

ORDINANCE NO. 2012 - 3589

AN ORDINANCE ENACTING NEW CHAPTER 749 OF THE CODIFIED ORDINANCES OF THE CITY OF FREMONT, ENTITLED "SWEEPSTAKE TERMINAL CAFES", AND DECLARING AN EMERGENCY.

WHEREAS, computerized sweepstake and sweepstake terminal cafés and similar operations, and the premises upon which they are located and operated, are by their nature a unique business; and

WHEREAS, the City of Fremont seeks to regulate this business to ensure that such businesses are in compliance with laws of the State of Ohio and the City of Fremont; and

WHEREAS, the City of Fremont further seeks to regulate this business to prevent safety and fire hazards, disturbances, disruption of pedestrian traffic, disorderly assemblies, theft of personal property, illegal gambling and truancy within the City; and

WHEREAS, the City of Fremont shall use various City personnel to monitor the operation of this business for compliance with pertinent federal, state and local laws and regulations:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FREMONT, OHIO:

SECTION 1: The Codified Ordinances of the City of Fremont Ohio be, and the same hereby is, amended by adding thereto a new Chapter 749, "Sweepstake Terminal Cafes", which, as so amended, shall read as follows:

**CHAPTER 749
SWEEPSTAKE TERMINAL CAFES**

749.01 TITLE, PURPOSE AND OBJECTIVES.

- (a) Title. This Chapter shall be known and may be cited as Sweepstake Terminal Cafes.
- (b) Purpose and Objectives. It is the purpose of this Chapter and the policy of the City of Fremont to establish standards for licensing, regulation and control of computerized sweepstake devices and sweepstake terminal cafes and similar operations, and premises upon which they are located and operated for the purpose of entertainment of the public. The objectives of this Chapter are to prevent

violation of state and local laws relative to gambling, safety and fire hazards, disturbances, disruption of pedestrian traffic, disorderly assemblies, theft of personal property, and truancy within the City.

749.02 CONSTRUCTION, SEPARABILITY AND APPLICABILITY OF CHAPTER.

- (a) Construction. This Chapter shall be liberally construed and applied to promote its purpose and objectives.
- (b) Separability. If any provision of this Chapter or the application thereof to any person or circumstance is held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and neither the remainder of this Chapter nor the application of such provision to other persons or circumstances shall be affected thereby.

749.03 DEFINITIONS.

As used in this Chapter:

- (a) "Computerized sweepstake device" means any computer, machine, or apparatus which is capable of connection to the internet, regardless of whether such connection is utilized, through a wireless router telephone line, digital subscriber line, satellite, cellular telephone, cable connection or any other method, which is engaged or accessed upon the insertion of a coin, token, or similar object, or the sliding of a magnetic card or entry of a code, or similar process, or upon payment of anything of value, either directly or indirectly, and which may be operated by the public generally for use as entertainment or amusement, whether or not generally for use as entertainment or amusement, whether or not registering a score, and which when so utilized announces, reveals or discloses the predetermined eligibility, award or payment of a cash prize redeemable on or at the internet sweepstakes café, whether or not said prize was in fact announced, revealed or disclosed through the usage of the "computerized sweepstakes device". Computerized sweepstakes device does not include machines which produce a non-predetermined prize, a game of chance, a game of skill, or which are designated for use by the State Lottery Commission.
- (b) "Safety Service Director" means the City Safety Service Director.
- (c) "Operator" means the person or persons having authority to control the premises of a Sweepstake Terminal Cafe.
- (d) "Licensee" means the person or persons who sign an application for a license hereunder and to whom such license is issued.
- (e) "Owner" means any person who possesses a pecuniary interest, either directly or indirectly in an amusement device business and/or Sweepstake Terminal Cafe.
- (f) "Person" means any natural person, firm, partnership, association, corporation or any other form of business organization.
- (g) "Premises" means the building or portion thereof used for conducting the operation of an amusement device business and/or Sweepstake Terminal Cafe.

(h) "Sweepstake Terminal Cafe" means any individual business premises upon which any computerized sweepstake device is located for the use or entertainment of the public, whether or not such premises has other business purposes of any nature whatsoever. Sweepstake Terminal Cafes shall be permitted in any areas zoned for business.

749.04 COMPUTERIZED SWEEPSTAKE DEVICE LICENSE REQUIRED.

No person shall display for purpose of use any computerized sweepstake device in the City without having first obtained a license therefore as provided in this Chapter, which license shall be designated as a computerized sweepstake license. A separate license is required for each such computerized sweepstake device.

749.05 SWEEPSTAKE TERMINAL CAFE LICENSE REQUIRED.

No person shall conduct or operate a sweepstake terminal cafe in the City without having first obtained a license therefore as provided in this Chapter, which license shall be designated as a sweepstake terminal cafe license.

749.06 AUTHORITY OF SAFETY SERVICE DIRECTOR.

Authority is hereby established and vested in the Safety Service Director to consider applications for licenses under this Chapter, conduct investigations thereon, inspect all sweepstakes devices, and issue or deny issuance of such licenses based upon the criteria set forth in this Chapter.

