

12

**AGENDA ITEM
ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS**

Deadline for Submission - Wednesday 9 a.m. following the prior BCC Meeting

October 4, 2011

BCC MEETING DATE

TO: Michael D. Wanchick, County Administrator **DATE: September 13, 2011**

FROM: Suzanne Konchan, AICP, Growth Management Director **PHONE: 209-0712**

SUBJECT OR TITLE: Final Public Hearing - Land Development Code Amendments for Article II, VI, X and XII

						Legal Review
<u> </u> BUSINESS ITEM	<u> </u> BONDS	<u> X </u>	<u> </u> PUBLIC HEARING	<u> X </u>	<u> </u> ORDINANCE	(JW)
<u> </u> CONSENT AGENDA	<u> </u> APPOINTMENTS	<u> </u>	<u> </u> BID AWARD	<u> </u>	<u> </u> RESOLUTION	()
<u> </u> WORKSHOP	<u> </u> REPORT	<u> </u>	<u> </u> EX PARTE COMMUNICATIONS	<u> </u>	<u> </u> CONTRACT	()
					<u> </u> BONDS	()

BACKGROUND INFORMATION: (Attach additional pages if necessary)

This is the second and final public hearing to consider modifications to the Land Development Code to provide for clarification of uses and standards for adult arcade amusement centers, electronic game promotions, and indoor activities allowed by or on the premises of a licensed pari-mutuel permit holder. A copy of the affected pages in underline/overstrike format and the proposed Ordinance is attached. A full copy of the affected Articles is available for viewing at Minutes and Records, and Growth Management.

The Land Development Code changes are proposed to be adopted in conjunction with a companion ordinance that regulates these gaming activities within St. Johns County. The Planning & Zoning Agency considered the proposed changes on August 18, 2011 and recommended approval on a vote of 7-0. No changes have been made to the Ordinance since the Board's review at first reading on July 19, 2011.

1. IS FUNDING REQUIRED? YES X NO 2. IF YES, INDICATE IF BUDGETED YES NO

IF FUNDING IS REQUIRED, MANDATORY OMB REVIEW IS REQUIRED OMB REVIEW ()

INDICATE FUNDING SOURCE - LIST ACCOUNT TITLE & NUMBER:

SUGGESTED MOTION/RECOMMENDATION/ACTION:

Motion to enact Ordinance 2011-___ amending the Land Development Code Article II Zoning Districts; Article VI Design Standards and Improvement Requirements; Article X Interpretations, Equitable Relief, & Enforcement; and, Article XII Definitions regulating adult arcade amusement centers, electronic game promotions, and indoor activities allowed by or on the premises of a licensed pari-mutuel permit holder.

Administration: DL Initials

 X FORWARDED TO BCC X SUPPORTING MATERIAL ATTACHED

**Proposed Modifications to the Land Development Code
Board of County Commissioners Meeting of October 4, 2011**

- A. The typical use sections of Highway Commercial Uses and High Intensity Commercial Uses are modified to add the following uses, “adult arcade amusement centers operated by a permit holder; electronic game promotions conducted by a permit holder; indoor activities allowed by or on the premises of a licensed pari-mutuel permit holder.” The High Intensity Commercial Uses category also includes as a new use, “facilities operated by a licensed pari-mutuel permit holder” which may include outdoor horse and dog tracks.
- B. Provides for **Special Use Permit** review for electronic game promotions conducted by a permit holder in the CHT, CI, CHI and CW zoning districts. Adult arcade amusement centers operated by a permit holder and indoor activities allowed by or on the premises of a licensed pari-mutuel permit holder would be allowed by right in the CI and CHI districts, and by special use permit potentially in the CHT and CW zone districts. The CI and CHT districts allow for High Intensity Commercial Uses, which staff recommends is appropriate for these uses without public hearing. Special Uses must be approved by the Planning and Zoning Agency, upon evidence presented which establishes that:
1. The Special Use can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the St. Johns County Comprehensive Plan or this Code;
 2. The Use is compatible with the contiguous and surrounding area and will not impose an excessive burden or have a substantial negative impact on surrounding or adjacent Uses or on community facilities or services; and
 3. If access is provided by a Street maintained by the Florida Department of Transportation (FDOT) a copy of the results of a pre-application meeting with FDOT is required unless otherwise deemed not necessary by the County Administrator; and
 4. The Use, which is listed as a Special Use in the district in which it is proposed to be located, complies with all required regulations and standards of this Article II, unless greater or more stringent regulations are contained or provided in the Comprehensive Plan or elsewhere in this Code for the Special Use.
- C. Creates a new Section 2.03.48 of the Land Development Code creating supplemental design standards for the above facilities, such as: minimum distance separations from schools and churches of 1,000 feet and separation from residential uses of 100'; independent calculation of parking availability in shared parking situations; and a prohibition on alcohol sales in Electronic Game Promotion facilities.
- D. Provides for parking standards for adult arcade amusement centers and electronic game promotions and sweepstakes in Table 6.17.
- E. Provides a new Section 10.03.02.M. establishing legal non-conforming status to existing electronic gaming establishments for all users who had made application for an application for such use on or before December 31, 2010.

