

ORDINANCE NO. 2010-160

Late Filing

SPONSOR Ms. Prentice

DATE May 10, 2010

COMMITTEE Rules

An amended Ordinance adopting and enacting Chapter 755 of the Codified Ordinances of the County of Summit, entitled, "Entertainment Device Arcades," for the County Council, and declaring an emergency.

WHEREAS, pursuant to the Ohio Revised Code and the Summit County Charter, this Council has authority to regulate businesses in the unincorporated areas of the County; and

WHEREAS, this Council has exercised its authority in the past to regulate certain businesses in the unincorporated areas of the County by adopting certain provisions in Part Seven of the Codified Ordinances of the County of Summit; and

WHEREAS, in several unincorporated areas within Summit County, certain businesses are operating gaming devices more commonly known as skill-based amusement machines or "games of skill," internet café terminals and internet sweepstakes machines; and

WHEREAS, the State of Ohio currently permits the operation of games of skill pursuant to Chapter 2915 of the Ohio Revised Code, but also narrowly defines games of skill and strictly prohibits devices that are, in fact, games of chance; and

WHEREAS, outside of regulations governing sweepstakes in general, the State of Ohio currently does not regulate internet café terminals or internet sweepstakes machines; and

WHEREAS, throughout Summit County and the State of Ohio, several businesses claiming to operate legal games of skill, internet café terminals and internet sweepstakes machines have been investigated and closed by various public law enforcement entities for actually operating games of chance or otherwise violating gambling and gaming provisions of the restrictions imposed upon them by the Ohio Revised Code; and

WHEREAS, when a business unlawfully operates as a gaming, gambling or games of chance parlor, it often times will encourage other illegal activity and harm to the community; and

WHEREAS, several local municipalities have adopted legislation regulating the games of skill, internet café terminals and internet sweepstakes machines businesses to ensure that they are operating in a legal manner and in a manner that is not likely to lead to illegal activity and harm to the community; and

WHEREAS, as a result of regulation by local municipalities, several of the games of skill, internet café terminals and internet sweepstakes machines businesses have chosen to locate or relocate in the unincorporated areas of Summit County; and

WHEREAS, by adopting regulations on games of skill, internet café terminals and internet sweepstakes machines businesses, this Council will ensure that those businesses are operating lawfully and in a manner that is not likely to harm the community; and

WHEREAS, this Council finds and determines that it is necessary and in the best interest of the County to adopt regulations of skill based games, internet café terminals and internet sweepstakes machines businesses in the unincorporated areas of Summit County.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the County of Summit, State of Ohio, that:

SECTION 1

Chapter 755 of the Codified Ordinances of the County of Summit, entitled, "Entertainment Device Arcades," attached hereto as amended Exhibit A, and incorporated herein by referenced, is hereby adopted and enacted by this Council.

SECTION 2

This Ordinance is hereby declared an emergency in the interest of the health, safety and welfare of the citizens of the County of Summit, and for the further purpose of immediately allowing the regulation of games of skill, internet café terminals and internet sweepstakes machines businesses and immediately ensuring that those businesses are operating lawfully.

SECTION 3

Provided this Ordinance receives the affirmative vote of eight members, it shall take effect immediately upon its adoption and approval by the Executive; otherwise, it shall take effect and be in force at the earliest time provided by law.

SECTION 4

It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

ORDINANCE NO. 2010-160
PAGE THREE

INTRODUCED March 29, 2010

SECOND READING April 26, 2010

ADOPTED May 10, 2010


CLERK OF COUNCIL


PRESIDENT OF COUNCIL

APPROVED May 11, 2010


EXECUTIVE

ENACTED EFFECTIVE May 11, 2010

On Voice Vote: 10-0-1 YES: Comunale, Crawford, Crossland, Feeman,
Kostandaras, Prentice, Rodgers, Schmidt, Shapiro, Smith ABSTAIN: Poda

AMENDED EXHIBIT A

CHAPTER 755 Entertainment Device Arcades

755.01 Applicability.

755.02 Definitions.

755.03 License application; requirements.

755.04 License fees; transfer and display; disposition of fees.

755.05 License revocation; hearing procedure.

755.06 Location.

755.07 Closing hours.

755.08 Miscellaneous operating requirements.

755.09 Severability.

755.99 Penalties.

SECTION 755.01 APPLICABILITY.

