

ORDINANCE NO. 404

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF HAVANA, FLORIDA, RELATING TO SIMULATED GAMBLING DEVICES AND INTERNET CAFES; CREATING CHAPTER 14, ARTICLE III OF THE CODE OF ORDINANCES OF HAVANA, FLORIDA; PROVIDING FOR AUTHORITY AND PURPOSE; SETTING FORTH FINDINGS OF FACT; PROVIDING FOR DEFINITIONS; PROVIDING FOR A PROHIBITION OF THE USE OF SIMULATED GAMBLING DEVICES; PROVIDING FOR EXEMPTIONS; PROVIDING FOR CONFLICTS WITH STATE LAW; PROVIDING FOR VIOLATION, ENFORCEMENT, PENALTIES, AND REMEDIES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AUTHORITY TO CODIFY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida has, in chapter 166, Florida Statutes, conferred upon municipalities the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry;

WHEREAS, business establishments that offer simulated gambling devices for use by the public, which have been present in the Town of Havana, in the past, and are present today in unincorporated Gadsden County in the areas surrounding the Town of Havana and throughout the State of Florida, are frequently located in businesses that are commonly referred to as "internet cafes;"

WHEREAS, presently throughout Gadsden 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;

WHEREAS, the Town Council of the Town of Havana, Florida, hereby finds that establishments that utilize simulated gambling devices can deceive many Town of Havana residents, including the elderly, the economically disadvantaged, the uneducated, and the unsuspecting into believing such activities are legal and lawfully permitted;



WHEREAS, the Town Council of the Town of Havana, Florida, hereby finds that simulated gambling devices are deceptive;

WHEREAS, due to the inherently deceptive nature of simulated gambling devices, establishments that utilize simulated gambling devices are contrary to the quality of life, tone of commerce, and community environment in the Town of Havana, Florida;

WHEREAS, there have been recent violent crimes associated with an internet cafe just outside the Town of Havana, Florida, where one person was killed in November 2023 during an attempted robbery;

WHEREAS, in December 2023, the Florida Gaming Control Commission seized approximately 70 suspected illegal gaming machines from another internet cafe just outside the Town of Havana, Florida;

WHEREAS, the Town Council of the Town of Havana, Florida, hereby finds that a correlation exists between establishments that utilize simulated gambling devices and crime and 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 the Town of Havana and constitutes a public nuisance;

WHEREAS, the Town Council of the Town of Havana, Florida, hereby finds that the Havana Police Department is without sufficient expertise or manpower to ensure the prevention of such illegal gaming machines within the Town of Havana;

WHEREAS, the Town Council of the Town of Havana, Florida, hereby determines that the endangerment of both the public and first responders, particular Havana Police Department officers, required to respond to this ongoing criminal activity is too significant to allow any public or commercial use of simulated gambling devices to begin, continue, or proliferate in the Town of Havana;

WHEREAS, the Town Council of the Town of Havana, Florida, hereby finds that the operation of simulated gambling establishments in the Town of Havana constitutes a public nuisance;

WHEREAS, the Town Council of the Town of Havana, Florida, hereby finds that any operation of simulated gambling establishments (internet cafes) in the Town of Havana will result in significantly increased expenditure of police resources and public funds to prevent criminal activity that threatens the public safety and welfare;

WHEREAS, the Town Council of the Town of Havana, Florida, hereby finds that any operation of simulated gambling establishments in the Town of Havana

creates an immediate and ongoing hazard to the public health, safety, and welfare associated with the continued operation of simulated gambling devices; and

WHEREAS, the Town Council of the Town of Havana, Florida, hereby finds that there is a legitimate public purpose in prohibiting simulated gambling devices from being operated in the Town of Havana.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HAVANA, FLORIDA, AS FOLLOWS:

**SECTION 1. INCORPORATION OF RECITALS.** The above recitals are true and accurate and are hereby incorporated herein, but need not be set forth in the Code of Ordinances of Havana, Florida.

**SECTION 2. CREATION OF CHAPTER 14, ARTICLE III.** The Code of Ordinances of Havana, Florida, is hereby amended by adding sections 14-36 through 14-41, article III, chapter 14, to read as follows:

**ARTICLE III. SIMULATED GAMBLING DEVICES; INTERNET CAFES**

**Sec. 14-36. Authority; Intent; Purpose; Scope**

(a) This article is adopted in the interest of the public health, safety, and general welfare of the citizens and inhabitants of the Town of Havana, Florida, pursuant to chapter 166, Florida Statutes and Florida Constitution Article VIII.

