

ORDINANCE NO.: 35-2011 (As amended 8/9/11)
INTRODUCED BY: O'Toole

AN ORDINANCE ENACTING A NEW CHAPTER 723, ENTITLED "SWEEPSTAKES/INTERNET CAFES", OF THE BUSINESS REGULATION CODE OF THE CODIFIED ORDINANCES; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Richmond Heights may legitimately regulate the location and operation of businesses within the City, including sweepstakes/internet cafes, as that term is defined herein; and

WHEREAS, the City Council enacted a moratorium on the acceptance and processing of applications for zoning, occupancy, and/or building permit approvals for sweepstakes/internet cafes and on the issuance of such approvals for the purpose of studying the appropriateness of adopting one or more ordinances that reasonably regulate the location and operation of sweepstakes/internet cafes in order to minimize or eliminate potential negative secondary effects on the community that may be found to result from the operation of one or more sweepstakes/internet cafes in the City, and to further the public health, safety and general welfare; and

WHEREAS, the Council has studied the relevant issues and believes it to be in the interest of the public health, safety and general welfare of the City of Richmond Heights, its businesses, property owners and residents to regulate sweepstakes/internet cafes as set forth herein.

NOW, THEREFORE, Be It Ordained by the Council of the City of Richmond Heights, State of Ohio; that:

Section 1. Part Seven of the Business Regulation Code of the Codified Ordinances of the City, is amended to add a new Chapter 723, to be entitled "Sweepstakes/Internet Cafes", to read as follows:

CHAPTER 723

SWEEPSTAKES/INTERNET CAFES

723.01 PURPOSE AND APPLICABILITY.

- (a) It is the purpose of this chapter to establish standards for the licensing and regulation of computerized sweepstakes devices, and the sweepstakes/internet cafes within which they are located and operated. This chapter is designed to prevent safety and fire hazards, prevent disturbances, preserve the peaceful enjoyment of neighboring establishments and residences, and prevent gambling

and other criminal behavior in and about sweepstakes/internet cafes within the City.

(b) This chapter shall apply immediately to all sweepstakes/internet cafes, as defined in this chapter, that commence operation after the effective date of this chapter. All sweepstakes/internet cafes in existence at the time of enactment of this chapter shall come into compliance with all sections of this chapter no later than thirty (30) days after its effective date.

723.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(a) “Computerized sweepstakes device” means any computer, machine, game or apparatus which, upon the insertion of a coin, token, access number, magnetic card, or similar object, or upon the payment of anything of value, 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 provides the user with a chance to win anything of value that is not *de minimus*, on a per play basis, or any cash payout or anything that could be redeemed, directly or indirectly, for any cash payout, and which is not gambling under state or local laws. Machines designated for use by the State Lottery Commission are not computerized sweepstakes devices for purposes of this chapter. “*De minimus*”, as used in this section, shall mean less than ten dollars (\$10.00).

(b) “Sweepstakes/internet cafe” means any premises upon which any computerized sweepstakes device is located for the use or entertainment of the public, whether or not such premises has other business purposes of any nature whatsoever.

(c) “Operator” means any person or entity that owns, controls, or operates a sweepstakes/internet cafe.

723.03 LICENSE APPLICATION AND REQUIREMENTS.

(a) No operator shall operate or conduct a sweepstakes/internet cafe without first obtaining a license from the Director of Public Safety or his designee. Every operator shall make an application in writing to the Director of Public Safety or his designee, which application shall set forth the following:

- (1) The legal name under which the business is to be conducted;
- (2) The location where the business is to be conducted, with a description of the premises, including a scaled diagram;

- (3) The name, address, and date of birth of all managers, supervisors, and other employees;
- (4) The name, address, and date of birth (if applicable) of the owner(s) of the computerized sweepstakes devices; and
- (5) The name, address, date of birth, and principal occupation of every person with an interest in the sweepstakes/internet cafe. The following persons are deemed to have an interest in the sweepstakes/internet cafe:
 - A. In a sole proprietorship, each individual owner(s).
 - B. In firm or partnership, each member of the firm or partnership.
 - C. In a corporation, each director, officer and shareholder owning more than twenty-five percent (25%) of the outstanding shares.
- (6) The name, description, model number and serial number of each computerized sweepstakes device on the premises and any other device on the premises that is necessary to the operation of the computerized sweepstakes device.
- (7) A list of each separate thing of value that may be given out, with an estimated cash value, and each separate cash amount that may be given out, and the odds of winning the same for the participation in any game, activity, program, scheme or play, use or participation in any way in a computerized sweepstakes device or participating in any other activity or promotion in the sweepstakes/internet cafe, whether or not the determination of the giving of the thing of value or the delivery of the thing of value occurs totally within the confines of the sweepstakes/internet cafe premises or requires some event, occurrence or happening at another location.
- (8) The name and address of any and all persons, businesses or organizations that provide games, computer software, equipment, or services or operate devices linked to the computerized sweepstakes devices or to devices necessary to operate the devices, whether any such devices are sold, leased or licensed.
- (9) The tax account number of the business from the Regional Income Tax Agency (RITA).

