

EXECUTIVE & FINANCE COMMITTEE MEETING
MONDAY, SEPTEMBER 12, 2011
6:00 PM

Council President Holzheimer Gail has called an Executive & Finance Committee Meeting for **Monday, September 12, 2011** at **6:00 PM** in the Euclid Municipal Center Council Chamber.

AGENDA

JOINT DISCUSSION WITH CIVIL SERVICE COMMISSION MEMBERS ON CIVIL SERVICE RULES & PROCEDURES FOR THE SELECTION OF POLICE & FIRE CHIEF.

First Deliberation:

Ord. (148-10) An ordinance enacting Chapter 705, entitled “Sweepstakes Terminal Cafes” of the Business Regulation and Taxation Chapter of the Codified Ordinances of the City of Euclid. (Sponsored by Mayor Cervenik)

REGINA CAHILL
CLERK OF COUNCIL

COMMITTEE: ALL COUNCIL

Ordinance No.

By – Mayor Cervenik

An ordinance enacting Chapter 705, Entitled “Sweepstakes Terminal Cafés” of the Business Regulation and Taxation Chapter of the Codified Ordinances of the City of Euclid.

WHEREAS, computerized sweepstakes and sweepstakes terminal cafés, and the premises upon which they are located and operated, are by their nature a unique business; and

WHEREAS, the City of Euclid seeks to regulate this business to insure that they are in compliance with pertinent rules and regulations of the Federal Trade Commission; and

WHEREAS, the City of Euclid further seeks to regulate this business to prevent safety and fire hazards, disturbances, disruption of pedestrian traffic, disorderly assemblies, theft of personal property, gambling and truancy within the City; and

WHEREAS, the City of Euclid shall use various city personnel to monitor the operation of this business to ensure compliance with all pertinent federal, state and local rules and regulations.

NOW, THEREFORE, be it ordained by the Council of the City of Euclid, State of Ohio:

Section 1: That Chapter 705 of the Euclid Codified Ordinances, entitled “Sweepstakes Terminal Cafe” is hereby enacted to read as follows:

CHAPTER 705
SWEEPSTAKES TERMINAL CAFÉS

705.01 TITLE, PURPOSE, AND OBJECTIVE.

(a) Title. This chapter shall be known and may be cited as Sweepstakes Terminal Cafés.

(b) Purpose and Objectives. It is the purpose of this chapter and the policy of the City to establish standards for licensing, regulation and control of computerized sweepstakes devices and sweepstakes terminal cafés and premises upon which they are located and operated for purpose of entertainment of the public. The objectives of this chapter are to prevent safety and fire hazards, disturbances, disruption of pedestrian traffic, disorderly assemblies, theft of personal property, gambling and truancy within the City.

705.02 CONSTRUCTION, SEPARABILITY, AND APPLICABILITY OF CHAPTER.

(a) Construction. This chapter shall be liberally construed and applied to promote its purpose and objectives.

(b) Separability. If any provision of this chapter or the application thereof to any person circumstance, is held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed 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.

705.03 DEFINITIONS.

As used in this chapter:

(a) “Computerized sweepstakes device” means any computer, machine, game or apparatus which, upon the insertion of a coin, token or similar object, or upon payment of anything of value, wherein a product or service is provided, and may be operated by the public generally for use as a contest of skill, entertainment or amusement, whether or not registering a score, and which in no way tends to encourage gambling.

(b) “Safety Director” means the Ex-officio Director of Public Safety.

(c) “Board” means the City Planning and Zoning Board.

- (d) "Operator" means the person or persons having authority to control the premises of an arcade amusement center or an accessory amusement area.
- (d) "Licensee" means the person or persons who sign an application for a license hereunder and to whom such license is issued.
- (f) "Owner" means any person who possesses a pecuniary interest, either directly or indirectly, of twenty-five percent or more in an amusement device business.
- (g) "Person" means any natural person, firm, partnership, association, corporation or any other form of business organization.
- (h) "Premises" means the building or portion thereof used for conducting the operation of an amusement device business.
- (i) "School" means any educational institution, public, private, secular or parochial, which offers instruction of kindergarten through high school grades.
- (j) "'Sweepstakes Terminal Café" means any individual premises upon which any computerized sweepstakes device is located for the use or entertainment of the public, whether or not such premises have other business purposes of any nature whatsoever.

705.04 COMPUTERIZED SWEEPSTAKES DEVICE LICENSE REQUIRED

No person shall for purpose of use any computerized sweepstakes device in the City without having first obtained a license therefore as provided in this chapter, which license shall be designated as a computerized sweepstakes license. A separate license is required for each such computerized sweepstakes device.

