s analysis assumes that the facts alleged in the Petition are true. See Fla. Admin. Code R. 28-105.003 (providing that “[t]he agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts.”).

3. The City of Jacksonville recently amended its Code of Ordinances by adding a chapter entitled "Chapter 155 – Adult Amusement Center" (hereinafter "the Ordinance"). The Petition states that 50 or more "amusement machines" will be installed at JKC's Jacksonville facility in compliance with the requirements of the Ordinance.

4. The Ordinance authorizes the operation of certain machines within Duval County. Specifically, Section 155.105 of the Ordinance is entitled "Skill-Based Adult Arcade Amusement Machine Operation Requirements" and it provides that:

Except as provided in Section 155.106 below, in order for an adult arcade amusement machine authorized by Florida law pursuant to F.S. § 849.161(1)(a)1., to lawfully exist and operate within the geographical boundaries of Duval County, each such machine must meet the following requirements.

- (a) Be located on the premises, as defined in this Chapter, of an adult arcade amusement center licensed by the City pursuant to this Chapter;
- (b) Operate by means of the insertion of a coin,
- (c) Incorporate into the game the application of skill required by this Chapter; and
- (d) Award only coupons or points to the player.

Adult arcade machines may also operate via the insertion of a token, card, ticket, currency, or other electronic or mechanical contrivance constituting the payment of monetary consideration provided it also operates by means of the insertion of a coin. Any coupons generated by a skill-based machine authorized under this section may only be redeemable for merchandise.

(emphasis added).

5. Section 155.104 is the definitions section of the Ordinance, and it contains several provisions relevant to the instant case. For instance, section 155.104(a) defines an "adult arcade amusement center" to mean a business:

- (1) That is located on the "premises" of a facility that is licensed by the State of Florida pursuant to F.S. Ch. 550, and
- (2) That operates adult arcade amusement machines and

(3) That is licensed under this Chapter.

6. Section 155.104(k) defines "premises" as "the legal description of the land and location of the pari-mutuel facility as licensed according to F.S. Ch. 550."

7. Also, section 155.104(b) defines an "adult arcade amusement machine" as:

an electronic, mechanical, coin, currency, ticket, token, card or other similarly operated, computer, video or other similar machine, device or game which operates on the insertion of money, coin, or other type of monetary consideration or requires the payment of monetary consideration for its operation and which, whether by application of skill or application of the element of chance or both or by any other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any credit, allowance or thing of value. The presence of a device as described above that requires the payment of monetary consideration for its operation shall result in the presumption that such machine is an adult arcade amusement machine as defined herein. This definition shall not include Electronic Equipment as defined in Section 156.105(d).

(emphasis added).

8. Section 155.104(d) defines the "application of skill" to mean "the ability of the player, through the application of any of the skill factors listed in this Chapter, to alter the payout percentage of an amusement game by not less than 25 percent over a completely random outcome determined as provided in this Chapter."

9. Section 155.107 provides that "[t]he application of skill factor required under F.S. §§ 155.104(d) and 155.105 of this Chapter shall be measured and certified by an independent testing laboratory licensed by the State of Florida pursuant to F.S. Ch. 551. In measuring a player's ability to alter the percentage through the application of skill for the purpose of this Chapter, the independent testing laboratory shall apply the following procedures:

(a) Measure the payout percentage of the subject game based on a completely random outcome and without any application by the player of

any skill factors that the independent testing laboratory will apply in making the measurement under subsection (b) below.

(b) Measure the payout percentage of the subject game through the exercise by the player of all skill factors available to optimize the payout percentage to the player, including but not limited to all applicable skill factors such as complete knowledge of the game, adherence to all probability based strategies, optimum manual dexterity, and/or optimum decision making ability.

(c) Measure the percentage decrease in the payout percentage determined under subsection (b) over that determined under subsection (a).

10. Section 155.104(e) defines "coupon" to mean "a printed instrument that is a representation of points available for merchandise redemption. A coupon may not be redeemed for anything other than merchandise, as defined herein."

11. "Merchandise" is defined by section 155.104(h) as:

an object of value available for sale to the general public on the premises of the adult arcade amusement center or via catalogs or kiosks produced by an adult arcade amusement center other than alcoholic beverages and cash. The general public must be able to discern:

- a. The points required to redeem the merchandise; and
- b. The purchase price of the merchandise.

12. Section 155.108 mandates that "[n]o person under the age of 18 years shall be permitted to play an adult arcade amusement machine or be on the premises of an adult arcade amusement center."

13. Finally, section 155.109(a) mandates that "[a]ll adult arcade amusement centers located within the geographic boundaries of Duval County shall obtain an adult arcade amusement center permit issued by the Department of Neighborhoods as a prerequisite to the initial operation of an adult arcade amusement center."³

³ A complete copy of Chapter 155 was attached to the Petition which (as noted above) is incorporated by reference into the instant Declaratory Statement.

14. In the Petition, JKC and JGR state they “are in doubt as to whether the Department has jurisdiction to discipline their existing licenses that are issued and regulated by the Department if the City of Jacksonville determines that the arcade amusement machines are operated at the Licensed Facility in conformance with Chapter 155.”

CONCLUSIONS OF LAW

15. JKC and JGR pose five specific questions that will be addressed in turn by the Conclusions of Law below.

The Petitioners’ First Question

16. The first specific question posed by JKC and JGR is “[w]hether the Department has jurisdiction to subject JKC’s and JGR’s licenses, as set forth above, to administrative discipline if the City of Jacksonville and Independent Laboratory determine that the arcade amusement machines are operated at the Licensed Facility in conformance with [Chapter 155].”⁴

17. Because the Division of Pari-Mutuel Wagering regulates slot machines pursuant to Chapter 551 of the Florida Statutes, the answer to the Petitioners’ first question turns on whether the machines to be installed at JKC’s facility fall within the definition of “slot machine” set forth in section 551.102(8), Florida Statutes (2011). That statute defines “slot machine” to mean:

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

⁴ The implications for JGR’s licenses will be discussed in the responses to the fourth and fifth questions.

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, machines, or other device. Slot machines may use spinning reels, video displays, or both. **A slot machine is not a "coin-operated amusement machine" as defined in s. 212.02(24) or an amusement game or machine as described in s. 849.161, and slot machines are not subject to the tax imposed by s. 212.05(1)(h).**

(emphasis added).

18. The Ordinance's definition of "adult arcade amusement machine" is very similar to the definition of "slot machine" in section 551.102(8), Florida Statutes (2011). Nevertheless, the Petitioners assert the machines to be installed at their facility are not "slot machines" as defined in section 551.102(8) because they fall under the criteria set forth in section 849.161(1)(a)1., Florida Statutes (2011).

19. The latter statute provides that:

[n]othing contained in this chapter shall be taken or construed as applicable to an arcade amusement center having amusement games or machines which operate by means of the insertion of a coin and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons which may be exchanged for merchandise only, excluding cash and alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played.

