

ORDINANCE NO. 2018-09

AN ORDINANCE AMENDING CHAPTER 14 AMUSEMENTS AND ENTERTAINMENTS TO ADD ARTICLE IV INTERNET CAFES; SETTING FORTH FINDINGS OF FACT; PROVIDING DEFINITIONS; PROVIDING FOR ZONING; PROVIDING FOR LOCATION OF INTERNET CAFES; PROVIDING FOR APPLICATION FEES; PROVIDING FOR PERMITTING AND FEES; PROVIDING FOR MINIMUM DISTANCE FROM SCHOOLS, DAYCARE FACILITIES, CHURCHES AND SIMILAR ESTABLISHMENTS; PROVIDING FOR HOURS OF OPERATION; PROHIBITING ALCOHOLIC BEVERAGES AT INTERNET CAFES; REQUIRING SECURITY CAMERAS; PROVIDING FOR UPDATED INFORMATION REGARDING OCCUPANCY AND COMPLIANCE; PROVIDING FOR IMPLEMENTATION AND ENFORCEMENT; PROVIDING FOR NONCONFORMING USES; PROVIDING FOR APPEALS; PROVIDING FOR CONFLICTS; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

Whereas, business establishments that offer electronic and mechanical gaming devices or machines for use by the public are present in the State of Florida, frequently located in Internet Cafes (as defined herein below); and

Whereas, the City Commission does not intend by this Ordinance to permit any gaming nor use of any device or machine which is contrary to Florida law, including but not limited to Chapters 849 and 551 Florida Statutes; and

Whereas, the City Commission recognizes that there have been questions of judicial clarity regarding the legality of certain games and devices available for play at such "internet cafes;" and

Whereas, internet cafes are present in the City of Belleview; and the City Commission finds it in the public interest to establish certain requirements and criteria for the protection of the public welfare, regarding operation of internet cafes within the City of Belleview; and

Whereas, the City Commission finds that internet cafes should be located so that they do not interfere with the safe and quiet enjoyment of inhabitants and guests at neighboring parcels of land within the City of Belleview; and

Whereas, the City Commission finds that there exists increased crime and public nuisance where internet cafes are located; and

Whereas, the City Commission finds that there exists increased crime and public nuisance where such establishments are located, which is exacerbated by consumption of alcoholic beverages and that it is in the public interest to regulate the dispensing, sale, consumption and/or possession of alcohol at such establishments; and

Whereas, the City Commission of the City of Belleview finds that due to the increased crime associated with Internet Cafes, there should be a minimum distance established regarding location of internet cafes in relation to the location of schools, day care facilities and churches; and

Whereas, the City Commission finds that crime and public nuisance are exacerbated by operation of such establishments during late night and early morning hours and that it is in the public interest to regulate the hours of operation for such establishments; and

Whereas, the City Commission finds that due to increased crime and to promote the health, safety and welfare of Citizens and inhabitants of Belleview, it is in the public interest to regulate the location of such establishments in relation to other similar establishments; and

Whereas, the City Commission finds that it is in the best interest of the public welfare to ensure that the operators of Internet Cafes comply with the requirements set forth herein and further, that an efficient and effective way to monitor compliance is to require a permit and to obtain updated information from Internet Café operators at the time they obtain such permit(s); and

Whereas, the City Commission finds that certain costs will be incurred by the City regarding applications to operate an internet café in Belleview, which costs include reviewing applications, verifying compliance with zoning, parking and minimum distance requirements, which costs should be defrayed by imposition of a reasonable application fee; and

Whereas, the City Commission finds that certain costs will be incurred by the City regarding operation of internet cafés in Belleview, which costs include issuing annual permits, confirming continued compliance with parking requirements, and law enforcement expense, which costs should be defrayed by imposition of a reasonable permit fee based upon the number of machines or devices present for play or use; and

Whereas, the City Commission, after public hearing, finds that it is in the best interest of the public welfare and of the citizens of the City of Belleview to adopt the ordinance set forth hereinafter regarding the operation of Internet Cafes within the corporate limits of Belleview, Florida.

NOW THEREFORE, BE IT ORDAINED by the City Commission of the City of Belleview as follows:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein, but need not be set forth in the City Code.

Section 2. Chapter 14 - Amusements And Entertainments of the City Code is hereby amended to add Article IV. Internet Cafes, which shall read as follows:

“Chapter 14. Amusements and Entertainments.