705.05 SWEEPSTAKES TERMINAL CAFÉ LICENSE REQUIRED

No person shall conduct or operate a sweepstakes terminal café are in the City without having first obtained a license therefore as provided in this chapter, which license shall be designated as a sweepstakes terminal café license.

705.06 AUTHORITY OF SAFETY DIRECTOR

Authority is hereby established and vested in the Safety Director to consider applications for licenses under this chapter, conduct investigations thereon and issue or deny issuance of such licenses based upon the criteria set forth in this chapter.

705.07 NATURE OF LICENSES.

(a) All Licenses. All licenses issued under this chapter shall have the following characteristics:

- (1) Each such license shall be an annual license which covers a period from January 1, through December 31 unless suspended or revoked.
- (2) Each such license shall vest a personal privilege but not any property rights in the licensee.
- (3) Each such license shall be required to be displayed permanently in a conspicuous place upon the premises for which it is issued.
- (4) Each such license shall be in the name of the applicant
- (5) Each such license shall be neither assignable nor transferable, either as to person or location.
- (6) Each such license, if lost, destroyed or mutilated, upon application within thirty days thereof may be replaced by a replacement license issued by the Safety Director bearing the word "Replacement" across its face and bearing the same license number as the license which it replaces.

(b) Computerized Sweepstakes Device Licenses. All computerized sweepstakes device licenses issued under this chapter shall have the following characteristics:

- (1) Each such license shall be issued for an individual computerized sweepstakes device only.

- (2) Each such license shall specify the name and address of each licensee, and the manufacturer, model number and serial number of the computerized sweepstakes device for which it was used.
- (3) Each such license, if changed, mutilated, erased or in any manner defaced, shall be void, and any amusement device which the same shall purport to license shall be deemed an unlicensed amusement device.

(c) Sweepstakes Terminal Café Licenses. All sweepstakes terminal café licenses issued under this chapter shall have the following characteristics:

- (1) Each such license shall be issued only for an individual business at an individual premises.
- (2) Each such license shall specify the name and address of each licensee, and the manufacturer, model number and serial number of each computerized sweepstakes device located upon the premises for which it was issued.

705.08 PROCEDURE FOR OBTAINING LICENSES.

(a) Applications for Licenses. All applications for licenses under this chapter shall be in writing on a form approved by and filed with the Safety Director. The application shall be 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, or partnerships, shareholders of corporations and principals of any other type of business entity. In the event that no person owns twenty-five percent or more of the sweepstakes terminal café, such application shall be signed by an authorized representative of the sweepstakes terminal café. All applications shall contain a statement that the information contained therein is complete, accurate and truthful to the best knowledge of all applicants. Every owner and operator of the sweepstakes terminal café shall be fingerprinted by the Euclid Police Department and said persons shall pay for the costs associated with obtaining said fingerprints.

(b) Contents of Applications. The application shall contain the following information as to all owners;

- (1) True name and all names used 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 crime other than traffic offenses, 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 a sweepstakes terminal café 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 on the premises;
- (9) A description of the nature and operation of any business to be conducted in conjunction with the sweepstakes terminal café, and the anticipated percentage of gross revenue to be derived from each respective business;
- (10) The address and telephone number of the premises and of the business, if different from that of the premises;
- (11) The name under which the business and premises will be operated;
- (12) A statement as to whether or not the owner will directly operate the sweepstakes terminal 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.
- (13) 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, bicycle storage racks and off-street parking.
- (14) A map showing all schools, playgrounds, parks or other arcade amusement centers within a radius 1,000 feet of the premises and all churches within a radius of 500 feet of the premises;
- (15) The name, and address and telephone number of the agent of the business upon whom service of process can effectively validly be made;
- (16) The number, type, name, model and manufacturer's serial number of each computerized sweepstakes device requested to be licensed;
- (17) The name and address of the owner, distributor and manufacturer of each computerized sweepstakes device requested to be licensed;

- (18) Specification of terms of agreement governing the acquisition and installation of each amusement device requested to be licensed;
- (19) A description as to the nature and type of property or services which will be sold or supplied upon the premises;
- (20) A copy of the title or lease to the premises;
- (21) A copy of the Articles of Incorporation, if the owner is a corporation;
- (22) A copy of the Operating Agreement, if the owner is a limited liability corporation;
- (23) A copy of the Partnership Agreement, if the owner is a partnership;
- (24) Specification of the days of the week and the hours of the day during which the licensed activity will be conducted; and
- (25) Any other information which the Safety Director may deem reasonably necessary for the full interest of the public in the application.

(c) Reports of City Officials. Upon receipt of an application for a license under this chapter, the Safety Director shall request the following reports, which shall be rendered to him within thirty days of the date of filing of the application.