§849.161(1)(a)1., Florida Statute (2011). The term "arcade amusement center ... means a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility." § 849.161(2), Florida Statute.

20. Therefore, in order to ascertain whether the machines to be installed at the Petitioner's facility fall within the definition of "slot machine" in section 551.102(8), the

Department must first evaluate whether those machines fall under the exception set forth in section 849.161(1)(a)1.

21. As explained below, even if the 50 or more machines to be installed at JGR's facility comply with the requirements of the Ordinance, the facts alleged in the Petition demonstrate that the Division of Pari-Mutuel Wagering would have jurisdiction over those machines pursuant to Chapter 551 of the Florida Statutes.

22. In order to come within the scope of section 849.161, the following criteria must be satisfied: (1) the machines must operate by means of the insertion of a coin; (2) the "application of skill" may entitle the player or operator of the machine to receive points or coupons which may be exchanged for merchandise only (excluding cash and alcoholic beverages); (3) the cost value of the aforementioned merchandise cannot exceed seventy-five cents on any game played; and (4) the machines must be installed in an "arcade amusement center," which is a premises operated for the entertainment of the general public and tourists as a bona fide amusement facility.

Criterion (1): Coin Operation

23. JKC and JGR allege in their Petition that each machine "will feature the ability to operate by insertion of a coin." See ¶ #11 of the Petition. Therefore, the first criterion of section 849.161(1)(a)1, Florida Statutes (2011), is satisfied in the First District. See Rowe v. County of Duval, 975 So. 2d 526, 529 (Fla. 1st DCA 2008) ("The fact that bills, too, can operate these coin-operated machines does not render the safe harbor provision unavailable."). But see State v. Cyphers, 873 So.2d 471 (Fla. 2d DCA 2004) (statute reflected intent that only those machines that operated by use of coin fell within the exception to the prohibition against gambling); Delorme v. State, 895 So.2d 1252 (Fla. 5th DCA 2005).

Criterion (2): Application of Skill

24. The second criterion of section 849.161(1)(a)1., Florida Statutes (2011), requires that the application of skill may entitle the player or operator to receive points or coupons which may be exchanged for merchandise (excluding cash and alcoholic beverages).

25. The Ordinance allows for machines in which the outcome can be determined by skill and chance inherent in the machine. See § 155.104(b) (providing “whether by application of skill or application of the element of chance or both or by any other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or thing of value . . .”); §155.104(d) (providing that “[a]pplication of skill shall mean the ability of the player, through the application of any of the skill factors listed in this Chapter, to alter the payout percentage of an amusement game by not less than 25 percent over a completely random outcome determined as provided in this Chapter.”).

26. Section 849.161(1)(a)1, Florida Statutes (2011), however, does not allow for any chance inherent in the machine to be involved in the determination of the outcome. The provisions of the Florida Statutes addressing slot machines demonstrate that the Legislature specifically designates when a machine’s outcome may be determined only in part by a particular factor. Thus, section 849.16(1) states that “[a]ny machine or device is a slot machine or device . . . if it is one that is 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” become entitled to a thing of value.⁵ And section 551.102(8)

⁵ See Dep’t of Bus. & Prof’l Reg., Div. of Alcoholic Beverages & Tobacco v. Broward Vending, Inc., 696 So. 2d 851 (Fla. 4th DCA 1997) (to comply with section 849.15’s prohibition against the possession of coin-operated gambling devices, a machine must have no element of

defines a slot machine as operating “by reason of skill or application of the element of chance or both.” Section 849.161(1)(a)1, in marked contrast, contemplates only “application of skill.” The Legislature could have added similar modifying language to “skill” in section 849.161(1)(a)1, but did not. Accordingly, the Division concludes that to fall within the scope of section 849.161(1)(a)1, a machine’s outcome must be determined solely by skill, and not by any element of chance inherent in the machine.

27. This conclusion regarding the absence of “chance” in a section 849.161(1)(a)1 “amusement game or machine” is also supported by the express legislative intent of Chapter 849. See § 849.46, Florida Statutes (2011) (“It is deemed by the Legislature that this chapter is necessary for the more efficient and proper enforcement of the statutes and laws of this state prohibiting lotteries and gambling, and a lawful exercise of the police power of the state for the protection of the public welfare, health, safety and morals of the people of the state. All the provisions of this chapter shall be liberally construed for the accomplishment of these purposes.”). See also Samara Dev. Corp. v. Marlow, 556 So.2d 1097, 1100 (Fla. 1990) (“exceptions or provisos should be strictly construed”); PPL, Inc. v. Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, 698 So.2d 306 (Fla. 3d DCA 1997) (exceptions to prohibitions against gambling should be strictly construed); State v. Nourse, 340

chance inherent in the machine itself); Deeb v. Stoutamire, 53 So. 2d 873, 875 (Fla. 1951) (“the score totaled has not depended on chance or other result unpredictable by the player, except such chance or unpredictability as is traceable to his own skill, which we interpret the law not to mean, as distinguished from the chance or unpredictability of the mechanism, which we construe the law to proscribe”); In re Forfeiture of Forty-Seven Video Redemption Games, 799 So. 2d 221, 222 (Fla. 2d DCA 2001) (“the testimony provided a sufficient probability to warrant a reasonable belief that there was an element of chance inherent in the Florida Skill machines”).

So.2d 966, 969 (Fla. 3d DCA 1976) (statutory exceptions to general prohibitions must be “strictly construed against the one who attempts to take advantage of the exception”).⁶

28. Moreover, section 849.161(1)(a)2 states that the “subsection shall not apply ... to any game or device defined as a gambling device in 24 U.S.C. s. 1171.” Although incorrectly cited, this is clearly a reference to the Johnson Act, 15 U.S.C. §§ 1171-1178. Federal courts interpreting the definition of gambling devices contained in the Johnson Act have found that games that include some skill are nonetheless gambling devices. See U.S. v. Wilson, 475 F.2d 108 (9th Cir. 1973); U.S. v. 5 Gambling Devices, 346 F.Supp. 999 (W.D. La. 1972); U.S. v. Two “Exhibit Rotary” Coin Operated Gambling Devices, 107 F.Supp. 314 (W.D. Okla. 1952). Thus, compliance with the Ordinance does not assure compliance with the Johnson Act, and in turn with section 849.161, Florida Statutes.

29. In sum, because the Ordinance does not foreclose the possibility that there will be some element of chance inherent in the machines installed at JKC’s facility, the Department cannot conclude that the second criterion of section 849.161(1)(a)1., Florida Statutes (2011), will be satisfied by compliance with the Ordinance.