This Chapter shall be applicable only to townships located in the County of Summit, Ohio. This Chapter shall apply to the operation of entertainment devices that are lawfully operated pursuant to the Ohio Revised Code and does not legalize or license any operation of a device that is unlawful to operate pursuant to the Ohio Revised Code. This Chapter shall apply immediately to all entertainment device arcades that commence operations after the date of the enactment of this Chapter. All entertainment device arcades in operation 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 of this Chapter, unless otherwise stated herein.

SECTION 755.02 DEFINITIONS.

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

(a) "Entertainment device arcade" means any business, establishment, room or place where four or more entertainment devices are kept for use by the public or by persons other than the owner of the devices, where persons give anything of value to access the use of the entertainment devices or the premises, and the person may be given anything of value by the operator, whether the giving occurs on or off the premise or at the same time or a later time.

(b) "Entertainment device" means any mechanical, electronic, video or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a person, for the purpose of playing a game, viewing a video display, hearing an audio transmission or reading entries or outcomes from any other kind of device. "Entertainment device" does not include any vending machine, juke box, audio book, video player or any device that gives anything of value where the only value given, directly or indirectly, is a video or audio transmission, ~~or any device specifically exempted under Section 2915.01 of the Ohio Revised Code from that Section's definition of a skill-based amusement machine.~~

(c) "Anything of value" means cash, cash equivalents, tangible objects, credits to play, sweepstakes entry points 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.

(d) "Operator" means any person or organization that owns, controls, operates, promotes or maintains or knowingly engages in conduct that facilitates the operation of an entertainment device arcade or the entertainment devices in an entertainment device arcade.

(e) "Law enforcement agency" means the law enforcement agency responsible for policing a township, whether a township police department or the Summit County Sheriff's Office.

SECTION 755.03 LICENSE APPLICATION; REQUIREMENTS.

(a) No person, partnership, corporation, or other entity shall operate or conduct an entertainment device arcade without first obtaining an annual license therefore from the Office of Consumer Affairs. The license shall first be obtained prior to the initial operation of the entertainment device arcade and annually thereafter, with the subsequent annual application and associated fee due prior to the 1st day of January of each calendar year.

(b) Every person, partnership, corporation, organization or other entity shall make an application in writing to the Office of Consumer Affairs, which application shall set forth:

(1) The name and federal tax identification number 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, and address, and government issued photo identification of any manager, supervisor, and all other employees;

(4) The name, and address, and government issued photo identification of the owner or owners of the entertainment devices; and

(5) The name, address, government issued photo identification 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, government issued photo identification and principal occupation of that individual.

B. A firm, limited liability company or partnership, the names, home addresses, government issued photo identification and principal occupations of each member of the firm or partnership.

C. A corporation, the names, home addresses, government issued photo identifications and principal occupations of all officers and shareholders and the statutory agent;

(6) If a corporation or limited liability company, a certificate of good standing from the Ohio Secretary of State.

(7) A certificate of insurance indicating that the person, partnership, corporation, limited liability company, organization or other entity operating the entertainment device arcade has covered the premises with general liability insurance coverage of not less than \$1,000,000.00 per occurrence.

(68) The name, description, model number and serial number of each entertainment device on the premises and any other device on the premises that is necessary to the operation of the entertainment device;

(79) A. A list of each separate prize that may be given out and each separate dollar amount that may be given; and

B. 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 an entertainment device or participating in any other

activity or promotion in the entertainment device arcade, 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;

(810) 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 licensee's entertainment devices or to devices necessary to operate the entertainment devices, whether any such provisions are sold, leased or licensed; and

(11) A certificate or report, provided by an Authorized Independent Testing Laboratory, verifying that each entertainment device identified in 755.03(b)(8), above, and the software therein, complies with all provisions of the Ohio Revised Code and is not a game of chance, gambling device, gaming device, or other device that is prohibited from operation in the State of Ohio under any provision of the Ohio Revised Code. The Office of Consumer Affairs shall publish, within fourteen (14) days after the enactment of this ordinance a list of Authorized Independent Testing Laboratories, and shall keep said list updated and current at all times. Only certificates or reports from the entities listed by the Office of Consumer Affairs as Authorized Independent Testing Laboratories shall satisfy the requirements of this Section. Said certificate or report shall be provided to the Office of Consumer Affairs for each entertainment device prior to an operator placing the device into service.

