

ORDINANCE NO. 80-2010

**AN EMERGENCY ORDINANCE ENACTING A NEW CHAPTER 793 OF THE
CODIFIED ORDINANCES OF THE CITY OF MACEDONIA REGULATING
COMPUTERIZED SWEEPSTAKES/INTERNET DEVICE CAFES**

**Adopted by Macedonia City Council
September 23, 2010**

WHEREAS, the City of Macedonia may legitimately license and regulate the location and operation of certain businesses that are of such a nature that they possess unique characteristics in operation that they could potentially have negative secondary effects on neighboring properties; and

WHEREAS, Council has determined that it is in the best interests of the City of Macedonia and its residents to establish licensing and regulating requirements for such businesses that operate sweepstakes and/or internet café operations wherein the public is invited to the establishment for the purpose of purchasing telephone cards or some other item of value for an opportunity to be entered into a sweepstakes.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Macedonia, Summit County, Ohio, not less than two-thirds of all the members thereof concurring, that:

Section 1. That a new Chapter 793 of the Codified Ordinances of the City of Macedonia, entitled "Sweepstakes/Internet Device Cafes" is hereby enacted, as set forth in "Exhibit A" attached hereto.

Section 2. That all present Codified Ordinances shall remain as presently drafted unless inconsistent with this Ordinance.

Section 3. 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 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.

WHEREFORE, this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety, convenience and welfare of the City of Macedonia and the inhabitants thereof, for the reason that it provides for the daily operation of a municipal department, and provided it receives the affirmative vote of four (4) or more of the members elected or appointed to this Council, it shall take effect and be in force from and after the earliest period allowed by law.

CHAPTER 793

Sweepstakes/Internet Device Cafes

793.01 PURPOSE AND APPLICABILITY.

- A. Applicability. This Chapter shall apply to the operation of computerized sweepstakes terminals and internet cafes or establishments operating such terminals. This Chapter shall only apply to the operation of such terminals that are lawfully operating pursuant to the Ohio Revised Code and nothing in this Chapter shall be construed to legalize, license or authorize any operation of a device that is unlawful to operate pursuant to the Ohio Revised Code. This Chapter shall apply immediately to all devices, arcades and/or internet cafes that commence operation after the date of enactment of this Chapter. All arcades, internet cafes, or establishments 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 enactment unless otherwise stated herein.
- B. Purpose. It is the purpose of this Chapter and the policy of the City of Macedonia to establish standards for licensing and regulation of computerized sweepstakes devices and arcades and/or internet cafes upon 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 preventing gambling and other criminal behavior in the City.

793.02 DEFINITIONS.

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

“Computerized Sweepstakes Device”. 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, wherein a product or service is provided, and may be operated by the public generally for use as a contest of skill, entertainment or amusement, whether or not registering a score, and which 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 793.

“Operator”. Any person or persons having authority to control the premises of an arcade and/or sweepstakes/internet café.

“Licensee”. The person or persons who sign an application for a license hereunder and to whom such license is issued.

“Anything of value”. Cash, cash equivalents, tangible objects, credits to play, and any other tangibles or intangibles, no matter how slight. Anything of value includes playing a game, viewing a video display, hearing an audio transmission, and reading entries or outcomes from any other kind of device. A person who gives anything of value for a product or service, whether tangible or intangible, in any way, directly or indirectly, in association with being given access to the use of an entertainment device, is deemed to have given value for the access to the entertainment device.

“Owner”. Any person who possesses a pecuniary interest, either directly or indirectly, of twenty-five percent (25%) or more in a sweepstakes/internet café.

“Sweepstakes/Internet Café”. Any premises upon which any computerized sweepstakes device is located for the use or entertainment of the public, whether or not such premises have other business purposes of any nature whatsoever.

793.03 LICENSE APPLICATION AND REQUIREMENTS.

- A. No person, partnership, corporation, or other entity shall operate or conduct a sweepstakes/internet café without first obtaining a license from the City. Every person, partnership, corporation, organization or other entity shall make an application in writing to the City, which application shall set forth:
1. The name under which the business is to be conducted;
 2. The location where the business is conducted, with a description of the premises, including a scaled diagram;
 3. The name, address, and date of birth of any manager, supervisor, and all other employees;
 4. The name, address, and date of birth of the owner or owners of the entertainment devices; and
 5. The name, address, date of birth, and principal occupation of every person with an interest in the business.