⁶ The Attorney General has opined that while section 849.161 “requires that skill be a factor in determining whether the player is entitled to receive a prize or free plays, it does not appear to require that the outcome of the game be dependent solely on skill” because “[t]o read the statute in such a manner would make the exemption from Chapter 849, Florida Statutes, superfluous.” Op. Att’y Gen. Fla., 1995-27. The Division disagrees. Section 849.16 refers not only to “any element of chance,” but also to “any other outcome of such operation unpredictable by him or her.” Because that latter phrase might be read in an overbroad manner (to include, for example, chance factors extrinsic to the machine or the inherent uncertainty a player may have about his application of skill), section 849.161 is simply a clarification that “[n]othing contained in th[e] chapter shall be *taken or construed*” to reach certain (but not all) skill-based machines. Moreover, if that reading of section 849.161 is correct, then any amount of skill, even an infinitesimal amount, would be sufficient to remove a machine from the reach of section 849.16. This would cut against the Legislature’s express direction that the chapter is to be “liberally construed for the accomplishment” of “proper enforcement of the statutes and laws of this state *prohibiting* lotteries and gambling.” § 849.46, Fla. Stat. (emphasis added).

Criterion (3): Merchandise Value

30. Section 849.161(1)(a)1., Florida Statutes (2011), specifies that “the person playing or operating the game or machine [may] receive points or coupons which may be exchanged for merchandise only, excluding cash and alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played.”

31. The Ordinance states that each machine to be installed at JKC’s facility will “[a]ward only coupons or points to the player.” § 155.105(d). It appears from section 155.104 that the aforementioned coupons or points can be exchanged for merchandise. However, nothing in the Ordinance indicates that the cost value of the aforementioned merchandise will not exceed “75 cents on any game played.”

32. Because the Ordinance does not foreclose the possibility that the cost value of the merchandise will exceed seventy-five cents on any game played, the Department cannot conclude that the second criterion of section 849.161(1)(a)1, Florida Statutes (2011), will be satisfied.

Criterion (4): Entertainment of the General Public

33. Section 849.161(2) provides that, “[t]he term ‘arcade amusement center’ as used in this section means a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility.” (emphasis added). Section 155.108 mandates that, “[n]o person under the age of 18 years shall be permitted to play an adult arcade amusement machine or be on the premises of an adult arcade amusement center.” Because minors are prohibited from playing or being on the premises, the statutory requirement that the “premises [be] operated

for the entertainment of the *general public*” will not be satisfied.⁷ See Black’s Law Dictionary (6th ed. 1990) at 682 (defining “general” as “relat[ing] to the whole kind, class, or order” and “open or available to all, as opposed to select”); *id.* at 1227 (defining “public” as “everybody, and accordingly the body of the people at large” and “all of the inhabitants of a particular place”); *City of New York v. Stringfellow’s of New York*, 749 N.E.2d 192, 195 (N.Y. 2001) (concluding that an establishment that only occasionally permits entry of minors is not open to the “general public”); *Iowa Farmers Purchasing Ass’n, Inc. v. Huff*, 260 N.W.2d 824, 827 (Iowa 1977) (“as opposed to ‘general public,’ the ‘public’ can mean any group or segment, however characterized, of the aggregate of the citizens of a political entity”).

35. In sum, the facts alleged in the Petition do not demonstrate that the machines to be installed at JKC’s facility satisfy section 849.161, Florida Statutes. Accordingly, the Division of Pari-Mutuel Wagering would have jurisdiction over those machines by virtue of Chapter 551 of the Florida Statutes even if the City of Jacksonville and an independent testing laboratory determine that the arcade amusement machines are operated at the Licensed Facility in conformance with the Ordinance. See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1246-47 (Fla. 2006)(holding “Municipal ordinances are inferior to laws of the state and must not conflict with any controlling provision of a statute. In other words, a municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.”)

The Petitioners’ Second Question

⁷ Also, the Division questions whether an “arcade amusement center” can be operated on the same premises as a licensed pari-mutuel wagering facility in compliance with section 849.161(2).

36. JKC and JGR ask in their second question whether “JKC’s pari-mutuel permit and/or license can be subjected to administrative discipline, including fines, suspension and/or revocation if the City of Jacksonville and Independent Laboratory determine that the arcade amusement machines are operated at the Licensed Facility in conformance with the Ordinance.”

37. If the machines operated at JKC’s facility fall within the definition of a slot machine in section 849.16, Florida Statutes (2011), then criminal penalties could result. See §§ 849.15(1)(a), 849.23, 849.01, Florida Statutes (2011).

38. Because JKC holds a pari-mutuel wagering license pursuant to Chapter 550 of the Florida Statutes, a conviction for a violation of sections 849.01 and/or 849.15(1)(a), Florida Statutes (2011), could subject JKC’s pari-mutuel permit and/or license to administrative discipline. See § 550.1815, Florida Statutes (2011).

39. Also, it should be noted that if JKC were to operate machines without the license required by Chapter 551 of the Florida Statutes, then JKC could be subject to an administrative fine of up to \$10,000 per unlawful machine. See § 551.109(2), Florida Statutes (2011).⁸

The Petitioners’ Third Question

40. In their third question, JKC and JGR ask “[w]hether JKC’s cardroom license can be subjected to administrative discipline, including fines, suspension and/or revocation if the City of Jacksonville and Independent Laboratory determine that the arcade amusement machines are operated at the Licensed Facility in conformance with the Ordinance.”

41. As explained in the answer to JKC and JGR’s second question, if the machines to be operated at JKC’s facility fall within the definition of slot machine in section 849.16, Florida

⁸ The hypothetical or potential consequences mentioned in Paragraph #'s 37, 38, and 39 are for illustrative purposes only and are not meant to be exhaustive.

Statutes (2011), then criminal penalties could result. If the Division then suspends or revokes JKC's pari-mutuel wagering license, then its cardroom license could also be disciplined. See §849.086(14), Florida Statute (2011).⁹

The Petitioners' Fourth Question

42. In the fourth question presented by JKC and JGR, the Petitioners ask “[w]hether JGR’s alcoholic beverage license can be subjected to administrative discipline, including fines, suspension and/or revocation if the City of Jacksonville and Independent Laboratory determine that the arcade amusement machines are operated at the Licensed Facility in conformance with the Ordinance.”

43. If the machines to be operated at JKC’s facility run afoul of Chapter 551, then JGR’s alcoholic beverage license could be subject to discipline under section 561.29(1)(b), Florida Statutes (2011). See §561.29(1)(b), Florida Statutes (2011) (providing the Division of Alcoholic Beverages and Tobacco “is given full power and authority to revoke or suspend the license of any person holding a license under the Beverage Law, when it is determined or found by the division upon sufficient cause appearing of violation by the licensee or, if a corporation, by any officers, thereof, of any laws of this state or any state or territory within the United States”).¹⁰

The Petitioner's Fifth Question

44. In their fifth question, JKC and JGR ask “[w]hether JGR’s public food service license can be subjected to administrative discipline, including fines, suspension and/or


⁹ The hypothetical or potential consequences mentioned in Paragraph # 41 are also intended for illustrative purposes and are not meant to be exhaustive.