Article IV. Internet Cafes.

Section 14-500 Authority

This Article is adopted in the interest of the public health, peace, safety, morals and the general welfare of the citizens and inhabitants of the City of Belleview, Florida, pursuant to Florida Constitution Article VIII, section 1(g), Ch. 166, Florida Statutes, and the Charter of the City of Belleview.

Section 14-501 Intent.

The intent of the City Commission in adopting this Article IV is to establish reasonable and uniform regulations that will protect the health, safety and general welfare of the people of the City of Belleview, Florida. The provisions of this Article, acting alone or together with other applicable ordinances of the City are intended to promote the health, safety and public welfare of the City and its citizens, without unduly restricting the use of private property for lawful purposes. The provisions herein are not intended to authorize or promote any illegal gambling activity; nor is it the City Commission’s intent to authorize or promote the use of machines, terminals, computers or devices (whether electronic or mechanical) which is contrary to applicable Florida law.

Section 14-502 Legislative findings.

The city commission, based on evidence and testimony presented at public hearings, finds as follows:

- (a) Despite questions as to legality of internet cafes such establishments exist and are present in the City of Belleview.**
- (b) Internet cafes, as defined hereinafter have operational characteristics which should be reasonably regulated in order to protect legitimate, substantial governmental concerns.**
- (c) There exists increased crime and public disturbance at internet cafes located within the City of Belleview, which has resulted in more than 100 calls for assistance by the Belleview Police Department, 3 of which were armed robberies, one attempted robbery, and one shooting of a bystander within the last eight months.**

(d) Late night operation or all night operation of internet cafes contributes to increased crime and public disturbance at such establishments during late night and early morning hours.

(e) A substantial relationship exists between the operation of internet cafes during late night and early morning hours and increased crime and public disturbance and it is in the public interest to limit the hours of operation of internet cafes in the City of Belleview.

(f) A substantial relationship exists between the consumption of alcoholic beverages and increased crime and public disturbance and it is in the public interest to prohibit the dispensing, sale, consumption and/or possession of alcohol at internet cafes in the City of Belleview.

(g) Installation of security cameras capable of recording recognizable facial features will aide law enforcement in dealing with the calls for assistance and identifying those persons committing crimes in internet cafes or in their parking areas.

(h) Requiring internet café owners or operators to provide a licensed, armed security guard or off duty law enforcement officer with valid Florida certification, to provide security for the parking area of internet cafés during hours of operation until one hour after closing will reduce crime, reduce public disturbance and improve safety of citizens and visitors to the City of Belleview.

(i) Installation of tape on exterior door jams which provide a reference to estimate the height of persons entering and exiting the establishment will aide law enforcement in identifying those persons committing crimes in internet cafes or in their parking areas.

(j) Internet Cafes interfere with the quiet enjoyment of neighboring residential parcels of land within the City of Belleview.

(k) A substantial rational relationship exists between internet cafes and an increased incidence of public disturbance and crime, including burglary, robbery and crimes against persons, which establishes a compelling justification for locational restrictions regarding zoning and which establish a minimum distance between internet cafes within the City of Belleview.

(l) A substantial rational relationship exists between internet cafes and an increased incidence of crime, including burglary of automobiles, robbery and crimes against persons, which establishes a compelling justification for locational restrictions which keep internet cafes away from children, schools, day care facilities, and churches/places of worship.

(m) There exists a substantial relationship between internet cafes and increased crime which establishes a compelling reason to prohibit minors at internet cafes and for providing law enforcement with a right of entry upon the premises of internet cafes within the City.

(n) Reasonable regulation and licensure procedures are in the best interest of the citizens and inhabitants of the City and of the public welfare.

(o) A reasonable and simple licensure procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of internet cafes. Further, such a licensing procedure will place a heretofore nonexistent incentive on the owner/operator to see that internet cafes in the City of Belleview are operated in a manner that is consistent with the health, safety and welfare of its patrons and employees, as well as the citizens and inhabitants of the city.

(p) An efficient and effective way to monitor compliance is to require updated information from Internet Café operators at the time they pay their business tax for fiscal year 2019-2020.

(q) It is in the best interest of the public welfare to require reasonable assurances that the permittee is complying with the requirements of this Article IV.

Section 14-503 Definitions.

For the purposes of this Section the following words and phrases are defined as follows:

“Applicant” means anyone submitting an application for issuance of a permit to operate an internet café as provided in this Article.