(b) The intent and purpose of this article is to provide for regulation of simulated gambling devices and internet cafes, decrease the unwanted secondary effects associated with the operation of internet cafes, authorize the use of private property for lawful purposes, and deter illegal gambling. To do this, the town intends 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 that can be reasonably construed to be the use of simulated gambling devices. Further, the town council, 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.

(c) Family amusement games or devices are exempt from the provisions of this article.



(d) Pari-mutuel facilities, operated by a holder of a pari-mutuel permit that may be issued pursuant to chapter 550, Florida Statutes, and chapter 61D of the *Florida Administrative Code*, and devices located therein, are exempt from the provisions of this article.

#### **Sec. 14-37. Definitions.**

For the purpose of this article, certain terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise.

“*Internet cafe*” means any location at which simulated gambling devices are made accessible for use by a person, except those places specifically excluded from this article as set forth in section 14-39.

“*Person*” means an individual, association, partnership, joint venture, corporation, or any other type of organization or legal entity, 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.

“*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, 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, electromagnetically, or otherwise 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*" include 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 or 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" is for convenience of reference only. The term "simulated gambling device" as used in this article 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.
- (9) For the purpose of determining the number of simulated gambling devices, each seat, terminal, or other point of interface at which a separate individual may use the device, shall be counted as a separate and distinct device, regardless of whether the device or any seat, terminal, or other point of interface is functional. For example, if a single table has six chairs at which six separate persons can play a game, on a common screen/display or otherwise, it shall be counted as six devices; if a stand-up game has three terminals or points of interface at which three people can use the device, it shall be counted as three devices.

"*Slot machine*" has the same meaning as specified in chapter 551, Florida Statutes.

"*COO*" shall mean a certificate of occupancy issued as provided for in the Code of Ordinances of Havana, Florida.



**Sec. 14-38. Prohibition of simulated gambling devices.**

(a) It is unlawful for any person to manage, supervise, maintain, provide, produce, possess, or use a simulated gambling device for commercial, promotional, or pecuniary gain or purpose.

(b) For determining the allowable unit of prosecution, it is the intent of the town council that each individual act of managing, supervising, maintaining, providing, producing, possessing, or using a simulated gambling device constitutes a separate violation of this section:

- (1) For example, if a person possesses five (5) simulated gambling devices, that person would be subject to a separate penalty for each of the five (5) simulated gambling devices;
- (2) For example, if a person possesses two (2) simulated gambling devices that the person sells to another individual, the person will have committed four (4) acts in violation of this section and would be subject to a separate penalty for possessing each of the two (2) simulated gambling devices and a separate sanction for providing each of the two (2) simulated gambling devices; and
- (3) For example, if a person employed at an internet cafe supervises an establishment having 10 simulated gambling devices, that person would be subject to a separate penalty for each of the 10 simulated gambling devices.

(c) Any commercial establishment or property that was lawfully in possession of either a COO or was operating unlawfully prior to the effective date of this section shall immediately cease the use of simulated gambling devices regulated by this ordinance upon the effective date of this section.

**Sec. 14-39. Exemptions.**

(a) This article 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 article does not prohibit the ownership, possession, play, operation, or use of any device expressly permitted by section 546.10, Florida Statutes, or other provisions of the Florida Statutes.

(c) This article does not prohibit a religious or charitable organization from conducting a fund-raising activity involving gaming, provided the religious or

charitable organization (1) does not conduct the activity more than twice in one calendar month, (2) for no more than six hours per fund-raising activity, (3) the organization provides advance written notice to the chief of police of the date, time, place, and nature of such activity and who will be conducting it, and (4) the activity is not otherwise unlawful.

(d) This Article does not apply to pari-mutuel facilities, operated by a holder of a pari-mutuel permit issued pursuant to chapter 550, Florida Statutes, and chapter 61D of the *Florida Administrative Code*, or to any devices or games therein.

#### **Sec. 14-40. Conflict with state law.**

Nothing in this article 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 article and either the Florida Constitution or chapter 849, Florida Statutes, then the provisions of the Florida Constitution or chapter 849, Florida Statutes, shall control, as applicable.