¹⁰ Paragraph # 43 is not intended to be an exhaustive description of every scenario or of all of the consequences that could occur.

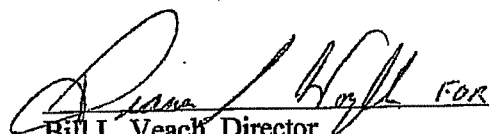
revocation if the City of Jacksonville and Independent Laboratory determine that the arcade amusement machines are operated at the Licensed Facility in conformance with the Ordinance.”

45. If the machines to be operated at JKC’s facility run afoul of Chapter 551, JGR’s public food service license could be subject to discipline under section 509.261(5)(b), Florida Statutes (2011). See §509.261(5)(b), Florida Statutes (2011) (providing that “[t]he division may fine, suspend, or revoke the license of any public lodging establishment or public food service establishment if the operator knowingly lets, leases, or gives space for unlawful gambling purposes or permits unlawful gambling in such establishment or in or upon any premises which are used in connection with, and are under the same charge, control, or management as, such establishment.”)¹¹

DONE and ORDERED on this the 26th day of October, 2012.


Leon M. Biegalski, Director
Division of Pari-Mutuel Wagering
1940 North Monroe Street
Tallahassee, Florida 32399-1035


Allen Douglas, Director
Division of Alcoholic Beverages & Tobacco
1940 North Monroe Street
Tallahassee, Florida 32399


Bill L. Veach, Director
Division of Hotels and Restaurants
1940 North Monroe Street
Tallahassee, Florida 32399-1011

¹¹ Paragraph # 45 is not intended to be an exhaustive description of every scenario or of all of the consequences that could occur.

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Oder is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review Proceedings are governed by Rules 9.110 and 9.190, Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Department of Business and Professional Regulation, Attn: Ronda L. Bryan, Agency Clerk, 1940 North Monroe Street, Suite 92, Tallahassee, Florida 32399 and a Second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Florida Appellate District where the Party Resides. The Notice of Appeal must be filed within thirty (30) Days of Rendition of the Order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this the 26th day of ~~August~~ October, 2012 to the following: (1) John M. Lockwood, Esquire; JOHN M. LOCKWOOD, P.A.; 200 West College Avenue, Suite 307; Tallahassee, Florida 32301; (2) Barry Richard, Esquire; GREENBERG TRAUIG, P.A.; 101 East College Avenue; Tallahassee, Florida 32301; (3) James M. DuRant, Jr., Esquire; BOYD, DURANT, & SLIGER, P.L.; 1407 Piedmont Drive East; Tallahassee, Florida 32308; (4) David S. Romanik, Esquire; DAVID S. ROMANIK, P.A.; P.O. Box 650; Oxford; Florida 34484; and (5) J. Stephen Menton, Esquire; RUTLEDGE, ECENIA, & PURNELL, P.A.; P.O. Box 551; Tallahassee, Florida 32302-0551.



Agency Clerk's Office

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	5/4/2012
File #	

In re: Petition for Declaratory Statement

Case No. _____

JACKSONVILLE KENNEL CLUB, INC.,
and JGR SERVICES, INC.,

DS 2012-041

Petitioners.

PETITION FOR DECLARATORY STATEMENT

COMES NOW, Jacksonville Kennel Club, Inc. ("JKC"), and JGR Services, Inc. ("JGR SERVICES") (collectively the "Petitioners"), and hereby move pursuant to Section 120.565, Florida Statutes (2011),¹ and Rule 28-105, Florida Administrative Code (2010), and request the issuance of a declaratory statement by the Department of Business and Professional Regulation (the "Department") regarding the application of certain statutes to the Petitioners' particular set of circumstances. Specifically, the Petitioners present questions as to whether installation of arcade amusement machines in conformance with a local ordinance will subject their various permits and licenses issued by the Department to administrative discipline. In support of the Petition, the Petitioners state the following:

1. JKC is formally known as Jacksonville Kennel Club, Inc., and its corporate offices are located at 455 Park Avenue, Orange Park, Florida 32073. For purposes of this Petition, JKC's address is that of its undersigned counsel.

¹ All references herein to "Chapter" or "Section" are to the applicable chapter or section of the official 2011 version of the Florida Statutes.

RECEIVED

MAY 04 2012

DBPR Agency Clerk

2. The Division of Pari-Mutuel Wagering has licensed JKC to conduct cardroom and pari-mutuel wagering performances at the bestbet-Jacksonville facility located at 201 Monument Road, Jacksonville, Florida 32225 (the "Licensed Facility").

3. JGR SERVICES is formally known as JGR Services, Inc., and its corporate offices are located at 455 Park Avenue, Orange Park, Florida 32073. For purposes of this Petition, JGR SERVICES' address is that of its undersigned counsel.

4. The Division of Alcoholic Beverages and Tobacco has licensed JGR SERVICES to sell alcoholic beverages within the Licensed Facility. The 12-RT alcoholic beverage license was issued by virtue of JKC's status as a pari-mutuel permitholder. *See* §§ 550.6315 and 565.02(5), Fla. Stat. (2011). The Division of Hotels and Restaurants has also licensed JGR SERVICES for public food service at the Licensed Facility.

5. The affected agency is the Department of Business and Professional Regulation, located at Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399. The Department has jurisdiction over this proceeding pursuant to Section 120.565, Florida Statutes.

6. The Department, through its divisions discussed herein, is the state agency authorized to regulate the Licensed Facility, including the conduct of pari-mutuel and cardroom gaming operations, alcoholic beverage sales, and public food service establishments. *See* § 550.0251, Fla. Stat. (2011); *see also* § 849.086(4), Fla. Stat. (2011); *see also* § 561.02, Fla. Stat. (2011); *see also* § 509.032, Fla. Stat. (2011).

7. The Petitioners are in doubt as to whether the Department has jurisdiction to discipline their existing licenses that are issued and regulated by the Department if the City of Jacksonville determines that the arcade amusement machines are operated at the Licensed

Facility in conformance with Chapter 155, City of Jacksonville Ordinance Code (the "Ordinance").

8. In the event the Department determines that it has jurisdiction, the Petitioners seek clarification that installation of arcade amusement machines in conformance with the Ordinance will not impair, or subject to discipline, their existing licenses issued and regulated by the Department.

Arcade Amusement Machines

9. Section 849.161(1)(a)1., Florida Statutes, expressly authorizes arcade amusement centers to operate amusement games or machines and exempts such games or machines from the general prohibition against slot machines. This authorization provides as follows:

Nothing contained in this chapter shall be taken or construed as applicable to an arcade amusement center having amusement games or machines which operate by means of the insertion of a coin and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons which may be exchanged for merchandise only, excluding cash and alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played.

§ 849.161(1)(a)1., Fla. Stat. (2011) (emphasis supplied).

10. An "arcade amusement center" is defined as a "place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility." § 849.161(2), Fla. Stat. (2011).