- (1) A written report from the Fire Chief shall be submitted to the Safety Director as to whether the premises and computerized sweepstakes devices thereon will create a fire hazard; and
- (2) A written report from the Police Chief shall be submitted to the Safety Director specifying, with regard to all owners and operators, any convictions for any felony or for any misdemeanor involving physical violence, gambling activity, controlled substances, alcoholic beverages, minors or any crime involving moral turpitude.
- (3) A written report from the Building Commissioner shall be submitted to the Safety Director as to whether all building laws have been satisfied.

A written report from the Zoning Commissioner shall be submitted to the Safety Director as to whether all zoning laws have been satisfied.

(d) Determination Process.

- (1) Safety Director. All applications for licenses under this chapter shall be considered by the Safety Director, who shall, within ten days after receiving the written reports, either issue such licenses or deny issuance of such licenses.
- (2) Appeal to Board. 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. 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 Planning and Zoning Board. Thereupon, the applicant shall have not less than ten days notice of the date and place of the hearing. The appeal shall be heard by the Board, which Board 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.
- (3) Appeal to Court. The decision of the Board may, within thirty days thereof, be appealed to a court of competent jurisdiction under Ohio R.C. Chapter 2506.

(e) License Renewal. Each computerized sweepstakes device license and sweepstakes terminal café license must be renewed annually. At the time of renewal, a statement shall be filed with the Safety Director that the information listed on the original application for the license is still complete, accurate and truthful to the best knowledge of all applicants, or a statement shall be filed with the Safety Director listing each and every item of information which has changed since the original application. Such statement shall be signed by the same persons who signed the original application. The Safety Director may determine to accept such statement and issue the license requested, or he may determine to enforce the procedure required for the original license.

705.09 DENIAL OF SWEEPSTAKES TERMINAL CAFÉ.

No arcade amusement center license shall be issued or renewed for any business or premise:

- (a) Where any of the owners or the operators has been convicted within the last five years of any felony or of any misdemeanor involving the operation of a sweepstakes terminal café business, or involving physical

violence, gambling activities, controlled substances, alcoholic beverages, minors or any crime involving moral turpitude;

(b) Where the premises do not specifically designate at least 30 gross square feet of floor area for each amusement device to be located upon the premises, excluding areas used for other principal uses;

(c) Where the premises do not provide a minimum of 35 off-street parking places, or 1 such space for every 2 computerized sweepstakes devices, whichever is greater;

(d) Where the premises are located within 1,000 feet of any school, playground, public park or other sweepstakes terminal café or within 500 feet of any church;

(e) Where it is determined that the premises or operation thereof 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;

(f) Where the applicant made a false statement as to a material matter upon the application or in a hearing concerning the license;

(g) Where the application failed to provide all of the required information; or

(h) Where not all terms and conditions under this chapter and all other applicable ordinances and statutes are complied with.

705.10 CONDITIONS AND REGULATIONS.

(a) In addition to any other condition or regulation contained in this chapter or in state statutes, the following conditions and regulations shall be applicable to and shall govern and control all licenses of sweepstakes terminal cafes:

- (1) Each such licensee shall at all times open each and every portion of the premises for inspection by the Police Department and other City departments for the purposes of enforcing any provisions of this chapter.
- (2) Each such 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 sweepstakes terminal café or involving physical violence, gambling activities, controlled substances, alcoholic beverages, minors or any crime involving moral turpitude.
- (3) No such licensee shall open the premises for business except between the following hours (local time) on the following days:
 - A. Sunday through Thursday, 9:00 a.m. to 9:00 p.m.; and
 - B. Friday and Saturday, 9:00 a.m. to 11:00 p.m.
- (4) No such licensee shall allow living quarters to exist with direct entry to the premises.
- (5) No such licensee shall operate the sweepstakes terminal café business other than on street level or on a level within three feet thereof.
- (6) No such licensee shall allow any person, other than an owner or operator over the age of twenty-one years, who shall be readily identifiable, to be in control of the premises, nor allow such operator to be regularly situated in a place upon the premises other than a place from which he has an unobstructed view of the entire portion of the premises devoted to the operation of computerized sweepstakes devices.
- (7) No person under the age of twenty-one years shall be permitted in a sweepstakes terminal café.
- (8) 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.
- (9) Each such licensee shall operate the sweepstakes terminal café business in compliance with any and all pertinent Federal Trade Commission rules and regulations, the Ohio Revised Code and regulation and ordinances of the City of Euclid.