(b) No person, organization or entity shall make a false or incorrect statement in an application for a license. The operator shall have a continuing duty to inform the Director of Public Safety or his designee as to changes in the information required in this section. No operator shall operate or conduct a sweepstakes/internet cafe

at any time unless the information on file with the Director of Public Safety or his designee is current and accurate.

- (c) If an application is not approved, the City shall notify the applicant in writing with reason(s) for rejection.
- (d) The Director of Public Safety or his designee shall not issue a license to any person, organization or entity if any of the persons with an interest in the business or if any of the employees of the business have been convicted of a violation of a federal, state, or local law pertaining to gambling or other crimes of moral turpitude within five years preceding the application. All owners, employees and persons having an interest in the sweepstakes/internet cafe, as set forth in Section 723.03(a)(5), shall consent to a criminal history check commissioned by the City as part of the application for a license.
- (e) As a prerequisite to the issuance of such license, an inspection shall be made of the premises by the City and the premises must be in compliance with all applicable fire regulations. The sweepstakes/internet cafe shall be open to inspection and viewing of operations by law enforcement officers, Division of Building, Housing and Zoning personnel, and by Division of Fire personnel at all times of operation. No operator shall fail to immediately permit entry to any such City officials.
- (f) Failure of any operator to pay a license fee or a device fee for a computerized sweepstakes device, as set forth in Section 723.05, shall be grounds for suspension or revocation of the license for the establishment. Any computerized sweepstakes devices being operated without a valid license for the premises may be seized and forfeited to the City.

723.04 LOCATION.

- (a) No license shall be granted to a sweepstakes/internet cafe located within five hundred (500) feet from the boundaries of a parcel of real estate having situated on it a school, public library, public playground, church, or religious institution.
- (b) This section shall not apply to any sweepstakes/internet cafe locations in existence at the effective date of this chapter, and shall not apply to any duly licensed sweepstakes/internet cafe locations in existence at the time a school, public library or public playground moves within five hundred (500) feet of said sweepstakes/internet cafe. Any change in location will remove said sweepstakes/internet cafe from this exception. "Change in ownership" in the case of a partnership or corporation for the purpose of this section means more than fifty percent change in partners or shareholders from the partners or shareholders owning the partnership or corporation as of the date the school, public library, church, religious institution or public playground moves within five hundred (500) feet of said sweepstakes/internet cafe.

(c) The sweepstakes/internet cafe must comply with all zoning and other regulations of the City of Richmond Heights Codified Ordinances.

723.05 LICENSE FEE; TRANSFER AND DISPLAY.

(a) The annual license fee, payable to the City at the time of application and annually thereafter, shall be Five Thousand Dollars (\$5,000.00) for each sweepstakes/internet location per year, commencing on January 1 of each year and ending on December 31 of each year. The annual license fee shall be paid before January 1 of each year. In the event an applicant applies for an initial license under this chapter where the license goes into effect after January 1 of a given year, the Five Thousand Dollar application fee shall be prorated on a per diem basis from the date the license goes into effect through December 31 of that year. In the event that an application is denied under this chapter, one-half of the license fee shall be returned to the applicant and the remainder shall be retained by the City as a nonrefundable application fee. In the event that a license is revoked or suspended hereunder, no portion of the license fee shall be returned. In the event the State of Ohio law explicitly pre-empts the City's authority to license under this chapter, the applicant shall be entitled upon request to a refund of the license fee which refund shall be prorated on a per diem basis from the effective date of the State of Ohio's pre-emption of the City's authority to license under this chapter through December 31 of that year.