The certificate or report for an Authorized Independent Testing Laboratory required herein shall be updated annually for each entertainment device and the updated certificate or report shall be provided at the time of each annual application. Said updated certificate or report shall verify that each entertainment device, and the software therein, continues to comply with all provisions of the Ohio Revised Code and is not a game of chance, gambling device, gaming device, or other device that is prohibited from operation in the State of Ohio under any provision of the Ohio Revised Code.

Any update to an entertainment device, or the software therein, during the course of the year shall be reviewed and inspected by an Authorized Independent Testing Laboratory, and a certificate or report from the Authorized Independent Testing Laboratory shall be filed with the Office of Consumer Affairs prior to the operator placing the device in service, which verifies that the entertainment device, and the software therein, continues to comply with all provisions of the Ohio Revised Code and is not a game of chance, gambling device, gaming device, or other device that is prohibited from operation in the State of Ohio under any provision of the Ohio Revised Code.

(c) Duty to keep information current. The person, partnership, corporation, or other entity operating or conducting the business shall have a continuing duty to inform the Office of Consumer Affairs as to changes in the information required in this section. No person, partnership, corporation, or other entity shall operate or conduct an entertainment device arcade at any time unless the information on file with the Office of Consumer Affairs is current and accurately reports the licensing information at the time of operation.

(d) Rejection of application. If an application is not approved, the Office of Consumer Affairs shall notify the applicant in writing, with reasons for rejection.

(e) Prohibition as a result of conviction; fire inspection. The Office of Consumer Affairs 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. Also, as a prerequisite to the issuance of such license, an inspection shall be made of the premises by the township's fire department to seek and obtain the approval of said department.

(f) Right of entry for inspection. The entertainment device arcade shall be open to inspection and viewing of operations by the Office of Consumer Affairs, law enforcement agency officers, ~~and fire department personnel, and health department personnel~~ at all times that the arcade is open for business. No operator shall fail to immediately permit entry to any such officials.

(g) Suspension or revocation of license. Failure to register or pay a license fee for an entertainment device shall be grounds for suspension or revocation of the license for the entertainment device arcade and said device shall be seized and forfeited to the County.

SECTION 755.04 LICENSE FEES; TRANSFER AND DISPLAY; DISPOSITION OF FEES.

(a) License fees. The non-refundable annual license fee, payable to the Office of Consumer Affairs at the time of initial or annual application, shall be ~~\$2,000.00~~ \$1,000.00 for each entertainment device arcade location for each calendar year or any part thereof. Additionally, ~~a monthly~~ an ~~semi-~~ semi-annual non-refundable license fee of \$200.00 shall be paid to the Office of Consumer Affairs ~~no later than the 1st day of each month~~ for each entertainment device that will be located on the premises during the following semi-annual period, that month calendar year. The ~~monthly~~ semi-annual license fee ~~shall be paid~~ for each entertainment device shall be paid at the time of initial or annual application and no later than June 1st of each calendar year, or, if the entertainment device is brought to the premises following the payment of the semi-annual license fee filing of the initial or annual application, prior to such time as the entertainment device is brought to or operating on the premises before the device is put into use for that month. For purposes of determining licensing fees, each device that is operable by one or more persons is a separate device.

(b) Non-transferability; display. 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 entertainment device with serial number.

(c) Disposition of license fees. License fees received by the Office of Consumer Affairs shall be disposed of as follows:

(1) Special revenue fund. 75% of the license fees shall be deposited into a special revenue fund which shall be established for the benefit of those townships in which entertainment device arcades are located. The County of Summit shall pay each township on quarterly basis those fee amounts received during the previous quarter from entertainment device arcades located within the township and deposited into the special revenue fund.

(2) Office of Consumer Affairs. 25% of the license fees shall be deposited on behalf of and paid to the Office of Consumer Affairs to be used for the Office's operational expenses.

SECTION 755.04 755.05 LICENSE REVOCATION; HEARING PROCEDURE.

(a) Creation of commission. An Entertainment Device Arcade License Review Commission is hereby created to hear complaints concerning entertainment device arcade licenses. The Commission shall consist of the County Executive or their designee, the President of the County Council or their designee and the County Fiscal Officer or their designee.