ORDINANCE NO. 2011-_____

AN ORDINANCE OF ST. JOHNS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AMENDING AND SUPPLEMENTING, ADDING AND REPEALING PARTS OF ARTICLE II - ZONING DISTRICTS AND SPECIAL USES; ARTICLE VI - DESIGN STANDARDS AND IMPROVEMENT REQUIREMENTS; ARTICLE X - INTERPRETATIONS, EQUITABLE RELIEF AND ENFORCEMENT; AND ARTICLE XII DEFINITIONS; OF THE ST. JOHNS COUNTY LAND DEVELOPMENT CODE AS PREVIOUSLY AMENDED. THIS ORDINANCE MAKES CHANGES INCLUDING AND RELATING TO: AMENDING ARTICLE II ZONING DISTRICTS AND SPECIAL USES SPECIFICALLY PART 2.02.00 USES ALLOWED WITHIN ZONING DISTRICTS AND PART 2.03.00 SPECIAL USES; AMENDING ARTICLE VI DESIGN STANDARDS AND IMPROVEMENT REQUIREMENTS SPECIFICALLY PART 6.05.00 PARKING AND LOADING; AMENDING ARTICLE X INTERPRETATIONS, EQUITABLE RELIEF AND ENFORCEMENT SPECIFICALLY PART 10.03.00 NONCONFORMING LOTS, USES AND STRUCTURES; AND AMENDING ARTICLE XII DEFINITIONS PART 12.01.00 DEFINITIONS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, that:

Section 1. St. Johns County Ordinance No. 99-51, as previously amended, is hereby amended by deleting Section 2.02.01.G in its entirety and by adding and substituting the following in its stead:

G. Highway Commercial Uses

1. Business Uses generally require accesses to an Arterial or Major Collector or have close proximity to Major Intersections. Highway Commercial Uses are those which serve the traveling public and are oriented to vehicular travel; however, they are distinguished from High Intensity Uses by scale and intensity. These Uses are typically not of an overall size or Building mass, as an activity center. Development generally includes one-story and low-rise Buildings and Uses tend to be in individual Structures. In addition, not all Uses are allowable by right in every zoning district. Refer to Section 2.03.00 which describes Uses by zoning district.
2. Typical Uses in this category include, but are not limited to the following:

Service Stations with or without retail food sales; automobile oil change facilities limited to three (3) enclosed service bays; automobile service and repair facilities performing similar activities as Service Stations and limited to three (3) enclosed service bays with no outdoor storage of automobile parts; car wash facilities; Restaurants, with or without drive-through facilities; agricultural stands, temporary or permanent; outdoor plant sales; Recreational Vehicle Campgrounds; Marinas; Hotels and Motels; Adult Arcade Amusement Centers; Electronic Game Promotions; indoor activities allowed by or on the premises of a licensed pari-mutuel permit holder; Retreats; Fish Camps; Convenience Stores, with or without gasoline sales; Truck Stops; retail sales of items catering to tourists; and other substantially similar facilities and Uses.

Section 2. St. Johns County Ordinance No. 99-51, as previously amended, is hereby amended by deleting Section 2.02.01.H in its entirety and by adding and substituting the following in its stead:

H. High Intensity Commercial Uses

1. Business Uses generally require access to an Arterial or Major Collector or have close proximity to Major Intersections or interchanges with limited access facilities. These Uses are characterized by outdoor activity and outdoor storage, and large demand for parking. High Intensity Commercial Uses are those which are major employment centers, or which serve the traveling public and are oriented to vehicular travel; however, they are distinguished from regional Uses by scale. These Uses are intense as measured by the impacts to adjacent properties, but are typically not of an overall size or Building mass as a regional activity center. These Uses often have an actual or potential negative impact on surrounding properties due to late hours of operation, noise, and or light. Uses may be located in several Buildings, as in shopping centers or business parks, or may be located in a single Building, such as a discount supercenter, or big box retailer. In addition, not all Uses are allowable by right in every zoning district. Refer to Section 2.03.00 which describes Uses by zoning district.
2. Typical Uses in this category include, but are not limited to the following: all types of vehicle sales, rental, service, repair, and storage, including Truck Stops, body shops, road services, car wash facilities, and the sales, rental, repair and service of new or used automobiles, boats, buses, farm and garden equipment, motorcycles, trucks, Recreational Vehicles, and Manufactured/Mobile Homes; Service Stations, Convenience Stores with or without gas pumps, large scale discount centers, supercenters, large scale Building supply centers and do-it-yourself centers, big-box retailers; outdoor plant and garden supply sales; Professional Offices, general office, government offices, newspaper printing operations and distribution