(b) In addition to the annual license fee, each computerized sweepstakes device shall be registered with the City and subject to a device fee of Five Hundred Dollars (\$500.00) for each device on the premises for each year. Device fees shall be paid initially upon preliminary approval of the license application and as a prerequisite to receiving the license, and then annually before January 1 for each subsequent year ending on December 31 of each year. In the event an applicant applies for an initial license under this chapter where the license goes into effect after January 1 of a given year, the device fee for each device shall be prorated on a per diem basis from the date the license goes into effect through December 31 of that year. Device fees shall not be refundable, except that in the event the State of Ohio explicitly pre-empts the City's authority to impose the device fee of this subsection, the applicant upon request shall receive a refund of the device fee which refund shall be prorated on a per diem basis from the effective date of the State of Ohio's pre-emption of the City's authority to charge the device fee under this subsection through December 31 of that year.

(c) After the initial device fees are paid pursuant to subsection (b) of this section, the device fee shall be paid for each computerized sweepstakes device brought to the facility before the device is put into use. For purposes of determining device fees, each device that is operable by one or more persons is a separate device.

(d) Licenses issued under this chapter shall not be transferable to any other person, partnership, corporation, or other entity and the business may be conducted only at the location for which the license is issued. The license must be so placed as to

be made conspicuously visible and shall list each sweepstakes/internet device with serial number.

- (e) Failure to register any computerized sweepstakes device before placement on the premises is an unclassified misdemeanor and the operators shall each be liable for a mandatory fine of One Hundred Fifty Dollars (\$150.00) for each day the device is not registered, and said fine shall not be reduced or suspended.

723.06 REVOCATION; HEARING PROCEDURE.

- (a) The license may be suspended or revoked at any time by the Director of Public Safety or his designee after a hearing and upon satisfactory proof that a violation of the federal, state or local laws or ordinances, including those of this chapter, has occurred on the premises of the sweepstakes/internet cafe. In addition to any license suspension, the City may assess the licensee a penalty fee of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Five Hundred Dollars (\$1,500.00) for any violation of this chapter. Each day a continuing violation exists shall constitute a separate violation for purpose of assessing penalty fees. Suspensions, revocations and assessments of penalty fees is in addition to and separate from any criminal liability and does not preclude criminal prosecution for any violation of this chapter or other City, state or federal laws.
- (b) The Director of Public Safety or his designee shall investigate all complaints and potential violations of this chapter with the aid of law enforcement as needed. If the Director of Public Safety or his designee finds substantial evidence to support a violation of this chapter, he shall conduct a hearing.
- (c) The Director of Public Safety or his designee shall provide the licensee and the owner of the computerized sweepstakes devices, as listed on the license application, with prior written notice of the hearing and a statement of the alleged violation at least ten (10) days in advance of the hearing. The licensee shall have the right to be represented by counsel and have the right to examine and cross-examine witnesses and introduce evidence. The Director of Public Safety or his designee shall render a decision the day of hearing unless additional time is needed. If additional time is needed, the decision shall be in writing to the licensee.
- (d) In the event of a decision and ruling adverse to the licensee, the licensee shall have the right to appeal such decision and ruling to the Zoning Board of Appeals within twenty (20) days of the receipt of the decision of the Director of Public Safety or his designee. The Zoning Board of Appeals shall set the matter for a public hearing and provide written notice to the appellant at least ten (10) days in advance of the hearing. The decision of the Zoning Board of Appeals shall be the final decision of the City on the violation(s) and may be appealed to a court of competent jurisdiction under authority of, and pursuant to, the provisions of the Ohio Revised Code.

723.07 HOURS OF OPERATION.

No sweepstakes/internet cafe shall be operated between the hours of 1:00 a.m. and 9:00 a.m. No operator shall permit any person to operate any computerized sweepstakes device between the hours of 1:00 a.m. and 9:00 a.m.

