

CITY OF VANDALIA
MONTGOMERY COUNTY, OHIO
ORDINANCE NO. 11-15

**AN ORDINANCE TO REGULATE AND LICENSE INTERNET SWEEPSTAKES
CAFES WITHIN THE CITY OF VANDALIA**

WHEREAS, based on investigation and reports of staff, news reports, discussions with members of other communities, and on findings incorporated in cases decided by Ohio courts, City Council finds: that in other communities where Internet Sweepstakes Cafés and similar types of businesses currently exist in the State of Ohio, there has been numerous incidents of illegal gambling; an increase in reports of criminal activities in the areas near the businesses; an increase in the number of constituent complaints related to the businesses; and an increase in the need for police oversight to ensure illegal gambling is not occurring; and

WHEREAS, City Council finds that the enactment of this ordinance to regulate Internet Sweepstakes Café is a substantial government interest for the City in preserving the quality of urban life and that it is in the interest of the health, safety, morals, and general welfare of the citizens of Vandalia; and

WHEREAS, it is the intent of the Council in enacting this Ordinance to improve the quality of life and economic vitality of the City of Vandalia; enforce income tax regulations, prevent safety and fire hazards; disturbances, disorderly assemblies, and illegal gambling within the City; to establish standards for licensing, regulation and control of Internet Sweepstakes Cafés and premises upon which they are located and operated.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VANDALIA, MONTGOMERY COUNTY, OHIO THAT:

Section 1. The above findings and purpose are incorporated into this ordinance by this reference.

Section 2. DEFINITIONS. As used in this Ordinance:

(a) "Computerized Sweepstakes Device" means any computer, machine, or apparatus which, is capable of connection to the internet, regardless of whether such connection is utilized, through a wireless router telephone line, digital subscriber line, satellite, cellular telephone, cable connection or any other method, which is engaged or accessed upon the insertion of a coin, token, or similar object, or the sliding of a magnetic card or entry of a code, or similar process, or upon payment of anything of value, either directly or indirectly, and which may be operated by the public generally for use as entertainment, amusement or a contest of skill, whether or not generally for use as a contest of skill, entertainment of amusement, whether or not registering a score, and which when so utilized produces, announces, reveals or discloses the eligibility, award or payment of a cash prize redeemable on or at the Internet Sweepstakes Café, whether or not said prize was in fact announced, revealed or disclosed through the usage of the Computerized Sweepstakes Device. Computerized Sweepstakes Device does not include machines designated for use by the State Lottery Commission.

"Internet Sweepstakes Café" means any premise upon which there are situated five (5) or more Computerized Sweepstake Devices that are available for the use or entertainment of the public within such premises whether or not such premise has any other business purpose.

"Chief of Police" means the Police Chief of the City of Vandalia or his designee.

"City Manager" means the City Manager of the City of Vandalia or his designee.

"Operator" means the person or persons having authority to control the premises of an Internet Sweepstakes Café.

"Licensee" means the person or persons who sign an application for a license hereunder and to whom such license is issued.

"Owner" means any person who possesses any interest, either directly or indirectly, in an Internet Sweepstakes Café.

"Applicant" means the person or persons who sign an application for a license hereunder.

"Person" means any natural person, firm partnership, association, corporation or any other form of business organization.

"Premises" means the building or any portion thereof used for conducting the operation of an Internet Sweepstakes Café.

Section 3. INTERNET SWEEPSTAKES CAFÉ LICENSE REQUIRED. No person shall conduct or operate an Internet Sweepstakes Café in the City without having first obtained a Sweepstakes Terminal Cafe license as provided in this Ordinance.

Section 4. COMPUTERIZED SWEEPSTAKES DEVISE LICENSE REQUIRED. One Computerized Sweepstakes Devise license shall be required for each individual Computerized Sweepstake Devise and shall specify the name and address of the licensee and the manufacturer, model number and serial number of the Computer Sweepstakes Devise for which it was issued.