749.07 NATURE OF LICENSES.

(a) All Licenses. All licenses issued under this Chapter shall have the following characteristics:

- (1) Each such license shall be an annual license, which covers a period from July 1 of each year through June 30.
- (2) Each such license shall vest a personal privilege but not any property rights in the licensee.
- (3) Each such license shall be required to be displayed permanently in a conspicuous place upon the premises for which it is issued.
- (4) Each such license shall be in the name of the applicant.
- (5) Each such license shall be neither assignable nor transferable, either as to person or location, without prior approval by the Safety Service Director, which approval will not be unreasonably withheld. Such approval must take place within thirty days from receipt of the request to transfer or assign said license.
- (6) Each such license, if lost, destroyed or mutilated, upon application within thirty days thereof may be replaced by a replacement license issued by the Safety Service Director bearing the word "Replacement" across its face and bearing the same license number as the license which it replaces. Licensee, however, can operate pending the issuance of the replacement license.

(b) Sweepstake Terminal Cafe Licenses. All sweepstake terminal cafe licenses issued under this Chapter shall have the following characteristics:

- (1) Each such license shall be issued only for an individual business at an individual premises.
- (2) Each such license shall specify the name and address of each licensee, and the manufacturer, model number and serial number of each computerized sweepstake device located upon the premises for which it was issued.

(c) Computerized Sweepstake Device Licenses. All computerized sweepstake device licenses issued under this Chapter shall have the following characteristics:

- (1) Each such license shall be issued for an individual computerized sweepstake device only.
- (2) Each such license shall specify the name and address of each licensee, and the manufacturer, model number and serial number of the computerized sweepstakes device for which it was issued.
- (3) Each such license, if changed, mutilated, erased or in any manner defaced, shall be void and any amusement device which the same shall purport to license shall be deemed an unlicensed amusement device.

749.08 PROCEDURE FOR OBTAINING LICENSES.

(a) Applications for Licenses. All applications for licenses under this Chapter shall be in writing on a form approved by and filed with the Safety Service Director. The application shall be signed by the owner or owners and shall contain information required by this section supplied in detail as to each such person, including general and limited partners, or partnerships, shareholders of corporations and principals of any other type of business entity. All applications shall contain a statement that the information contained therein is complete, accurate and truthful to the best knowledge of all applicants, and such statement shall be signed before a notary public of the State of Ohio. Every owner and operator of the sweepstake terminal cafe shall be fingerprinted by the City of Fremont Police Department and said persons shall pay for the costs associated with obtaining said fingerprints.

(b) Contents of Applications. The application shall contain the following information as to all owners:

- (1) True name and all names used in the past five years;
- (2) Date of birth;
- (3) Permanent home address and all home addresses used in the past five years;
- (4) Business and home telephone numbers;
- (5) Employment history for the past five years;
- (6) A statement as to whether or not the owner has been convicted of any felony and, if so, the date and place of conviction, the nature of the offense and the penalty imposed;

- (7) A statement as to whether or not the owner has ever operated a sweepstake terminal cafe and, if so, when, where and for how long.
- (8) A description of the nature and operation of the main type of business activity to be conducted upon the premises;
- (9) A description of the nature and operation of any business to be conducted in conjunction with the sweepstake terminal cafe;
- (10) The address and telephone number of the premises and of the business, if different from that of the premises;
- (11) The name under which the business and premises will be operated;
- (12) A statement as to whether or not the owner will directly operate the sweepstake terminal cafe, or whether or not an operator who is not an owner will operate it, and if the latter, the application shall contain information required by this section supplied in detail as to each such operator;
- (13) The name, and address and telephone number of the agent of the business upon whom service of process can effectively and validly be made;
- (14) The name and address of the manufacturer of each computerized sweepstake device requested to be licensed;
- (15) A description as to the nature and type of property or services which will be sold or supplied upon the premises;
- (16) A copy of the title or lease to the premises;
- (17) A copy of the Articles of Incorporation, if the owner is a corporation;
- (18) A copy of the Operating Agreement, if the owner is a limited liability corporation;
- (19) A copy of the Partnership Agreement, if the owner is a partnership;
- (20) Federal tax identification number for the Operator.

(c) Reports of City Officials. Upon receipt of an application for a license under this Chapter, the Safety Service Director shall request the following reports, which shall be rendered to him within thirty days of the date of filing of the application. Should no information be received by the Safety Service Director within thirty days, no negative action should be taken by the Safety Service Director.

- (1) A written report from the Police Chief shall be submitted to the Safety Service Director specifying, with regard to all owners and operators, any convictions for any felony.
- (2) A written report from the Building & Zoning Inspector shall be submitted to the Safety Service Director as to whether all building and zoning laws have been satisfied. Sweepstake terminal Cafes are authorized in any area zoned for business.

(d) Determination Process.

- (1) Safety Service Director. Each application for a license under this Chapter shall be considered by the Safety Service Director, who shall, within ten days after receiving the written reports, either issue such

license or deny issuance of such license.