(b) Revocation or suspension of license. A license may be suspended or revoked at any time by the Commission on satisfactory proof that violation of the laws of the State of Ohio, the Codified Ordinances of the County of Summit or this Chapter occurs at an entertainment device arcade. In addition to any license suspension, the Commission may assess the licensee a penalty fee of not less than \$500.00 or more than \$1000.00 for any violation of this Chapter. Each day a continuing violation exists shall constitute a separate violation for purpose of assessing penalty fees. Suspensions, revocations and assessments of penalty fees by the Commission is in addition to and separate from any criminal liability and does not preclude criminal prosecution for any violation of this article or other County, State of Ohio or federal laws. Penalty fees shall be disposed of in the same manner as license fees as set forth in Section 755.04(c).

(c) Submission of complaint; regular inspection. Any resident of a township may submit a written notice of complaint to the Office of Consumer Affairs concerning any entertainment device arcade located within the complainant's township. The notice of complaint will include the name, phone number and address of the resident, the address of the location, the OAC device number, if applicable, and the specific reasons why the resident is complaining. The Office of Consumer Affairs and/or the law enforcement agency responsible for policing the township shall regularly inspect the premises, the operation, the entertainment devices and the licensee's records and may issue a notice of complaint to the licensee for any violations.

(d) Interview of complainant. The Office of Consumer Affairs shall interview meet with the complainant and inquire as to the specific reasons for the complaint. The Office of Consumer Affairs may dismiss the complaint if it is determined that:

- (1) The specific reasons listed in the complaint are not proper grounds for suspension or revocation of the license; or
- (2) There are not substantial credible facts to support the complaint by the township resident.

(e) No appeal from dismissal of complaint. No appeal shall lie from the decision of the Office of Consumer Affairs to dismiss a complaint.

(f) Fact-finding conference. If the complaint is not dismissed by the Office of Consumer Affairs, the Office 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 fact-finding conference on the matter. Extensions will be granted and necessary investigations will be conducted at the discretion of the Office of Consumer Affairs and the Office may request the assistance of the law enforcement agency to assist in the investigation. The Office and any assisting law enforcement agency officer shall have access to the entertainment device arcade and the records of the licensee during all times that the entertainment devices are available for play.

(g) Resolution of complaint. At the time of the conference, the resident, the licensee, and the owner of the devices will meet and attempt to amicably resolve the situation. If the resident, licensee, and the owner can reach an amicable solution, the Office will issue a written notice directing the licensee to comply with the agreed resolution of the complaint.

(h) Referral to the Commission. If the parties cannot agree upon an amicable solution to the problem, the Office of Consumer Affairs will transmit the complaint, together with its recommendation thereon, to the Entertainment Device Arcade License Review Commission. The Office's recommendation may be for dismissal of the complaint, suspension of the license and assessment of penalty fees, or revocation of the license.

(i) Hearing. The Commission may accept, reject, or modify the recommendation of the Office of Consumer Affairs. The resident, the licensee and the owner of the devices, as listed on the license application, shall be notified in advance by certified mail of the day on which the

Commission is to consider the complaint; and they may, if they so choose, be present during consideration of the complaint. Consideration of the complaint before the Commission shall be a public hearing which shall be held within 30 days after said notice is given. The licensee shall have the right to be represented by counsel, and have the right to examine and cross-examine witnesses. The Commission shall enter its decision the day of hearing. 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 Chapter 2506 of the Ohio Revised Code.

(j) Other enforcement actions. The complaint process set forth in this section is separate and distinct from any law enforcement action taken to enforce the laws of the State of Ohio or the Codified Ordinances of the County of Summit and this Chapter, and is not a condition precedent or otherwise an impediment to enforcement of said laws by criminal prosecution.

SECTION 755.06 LOCATION.

(a) Limitation on location. No license shall be granted to an entertainment device arcade that will conduct its business at a location that is within 500 feet from the boundaries of a parcel of real estate having situated on it a school, public library, public playground, or any establishment that has been issued a liquor permit by the State of Ohio.