Section 5. AUTHORITY OF CHIEF OF POLICE. Authority is hereby established and vested in the Chief of Police to consider any application for an Internet Sweepstakes Café license under this Ordinance, conduct investigations therefore and thereon and issue or deny issuance of any such license based upon the criteria set forth in this Ordinance.

Section 6. NATURE OF LICENSES.

(a) Each Internet Sweepstakes Café license shall be required to be displayed permanently in a conspicuous place upon the premises for which it is issued. Each Internet Sweepstakes Café license shall be issued for only one (1) business at only one (1) premise.

(b) A Computerized Sweepstakes Devise license shall become invalid if the Computerized Sweepstakes Devise is replaced or moved to another location not specifically stated on the license.

(c) Any license issued under this Ordinance shall be valid for a period of one year from and after the date of issuance unless suspended or revoked as provided in this Ordinance. Each license shall vest a personal privilege but not any property rights in the license. No license shall be assignable or transferable, either as to person or location.

Section 7. PROCEDURE FOR OBTAINING LICENSES.

(a) Applications for Internet Sweepstakes Café Licenses. All applications for Internet Sweepstakes Café licenses under this Ordinance shall be in writing on a form approved by and filed with the Chief of Police. The application shall be sworn to under oath and signed by the owner or owners and shall contain information required by this section supplied in detail as to each such person, including general and limited partners of partnerships, shareholders of corporations and principals or members of any other type of business entity or organization. All applications shall contain a statement that the information contained therein is complete, accurate and truthful. Every owner and operator of the Internet Sweepstakes Café, shall at their sole cost and expense, be fingerprinted by an agency approved by the Chief of Police.

(b) Contents of Applications. The application for an Internet Sweepstakes Café License shall contain the following information as to all Owners:

- (1) True name and all names used by owner(s) in the past five years;
- (2) Date of birth;
- (3) Permanent home address and all home addresses used in the past five years;
- (4) Business and home telephone numbers;
- (5) Employment history for the past five years;
- (6) A statement as to whether or not the owner has been convicted of any felony or for any misdemeanor involving the operation of a business or involving gambling activity, minors or any crime involving moral turpitude and, if so, the date and place of conviction, the nature of the offense and the penalty imposed;
- (7) A statement as to whether or not the owner has ever conducted an Internet Sweepstakes Café or similar business and, if so, when, where and for how long.
- (8) A description of the nature and operation of the main type of business activity to be conducted upon the premises;
- (9) The address and telephone number of the premises and of the business, if different from that of the premises;
- (10) The name under which the business and premises will be operated;
- (11) A statement as to whether or not the owner will directly operate the Internet Sweepstakes Café, or whether or not an operator who is not an owner will operate it, and if the latter, the application shall contain information required by this section supplied in detail as to each such operator;
- (12) A floor plan of the premises and the immediate vicinity drawn to scale, showing the square footage and placement of the computerized sweepstakes devices, exits, windows, storage spaces, and off-street parking;
- (13) The name, and address and telephone number of the agent of the business upon whom service of process can effectively and validly be made;
- (14) Specification of the days of the week and the hours of the day during which the licensed activity will be conducted; and

(c) Reports of City Officials. Upon receipt of an application for an Internet Sweepstakes Café license under this Ordinance, the Chief of Police shall request the following reports, which shall be rendered to him within thirty days of the date of filing of the application:

A written report from the Fire Chief as to whether the premises and Computerized Sweepstakes Devices thereon will create a fire hazard;

A written report from the police department specifying, with regard to all owners and operators, any convictions for any felony or for any misdemeanor involving the operation of a business or involving gambling activity, controlled substances, alcoholic beverages, minors or any crime involving moral turpitude;

A written report from the Chief Building Official as to whether all applicable building code regulations have been satisfied.

A written report from the Chief Zoning Official as to whether all applicable zoning laws have been satisfied.

