

ORDINANCE NO.: 2011-42

FIRST READING September 12, 2011

SECOND READING September 26, 2011

INTRODUCED BY: James Flaiz

THIRD READING October 10, 2011

**ORDINANCE ENACTING REGULATIONS OF COMPUTERIZED INTERNET SWEEPSTAKES CAFES AND DECLARING AN EMERGENCY.**

**WHEREAS**, the Council of the Village of South Russell, Ohio acknowledges the popularity of so-called Computerized Internet Sweepstakes Cafes; and

**WHEREAS**, the Council believes that a Computerized Internet Sweepstakes Café is by its nature a unique business; and

**WHEREAS**, the State of Ohio has not established a policy or offered guidance to local governments to assist their officials in determining whether such business operations violate State of Ohio gambling laws; and

**WHEREAS**, the Investigative Unit of the Office of the Ohio Attorney General has limited its investigation of computerized internet sweepstakes devices and enforcement of Ohio's gambling laws to premises licensed to serve alcoholic beverages and charitable organizations licensed to operate games of chance; and

**WHEREAS**, the Council finds that the Village has an overwhelming interest in regulating this type of business for the safety and welfare of its residents; and

**WHEREAS**, the computer programs and devices used in Computerized Internet Sweepstakes Cafes can be manipulated to operate in a manner which violates Ohio's gambling laws; and

**WHEREAS**, the Council finds that nearby communities have either enacted or are drafting ordinances to regulate computerized Internet Sweepstakes Cafes.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Village of South Russell, State of Ohio, that:

**SECTION 1.** The Council hereby enacts the following:

Computerized Internet Sweepstakes Cafes

- .01 Purpose & Objectives
- .02 Construction, Severability & Applicability of Chapter
- .03 Definitions
- .04 Computerized Sweepstakes Device License Required

- .05 Sweepstakes Terminal Café License Required
- .06 Computerized Sweepstakes Device Supplier License Required
- .07 Authority of Village Administrator
- .08 Licenses
- .09 Procedure for Obtaining Licenses
- .10 Denial of Sweepstakes Terminal Café License
- .11 Conditions and Regulations
- .12 License Expiration, Suspension or Revocation
- .13 License Fees
- .14 Equal Opportunity
- .99 Penalty

**.01 PURPOSE & OBJECTIVES**

The purpose of this Chapter and the policy of the Village is to establish standards for the licensing, regulation and control of computerized sweepstakes devices, computerized sweepstakes terminals and so-called computerized internet sweepstakes cafes; the premises upon which the terminals and devices are located and operated for the entertainment of the public; and the hours of operation thereof. The objectives of this chapter are to prevent safety and fire hazards, disturbances, disruption of pedestrian traffic, gambling and to provide adequate parking for the patrons within the Village.

**.02 CONSTRUCTION, SEVERABILITY AND APPLICABILITY OF CHAPTER**

- (a) Construction. This chapter shall be liberally construed and applied to promote its purpose and objectives.
- (b) Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and neither the remainder of this chapter nor the application of such provision to other persons or circumstances shall be affected thereby.

**.03 DEFINITIONS**

As used in this Chapter:

- (a) “Computerized Sweepstakes Device” means a computer, machine, game or apparatus including an individual computer terminal screen which may be operated by the public generally for participation in a sweepstakes and which does not violate the Ohio Revised Code or municipal ordinance prohibitions upon gambling. No electronic or computerized sweepstakes device, game play or outcome shall have as a component thereof, or shall be operated or determined by, a random number generator (RNG) or compensating

algorithm. The game play and outcome shall be determined by or from a finite pre-determined pool, with the odds of winning stated in the sweepstakes "Official Game Rules".

- (b) "Operator" means the person or persons having control of the premises of a Sweepstakes Terminal Café or authority over the computerized sweepstakes devices located therein.
- (c) "Licensee" means the person or persons who sign an application for a license hereunder and to whom the license is issued.
- (d) "Owner" means a person who possesses an interest, either directly or indirectly, in a Sweepstakes Terminal Café.
- (e) "Sweepstakes" means a game, advertising program or plan, or other promotion, which without payment of any consideration, a person may enter to win or become eligible to receive a prize, the determination of which is based upon chance.
- (f) "Sweepstakes Terminal Café" and "Computerized Internet Sweepstakes Café" means the premises or the portion of the premises upon which computerized sweepstake devices are located for the use or entertainment of the public, whether or not such premises are operating under a zoning certificate for another use or business purpose.

**.04 COMPUTERIZED SWEEPSTAKES DEVICE LICENSE REQUIRED.**

No person shall display or offer the use of a computerized sweepstakes device until all licenses required by this chapter have been issued by the Village. A separate license is required for each computerized sweepstakes device.