If the business is conducted by:

- a. A sole proprietorship: the name, home address, date of birth and principal occupation of that individual.
- b. A firm or partnership: the names, home addresses, dates of birth, and principal occupations of each member of the firm or partnership.
- c. A corporation: the names, home addresses, dates of birth and principal occupations of all directors, officers and shareholders 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 prize that may be given out and each separate dollar amount that may be given; and the odds of winning any offered prize or dollar amount awarded for the participation in any game, activity, program, scheme or play, use or participation in any way in a computerized sweepstakes device or participation in any other activity or promotion in the sweepstakes/internet café, 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.
 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 entertainment devices, whether any such provisions are sold, leased or licensed.
 9. The tax account number of the business from the City of Macedonia Income Tax Division.
 10. The application is to include supporting documentation from a Certified Independent Regulatory Compliance Test Laboratory that the software performs in similar fashion as other permitted sweepstakes commercially offered to the public and that the entries are drawn from a pre-created finite static pool of entries with assigned values. To be certified, the Independent Regulatory Compliance Testing Laboratory must be authorized to test regulated gaming equipment by at least one state government gaming regulatory agency.
- B. The person, partnership, corporation, or other entity operating or conducting the business shall have a continuing duty to inform the City as to changes in the information required in this section. No person, partnership, corporation, or other entity shall operate or conduct a sweepstakes/internet café at any time unless the information on file with the City is current and accurately reports the licensing information at the time of operation.
- C. If an application is not approved, the City shall notify the applicant in writing, with reasons for rejection.
- D. The City shall not issue a license to any person, partnership, corporation, or other 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 or state statute or of any local ordinance pertaining to gambling or other crime of moral turpitude within five years preceding the application. All owners, employees and persons having an interest in the business, as set forth in Section 793.03(A)(5), shall consent to a criminal history check by the Macedonia Police Department.

- E. As a prerequisite to the issuance of such license, an inspection shall be made of the premises by the Fire Department and the premises must be in compliance with all applicable fire regulations. The sweepstakes/internet café shall be open to inspection and viewing of operations by law enforcement officers and fire department personnel at all times of operation. No operator shall fail to immediately permit entry to any such City officials.
- F. Failure to register or pay a license fee for a computerized sweepstakes device shall be grounds for suspension or revocation of the license for the establishment and said device shall be seized and forfeited to the City.

793.04 LOCATION.

- A. No license shall be granted to a sweepstakes/internet café that will conduct its business at a location that is within one thousand (1000) feet from the boundaries of a parcel of real estate having situated on it a school, public library, public playground, church, or religious institution, or within one thousand (1000) feet of any establishment that has been issued a liquor permit by the State of Ohio.
- B. This section shall not apply to any sweepstakes/internet café locations in existence at the time of the passage of this ordinance, and shall not apply to any duly licensed sweepstakes/internet café locations in existence at the time a school, public library, public playground, or any establishment that has been issued a liquor permit by the State of Ohio moves within one thousand (1000) feet of said sweepstakes/internet café. However, any change in ownership of the sweepstakes/internet café or change in location will remove said sweepstakes/internet café 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 one thousand (1000) feet of said sweepstakes/internet café.

793.05 LICENSE FEE; TRANSFER AND DISPLAY.

- A. The license fee, payable to the City at the time of application and annually thereafter, shall be Five Thousand Dollars (\$5,000.00) for each business location per year or any part thereof ending on December 31 of each year. In the event that an application is denied under this Chapter, one-half (1/2) of the application fee shall be returned to the applicant. In the event that a license is revoked or suspended hereunder, no portion of the license fee shall be returned.
- B. The fee for each computerized sweepstakes device shall be Five Hundred Dollars (\$500.00) for each device on the premises for each year or any part thereof ending on the last day of the year.
- C. The fees, which are paid at the time of application, are not refundable in any case. The license fee shall be paid for each device brought to the facility before the device is put into use. For purposes of determining licensing fees, each device that is operable by one or more persons is a separate device.

- D. Licenses issued under this article 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 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.

793.06 REVOCATION; HEARING PROCEDURE.

- A. The license may be suspended or revoked at any time by the City on satisfactory proof that violation of the laws of the state, ordinances of the City, or of this Chapter occur on the premises. 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 article. 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 article or other village, state or federal laws.
- B. Any person may submit a written complaint to the City in regard to any sweepstakes/internet café location, which shall include the name and address of the complainant, the location of the sweepstakes/internet café, and the specific reasons why the resident is complaining. The designated City official or a designee from law enforcement shall regularly inspect the premises, the operation, the computerized sweepstakes devices and the licensee's records and may issue a complaint to the licensee for any violations.
- C. The Mayor, or his/her designee from law enforcement, shall meet with the complainant and inquire as to the specific reasons for the complaint. The complaint may be dismissed if it is determined that:
 - 1. The specific reasons listed in the complaint are not proper grounds for suspension or revocation of the license.
 - 2. There are not substantial credible facts to support the complaint by the resident.
- D. No appeal shall lie from the decision to dismiss a complaint.
- E. If the complaint is not dismissed, the Mayor, or his/her designee, will then notify the licensee and the owner of the devices on the premises, as listed on the license application, that a complaint has been filed and will set a date for a conference on the matter. Extensions will be granted and necessary investigations will be conducted at the discretion of the Mayor who may request the assistance of any person in law enforcement to assist in the investigation. The City and its designee and any law

enforcement officer shall have access to the premises and the records of the licensee during all times that the computerized sweepstakes devices are available for play.