(d) Applications for Computerized Sweepstakes Devise Licenses. All applications for Computerized Sweepstakes Devise licenses under this Ordinance shall be in writing on a form approved by and filed with the Chief of Police. The application shall be signed by the owner or owners and shall contain information required by this section supplied in detail. All applications shall contain a statement that the information contained therein is complete, accurate and truthful. The application shall contain the following information:

(1) A list of all Computerized Sweepstakes Devise to be used at the Internet Sweepstakes Café, specifying the manufacturer, model number and serial number of the Computer Sweepstakes Devise for which it was issued.

(2) Supporting documentation from a Certified Independent Regulatory Compliance Test Laboratory that the software that will be used by the Computerized Sweepstakes Devise performs in similar fashion as other permitted sweepstakes commercially offered to the public and that the entries are drawn from a pre-created finite static pool of entries with assigned values. To be certified the Independent Regulatory Compliance Testing Laboratory must be authorized to test regulated gaming equipment by at least one state government gaming regulatory agency.

(e) Determination Process. All applications for licenses under this Ordinance shall be considered by the Chief of Police, who shall, within ten days after receiving the written reports, either issue such licenses or deny issuance of such licenses. Unless a longer time is agreed upon by the Applicant and Chief of Police, all decisions shall be issued within 40 days of submittal of an Application.

In the event of the denial of issuance of such a license, the Applicant shall be notified of such denial and the specific reasons therefore in writing. Such notice shall be mailed or delivered to the Applicant at the address specified in the application by certified U.S. mail, return receipt requested. The Applicant shall have ten days after receipt of such notice within which to appeal such denial, by filing a written notice of appeal with the City Manager. Thereupon, the City Manager shall set a date and time for a hearing upon the appeal which date shall be no later than 30 days from the date of receipt by the City Manager of the written notice of appeal. Notice of hearing shall be sent to the Applicant not later than ten (10) days prior to the date of hearing, by certified U.S. mail, return receipt requested. The appeal shall be heard by the City Manager, who shall have the power after such hearing to confirm the denial, order the license to be issued or, at its discretion, to issue a conditional or probationary license. The Applicant may present evidence, provide witnesses and testimony, cross exam witnesses and may be represented by legal counsel.

(f) License Renewal. Each Internet Sweepstakes Café license and each Computerized Sweepstake Devise license must be renewed annually. At the time of renewal, a statement shall be filed with the Chief of Police that the information listed on the original application for the license is still complete, accurate and truthful to the best knowledge of all applicants. Such statement shall be signed by the same persons who signed the original application. In the event of a change since the original application, a statement shall be filed with the Chief of Police listing each and every item of information which has changed since the original application. The Chief of Police may determine to accept such statement and issue the renewal license requested, or, in the event of a material change, may require updated information in which case the provisions associate with obtaining an original license shall be followed.

(g) Expiration. Any Internet Sweepstakes Cafe license issued under this Ordinance shall expire upon the transfer or sale of a majority interest in the business, sale of substantially all the Assets of the business, or the discontinuation of the business for a continuous period of thirty (30) days.

(h) Changes. Applicants for any Internet Sweepstakes Café license issued under this Ordinance shall have a continuing duty to promptly supplement application information required by this section in the event that said information changes in any material way from what is stated on the application, including all information pertaining to Operators. This requirement applies even after a license has been issued. The failure to comply with said continuing duty within 20 days from the date of such change, by supplementing the application on file with the City, shall be grounds for suspension of a license.

Section 8. DENIAL OF LICENSE

- (a) An Internet Sweepstakes Café license shall not be issued or renewed for any business:
- (1) Where any of the owners or the operators have been convicted within the last five years of any felony or for any misdemeanor involving the operation of a business or involving gambling activity, minors or any crime involving moral turpitude;
 - (2) Where the premises do not provide a minimum of 1 off-street parking space for every two computerized sweepstake devices;
 - (3) Where it is determined that the premises or operation therein would be in violation of any provision of the Building Code, the Zoning Code or the Fire Code of the City or any other pertinent provisions of local, state or federal law;
 - (4) Where the applicant made a false statement as to a material matter upon the application or in a hearing concerning the license;
 - (5) Where the application failed to provide all of the required information; or
 - (6) Where there is not compliance with all terms and conditions under this Ordinance and all other applicable ordinances and statutes.
- (b) A Computerized Sweepstakes Devise license shall not be issued or renewed:
- (1) Where the applicant made a false statement as to a material matter upon the application or in a hearing concerning the license;
 - (2) Where the application failed to provide all of the required information; or
 - (3) Where there is not compliance with all terms and conditions under this Ordinance and all other applicable ordinances and statutes.