“Child care facility” means a child care facility licensed by the State of Florida and providing child care services or a child care facility meeting the definition of such facility in any law of the State of Florida.

“Church/place of worship” means an institution that people regularly attend to participate in or hold religious services, meetings and other activities.

“De minimis activity” means operation by an organization exempt from federal taxation under Section 501(c) of the Internal Revenue Code for a charitable event for no more than one day per year within the City of Belleview. As used herein, a year shall run from October 1 through September 30 of the following year.

“Family amusement games or devices” mean games or devices which comply with F.S. § 546.10 and which cater primarily to families and minors. Such games or devices are typically installed in public businesses such as restaurants, bars and family arcades.

“Gaming machine” means an electronic or mechanical gaming device that operates on the insertion of money, coin, or other form of monetary consideration or which requires the payment of monetary consideration for its operation and which, whether by application of skill or application of the element of chance or both or by an outcome unpredictable to the person using such machine or device, may become entitled to receive any money, credit, allowance, or thing of value, including but not limited to additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any credit, allowance or thing of value.

“Internet café” means a facility where consumers purchase use or access to a “gaming machine” or internet gaming device (as defined hereinabove), or a facility that purports to be an establishment for access to internet time on computers or terminals that display images of games of chance.

“Internet gaming device” means a computer or internet-capable terminal allowing access to the internet to access sweepstakes games, submit sweepstake entries that entitle customers to win prizes; or where a user, through skill or chance, could receive an item of value, or to provide internet time on for accessing display images of games of chance.

“Law enforcement officer” means any person who is elected, appointed or employed full time by the state, municipality, or any political subdivision; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic or highway laws of the state.

“Permittee” means any person whose application for an internet cafe has been granted and who owns, possesses, operates or controls an internet café or the gaming machines or internet gaming machines therein.

“Machine” means a gaming machine or internet gaming device, as defined hereinabove.

“Minor” means an individual under the age of 18 years.

“Premises” means the legal description of the land, building(s) and parking areas at the location of the internet café.

“Purchase” means to exchange money, coin, thing of value, or other form of monetary consideration for time or access to a gaming machine or internet gaming device.

“School”, including public and private, means elementary and secondary schools which furnish academic courses, ordinarily for kindergarten through grade 12. This includes only school-related buildings and grounds. For the purpose of this Article, facilities

offering only pre-kindergarten and kindergarten education is considered a day care facility.

Section 14-504 Application Required.

- (a) No internet café shall be permitted to operate in the City of Bellevue without the submittal of an application to the Development Services Department.**
- (b) There is hereby established a nonrefundable application fee of \$500.00 for processing the initial application or change of ownership for an internet café. This is a fee to offset the City's staff time and expense incurred in reviewing the application, zoning, location and parking regarding the proposed location.**
- (c) All application shall include an inventory defined in Section 14-505 of the machines that the permittee intends to put into operation when the internet café begins its business activities.**
- (d) Upon the submission of a complete and accurate application complying with the terms of this section and payment of the \$500.00 nonrefundable application fee, the City will review and approve or deny the application for a business tax permit.**
- (e) All applications for an annual internet cafe permit must be on a form approved by the Development Services Department.**
- (f) There shall be no initial application fee for an internet café currently operating in the City of Bellevue at the time of adoption of this Ordinance. However, any existing internet café that changes ownership after the time of adoption will be subject to the application fee.**

Section 14-505 Gaming Device Registration Requirements.

- (a) All gaming machines and internet gaming devices, as defined in this Article, offered for use in internet cafes in the City of Bellevue shall be registered and comply with the requirements of this section.**
- (b) The permittee is required to provide to the City Development Services Department a complete inventory of all gaming machines or internet gaming devices in operation on the premises of the internet café at all times. A copy of said inventory shall also be kept at the internet café. The inventory shall provide the following information: the manufacturer(s); the serial number(s); common name, type or description of the game played on the machine.**
- (c) Before a new machine or device is put into operation at the internet cafe, whether replacing a permitted machine or as additional inventory, the permittee**

shall notify the City's Development Services Director of the addition of the machine to the inventory, pay the Annual Machine Registration Fee for such machine, and update its inventory accordingly.

(d) For each machine registered and for which the required permit fee is paid, the Development Services Director or designee shall issue and deliver to permittee a registration decal.

(e) The registration decal for each machine shall be attached thereto and in plain view at all times.

