

ORD-08122013-1 Ch18-New Art XIV

Under old business, Council considered on second reading an ordinance to amend the Code of the City of Thomasville by adding provisions pertaining to "internet cafes". The City Attorney briefly reviewed the need for the ordinance, and discussed a change to the ordinance as read on first reading to explicitly stress that the provisions and prohibitions of the ordinance are applicable, regardless of the name or description of the business used by the owner or operator thereof. He stated that assistance from the state office that regulates gaming machines, as well as from the GBI, should be forthcoming in enforcing the provisions of this ordinance, which reflect state legislation pertaining to the prohibition of this form of gambling. On motion of Councilmember Hobbs and seconded by Councilmember Flowers, the following ordinance was ordered read for the second time, passed, and adopted:

AN ORDINANCE TO AMEND THE CODE OF THOMASVILLE, GEORGIA, BY AMENDING CHAPTER 18, CAPTIONED "TAXATION, REVENUE AND MISCELLANEOUS BUSINESS REGULATIONS," SO AS TO ADD A NEW ARTICLE XIV TO BE CAPTIONED "SWEEPSTAKES PARLORS, INTERNET CAFES, AND SIMILAR ESTABLISHMENTS;" TO REPEAL ALL ORDINANCES IN CONFLICT HERewith; TO PROVIDE FOR THE EFFECTIVE DATE OF THIS ORDINANCE; AND FOR OTHER PURPOSES.

SECTION I

WHEREAS, with daily advances in electronic and computer technology, illegal gaming has evolved from readily apparent methods to more veiled and camouflaged schemes;

WHEREAS in recognition of this, the state of Georgia specifically prohibited the use of video poker machines in 2006; and WHEREAS, since 2006, companies have developed Electronic Machines and Devices to entitle customers a chance to win "Sweepstakes" through the purchase of token services or products such as Internet service, telephone cards, and office supplies, among other products; and

WHEREAS, certain of these businesses appear to represent a mere pretext to import illegal gambling into the City; and

WHEREAS, certain companies are advertising on the internet that these Sweepstakes are legal in the state of Georgia. (see, e.g., www.cashoutgaming.com); and

WHEREAS, these websites explain how to evade the gambling laws in states such as Georgia by establishing Sweepstakes Parlors, sometimes also known as "Internet Cafes;" and

WHEREAS, the owners and operators of such Sweepstakes Parlors contend that no gambling is occurring at the establishments; and

WHEREAS, the sale of goods or services to patrons may be no more than a subterfuge for promoting gambling on the premises; and

WHEREAS, a number of jurisdictions around the United States either have passed or are contemplating the passage of laws, statutes, or ordinances banning or prohibiting such Sweepstakes Parlors; and

WHEREAS, the council of the City of Thomasville also recognizes that establishments known as "Internet Cafes" can have a legitimate business function whereunder patrons can connect to the Internet using a publicly accessible computer for free or for consideration; and

WHEREAS, the City of Thomasville's Alcoholic Beverages Ordinance (Chapter 3, Code of Thomasville, Georgia) does not address Sweepstakes Parlors or Internet Cafes; and

WHEREAS, the City of Thomasville's Taxation, Revenue and Miscellaneous Regulations (Chapter 18, Code of Thomasville, Georgia) do not presently recognize Sweepstakes Parlors or Internet Cafes and therefore such establishments are not classified for occupational tax rates; and

WHEREAS, in addition to potential legalities of Sweepstakes Parlors, the City of Thomasville's Zoning Ordinance (Chapter 22, Code of Thomasville, Georgia) does not presently recognize Sweepstakes Parlors or Internet Cafes and does not specifically classify the same for allowance in any zoning district; and

WHEREAS, the Council of the City of Thomasville considers it appropriate to adopt this ordinance that reasonably regulates the location and operation of Sweepstakes Parlors, Internet Cafes, and similar establishments in order to minimize or regulate potential negative secondary effects on the community that may be found to result from the operation of one or more Sweepstakes Parlors

in the City, and to further the public health, safety and general welfare; and

WHEREAS, the Council of the City of Thomasville considers that the adoption of this ordinance regarding Sweepstakes Parlors and Internet Cafes as defined herein will not deny property owners economically viable use of their properties and will afford City officials a method and means by which activities of Sweepstakes Parlors and Internet Cafes can be monitored and regulated, all in the interest of furthering the purposes set out above:

BE IT ORDAINED by the City Council for the City of Thomasville, and it is hereby ordained by the authority of the same, that Chapter 18, captioned "Taxation, Revenue and Miscellaneous Business Regulations, of the Code of Thomasville, Georgia, is amended by adding thereto a new Article XIV to be captioned "Sweepstakes Parlors, Internet Cafes and Similar Establishments, the new Article XIV to read as follows:

ARTICLE XIV. SWEEPSTAKES PARLORS, INTERNET CAFES, AND SIMILAR ESTABLISHMENTS

Sec. 18.285. Findings of the City Council.