centers; free-standing taverns, Bars, lounges, Night Clubs, and dance halls; psychics in accordance with St. Johns County Ordinance 98-18, as may be amended; financial institutions with or without drive-through facilities; Restaurants with or without drive-through facilities; commercial recreation; vocational, technical and trade schools; facilities operated by a licensed pari-mutuel permit holder; Adult Arcade Amusement Centers; Electronic Game Promotions; indoor activities allowed by or on the premises of a licensed pari-mutuel permit holder; agricultural stands, temporary or permanent; outdoor arenas, rodeo grounds, livestock auction facilities, race tracks (auto, dog, go-kart, horse, motorcycle), indoor shooting and firing ranges; Recreational Vehicle Campgrounds; Ports, Marinas; veterinary offices and Animal hospital with outside Kennels; Kennels and other Animal boarding facilities; storage yards for equipment, machinery, dry storage for boats, and supplies for Building and trades contractors, garbage haulers; extermination and pest control services; Flea Markets or similar outdoor or indoor/outdoor sales complexes, whether temporary or permanent; Hotels and Motels; and other substantially similar facilities and Uses.

Section 3. St. Johns County Ordinance No. 99-51, as previously amended, is hereby amended by deleting Table 2.03.01 Table of Special Uses in Zoning Districts in its entirety and by adding and substituting Table 2.03.01 Table of Special Uses in Zoning Districts attached hereto as Exhibit 1, and incorporated herein by reference in its stead.

Section 4. St. Johns County Ordinance No. 99-51, as previously amended, is hereby amended by adding the following Section to Part 2.03.00 Special Uses:

Sec. 2.03.48 Electronic Game Promotions, Adult Arcade Amusement Centers and Indoor Activities on the Premises of a Licensed Pari-mutuel Permit Holder

Electronic Game Promotions, Adult Arcade Amusement Centers and Indoor Activities on the Premises of a Licensed Pari-mutuel Permit Holder may be permitted as a Special Use within the districts defined in Section 2.03.01, and whether permitted by right or by special use shall also be subject to the following conditions and limitations to ensure compatibility with adjacent Uses and the surrounding neighborhood. Notwithstanding the provisions of this Section, a De Minimus Activity Facility that is accessory to a primary use is not considered Electronic Game Promotions for the purposes of complying with these provisions, nor to determine the appropriate category of Use as provided in Section 2.02.

- A. Electronic Game Promotions, Adult Arcade Amusement Centers and Indoor Activities on the Premises of Licensed Pari-mutuel Permit Holder establishments shall not operate within a minimum of one hundred (100) feet of residentially zoned property or residential portions of Planned Unit Developments.
- B. If the facility is placed in a freestanding building, the parking standards provided

in Table 6.17 shall apply.

- C. If the facility is located in a shopping center, or other building with shared parking, parking for the Electronic Game Promotions, Adult Arcade Amusement Centers and Indoor Activities on the Premises of Licensed Pari-mutuel Permit Holder establishments may not be included in the assessment of shared parking and adequate parking shall be demonstrated for the facility based on a parking ratio provided in Table 6.17. This demonstration shall include evidence that the remaining shopping center and/or building areas meet the standards for parking as provided in Table 6.17 excluding the use of the facility.
- D. The consumption, possession, dispensation, or sale of alcohol shall be prohibited within Electronic Game Promotions establishments, but may be allowed within Adult Arcade Amusement Centers and Indoor Activities on the Premises of Licensed Pari-mutuel Permit Holder establishments.
- E. Electronic Game Promotions, Adult Arcade Amusement Centers and Indoor Activities on the Premises of a Licensed Pari-mutuel Permit Holder establishments shall not operate within one thousand (1,000) feet of a church, park or school, unless such establishment was in operation prior to the church, park or school locating nearby. With respect to the distance between such an establishment and an established church, park, or school, the distance shall be measured by from property line to property line, without regard to the route of travel.
 - 1 The word “school” as used in this Part shall mean an establishment that is licensed as a general education or vocational facility under the jurisdiction of the Florida Department of Education, or an establishment that offers general or vocational education which includes courses of general education accepted by the Florida Department of Education for transfer to a school under its jurisdiction. Day care centers, day nurseries, nursery schools, and kindergartens that do not or do not include general education or vocational programs along with conventional child care activities are considered “schools” as defined in this Section.
 - 2 Subsequent Establishment of Church, Park or School: Whenever an Electronic Game Promotion operator has procured a permit and has commenced the business of operating an Electronic Game Promotions, Adult Arcade Amusement Centers and/or an Indoor Activities on the Premises of Licensed Pari-mutuel Permit Holder establishment at a properly zoned location and thereafter a Church, park or school shall be established within a distance otherwise prohibited by this Code, the establishment of such Church, park or school shall not be cause for the discontinuance of the business of such licensee at that location nor shall

the business be considered nonconforming as defined in Part 10.03.00 of this Code.