**.05 SWEEPSTAKES TERMINAL CAFÉ LICENSE REQUIRED.**

No person shall open for business or operate a sweepstakes terminal café in the Village of South Russell without first obtaining a sweepstakes terminal café license.

**.06 COMPUTERIZED SWEEPSTAKES DEVICE SUPPLIER LICENSE REQUIRED.**

No person shall sell, rent or otherwise provide a computerized sweepstakes device in the Village without first obtaining a computerized sweepstakes supplier license as provided in this Chapter.

**.07 AUTHORITY OF SAFETY DIRECTOR.**

The Village Building Commissioner has the authority to consider, review and investigate an application for a license under this Chapter, apply the licensing criteria in this Chapter, and to either issue or deny a license.

**.08 LICENSES.**

A license issued hereunder shall:

- (a) be issued in the name of the applicant.
- (b) be valid for one year unless suspended or revoked as provided in this Chapter.
- (c) be displayed permanently in a conspicuous place upon the premises.
- (d) not be assigned or transferred to another operator or location.

**.09 PROCEDURE FOR OBTAINING LICENSES; DENIAL; APPEAL; RENEWAL.**

- (a) Application for License. A license application shall be submitted with the application for a zoning certificate on a form provided by and filed with the Village Building Commissioner and signed by the owner(s). An application shall be acknowledged before a notary public that the information contained therein is complete, accurate and truthful.
- (b) Contents of Applications. The application shall contain:
  - (1) Such information requested on the application form which the Village Building Commissioner deems reasonably necessary for the interest of the public in the application.
  - (2) Supporting documentation from a certified Independent Regulatory Compliance Test Laboratory that the software performs in similar fashion as other permitted sweepstakes commercially offered to the public, that the entries are drawn from a pre-created finite static pool of entries with assigned values and the device does not include nor is the outcome determined by a random number generator or compensating algorithm. 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.
- (c) Village Building Commissioner Review. A license application shall be reviewed by the Village Building Commissioner within ten days of approval of the zoning certificate and either approved or denied.

- (d) Appeal. If a license application is denied, the applicant shall be notified in writing with the specific reasons for denial stated therein, and mailed by certified U.S. mail, return receipt requested, or delivered to the applicant at the address in the application. The applicant may appeal the denial within ten days by filing a written notice of appeal with the Fiscal Officer, who shall set a date and time for a hearing upon the appeal. Notice of hearing shall be sent to the applicant not less than ten (10) days prior to the date of hearing, by certified U.S. mail, return receipt requested. Council shall have the authority after the hearing to confirm the denial, order the license to be issued or, at its discretion, issue a conditional or probationary license.
- (e) Appeal to Court. The decision of the Council may, within thirty days thereof, be appealed to a court of competent jurisdiction under O.R.C. Chapter 2506.
- (f) License Renewal. A statement acknowledged before a notary public shall be filed with the annual license renewal that the information listed on the original application for the license is complete, accurate and truthful to the best knowledge of the owner(s) and include any changes to the original application or the last annual renewal. The Village Building Commissioner may renew the license or require a new application for a license.

**.10 DENIAL OF SWEEPSTAKES TERMINAL CAFÉ LICENSE.**

No license shall be issued or renewed unless a zoning certificate has been issued and is in full force and effect for the use on the premises and has not been denied, suspended or revoked; the premises or operation thereof comply with the municipal Building Code, Zoning Code and Fire Code and local, state and federal laws; and the application includes all of the required information.

**.11 CONDITIONS AND REGULATIONS.**

- (a) In addition to any other condition or regulation contained in this Chapter, the codified ordinances or the O.R.C., the following conditions and regulations shall control the operation of a licensed sweepstakes terminal café.
  - (1) Every portion of the licensed premises shall be open for inspection by law enforcement officials with jurisdiction within the Village of South Russell and municipal officials for enforcing the provisions of this Chapter.
  - (2) At least one adult operator shall be present when the premises are open to the public.
  - (3) The adult person in control of the premises shall be readily identifiable and situated at a location upon the premises which

provides unobstructed view of the portion of the premises devoted to the operation of computerized sweepstakes devices.