(b) Exception: change in ownership. This section shall not apply to any entertainment device arcade locations in existence at the time of the passage of this ordinance, and shall not apply to any duly licensed entertainment device arcade 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 500 feet of said entertainment device arcade. However, any change in ownership of the entertainment device arcade or change in location will remove said entertainment device arcade from this exception. "Change in ownership" in the case of a partnership or corporation for the purpose of this section means more than 50 percent change in partners or shareholders from the partners or shareholders owning the partnership or corporation as of the date the school, public library, or public playground moves within five hundred feet of said entertainment device arcade.

SECTION 755.07 ~~CLOSING HOURS OF OPERATION.~~

~~No operator of an entertainment device arcade shall permit the same to be or remain open between the hours of 11:00 p.m. and 10:00 a.m. of the next day. No operator shall permit any person to operate any entertainment device between the hours of 11:00 p.m. and 10:00 a.m. of the next day.~~

Entertainment device arcades shall operate only between the hours set forth below:

<u>Sundays</u>	<u>1:00pm to 12:00am Monday morning</u>
<u>All Other Days</u>	<u>10:00am to 12:00am of the following day</u>

No operator shall permit any person to operate any entertainment device during any time other than specified herein.

SECTION 755.08 MISCELLANEOUS OPERATING REQUIREMENTS.

(a) Supervision of entertainment devices. Any entertainment device arcade shall have an adult who is 21 years of age or over on the premises and supervising at all times the entertainment devices during all hours of operation.

(b) Square-footage. The interior of the entertainment device arcade shall provide a minimum area of 50 square feet per entertainment device in each room in which entertainment devices are located.

(c) No alcoholic beverages. No operator shall permit the sale, possession or consumption of alcoholic beverages on the premises of an entertainment device arcade.

(d) Public peace. No operator shall fail to maintain order and quiet on the premises so as not to violate the public peace.

(e) No minors. No persons under the age of eighteen years shall be permitted on the premises of any entertainment device arcade.

(f) Photo identification. The operator shall require a photo identification of every person to whom anything of value is given in connection with the entertainment device arcade and shall record the person's name 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 of the thing given to a person is more than ten dollars, the operator shall include in the record a copy of the person's photo identification. By the second Tuesday of each month the operator shall cause to be delivered to the Office of Consumer Affairs a copy of the record of things given to persons together with the above required information given during the preceding month. If the records pertaining to photo identification contain social security numbers or drivers license numbers, the operator and the Office of Consumer Affairs shall not disclose those numbers to anyone except as required by the laws of the State of Ohio and the United States government.

(g) Posting. The operator shall post in a conspicuous place on the premises in the room where the entertainment 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 Office of Consumer Affairs, as required in Section 755.03(b)(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 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.

(4) On each machine, a sticker, if issued by the Office of Consumer Affairs, indicating that it has been registered by the operator with the Office of Consumer Affairs, and bearing a unique identification number for that machine.

(h) Records. 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 more than 10 years old are exempt from this requirement.

(i) Correct information. No applicant shall make a false or incorrect statement in an application for an entertainment device arcade license and no operator shall fail to update the information supplied to the Office of Consumer Affairs to reflect existing operations as required in Section 755.03(b).

(j) Insurance. Each operator of an entertainment device arcade shall maintain general liability insurance covering the premises of the arcade in an amount of no less than \$1,000,000.00 per occurrence.

(k) Reporting of Internet Time. Any entertainment device arcade that engages in the sale of internet time or computer usage time in exchange for anything of value shall provide to the Office of Consumer Affairs, no later than the 15th day of each month a report detailing the daily amount of time sold and the daily amount of time used or consumed in the preceding calendar month.

(j) Strict liability for violations. It is the intent of this Chapter that operators are strictly liable for any violations of this Chapter.

SECTION 755.09 SEVERABILITY.

In the event any provision of Sections 755.01-755.99 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.

SECTION 755.99 PENALTIES.

(a) Minor misdemeanor. Whoever violates or fails to comply with any of the provisions of this Chapter, for which no penalty is otherwise provided, is guilty of a minor misdemeanor and shall be fined not more than \$100.00 for each offense, said fine shall not be reduced or suspended. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

(b) Failure to obtain or operating without a license. Whoever violates or fails to comply with the requirement to obtain a license for an entertainment device arcade or an entertainment device as provided in this Chapter is guilty of a misdemeanor of the fourth degree and shall be fined not more than \$250.00, or imprisoned not more than 30 days or both, for each offense, provided said fine shall not be reduced or suspended. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.