(f) Registration decals for each machine are not transferable.

(g) The failure to display on any machine a current registration decal shall be a violation of this section and subject to enforcement action by the City.

Section 14-506 Annual Gaming Device Registration Fee.

(a) There is hereby established an Annual Gaming Device Registration Fee regarding internet cafes in the amount of \$25.00 per gaming device or machine for each year or portion of a year.

(b) Tables with a central gaming device, shall be counted as one device for each seat at the table. Example: A table device with six chairs shall count as six devices.

(c) The Annual Gaming Device Registration Fee provided for herein shall be due and payable on or before September 30 and shall expire on September 30 of the following year. There shall be a late fee of \$5.00 per machine for payments received after September 30, except for new businesses.

(d) The Annual Gaming Device Fee provided for herein may be amended by Resolution of the City Commission.

Section 14-507 Parking.

There shall be no more than four (4) gaming devices in an internet café for each off street parking space provided. Tables with a central gaming device shall be counted as one device for each seat at the table. Example: A table device with six chairs shall count as six devices.

Section 14-508 Zoning.

It shall be unlawful to operate, within the corporate limits of the City, an Internet Café, except upon premises with a business zoning designation of B-4 or B-5.

Section 14-509 Location.

- (a) It shall be unlawful to operate, within the corporate limits of the city an Internet Café within 1,000 feet of a church, school or child care facility.**
- (b) It shall be unlawful to operate, within the corporate limits of the city, internet cafe within 500 feet of another Internet Café.**
- (c) The method of determining the distance limitations shall be the measurement of linear feet from the front entrance doorway of one such structure to the other along the shortest and most practicable pedestrian route.**
- (d) Should a church, school or child care facility locate within the proscribed distance of the internet café, the existing internet café may continue as a pre-existing nonconforming use.**

Section 14-510 Hours of Operation.

The operation of Internet Cafes within the corporate limits of the City shall be permitted during the following hours of each and every calendar week to wit:

- From 8:00 a.m. Monday to 2:00 a.m. Tuesday;**
- From 8:00 a.m. Tuesday to 2:00 a.m. Wednesday;**
- From 8:00 a.m. Wednesday to 2:00 a.m. Thursday;**
- From 8:00 a.m. Thursday to 2:00 a.m. Friday;**
- From 8:00 a.m. Friday to 2:00 a.m. Saturday;**
- From 8:00 a.m. Saturday to 2:00 a.m. Sunday;**
- From 8:00 a.m. Sunday to 2:00 a.m. Monday.**

Section 14-511 Alcoholic Beverage Prohibited.

- (a) No person shall, either directly or indirectly, dispense or cause to be dispensed any alcoholic beverage upon any property operated as an internet café within the city limits of Belleview, Florida.**
- (b) No person shall consume any alcoholic beverage upon any property operated as an internet café within the city limits of Belleview, Florida.**

- (c) It shall be unlawful to possess any open alcoholic beverage container upon the premises of an internet café within the city limits of Belleview, Florida.

Section 14-512 Safety and Security.

For the safety of its patrons and in the interest of public safety, all internet cafes shall:

- (a) Provide a licensed, armed security guard or off duty law enforcement officer with valid Florida certification, to provide security for the parking area of internet cafés during hours of operation and until one hour after the close of business.
- (b) Install a functioning security camera system, operating during gaming hours, capable of recording and retrieving an identifiable image of persons within the gaming area, entering and exiting the premises, and at the cashier area. All security cameras provided for herein shall be a video system running on a 30-day loop;
- (c) Provide parking areas that are lighted and have security cameras, which are capable of recording and retrieving an identifiable image of persons in the parking lot, operating from one hour before opening and until one hour after closing time.
- (d) Post a conspicuous notice at all public entrances to the premises stating that the cash register contains limited amount of cash;
- (e) Install, at exits to the premises, height markers displaying height measures;
- (f) Install and maintain in working order a silent alarm system capable of notifying law enforcement.

Section 14-513 No Minors.

Operators and permittees shall not permit minors to enter within an internet café or to remain in its parking area. Permittees shall post a conspicuous notice at all public entrances to the premises stating that minors are not allowed on the premises.

Section 14-514 Right of Entry.

Agents and employees of the City of Belleview, including but not limited to the Development Services Director or designee and officers of the City of Belleview Police Department and their agents, shall have the right to enter and inspect the public spaces

of the premises at any time to ensure compliance with the provisions of this chapter or any other ordinances within their authority.