- (4) A person under the age of 18 years shall not be permitted upon the premises unless accompanied by a parent, guardian or an adult spouse nor permitted to operate a computerized sweepstakes device.
- (5) The hours of operation shall not commence earlier than 9:00 a.m. nor extend beyond 12:00 a.m. EXCEPT that the premises, if also licensed for any purpose by the State of Ohio, may operate under the hours permitted by the State.
- (6) Sweepstakes rules and odds of winning shall be posted in a conspicuous place at the premises in at least 72 point bold print and displayed on the computerized sweepstakes device at the start of each game and/or activity in at least 14 point bold font.
- (7) The licensee shall operate the Sweepstakes Terminal Café business in compliance with Federal Trade Commission rules and regulations.
- (8) All the licensed computerized sweepstakes devices shall be placed in conformity with the floor plan approved prior to the issuance of the license. The floor plan shall show the location of each computerized sweepstakes device, provide unobstructed ingress and egress to the premises, allow free and unfettered passage through the premises and permit an unobstructed view of the entire premises immediately upon entry.
- (9) The licensee shall permit a certified Independent Regulatory Compliance Test Laboratory selected by the Village Building Commissioner or designee to inspect and verify that all operating systems, including but not limited to software programs and computer chip components, comply with the provisions of this ordinance. The inspections shall be paid by the licensee.
- (10) The Licensee shall not permit a computerized sweepstake device to be operated when the premises are not open to the public for business nor permit the entrance to be locked when the computerized sweepstakes devices on the premises are used by persons other than the owners, licensees, operators or employees of the internet sweepstakes café business.

**.12 LICENSE EXPIRATION, SUSPENSION OR REVOCATION.**

- (a) Expiration. The sweepstakes terminal café license and computerized sweepstakes device licenses shall expire upon the earliest of the following: the transfer or sale of a majority interest in the business, the discontinuation of the business for a continuous period of thirty days, or one year from the date the licenses were issued.
- (b) Suspension and Revocation. A license issued under this chapter shall be suspended or revoked by the Village Building Commissioner upon a finding of any of the following:
  - (1) A false statement concerning a material matter made in an application for license or during a hearing concerning the license;
  - (2) Two convictions within one year of a licensee or operator for a violation of this Chapter.
- (c) Hearing. No license shall be suspended or revoked under this chapter without a hearing. The licensee shall be given not less than ten days written notice prior to the hearing scheduled to consider license revocation or suspension of intent to suspend or revoke, which shall set forth the time and place of the hearing and the specific reasons for 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 who testifies or offers evidence in support of suspension or revocation.
- (d) Appeal. The decision of the Village Building Commissioner to suspend or revoke a license may be appealed to Council and a court of competent jurisdiction under O.R.C. Chapter 2506 pursuant to procedures set forth in §743.09(d) and (e) above.

**.13 LICENSE FEES.**

- (a) Computerized Sweepstakes Devices. The fee for each computerized sweepstakes device license shall be three thousand dollars (\$3,000.00) per device, per month.
- (b) Computerized Sweepstakes Device Supplier. The fee for each computerized sweepstakes device supplier license shall be Two Thousand Five Hundred Dollars (\$2,500.00) per year.

- (c) Sweepstakes Terminal Café. The fee for a sweepstakes terminal café license shall be based upon the number of computerized sweepstakes devices on the premises and in accordance with the following schedule:

1 to 10	\$10,000.00
10 to 40	\$12,500.00
41 to 60	\$17,500.00
61 to 80	\$20,000.00
81 to 100	\$25,000.00
100 or more	\$35,000.00

- (d) Replacement License. The fee for a replacement license shall be fifteen dollars (\$15.00).
- (e) Payment with Application. License fees under this chapter shall be paid with the application for license.
- (f) Return of Fee. If a license application is denied, the license fee shall be returned to the applicant. None of the license fee shall be returned if a license is suspended or revoked.

**.14 EQUAL OPPORTUNITY.**

No person shall be denied a license or the right to use a license issued under this Chapter because of race, color, creed, sex, religious belief or national origin.

**.99 PENALTY.**

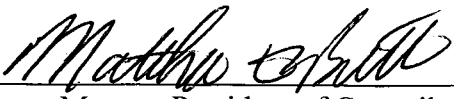
Whoever violates any provision of this chapter is guilty of misdemeanor of the first degree. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

**SECTION 2.** It is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law, including §121.22 of the Ohio Revised Code.


**SECTION 3.** This ordinance constitutes an emergency measure necessary for the immediate preservation of the public peace, health, and safety, and for the further reason that the municipal moratorium on the issuance of a zoning certificate for a computerized internet sweepstakes café expires on October 22, 2011, and for these reasons this Ordinance shall be effective upon its passage.



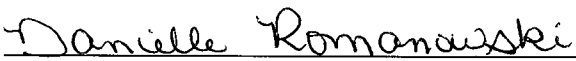
**SECTION 4.** This Ordinance shall take effect immediately upon its passage.

  
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Mayor - President of Council

ATTEST:

  
\_\_\_\_\_  
Fiscal Officer

I certify that Ordinance No. 42 was duly enacted on the 10<sup>th</sup> day of October, 2011, by the Council of the Village of South Russell, and posted in accordance with the Ordinances of the Village.

  
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Fiscal Officer