11. In excess of 50 amusement machines will be installed within the Licensed Facility to satisfy the statutory definition of "arcade amusement center." In addition, each amusement machine will feature the ability to operate by insertion of a coin.

12. Section 849.161(1)(a)1., Florida Statutes, authorizes conduct that is exempt from the general gambling prohibitions, including slot machine operation, that are set forth in Chapter 849, Florida Statutes.

13. The coin-operated amusement games or machines authorized by Section 849.161(1)(a)1., Florida Statutes, are also not considered "slot machines" as such term is used in Chapter 551, Florida Statutes. *See* § 551.102(8), Fla. Stat. (2011).

14. The Florida Attorney General has concluded that Chapter 849, Florida Statutes, is criminal in nature and "must be enforced by local law enforcement agencies and prosecuted by the State Attorney's Office in the appropriate judicial circuit." Op. Att'y Gen. Fla. 2007-48 (2007).

15. The Florida Attorney General has also concluded that "while [Section 849.161(1)(a)1., Florida Statutes,] requires that skill be a factor in determining whether the player is entitled to receive a prize or free plays, *it does not appear to require that the outcome of the game be dependent solely on skill.*" Op. Att'y Gen. Fla. 95-27 (1995) (emphasis supplied).

The Local Ordinance

16. In 2010, the City of Jacksonville approved the Ordinance and restricted arcade amusement centers to licensed pari-mutuel facilities in order to "protect the public health, safety and welfare." A true and correct copy of Chapter 155, City of Jacksonville Ordinance Code, is attached hereto as Exhibit A.

17. The City of Jacksonville adopted the Ordinance pursuant to its article VIII, section 1(g) of the Florida Constitution; Section 125.01, Florida Statutes; Chapter 166, Florida Statutes, and the Charter of the City of Jacksonville. § 155.101, City of Jacksonville Ordinance Code.

18. The Ordinance restricts arcade amusement centers to operate solely at licensed pari-mutuel facilities.² See § 155.104(a), City of Jacksonville Ordinance Code. JKC operates the only licensed pari-mutuel facility within the Ordinance's jurisdiction.

19. The arcade amusement machines installed within the Licensed Facility will be certified by an independent testing laboratory in conformance with the requisite "application of skill" required by the Ordinance. The Ordinance requires that the independent testing laboratory (the "Independent Laboratory") be licensed by the Division of Pari-Mutuel Wagering pursuant to Chapter 551, Florida Statutes. See § 155.107, City of Jacksonville Ordinance Code.

20. The Ordinance defines "application of skill" as "the ability of the player, through the application of any of the skill factors listed in this Chapter, to alter the payout percentage³ of an amusement game by not less than 25 percent over a completely random outcome determined as provided in this Chapter." § 155.104(d), City of Jacksonville Ordinance Code.

21. The Ordinance provides local authorities, specifically the City of Jacksonville and the Jacksonville Sheriff's Office, with clarity in the amount of skill required by the statute since such amount is not apparent based on clearly established law interpreting that exception. See *Noell v. White*, 198 Fed. Appx. 858, 859 (11th Cir. 2006).

22. The Independent Laboratory is required to apply the following procedure in certifying the requisite application of skill:

- (a) Measure the payout percentage of the subject game based on a completely random outcome and without any application by the player of any skill factors that the independent testing laboratory will apply in making the measurement under subsection (b) below.

² The Ordinance does not regulate either a Family Amusement Arcade or a De minimis Activity Facility and this Petition does not seek any declaration concerning such facilities.

³ The Ordinance defines "payout percentage" as the "theoretical portion of played points retained by a machine over a period of time as determined by a licensed testing laboratory" See § 155.104(i), City of Jacksonville Ordinance Code.

- (b) Measure the payout percentage of the subject game through the exercise by the player of all skill factors available to optimize the payout percentage to the player, including but not limited to all applicable skill factors such as complete knowledge of the game, adherence to all probability based strategies, optimum manual dexterity and/or optimum decision making ability.
- (c) Measure the percentage decrease in the payout percentage determined under subsection (b) over that determined under subsection (a).

§ 155.107, City of Jacksonville Ordinance Code.

23. The Independent Laboratory shall certify the machines in conformance with the Ordinance if the payout percentage decrease is at least 25 percent. *See* §§ 155.104(d) and 155.107, City of Jacksonville Ordinance Code.

24. The Ordinance provides substantial local governmental regulation. Specifically, the Ordinance contains extensive permitting and machine registration requirements. *See* §§ 155.107 and 155.108, City of Jacksonville Ordinance Code.

25. The Ordinance also specifically authorizes the City of Jacksonville and the Jacksonville Sheriff's Office to enter the Licensed Premises and conduct compliance inspections. *See* § 155.115, City of Jacksonville Ordinance Code.

26. The Jacksonville Sheriff's Office, in conjunction with the State Attorney's Office for the Fourth Judicial Circuit, may investigate and pursue criminal charges if arcade amusement machines are operated at the Licensed Facility in a manner inconsistent with the Ordinance.

Licenses and Regulatory Authority

27. As set forth above, JKC holds a pari-mutuel permit, pari-mutuel license, cardroom license, and alcoholic beverage license issued by agencies within the Department.

28. Section 550.0251(10), Florida Statutes, authorizes the Division of Pari-Mutuel Wagering to impose a fine, suspend, or revoke JKC's pari-mutuel permit and/or license for violations under Chapter 550, Florida Statutes.

29. Section 849.086(14), Florida Statutes, authorizes the Division of Pari-Mutuel Wagering to impose a fine, suspend or revoke JKC's cardroom license for violations under Section 849.086, Florida Statutes.

30. Section 561.29(1)(a), Florida Statutes, authorizes the Division of Alcoholic Beverages and Tobacco to fine, suspend, or revoke JGR SERVICES' alcoholic beverage license for violations of any state law.

31. Section 509.261(5)(b), Florida Statutes, authorizes the Division of Hotels and Restaurants to fine, suspend, or revoke JGR SERVICES' public food service license permitting unlawful gambling upon its premises.

32. JKC and JGR SERVICES' are in doubt as to whether these statutes are applicable if the City of Jacksonville and Independent Laboratory determine that the arcade amusement machines are operated at the Licensed Facility in conformance with the Ordinance.

Conclusion

33. The Petitioners seek a declaratory statement from the Department concerning how the operative provisions of Chapters 509, 550, 561 and Section 849.086, including any applicable administrative rules, will impact the questions presented regarding the operation of arcade amusement machines at the Licensed Facility in conformance with the Ordinance as determined by the City of Jacksonville and Independent Laboratory.

Questions Presented

Question 1: Whether the Department has jurisdiction to subject JKC's or JGR SERVICES' licenses, as set forth above, to administrative discipline if the City of Jacksonville and Independent Laboratory determine that the arcade amusement machines are operated at the Licensed Facility in conformance with the Ordinance.