- F. At the time of the conference, the complainant, the licensee, the Mayor, or his/her designee, and the owner of the devices will meet and attempt to amicably resolve the situation. If the complainant, licensee, Mayor, or his/her designee, and the owner of the devices can reach an amicable solution, the City will direct the licensee to comply with the solution in his notice of reconciliation.
- G. If the parties cannot agree upon an amicable solution to the problem, the complaint shall be transmitted to the City Director of Law for consideration. The recommendation may be for dismissal of the complaint, suspension of the license and assessment of penalty fees, or revocation of the license.
- H. Consideration of the complaint shall be a public hearing which shall be held within thirty days after said notice is given. The complainant, the licensee and the owner of the devices, as listed on the license application, shall be notified at least fifteen (15) days in advance of the hearing by certified mail; and they may, if they so choose, be present during consideration of the complaint. 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 Law shall enter its decision the day of the hearing unless additional time is needed. 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 a court of competent jurisdiction under authority of and pursuant to the provisions of Ohio Revised Code Chapter 2506.
- I. This complaint process is separate and distinct from any law enforcement action taken to enforce the laws of the State or the City and is not a condition precedent or otherwise an impediment to enforcement of said laws by criminal prosecution.

793.07 HOURS OF OPERATION.

No operator of a sweepstakes/internet café shall permit the same to be or remain open between the hours of 10:00 p.m. and 10:00 a.m. of the next day. No operator shall permit any person to operate any computerized sweepstakes device between the hours of 10:00 p.m. and 10:00 a.m. of the next day.

793.08 PROHIBITED CONDUCT.

No licensee of a sweepstakes/internet café by himself/herself, directly or indirectly, or by any servant, agent or employee, shall permit or fail to take active steps to eliminate or prevent the activities specified in this section from occurring on the premises. All such licensees shall have a duty to diligently pursue enforcement of this section. The actions or inactions of the operator and the failure to take action by the operator shall be imputed to the licensees. No such licensee shall:

- (a) Permit any indecent, immoral or profane language, or indecent, immoral or disorderly conduct, upon the premises;

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

793.09 MISCELLANEOUS.

- A. Any sweepstakes/internet café 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 café 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 operator shall permit the sale, possession or consumption of alcoholic beverages on the premises of a sweepstake/internet café.

- D. No operator shall fail to maintain order and quiet on the premises so as not to violate the public peace.
- E. No persons under the age of twenty one (21) years shall be permitted on the premises of any sweepstakes/internet café.
- F. The operator shall require a photo identification of every person to whom anything of value is given in connection with the sweepstakes/internet café and shall record the person's name, date of birth, and home address and a description of the thing given, a stated dollar value of the thing given, the date and time of the giving and, if an entertainment device is involved in the circumstances of the giving, the serial number or other identifying description of the device. If the dollar value given for any single event for which there is a chance of winning, as calculated by the odds of winning provided to the City in Section 793.03, is Six Hundred Dollars (\$600.00) or more the operator shall also include in the record a copy of the photo identification and record the person's social security number. By the second Tuesday of each month the operator shall cause to be delivered to the City Finance Director a copy of the record containing the information set forth above for the preceding month. The operator and the City Finance Director shall not disclose the social security number of any person to anyone except as required by the laws of the State of Ohio and the United States government.
- G. 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:
 - 1. Each separate prize that may be given and each separate dollar amount that might be given.
 - 2. The odds as stated in the filing with the City, as required in Section 793.03(A)(7).
 - 3. A complete statement of the rules and conditions pertaining to the giving of any prizes 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.
- H. The operator shall keep a complete set of all records of the operations 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 for ten (10) years.
- I. No applicant shall make a false or incorrect statement in an application for a license and no operator shall fail to update the information supplied to the City to reflect existing operations as required in Section 793.03(B).

- J. It is the intent of this Chapter that operators are strictly liable for any violations of this article.
- K. 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.

793.10 NUISANCE.

A violation of this Chapter shall constitute a nuisance and is subject to civil proceedings, including an injunction, in addition to prosecution for criminal violations of the State of Ohio and Codified Ordinances of the City of Macedonia.

793.11 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.

793.12 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. 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 café shall be permanently revoked.