The "Whereas" clauses set forth above are incorporated by reference into this ordinance and represent the legislative findings of the Council of the City of Thomasville.

Sec. 18-286. Definitions.

As used within this Ordinance, the following terms, when capitalized, shall have the meanings set forth below:

(1) *Business Entity*. The term "Business Entity" means one or more persons engaging in activities for a profitable or charitable purpose either individually or through the use of any of the following:

- * Company or corporation;
- * General partnership;
- * Joint venture;
- * Limited liability company;
- * Limited liability partnership;
- * Limited partnership;
- * Sole proprietorship;
- * A trust; or,
- * Any other corporate entity similar in nature or function to any of those listed in Subsections 2.1.1 through and including 2.1.8.

(2) *Effective Date*. The term "Effective Date" means _____, 2013.

(3) *Electronic Machine or Device*. The term "Electronic Machine or Device" means a mechanically, electrically, or electronically operated machine or device, including but not limited to a computer, that is owned, leased, possessed by, or under the control of a Sweepstakes sponsor or promoter, or any of the Sweepstakes sponsor's or promoter's partners, affiliates, parent corporation, brother or sister corporations, subsidiaries, or contractors, that is intended to be used by a Sweepstakes entrant that uses energy and that is capable of displaying information on a screen or other type of display. This Section is applicable to any Electronic Machine or Device whether or not:

- (a) It is server based;
- (b) It uses a simulated game terminal as a representation of the Prize or Prizes associated with results of the sweepstakes entries;
- (c) It utilizes software such that the simulated game influences or determines the winning or value of the Prize to be won or awarded;
- (d) It selects Prizes from a predetermined, finite pool of entries;
- (e) It utilizes a mechanism that reveals the content of a pre-determined Sweepstakes entry;
- (f) It pre-determines the Prize results and stores those results for delivery at the time the sweepstakes entry results are revealed;
- (g) It utilizes software to create a game result;

- (h) It requires the deposit of any money, or token, or the use of a credit card, debit card, prepaid card, or any other method of payment to activate the machine or device;
- (i) It requires purchase of a related product or service, which has legitimate value;
- (j) It reveals a Prize incrementally, even though it may not influence if a Prize is awarded or the value of any Prize awarded;
- (k) It determines and associates the Prize with an entry or entries at the time the sweepstakes is entered; and/or
- (l) It is a slot machine or other form of electrical, mechanical, or computer game.

(4) *Enter or Entry.* The terms "Enter" or "Entry" mean the act or process by which a person becomes eligible to receive a Prize in a Sweepstakes.

(5) *Entertaining Display.* The term "Entertaining Display" means visual information, capable of being seen by a Sweepstakes entrant, that takes the form of actual game play, or simulated play, such as the following electronic games:

- (a) A video poker game or any other kind of video playing card game;
- (b) A video bingo game;
- (c) A video craps game;
- (d) A video keno game;
- (e) A video lotto game;
- (f) Eight-liner or any other electronic game that is identical in its operational display or operation to Eight-liner regardless of the name of the game or machine on which it is operated;
- (g) "Pot-of-Gold" or any other electronic game that is identical in its operational display or operation to "Pot-of-Gold" regardless of the name of the game or the machine on which it is operated;
- (h) A video or electronic game based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player of the game; or,
- (i) A Gambling Device.