The Petitioners present Questions 2 through 5 only in the event that the Department answers Question 1 in the affirmative.

Question 2: Whether JKC's pari-mutuel permit and/or license can be subjected to administrative discipline, including fines, suspension and/or revocation if the City of Jacksonville and Independent Laboratory determine that the arcade amusement machines are operated at the Licensed Facility in conformance with the Ordinance.

Question 3: Whether JKC's cardroom license can be subjected to administrative discipline, including fines, suspension and/or revocation if the City of Jacksonville and Independent Laboratory determine that the arcade amusement machines are operated at the Licensed Facility in conformance with the Ordinance.

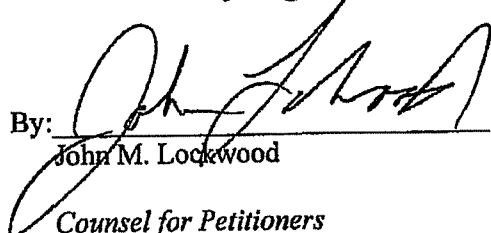
Question 4: Whether JGR SERVICES' alcoholic beverage license can be subjected to administrative discipline, including fines, suspension and/or revocation if the City of Jacksonville and Independent Laboratory determine that the arcade amusement machines are operated at the Licensed Facility in conformance with the Ordinance.

Question 5: Whether JGR SERVICES' public food service license can be subjected to administrative discipline, including fines, suspension and/or revocation if the City of Jacksonville and Independent Laboratory determine that the arcade amusement machines are operated at the Licensed Facility in conformance with the Ordinance.

WHEREFORE, the Petitioners request that the Department issue a Declaratory Statement answering the above-stated questions.

Respectfully submitted this 4th day of May 2012.

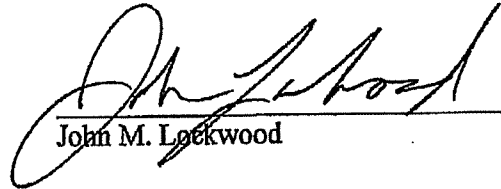
JOHN M. LOCKWOOD, P.A.
200 West College Avenue, Suite 307
Tallahassee, Florida 32301
Telephone: (850) 727-5009
Facsimile: (850) 270-2610
Email: john@lockwoodlawfirm.com

By: 
John M. Lockwood

Counsel for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing document was filed via hand delivery with the Agency Clerk of the Department of Business and Professional Regulation at 1940 North Monroe Street, Tallahassee, Florida 32399-1035 on this 4th day of May 2012.


John M. Lockwood

**Jacksonville, Florida, Code of Ordinances >> TITLE VI - BUSINESSES, TRADES AND OCCUPATIONS
>> Chapter 155 - ADULT ARCADE AMUSEMENT CENTER >>**

Chapter 155 - ADULT ARCADE AMUSEMENT CENTER

Sec 155 101 - Legislative Authorization

Sec 155 102 - Area of Enforcement

Sec 155 103 - Intent

Sec 155 104 - Definitions

Sec 155 105 - Skill-based Adult Arcade Amusement Machine Operation Requirements

Sec 155 106 - Exemption

Sec 155 107 - Measure and Testing Application of Skill

Sec 155 108 - Minors Prohibited from Playing Adult Arcade Amusement Machines

Sec 155 109 - Permitting

Sec 155 110 - Machine Registration Requirements

Sec 155 111 - Record Keeping Requirements

Sec 155 112 - Enforcement

Sec 155 113 - Occupational License Tax, Adult Arcade Amusement Machine Registration Fees

Sec 155 114 - Penalty

Sec 155 115 - Right of Entry

Sec 155 116 - Severability

Sec. 155.101. - Legislative Authorization.

This Chapter is enacted in the interest of the public health, peace, safety, morals and general welfare of the citizens and inhabitants of Duval County, Florida, pursuant to Fla. Const. Article VIII, section 1(g), F.S. § 125.01, F.S. Ch. 166, Florida Statutes, and the Charter of the City of Jacksonville.

(Ord 2010-326-E, § 2)

Sec. 155.102. - Area of Enforcement.

The Council is acting herein as the governing body for Duval County, Florida, and this Chapter shall be effective in the General Services District, less Urban Services Districts 2, 3, and 4 which said area includes the entire City of Jacksonville, except the Cities of Jacksonville Beach, Neptune Beach, and Atlantic Beach

(Ord 2010-326-E, § 2, Ord 2011-24-E, § 1)

Sec. 155.103. - Intent.

The intent of the Council acting as the governing body of Duval County, Florida in adopting this Chapter is to regulate adult arcade amusement centers, so as to protect the public health, safety and welfare.

(Ord 2010-326-E, § 2)

Sec. 155.104. - Definitions.

- (a) *Adult arcade amusement center* means a business.
- (1) That is located on the "premises" of a facility that is licensed by the State of Florida pursuant to F.S. Ch 550, and
 - (2) That operates adult arcade amusement machines and
 - (3) That is licensed under this Chapter.
- (b) *Adult arcade amusement machine or machine* means an electronic, mechanical, coin, currency, ticket, token, card or other similarly operated, computer, video or other similar machine, device or game which operates on the insertion of money, coin, or other type of monetary consideration or requires the payment of monetary consideration for its operation and which, whether by application of skill or application of the element of chance or both or by any other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any credit, allowance or thing of value. The presence of a device as described above that requires the payment of monetary consideration for its operation shall result in the presumption that such machine is an adult arcade amusement machine as defined herein. This definition shall not include Electronic Equipment as defined in Section 156.105(d).
- (c) *Amusement game or game* shall mean any individual measure of play as indicated by an adult arcade amusement machine. Multiple games may be played by a single activation of the machine with the machine rendering the results of the games played without the decrementing of additional points or the payment of additional consideration.
- (d) *Application of skill* shall mean the ability of the player, through the application of any of the skill factors listed in this Chapter, to alter the payout percentage of an amusement game by not less than 25 percent over a completely random outcome determined as provided in this Chapter.
- (e) *Coupon* means a printed instrument that is a representation of points available for merchandise redemption. A coupon may not be redeemed for anything other than merchandise, as defined herein.
- (f) *De minimis Activity Facility* means a facility operated by an organization exempt from federal taxation under Section 501(c) of the Internal Revenue Code with ten or fewer adult arcade amusement machines at that facility, all of which were in operation on or before January 1, 2010.
- (g) *Family Amusement Arcade* means a business which, in addition to a food and beverage business for which it possesses state and local licenses, also operates an integrated arcade business that complies with F.S. § 849.161(1)(a)1, catering primarily to families and minors.
- (h) *Merchandise* means an object of value available for sale to the general public on the premises of the adult arcade amusement center or via catalogs or kiosks produced by an adult arcade amusement center other than alcoholic beverages and cash. The general public must be able to discern:
- (1) The points required to redeem the merchandise; and

- (2) The purchase price of the merchandise.
 - (i) *Payout percentage* means the theoretical portion of played points retained by a machine over a period of time as determined by a licensed testing laboratory.
 - (j) *Points* means a unit of entitlement for play of an adult arcade amusement machine created by either
 - (1) The conversion of coins, bills, tickets, or vouchers when inserted into an adult arcade amusement machine; or
 - (2) The results of a played game.
 - (k) *Premises* means the legal description of the land and location of the pari-mutuel facility as licensed according to F S Ch 550
 - (l) *Promotional points* means points that are provided free of charge by the adult amusement arcade center to patrons
- (Ord 2010-326-E, § 2)

Sec. 155.105. - Skill-based Adult Arcade Amusement Machine Operation Requirements.