Section 5. St. Johns County Ordinance No. 99-51 as previously amended, is hereby amended by deleting Table 6.17 Off Street Parking Requirements in its entirety and by adding and substituting Table 6.17 Off Street Parking Requirements attached hereto as Exhibit 2, and incorporated herein by reference in its stead.

Section 6. St. Johns County Ordinance No. 99-51, as previously amended, is hereby amended by adding paragraph M to Section 10.03.02:

M. Where an establishment conducting Electronic Game Promotions exists lawfully in any zoning district as of the passage of this Ordinance, or has submitted an Application/Affidavit for Certificate of Business Office/Home Office to the Growth Management Department by December 31, 2010 and whose application is subsequently approved, such use may be continued anywhere on such property or site, or within such center, as a nonconforming use subject to all restrictions, limitations and requirements set forth in Section 10.03.02, Land Development Code, and all other applicable provisions of the Code of Ordinances; except that businesses qualifying under this provision which commence Electronic Game Promotions operations on the premises on or after December 31, 2010 shall meet the parking requirements as provided in Table 6.17 of this Code.

Section 7. St. Johns County Ordinance No. 99-51, as previously amended, is hereby amended by adding the following definitions to Article 12, Part 12.01.00:

Adult Arcade Amusement Center: A business (a) that is located on the “premises” of a facility that is licensed by the State of Florida pursuant to Ch. 550, Florida Statutes, and (b) that operates Adult Arcade Amusement Machines that complies with section 849.161(1)(a)1., Florida Statutes. Adult Arcade Amusement Centers do not include Family Amusement Arcades.

Adult Arcade Amusement Machine: An electronic, mechanical, computer, or other device which operates by the insertion of coin and may also operate by the use or insertion of other type of monetary consideration, ticket, token, or card that activates the play of a game or multiple games which by application of skill may entitle the person operating the machine to receive (i) points representing a unit of game play on the machine or (ii) coupons which may be exchanged for merchandise available for sale to the general public on the premises of the Adult Arcade Amusement Center or via catalogs or kiosks produced by an Adult Arcade Amusement Center, other than alcoholic beverages and cash, provided the value of the merchandise does not exceed the amount set forth in section 849.161(1)(a)1, Florida Statutes. The “application of skill” shall mean the ability of a player, with knowledge of the game, and by use of probability based

strategies, manual dexterity and/or decision making to improve his or her level of theoretical success in the game offered by the machine by decreasing the game's advantage by at least 25% over a completely random strategy of play, as certified by an independent laboratory licensed under Chapter 551, Florida Statutes. The presence of a device as described above that requires the payment of monetary consideration for its operation shall result in the presumption that such machine is an Adult Arcade Amusement Machine as defined herein.

De Minimus Activity Facility means a facility operated by an organization exempt from federal taxation under Section 501(c) of the Internal Revenue Code and with five (5) or fewer electronic or mechanical devices that are used to conduct a drawing by chance, sweepstakes or game promotion utilizing those electronic or mechanical devices.

Electronic Equipment: Any electronic or mechanical device provided by or on behalf of the operator of an Electronic Game Promotion that is used or adapted for use to conduct and/or reveal the results of a drawing by chance conducted in connection with the sale of a consumer product or service, sweepstakes or game promotions that display results by simulating a game or games ordinarily played on a slot machine.

Electronic Game Promotion: A sweepstakes or other game promotion which utilizes Electronic Equipment and a drawing by chance conducted in connection with the sale of a consumer product or service which utilizes Electronic Equipment.

Family Amusement Arcade: A business which, in addition to a food and beverage business for which it possesses state and local licenses and permits, also operates an integrated arcade business that complies with section 849.161(1)(a)1., Florida Statutes, catering primarily to families and minors.

Section 8. Severance Clause. It is the intent of the Board of County Commissioners of St. Johns County, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

Section 9. Effective Date. This Ordinance shall take effect on _____, 2011 or upon its being filed with the Department of State of Florida, which ever is later.

PASSED AND ENACTED by the Board of County Commissioners of St. Johns County, Florida, this _____ day of _____, 2011.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: _____
J. Ken Bryan, Chairman

ATTEST: Cheryl Strickland, Clerk of Court

By: _____
Deputy Clerk

Effective Date: _____