723.08 PROHIBITED CONDUCT.

No operator of a sweepstakes/internet cafe by himself/herself/itself, directly or indirectly, or by any servant, agent or employee, shall permit or fail to take active steps to eliminate or prevent the following activities from occurring on the licensed premises:

- (a) Permit any disorderly conduct upon the premises or permit the premises to become a gathering place for disorderly persons of any type;
- (b) Permit gambling in any form or the possession or use of gambling paraphernalia upon the premises;
- (c) Permit sale, possession or use of alcoholic beverages upon the premises;
- (d) Permit the possession or use of any unlawful drug, narcotic or controlled substance;
- (e) Permit the public streets, sidewalks, alleys or walkways adjacent to the premises to become littered or permit inside or outside walkways to become obstructed in any manner so that pedestrian traffic is hindered;
- (f) Permit the premises or the activity conducted thereon to become a public nuisance to the surrounding environs or violate the public peace;
- (g) Permit any computerized sweepstakes device to be operated at any time the premises is not open for business;
- (h) 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 codes or other regulatory codes;
- (i) Permit any computerized sweepstakes device to be offered to the public for operation unless fully operable and in safe operating condition;
- (j) Permit the premises to be open for business without displaying the licenses therefore in a conspicuous place thereon;
- (k) Permit the operation of any unlicensed computerized sweepstakes device upon the premises; and

(l) Permit any violation of any ordinance of the City or statute of the federal or state government to take place upon the premises.

723.09 MISCELLANEOUS REGULATIONS.

(a) Every sweepstakes/internet cafe shall have an adult who is twenty-one years of age or over on the premises and supervising at all times the computerized sweepstakes devices during all hours of operation.

(b) The interior of the sweepstakes/internet cafe shall provide a minimum area of forty (40) square feet per computerized sweepstakes device in each room in which such devices are located.

(c) No persons under the age of eighteen (18) years shall be permitted on the premises of any sweepstakes/internet cafe.

(d) The operator shall require a photo identification of every person to whom anything of value is given, for any single event for which there is a chance of winning a thing of value or cash with a dollar value in excess of Ten Dollars (\$10.00) in connection with the sweepstakes/internet cafe and shall record the person's name, date of birth, and home address and a description of the thing of value given, a stated dollar value of the thing given, the date and time of the giving and which computerized sweepstakes device is involved in the circumstances of the giving by the serial number or other identifying description of the device. If the thing of value or cash given for any single event for which there is a chance of winning has a dollar value of Six Hundred Dollars (\$600.00) or more, the operator shall also include in the record a copy of the recipient's photo identification and the recipient's social security number. By the second Tuesday of each month the operator shall cause to be delivered to the City's Tax Administrator 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 City, the State of Ohio and the United States government.

(e) The operator shall post in a conspicuous place on the premises in the room where the computerized sweepstakes devices are located in no less than twenty point type the following:

- (1) Each separate thing of value that may be given, with estimated value, and each separate dollar amount that might be given in association with the use of computerized sweepstakes device, on a per play basis;
- (2) The odds of winning, as stated in the filing with the City pursuant to Section 723.03(a)(7); and
- (3) A complete statement of the rules and conditions pertaining to the giving of any prizes, cash or anything of value to any person, whether or not the

determination of the giving of the thing of value or the delivery of the thing of value occurs totally within the confines of the premises or requires some event, occurrence or happening at another location.

- (f) The operator shall keep a complete set of all records of the operations of the sweepstakes/internet cafe at the premises at all times, including all federal, state and local tax records, all records of payments and receipts, all records of expenses and revenues of the operation, all banking records, all contracts, leases and agreements affecting the premises, equipment and operation, all personnel records and all other records pertaining to the business. Records shall be maintained and made available for inspection by the City for ten (10) years.
- (g) It is the intent of this chapter that operators are strictly liable for any violations of this chapter.
- (h) No person shall be denied any license or the right to use a licensed computerized sweepstakes device under this chapter in the City because of race, color, creed, sex, religious belief or natural origin.

723.10 SEVERABILITY.

In the event any provision of this chapter shall be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of this chapter as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

723.99 PENALTY.

Whoever violates any provision of this chapter for which a specific penalty is not otherwise stated shall be guilty of a misdemeanor of the first degree and may be subject to the fines and penalties therefor. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. In addition to the penalties set forth herein, the license for the sweepstakes/internet cafe may be permanently revoked.

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 of 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 3: This Ordinance is declared to be an emergency measure immediately necessary for the preservation of public health, safety and general welfare of the citizens of, property owners and tenants in, and visitors to, the City of Richmond Heights and for the further reason that it is necessary to immediately enact a new Chapter of the Business Regulation Code of the City regulating sweepstakes/internet cafes for clarity for enforcement purposes related to businesses and proposed businesses seeking to locate in the City that will operate as a

sweepstakes/internet cafe; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: _____

Daniel J. Ursu, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben
Clerk of Council

David H. Roche
President of Council