Except as provided in Section 155.106 below, in order for an adult arcade amusement machine authorized by Florida law pursuant to F.S. § 849.161(1)(a)1., to lawfully exist and operate within the geographical boundaries of Duval County, each such machine must meet the following requirements.

- (a) Be located on the premises, as defined in this Chapter, of an adult arcade amusement center licensed by the City pursuant to this Chapter;
- (b) Operate by means of the insertion of a coin,
- (c) Incorporate into the game the application of skill required by this Chapter; and
- (d) Award only coupons or points to the player.

Adult arcade machines may also operate via the insertion of a token, card, ticket, currency, or other electronic or mechanical contrivance constituting the payment of monetary consideration provided it also operates by means of the insertion of a coin. Any coupons generated by a skill-based machine authorized under this section may only be redeemable for merchandise

(Ord 2010-326-E, § 2)

Sec. 155.106. - Exemption.

Nothing in this Chapter shall be interpreted to apply to either a Family Amusement Arcade or a De minimis Activity Facility, as defined in this Chapter.

(Ord 2010-326-E, § 2)

Sec. 155.107. - Measure and Testing Application of Skill.

The application of skill factor required under F.S. §§ 155.104(d) and 155.105 of this Chapter shall be measured and certified by an independent testing laboratory licensed by the State of Florida pursuant to F S Ch. 551. In measuring a player's ability to alter the percentage through the application of skill for the purposes of this Chapter, the independent testing

laboratory shall apply the following procedures:

- (a) Measure the payout percentage of the subject game based on a completely random outcome and without any application by the player of any skill factors that the independent testing laboratory will apply in making the measurement under subsection (b) below.
- (b) Measure the payout percentage of the subject game through the exercise by the player of all skill factors available to optimize the payout percentage to the player, including but not limited to all applicable skill factors such as complete knowledge of the game, adherence to all probability based strategies, optimum manual dexterity and/or optimum decision making ability.
- (c) Measure the percentage decrease in the payout percentage determined under subsection (b) over that determined under subsection (a)

(Ord 2010-326-E, § 2)

Sec. 155.108. - Minors Prohibited from Playing Adult Arcade Amusement Machines.

No person under the age of 18 years shall be permitted to play an adult arcade amusement machine or be on the premises of an adult arcade amusement center. All adult arcade amusement machines on the premises of the adult arcade amusement center shall each bear a sticker, at least three inches in diameter, which clearly and legibly says "Play by Minors Prohibited".

(Ord 2010-326-E, § 2)

Sec. 155.109. - Permitting.

The following shall apply relative to permitting of any adult amusement arcade center

- (a) *Permit Required.* All adult arcade amusement centers located within the geographic boundaries of Duval County shall obtain an adult arcade amusement center permit issued by the Department of Neighborhoods as a prerequisite to the initial operation of an adult arcade amusement center
- (b) *Permits Limited.* The total number of permits issued pursuant to this section for adult arcade amusement centers within Duval County shall be limited to no more than two
- (c) *Permit Form and Conditions.* The application for an adult arcade amusement center permit must be on a form approved by the Department of Neighborhoods and the Office of General Counsel, and accompanied by satisfactory proof of:
 - (1) Licensure of the pari-mutuel permittee's premises pursuant to F.S. Ch 550, and
 - (2) Payment by the applicant of the applicable occupational license tax imposed by Section 772.340, Ordinance Code.
- (d) *Permit Issuance.* Upon the submission of a complete and accurate application complying with the terms of this section, the Department of Neighborhoods shall issue an initial permit for the period from the date of the beginning of operations until the following September 30. After the permit for the initial year or partial

- year of operation, renewal permits with a term of one year shall be issued to the permittee on or before each October 1 upon submission of required documentation and payment of the applicable permit fees.
- (e) *Certain Convictions Prohibited.* No adult arcade amusement center occupational permit shall be issued to an applicant if any person with an ownership interest in the business operating the adult arcade amusement center has been convicted of a violation of a federal, state or local law, statute or ordinance pertaining to gambling or any other crime involving moral turpitude within seven years preceding the date of the filing of the license application
- (f) *Review and approval.* Except as provided for in subsection (c) above, within 60 days of receipt of an Applicant's completed permit application, the Department of Neighborhoods shall grant or deny the application. If any principal, officer, shareholder or director of the Operator has a pending criminal case for an enumerated crime the City may delay its grant or denial of the permit until 60 days after the final judgment in the case. If an Applicant satisfies all permit filing requirements and is not ineligible, the Department of Neighborhoods shall approve the application.
- (g) *Denial of Permit.* An Applicant whose permit application is denied may reapply at any time by completing all steps of the application procedure. The decision to deny a permit shall be considered non-final agency action subject to appellate review by a committee (Committee) consisting of the Director of Planning and Development, the Director of Neighborhoods (or successor), and the Chair of the Council's Public Health & Safety Committee. The decision of the Committee shall constitute final agency action subject to judicial review. Any appeal of a permitting decision shall be made within 15 calendar days of denial by filing a written notice of appeal with the Director of Neighborhoods. Failure to file written notice of appeal within the prescribed time period constitutes a waiver of the right to appeal
- (h) *Revocation of Permit.* The City may revoke a permit for violation of any provision of this Chapter. Prior to revocation, the City shall provide to the permit holder, through their individual in Duval County authorized to accept notices from the City, the following:
- (1) A written notice of intent to revoke the permit,
 - (2) A 14 calendar day opportunity to cure the alleged violation, and
 - (3) An opportunity to be heard prior to revocation.

Revocation shall not take place before 21 days after a notice of revocation, opportunity to cure, and opportunity to be heard is delivered to the permit holder. The decision to revoke a permit shall be considered non-final agency action subject to appellate review by a committee (Committee) consisting of the Director of Planning and Development, the Director of Neighborhoods (or successor), and the Chair of the Council's Public Health & Safety Committee. The decision of the Committee shall constitute final agency action subject to judicial review. Any appeal of a revocation decision shall be made within 15 calendar days of revocation by filing a written notice of appeal with the Director of Neighborhoods. Failure to file written notice of appeal within the prescribed time period constitutes a waiver of the right to appeal.