(6) *Gambling Device.* The term "Gambling Device" shall have the same definition as O.C.G.A. 16-12-20(2);

(7) *Internet Cafe.* The term "Internet Cafe" means a place:

- (a) Where one or more persons can:
 - * Connect to the Internet using a publicly accessible computer for free or for the payment of a fee or any other consideration; or,
 - * Connect to the Internet using their own computers by using a wireless connection in their local area networking provided by the owner or operator of the cafe; and,
- (b) Where any food or drinks are served either for free or for a fee for consumption on-site; and,
- (c) Where the principal activities conducted via the Internet include, but are not limited to:
 - * Reading or composing email; or,
 - * Reading or posting to newsgroups; or,
 - * Website surfing; or,
 - * Viewing social networking web sites; or,
 - * Composing or editing documents or spreadsheets; or,
 - * Scanning or printing digital services; or;

* Playing online games for which no payment or consideration is paid to the Internet Cafe owner or operator; and

(d) Which does not run or operate any illegal Sweepstakes or lottery; and

(e) Which does not, in addition to providing access to the Internet for a fee or other consideration, also provide the user with a credit or credits to enter or play a game on any of the computers within the Internet Café and which game does not constitute gambling as defined at O.C.G.A. § 16-12-21, does not violate the provisions of O.C.G.A. § 10-1-370 et seq. and in particular the provisions of O.C.G.A. § 10-1-393 (b)(16)(N); and does not otherwise contravene Georgia law, including, but not limited to, the provisions of O.C.G.A. § 50-27-70, et seq.

(8) *Prize.* The term "Prize" means any gift, award, good, service, credit, or anything else of value, which may be transferred to a person, whether possession of the gift, award, good, service, credit or other item of value is actually transferred to that person, or placed on an account or other record as evidence of the intent to transfer the gift, award, good, service, credit or other item of value.

(9) *Sweepstakes.* The term "Sweepstakes" means any game, advertising scheme or plan, other promotion which, with or without payment of any consideration, a person may Enter to win or become eligible to receive a Prize, when the determination of the receipt of such Prize is based, in whole or in part, on chance. This definition also encompasses the term "unlawful lottery" as set forth at O.C.G.A. § 16-12-20 and O.C.G.A. § 10-1-393(b)(16)(N).

(10) *Sweepstakes Parlor.* The term "Sweepstakes Parlor" means an establishment that operates or places into operation one or more Electronic Machines or Devices that, upon payment of consideration to the operator of the establishment, and in contravention of Article 2, Gambling and Related Offenses, of Chapter 12, Offenses Against Public Health And Morals, of the Official Code of Georgia Annotated:

- (a) Conducts a Sweepstakes through the use of an Entertaining Display, including the Entry process or the reveal of a Prize;
- (b) Promotes a Sweepstakes that is conducted through the use of an Entertaining Display, including the Entry process or reveal of a Prize;
- (c) Utilizes any devices as defined in paragraphs 2.5 and 2.6, above; or
- (d) Is otherwise in contravention of Georgia law.

Sec.18-287. Ban On Certain Activities Associated With Sweepstakes Parlors and Internet Cafes

Any business establishment, regardless of the name, characterization, title or other identifying element, which conducts or permits gambling as defined at O.C.G.A. § 16-12-21 or is otherwise in contravention of Georgia law, is hereby banned and prohibited. The provisions of this Section and all other provisions of this ordinance will be read and interpreted in accordance with, but not limited to Article 2, "Gambling and Related Offenses" of Chapter 12, "Offenses Against Public Health and Morals," of the Official Code of Georgia Annotated, O.C.G.A. § 16-12-20 et seq.; Part 2, "Fair Business Practices Act," of Article 15, "Deceptive or Unfair Practices," of Chapter 1, "Selling and other Trade Practices" of Title 10 of the Official Code of Georgia Annotated, O.C.G.A. § 10-1-370 et seq. and, in particular, but not limited to, O.C.G.A. § 10-1-393; and other applicable Georgia law, including, but not limited to, O.C.G.A. § 59-27-70 et seq. Provided further, however, that the ban on the activities set forth in this Article shall not preclude the issuance of a certificate of occupancy and an occupation tax certificate to an Internet Cafe as defined herein. Any person or business entity who or which wishes to open a business as an Internet Cafe must provide a signed, notarized statement and submit it to the office of the City Planner of the City of Thomasville which certifies that the business activities of the establishment will not constitute gambling as defined at O.C.G.A. § 16-21-21; will not contravene the provisions of O.C.G.A. § 10-1-393(b)(16)(N); and will not otherwise contravene Georgia Law, including but not limited, to the provisions of O.C.G.A. § 50-27-70 et seq.. No occupational tax certificate or certificate of occupancy shall be issued or renewed unless and until this signed, notarized statement is submitted to the office of the City Planner of the City of Thomasville. Should the signed, notarized statement prove to be false, the occupational tax certificate and certificate of occupancy shall be revoked.