#### **Sec. 14-41. Enforcement; Penalties; Civil remedies.**

(a) The police department, through any of their respective officers, employees, and agents shall have concurrent jurisdiction to investigate and enforce the requirements of this article, as follows:

- (1) By the issuance of a cease and desist order. Upon notice from any agency or individual authorized to enforce this section, occupancy or operation of any structure or property where any simulated gambling device is being used or operated in violation of this section 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 section. Failure to comply with the terms and conditions of a cease and desist order issued pursuant to this section shall constitute an additional violation of this section. 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.
- (2) By citation for civil penalties, which shall be \$250.00 per violation per day for each violation. In lieu of the aforementioned civil penalties, the town may enforce this article in the manner otherwise provided by the Code of Ordinances of Havana, Florida, or by any other means authorized by law.
- (3) A violation of this Article that is a civil violation may be reclassified to a



misdemeanor of the second degree, punishable by up to 60 days imprisonment in jail and a fine of up to \$500.00, if, at the time of the violation:

- a. The violator manages, supervises, maintains, provides, produces, possesses, or uses five or more simulated gambling devices for commercial, promotional, or pecuniary gain or purpose;
  - b. The violator has one or more prior convictions for a violation of this article or has been found, on one or more occasions, to have committed a violation of this article. For the purpose of this subsection, "*conviction*" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of *nolo contendere* is entered. A person may be found to have committed a violation of this article by any court or board empowered to impose a sanction for violation of this article.
  - c. The violator has one or more prior convictions for a violation of any provision of chapter 849, Florida Statutes. For the purpose of this subsection, "*conviction*" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of *nolo contendere* is entered;
  - d. The violator has previously entered in any pretrial intervention program or diversion program for any violation of this article, a substantially similar ordinance of another jurisdiction, or any provision of chapter 849, Florida Statutes; or
  - e. The violator is in violation of a cease and desist order issued pursuant to this article at the time the violations occur.
- (4) By an action for injunctive relief through a court of competent jurisdiction. An action for injunctive relief may be brought by the town council, the State Attorney, or any substantially affected person. If such action is successful, a judgment for reasonable attorney's fees and costs may be awarded by the court.
- (5) Any person against whom a civil penalty is assessed pursuant to this article shall be prohibited from applying for any certificate of occupancy for any property until such civil penalty has been paid in full. Prohibitions against an application for a certificate of occupancy contemplated in this section shall not become effective until the judgment requiring such prohibition becomes final.



**SECTION 3. CONFLICTS.** In the event that the provisions of this ordinance are in conflict with any other town ordinance, then the provisions of this ordinance shall prevail.

**SECTION 4. SEVERABILITY.** It is hereby declared to be the intent of the Town Council of the Town of Havana, Florida, that if any section, subsection, clause, phrase, or provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this ordinance.

**SECTION 5. REPEAL OF ORDINANCES.** All ordinances or parts of ordinances in conflict with this ordinance are, to the extent of such conflict, hereby repealed.

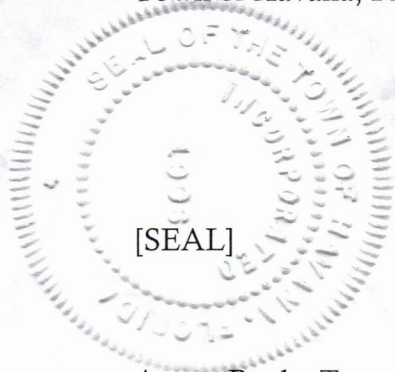
**SECTION 6. INCLUSION IN TOWN CODE.** It is the intention of the town council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Havana, Florida; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section," "article," or other appropriate designation.

**SECTION 7. EFFECTIVE DATE.** This Ordinance shall become effective upon its final approval and adoption.

*[Remainder of Page Intentionally Blank]*

PASSED in an open session of the Town Council of the Town of Havana, Florida, on this 8 day of October, 2024, by a vote of 6 - 0.

PASSED AND ADOPTED in an open session of the Town Council of the Town of Havana, Florida, on this 8 day of October, 2024, by a vote of 6 - 0.



[SEAL]

TOWN OF HAVANA, FLORIDA:

A handwritten signature in black ink, appearing to be 'Tim Loughmiller Jr.', written over a horizontal line.

Tim Loughmiller Jr., Mayor

Attest, By the Town Clerk of  
the Town of Havana, Florida:

A handwritten signature in black ink, appearing to be 'Shirley Ann L. Miller', written over a horizontal line.

Town Clerk

Approved as to Form:

A handwritten signature in black ink, appearing to be 'John B. ...', written over a horizontal line.

Town Attorney