Section 14-515 Implied Consent.

By holding or obtaining a permit under this Article, the permittee shall be deemed to have consented to the provisions of this Article and to the exercise by the zoning department and any law enforcement officer of their respective responsibilities under this Article.

Section 14-516 Reapplying and Appeals.

- (a) An applicant whose permit application is denied may reapply at any time by completing all steps of the application procedure, including payment of a new application fee.
- (b) The decision of the Development Services Director to deny an application shall be considered non-final agency action, which is subject to review by the City Commission. The decision of the City Commission shall constitute final agency action.
- (c) Any appeal of a denial of a permit must be made within 15 calendar days of denial by filing a written notice of appeal, together with a brief statement of the matter. The appeal should be forwarded to the City Clerk for inclusion in the City Commission agenda packet.
- (d) Failure to file a written notice of appeal within the prescribed time period constitutes a waiver of the right to appeal.
- (e) The appeal will be heard by the City Commission at the next regular commission meeting, at least 10 days after filing of the Notice of Appeal.

Section 14-517 Updated Certificate of Occupancy.

Effective with the business tax renewal for the 2019 – 2020 fiscal year, all internet cafes shall apply for an updated certificate of occupancy and affirm that they are in compliance with the regulations set forth herein.

Sec. 14-518. - Exemption.

Nothing in this Article IV shall be interpreted to apply either to family amusement games and devices or to *de minimis* activity, as defined in this Article IV.

Section 14-519 Implementation.

The provisions of this Article IV shall take effect immediately upon adoption of this ordinance. All internet cafes operating at the time this ordinance takes effect, which are in violation with the provisions in this ordinance regarding zoning or parking, shall be considered a nonconforming use, as defined and provided for in Chapter 134 of the City Code.

Sec. 14-520 Violations and enforcement.

Each violation of a provision of this Article IV shall constitute a separate offense under Chapter 2, Article V - Code Enforcement.

Section 14-521 Other Remedies.

In addition to the provisions for enforcement and violations set forth above, the City shall have the right to pursue all other legal and equitable remedies necessary to ensure compliance with this Article IV, including but not limited to, injunctive relief.

Section 14-522 Conflict with State Law.

Nothing set forth herein shall be deemed to authorize or validate the operation of internet cafes contrary to the laws of the State of Florida. To the extent that the operation of internet cafes may be illegal under the laws of the State of Florida, then State law shall take precedence and nothing herein shall be deemed to approve or allow such internet cafes in the City of Belleview contrary to Florida law.”

Section 14-523

Should any portion of this Article IV be declared invalid, unenforceable, void or unconstitutional, or is permanently enjoined and the court does not sever such invalid portion of this section, then the invalid portion of this Article IV is repealed and invalid. It is the specific intent of the City that the invalidity of any portion of this Article IV shall not affect any other section, subsection, paragraph, subparagraph, sentence, phrase, clause or word of this Article IV or the City Code.”

Section 3. Conflicts. In the event that the provisions of this ordinance are in conflict with any other ordinance, then the provisions of this Ordinance shall prevail.


Section 4. Saving Clause. If any section, sentence, provision or phrase of this Ordinance is held to be Invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

BE IT FURTHER ORDAINED by the City Commission of the City of Belleview, Florida that Sections of this ordinance may be renumbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section", "article" or other appropriate designation.

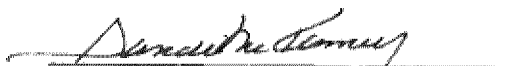
BE IT FURTHER ORDAINED that this Ordinance shall become effective immediately upon adoption.

CERTIFICATE OF ADOPTION AND APPROVAL


The above and foregoing ordinance was duly read and approved upon First Reading by a 4 to 1 vote of the City Commission of the City of Belleview, Florida, at a Regular Meeting held on the 18th day of September, 2018. Said ordinance was duly read, passed, and adopted upon Final Reading by a 4 to 1 vote of the City Commission of the City of Belleview, Florida at a Public Hearing held on the 2nd day of October, 2018.


CHRISTINE K. DOBKOWSKI
Mayor/Commissioner

Attest:


Sandi McKamey, MMC, CPM
City Administrator

Approved as to form and legality for the use
and benefit of the City of Belleview only:


FREDERICK E. LANDT, III
City Attorney