Sec. 18-288. Permitted locations.

Internet Cafes shall be permitted only in the following zones: C-2 (CU).

Sec. 18-289. Unlawful operation; declared nuisance.

In addition to the provisions of paragraph 3, above, the City Council for the City of Thomasville declares that any establishment operated, conducted, or maintained contrary to the provisions of this Ordinance is unlawful and constitutes a public nuisance. In addition to or in lieu of prosecuting a criminal action hereunder, the city may seek the commencement of an action or proceeding for the abatement, removal of enjoinder thereof, all in a manner contemplated by and provided for Title 41 of the Code of the State of Georgia.

Sec. 18-290. Penalties.

- (a) It shall be unlawful for any person to violate the terms of this article and any such violation shall be punishable in the Municipal Court of the City as provided in section 4.13 of the Charter of the City.
- (b) It shall be unlawful for an operator of an Internet Café to permit any conduct prohibited in this article which the licensee knows or has reasonable cause to know is taking place on the premises. Any such conduct by an operator of an Internet Cafe shall be a violation of this code and shall be punishable in the Municipal Court of the City as provided.
- (c) For purposes of interpretation and enforcement of the provisions of this section, this ordinance specifically adopts by reference and incorporates herein the provisions of O.C.G.A. § 16-12-20 et seq. and the definitions contained therein; the provisions of the Fair Business Practice Act of 1975, O.C.G.A. § 10-1-390 et seq., and the provisions of O.C.G.A. § 50-27-70 et seq. In the event of any conflict between a provision or definition contained in the sections of the official code of Georgia adopted herein, the Official Code of Georgia shall control.

Sec. 18.291. On-premise operator required.

An Internet Café shall have a designated person to serve as an on-premises operator. The operator shall be principally in charge of the establishment and shall be located on the premises during all operating hours.

Sec. 18.292. Issuance of occupation tax certificate and certificate of occupancy to persons with prior convictions prohibited.

No occupation tax certificate and certificate of occupancy under this article shall be issued, renewed or transferred to any individual having any interest in the establishment in question, either as owned, partner, operator, principal stock holder, directly or indirectly, beneficial or absolute, who, within the ten (10) year period immediately prior to the filing of the application, has been convicted or who has entered a plea of guilty or nolo contendere to any felony offense. No occupation tax certificate and certificate of occupancy under this article shall be issued, renewed or transferred to any individual who, within the two (2) year period immediately prior to the filing of the application, has been convicted of or who has entered a plea of guilty or nolo contendere to a total of three (3) misdemeanors in any state or municipal court (or in combination), traffic violations excepted, other than D.U.I.

Sec. 18-293. Open to inspection.

Any establishment operating under this article shall at any time that the premises is open to the public for business be open also to inspection by any officer of the police department, any building inspector of the city or fire department inspector of the City.

Sec. 18-294. Consumption; open containers prohibited.

It shall be unlawful for any person owning or operating a place of business operating under this article to permit any person to drink at any time any whiskey, wine, beer or any other alcoholic beverage of any kind or description upon the premises. It shall be unlawful for any person owning or operating a place of business licensed under this article to permit at any time any glass containing any alcoholic beverage, or any opened or unemptied bottle or other open container of any alcoholic beverage to remain in or on the premises of the place of business.

Sec. 18-295. Severability.

Should any phrase, clause, or section of this ordinance be deemed unconstitutional by a court of competent jurisdiction, such determination shall not affect the remaining provisions of this ordinance, which provisions shall remain in full force and effect.

SECTION II

BE IT FURTHER ORDAINED that all ordinances of the City of Thomasville in conflict herewith be and the same are hereby repealed for the purposes of this ordinance only.

SECTION III

BE IT FURTHER ORDAINED that the provisions of this ordinance shall be made a part of the official codified ordinances of the City of Thomasville and shall be spread upon the public minutes and records of the City of Thomasville.

SECTION IV

This ordinance will be effective on the date of its final reading and passage.

SECTION V

This ordinance was introduced and read at the lawful meeting of the city council for the City of Thomasville held on July 22, 2013, and read the second time, passed and adopted at a like meeting of the City Council for the City of Thomasville held on August 12, 2013.