(b) All computerized sweepstakes devices upon the premises of a sweepstakes terminal 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 premises;
- (3) So that at least 30 gross square feet of floor area is specifically designated for each amusement device, excluding areas used for other principal uses;
- (4) So that there shall be a minimum unobstructed area of five feet on either side of each amusement device where persons may use, watch or wait to use such amusement device;
- (5) So as to permit a clear and complete view of the interior of the premises immediately upon entry; and
- (6) So that the back of any amusement device is not exposed to a window.

705.11 PROHIBITED CONDUCT AND CONDITIONS IN SWEEPSTAKES TERMINAL CAFES.

No licensee of a sweepstakes terminal café by himself, directly or indirectly, or by any servant, 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:

- (a) Permit any indecent, immoral or profane language, or indecent, immoral or disorderly conduct, upon the premises;
- (b) Permit the premises to become a gathering place for disorderly persons of any type;
- (c) Permit the gambling in any form or the possession or use of gambling paraphernalia upon the premises;
- (d) Permit intoxication or the possession or use of alcoholic beverages upon the premises;
- (e) Permit the possession or use of any unlawful drug, narcotic or controlled substance;
- (f) Permit the public streets, sidewalks, alleys or walkways in the immediate vicinity of any entrance or exit to the premises to become littered;
- (g) Permit the premises or the activity conducted thereon to become a public nuisance to the surrounding environs;
- (h) Permit the walkways to become obstructed in any manner so that pedestrian traffic is hindered;
- (i) Permit any computerized sweepstakes device thereon to be operated at any time the premises is not open for business, or permit the entrance to be locked at any time that the premises are open for business;
- (j) Permit the premises to become overcrowded so as to constitute a hazard to the health or safety of persons therein or to be in violation of any of the City's fire, health or sanitation codes;
- (k) Permit any computerized sweepstakes device to be offered to the public for operation unless fully operable and in safe operation condition;
- (l) Permit the premises to be open for business without displaying the licenses therefore in a conspicuous place thereon;
- (m) Permit the operation of any unlicensed computerized sweepstakes device upon the premises;
- (n) Permit any violation of any ordinance of the City or statute of the State to take place upon the premises.

705.12 LICENSE EXPIRATION, SUSPENSION OR REVOCATION.

- (a) Expiration. Any sweepstakes terminal café license issued under this chapter shall expire upon the transfer or sale of a majority interest in the business, or the discontinuation of the business for a continued period of thirty days. Any computerized sweepstakes device license issued under this chapter shall expire upon the transfer or sale of such computerized sweepstakes device.

(b) Suspension and Revocation. All licenses issued under this chapter shall be suspended or revoked by the Safety Director upon a 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 of any felony or of any misdemeanor involving physical violence, gambling activities, controlled substances, alcoholic beverages, minors or any crime involving moral turpitude;
- (3) Conviction twice within a one-year period of any license or operator for a violation of this chapter.

(c) Hearing. The suspension or revocation of any license under this chapter shall not be made without a hearing. The licensee shall be given at least ten days prior written notice of intent to suspend or 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 suspension or revocation.

(d) Appeal. The decision of the Safety Director may be appealed to the Planning and Zoning Commission as provided by the rules contained in the Euclid Codified Ordinances.

705.13 LICENSE FEES

(a) Computerized Sweepstakes Devices. The fee for each computerized sweepstakes device license shall be thirty dollars (\$30.00) per device, per month.

(b) Sweepstakes Terminal Café. The fee for a sweepstakes terminal café shall be five thousand dollars (\$5,000.00) per year.

(c) Replacement License. The fee for a replacement license shall be fifteen dollars (\$15.00).

(d) Filed with Application. License fees under this chapter shall be filed with the application for license.

(e) Return of Fee. In the event the application is denied under this chapter, one-half of the license fee therefore shall be returned to the applicant. In the event any license is suspended or revoked under this chapter, no portion of the license fee shall be returned to the owner.

705.14 ZONING COMPLIANCE

Sweepstakes terminal cafés as set forth in this chapter shall be permitted in U4 and U5 zoning districts as a special use pursuant to Section 1359.06 of the Euclid Codified Ordinances and shall not be permitted in any other zone within the City. A special use permit pursuant to 1359.06 shall be obtained before operating a sweepstakes terminal café within the City.

705.15 EQUAL OPPORTUNITY.

No person shall be denied any license or the right to use a licensed amusement device under this chapter in the City because of race, color, creed, sex, religious belief or national origin.

705.16 PENALTY.

Whoever violates any of the provisions of this chapter 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 2: That Chapter 705 of the Business Regulation and Taxation Code of the Codified Ordinances for the City of Euclid is hereby enacted.

Section 3: That 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 all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: That this ordinance shall be in full force and effect from and after the earliest period allowed by law.

Attest:

Clerk of Council

President of Council

Passed:

Approved:

Effective:

Mayor