Section 9. CONDITIONS AND REGULATIONS.

(a) In addition to any other condition or regulation contained in this Ordinance or in state statutes, the following conditions and regulations shall be applicable to and shall govern and control all licenses of Internet Sweepstakes Cafes:

(1) Each licensee shall at all times open each and every portion of the premises for inspection by the Police department and other City personnel as necessary for the purposes of enforcing assuring compliance with, and/or enforcement of, any provisions of this Ordinance.

(2) Each licensee shall have present on the premises at all times when the premises are open to the public at least one adult operator who has not been convicted of any felony or of any misdemeanor involving the operation of a business or involving gambling activities, minors or any crime involving moral turpitude.

(3) No licensee shall allow living quarters to exist with direct entry to the premises.

(4) No person under the age of twenty one (21) years shall be permitted to operate a Sweepstakes Terminal Cafe.

(5) Any and all sweepstakes rules and odds of winning shall be posted in a conspicuous place at the premises and displayed on the Computerized Sweepstakes Device at the start of each game and/or activity. If results of a sweepstakes can be ascertained immediately upon receipt of the sweepstakes card, token code, or the like, such fact shall conspicuously placed at the premises and displayed on the computerized sweepstakes device.

(6) A list of each separate prize that may be given out and each separate dollar amount that may be given and the odds of winning any offered prize or dollar amount awarded for the participation in any game, activity, program, scheme, sweepstake or play, shall be conspicuously placed at the premises and displayed on the Computerized Sweepstakes Device.

(7) Each licensee shall operate the Internet Sweepstakes Café business in compliance with any and all pertinent Federal, State and local laws rules and regulations.

(8) No person under the age of twenty one (21) years shall be permitted within the Internet Sweepstakes Café.

(b) All computerized sweepstakes devices upon the premises of an Internet Sweepstakes Café shall be located thereon in conformity with the floor plan filed with the application for the license and in such a manner:

(1) So as not to impair ingress or egress to the premises;

(2) So as not to interfere with free and unfettered passage through the premise;

(3) So as to permit a clear and complete view of the interior of the premises immediately upon entry;

(c) The operator shall require a photo identification of every person to whom anything of value is given in connection with the sweepstakes/internet café and shall record the person's name, date of birth, and home address and a description of the thing given, a stated dollar value of the thing given, the date and time of the giving and, if a Computerized Sweepstakes Device is involved in the circumstances of the giving, the serial number or other identifying description of the device. If the dollar value given for any single event is six hundred dollars (\$600.00) or more, and the person receiving such sum is a resident of the City of Vandalia, the operator shall also include in the record a copy of the person's social security number. By the second Tuesday of each month the operator shall cause to be delivered to the City of Vandalia finance department, a copy of the record containing the information set forth above for the preceding month. The operator and the City shall not disclose the social security number of any person to anyone except as required by the laws of the State of Ohio and the United States.

Section 10. PROHIBITED CONDUCT. No Licensee of an Internet Sweepstakes Café by himself, directly or indirectly, or by any representative, agent or employee shall permit or fail to take active steps to eliminate the activities specified in this section from occurring upon the premises. All such Licensees shall have a duty to diligently pursue enforcement of this section. The actions of the Operator and the failure to take action by the Operator shall be imputed to the Licensees. No such Licensee shall:

- (1) Permit the premises to become a gathering place for disorderly persons of any type;
- (2) Permit gambling in any form or the possession of gambling paraphernalia upon the premises;
- (3) Permit intoxication or permit the possession, sale, use or consumption of alcoholic beverages upon the Premises unless properly licensed through the State of Ohio;
- (4) Permit the possession, use or consumption of any unlawful drug, narcotic or controlled substance upon the premises;
- (5) Permit the premises or the activity conducted thereon to become a public nuisance to the surrounding environs;
- (6) Permit the driveways or streets to become obstructed in any manner so that traffic is hindered;
- (7) Permit any Computerized Sweepstakes Device thereon to be operated at any time the premises are not open for business, or permit the entrance to be locked at any time that the premises are open for business;
- (8) Permit any computerized sweepstakes device to be offered to be used for gambling of any sort.
- (9) Permit the premises to be open for business without displaying the licenses therefore in a conspicuous place thereon;
- (10) Permit any violation of any ordinance of the City or statute of the State of Ohio to take place upon the premises.

Section 11. REVOCATION.

(a) Revocation. All Internet Sweepstakes Café licenses issued under this Ordinance shall be revoked by the Chief of Police upon his finding of the occurrence of any of the following events:

- (1) A false statement by any licensee as to a material matter made in an application for license or in a hearing concerning the license;
- (2) Conviction of any licensee or operator of any felony or of any misdemeanor involving gambling activities, controlled substances, alcoholic beverages, minors or any crime involving moral turpitude;
- (3) Conviction twice within a one-year period of any licensee or operator for a violation of this Ordinance.
- (4) Where it is determined that the premises or operation thereof are in violation of any provision of the Building Code, the Zoning Code or the Fire Code of the City or any other pertinent provisions of local, state or federal law;

(b) Hearing. A license shall not be revoked without a hearing before the City Manager. The licensee shall be given at least ten (10) days prior written notice of intent to revoke, which shall set forth the time and place of the hearing and the specific reasons for such suspension or revocation. The licensee shall have the right at the hearing to present testimony and other relevant evidence and to orally examine any person offering evidence as to the reasons for evocation.

Section 12. LICENSE FEES.

- (a) Fee. In order to offset the costs to be incurred by the City, including but not limited to costs associated with the enforcement this Ordinance, costs to investigate the Internet Sweepstakes Café and its owners and operators and other related costs, the fee for an Internet Sweepstakes Café license shall be Two Thousand Five Hundred Dollars (\$2,500) per year. The fee for each Computerized Sweepstakes Devise license shall be Thirty Five Dollars (\$35.00)
- (b) Filed with Application. License fees under this Ordinance shall be filed with the application for license and at the time for renewal.
- (c) Return of Fee. In the event an application is denied under this Ordinance, one-half of the license fees therefore shall be returned to the applicant. In the event any license is revoked under this Ordinance, no portion of the license fee shall be returned to the owner.

Section 13. SEVERABILITY. This Ordinance and each section and provision of this Ordinance, are hereby declared to be independent sections and subsections and, notwithstanding any other evidence of legislative intent, the Council of the City of Vandalia, by adoption of the legislation containing this section, hereby states that it is the controlling legislative intent that if any provisions of said Ordinance, or the application thereof to any person or circumstance, is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently if such section or provision were so known to be invalid. The adoption of this Ordinance in a single legislative act is merely for convenience. It is the intent that each and every separate part hereof be severable so as to leave in effect as much of this Ordinance as is not found invalid so as to provide as much benefit to its citizens as possible while still protecting the rights guaranteed under the US and State Constitution. Nothing contained herein shall be deemed to permit the use of a Computerized Sweepstakes Device or operation of Internet Sweepstakes Café if such use or operation is determined by a court of competent jurisdiction to be illegal within the State of Ohio.

Section 14. NON CONFLICT. Computerized Sweepstakes Devices and Internet Sweepstakes Cafes shall not be subject to the licensing regulations for Amusement Devises as set forth in Ordinance 810 of the Vandalia Codified Ordinances.

Section 15. PENALTY. Whoever violates any of the provisions of this Ordinance is guilty of a misdemeanor of the first degree. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Section 16. This ordinance shall take full force and effect from and after the earliest period allowed by law.

Passed this 6th day of September, 2011.

APPROVED:

ATTEST:

William M. Loy, Mayor

Robert L. Anderson
Clerk of Council