(Ord 2010-326-E, § 2; Ord 2011-732-E)

Sec. 155.110. - Machine Registration Requirements.

Adult arcade amusement machines, as defined in this Chapter, shall be registered as follows.

- (a) The permittee is required to maintain on its premises a complete inventory, along with serial numbers or equivalent identification, as set forth in subsections (d) and (e) below, the adult arcade amusement machines in operation on the premises of the adult arcade amusement center at all times. The initial application for permit shall include a certificate of inspection by the Department of Neighborhoods's permitting administrator of the inventory, along with serial numbers or equivalent of identification, as set forth in subsection (d) and (e) below, of the machines that the permittee intends to put into operation when the adult arcade amusement center begins its business activities.
- (b) Each renewal permit application shall contain a certificate of inspection of updated inventory, along with serial numbers or equivalent identification, as set forth in subsection (d) and (e) below, of the machines that the permittee intends to put into operation when the adult arcade amusement center begins its business activities under the renewal license
- (c) Before a new adult arcade amusement machine is put into operation at the adult arcade amusement center, the permittee shall notify the Department of Neighborhoods's permit administrator of the addition of the machine to the inventory and update its inventory accordingly.
- (d) Upon review of the inventory of machines under subsections (a), (b) and (c) above, the Department of Neighborhoods's permit administrator shall enter each machine into an adult arcade amusement machine registry that the license administrator shall create. For each machine registered, the permit administrator shall cause to be issued and delivered to permittee for each machine within seven days of the notification required under section (c) a numbered metal or plastic decal. The registration decal for each machine shall be attached thereto and in plain view at all times. Registration decals are not transferable. The failure of any machine to display a current registration decal shall be a violation of this section and subject to enforcement action by the City
- (e) The inventory of machines under subsections (a), (b) and (c) above shall provide the following information: the manufacturer(s); the serial number(s); common name, type or description of the game played on the machine. The registration decal shall contain the inventory number of the machine.
- (f) Each inventory of machines submitted under subsections (a), (b) and (c) above shall be accompanied by a certificate issued by an independent testing laboratory licensed by the State of Florida pursuant to F.S. Ch. 551, certifying that the game played by the skill-based adult arcade amusement machines identified in the inventory meet the application of skill requirement contained in Sections 155.104(d), 155.105 and 155.107 of this Chapter

(Ord. 2010-326-E, § 2, Ord 2011-732-E)

Sec. 155.111. - Record Keeping Requirements.

The following records shall be maintained in the administrative office of each adult

arcade amusement center

- (a) The name, address, telephone numbers, date of birth, driver's license number, and principal occupation of every person with a ten percent or greater ownership interest in the business of the adult arcade amusement center,
- (b) A copy of the license issued for the pari-mutuel permittee by the State of Florida pursuant to F.S. Ch 550
- (c) A current inventory of machines in operation on the premises, and
- (d) A current certification of compliance issued by an independent testing laboratory licensed pursuant to F.S. Ch. 551, for each game played by the skill based machines listed in the inventory.

(Ord 2010-326-E, § 2)

Sec. 155.112. - Enforcement.

- (a) The City of Jacksonville shall have the right to pursue all legal and equitable remedies necessary to ensure full compliance with this Chapter. Except as otherwise provided herein, the requirements of this Chapter may be enforced by the Department of Neighborhoods (or its successor) and/or the Jacksonville Sheriff's Office as follows:
 - (1) Through the Municipal Code Enforcement Board or the Special Magistrate pursuant to the authority granted by F.S. Ch 162, Part I, and Ch. 91, Ordinance Code;
 - (2) Through the judicial system by citation for civil penalties pursuant to the authority granted by F.S. Ch 162, Part II, and Ch 609, *Ordinance Code*;
 - (3) Through the judicial system by civil complaint filed by the City for civil penalties in a court of competent jurisdiction;
 - (4) By civil action for injunctive relief through a court of competent jurisdiction; and/or
 - (5) By all other means available in law or equity.
- (b) Civil penalty payments recovered pursuant to this Chapter shall be used to fund administration and enforcement efforts under this Chapter. Upon successful prosecution of any violation of this Chapter wherein the City has filed suit in a court of competent jurisdiction to recover a civil penalty and/or obtain injunctive relief, the City shall be authorized to recover its reasonable attorneys' fees and costs.
- (c) Permittees shall have a private right of action to pursue all legal and equitable remedies necessary to ensure full compliance with this Chapter against any other permittee, including but not limited to injunctive relief.

(Ord 2010-326-E, § 2, Ord 2011-386-E, § 1; Ord 2011-732-E)

Sec. 155.113. - Occupational License Tax; Adult Arcade Amusement Machine Registration Fees.

The following taxes and fees shall be assessed in connection with operation of any adult arcade amusement center.

- (a) Notwithstanding any other provision of the Ordinance Code, and in accordance with F.S. Ch. 205, the exclusive annual occupational license tax for each licensed adult arcade amusement center shall be \$40 per day of operation,

payable by the licensee on or before October 1 of each year for the following one-year operational period beginning on October 1. In any partial year of operation, the annual occupational license tax shall be prorated from the beginning date to the following September 30.

- (b) The annual machine registration fee shall be \$50 per machine payable by the permittee on or before October 1 of each year for the following one-year operational period beginning on October 1. If a machine is registered after October 1, then the annual registration fee shall be prorated from date of registration to the following September 30

(Ord 2010-326-E, § 2)

Sec. 155.114. - Penalty.

Each violation of this Chapter by a licensee or any unlicensed person, company or entity shall constitute a Class E offense, as defined in Chapter 609, Ordinance Code per machine per day. Each day the violation exists, and each individual machine found to be in violation on that day, shall constitute a separate violation for the purposes of this Chapter and may be punishable as such.

(Ord 2010-326-E, § 2, Ord 2011-386-E, § 2)

Sec. 155.115. - Right of Entry.

The City of Jacksonville and the Jacksonville Sheriff's Office shall have the right to enter and inspect the public spaces of the premises at any time to ensure compliance with the provisions of this Chapter or any other ordinances within their authority, including but not limited to the right to enter the premises and to select and remove any adult arcade amusement machine(s) to inspect, test and/or have tested to determine compliance with this Chapter.

(Ord. 2010-326-E, § 2)

Sec. 155.116. - Severability.

In the event that any portion of this Chapter is declared invalid, unenforceable, unconstitutional or void, or is permanently enjoined, or if the existence of any provision of this Chapter would result in any other portion of any Chapter of the Ordinance Code being held to be invalid, unenforceable, unconstitutional or void, and the court does not sever such invalid portion of this section, then the invalid portion of this Chapter is repealed and invalid. It is the specific intent that the invalidity of any portion of this Chapter shall not affect any other section, subsection, paragraph, subparagraph, sentence, phrase, clause or word of this Chapter or the Ordinance Code.

(Ord. 2010-326-E, § 2)