- (2) Appeal to Board. In the event of the denial of issuance of such a license, the applicant shall be notified of such denial and the specific reasons, therefore in writing. Such notice shall be mailed or personally delivered to the applicant at the address specified in the application. The applicant shall have ten days after the mailing or personal delivery of such notice within which to appeal such denial, by filing a written notice of appeal with the Board of Internet Café Gaming Appeals ("Board".) The Board shall consist of the Director of Law as Chairman, the Clerk of City Council as Secretary, and the President of Council. The Board shall fix a time and place for hearing such appeal, and shall give a minimum of ten days notice in writing of the date and place of the hearing to such applicant at the address specified in the application. The appeal shall be heard by the Board, which shall have the power after such hearing to confirm the denial, order the license to be issued, or, at its discretion, to issue a conditional or probationary license. In rendering its decision, the Board may, for good cause shown, modify or waive any of the provisions of this Chapter in the interest of justice.
- (3) Appeal to court. The decision of the Board may, within thirty days thereof, be appealed to a court of competent jurisdiction under Ohio R.C. Chapters 2505 and 2506.

(e) License Renewal. Each computerized sweepstake device license and sweepstake terminal cafe license must be renewed annually. At the time of renewal, a statement shall be filed with the Safety Service Director that the information listed on the original application for the license is still complete, accurate and truthful to the best knowledge of all applicants, or a statement shall be filed with the Safety Service Director listing each and every item of information which has changed since the original application. Such statement shall be signed by all owners, and shall be notarized.

749.09 DENIAL OF SWEEPSTAKE TERMINAL CAFE.

No sweepstake terminal cafe license shall be issued or renewed for any business or premises:

- (a) Where any of the owners or the operators has been convicted within the last five years of any felony involving the operation of a sweepstake terminal cafe business, or involving gambling activities, controlled substances, or alcoholic beverages;
- (b) Where it is determined that the premises or operation thereof would be in violation of any provision of the Building Code, the Zoning Code or the Fire Code of the City or any other pertinent provisions of local, state or federal law;
- (c) Where the applicant made a false statement as to a material matter upon the application or in a hearing concerning the license;

- (d) Where the application failed to provide all of the required information; or
- (e) Where not all terms and conditions under this Chapter and all other applicable ordinances and statutes are complied with.

749.10 CONDITIONS AND REGULATIONS.

(a) In addition to any other condition or regulation contained in this Chapter, in state statutes, or in the ordinances of the City of Fremont, the following conditions and regulations shall be applicable to and shall govern and control all licenses of sweepstake terminal cafes:

- (1) Each such licensee shall at all times open each and every portion of the premises for inspection by the Police Division, Building & Zoning Division, Fire Division, and other City departments and divisions for the purposes of enforcing any provisions of this Chapter.
 - (2) Each such licensee shall have present on the premises at all times when the premises are open to the public at least one adult operator who has not been convicted of any felony involving the operation of a sweepstake terminal cafe or involving physical violence, gambling activities, controlled substances, alcoholic beverages, minors, or any crime involving moral turpitude.
 - (3) No such licensee shall allow any person, other than an owner or operator over the age of twenty-one years, who shall be readily identifiable, to be in control of the premises, nor allow such operator to be regularly situated in a place upon the premises other than a place from which he has an unobstructed view of the entire portion of the premises devoted to the operation of computerized sweepstake devices.
 - (4) No person under the age of twenty-one years shall be permitted within a sweepstake terminal cafe.
 - (5) Any and all sweepstake rules and odds of winning shall be posted in a conspicuous place at the premises and displayed on the computerized sweepstake device at the start of each game and/or activity.
- (b) All computerized sweepstake devices upon the premises of a sweepstake terminal cafe shall be located thereon in conformity with the floor plan filed with the application for the license and in such a manner:
- (1) So as not to impair ingress or egress to the premises;
 - (2) So as not to interfere with free and unfettered passage through the premises;
 - (3) So as to permit a clear and complete view of the interior of the premises immediately upon entry; and
 - (4) So that the back of any amusement device is not exposed to a window.

**749.11 PROHIBITED CONDUCT AND CONDITIONS IN SWEEPSTAKE
TERMINAL CAFES.**

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

- (a) Permit gambling in any form or the possession or use of gambling paraphernalia upon the premises;
- (b) Permit intoxication or the possession or use of alcoholic beverages upon the premises;
- (c) Permit the possession or use of any unlawful drug, narcotic or controlled substance;
- (d) Permit the public streets, sidewalks, alleys or walkways in the immediate vicinity of any entrance or exit to the premises to become littered;
- (e) Permit the walkways to become obstructed in any manner so that pedestrian traffic is hindered;
- (f) Permit any computerized sweepstake 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;
- (g) 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;
- (h) Permit any computerized sweepstake device to be offered to the public for operation unless fully operable and in safe operation condition;
- (i) Permit the premises to be open for business without displaying the licenses therefore in a conspicuous place thereon;
- (j) Permit the operation of any unlicensed computerized sweepstake device upon the premises;
- (k) Permit any violation of any ordinance of the City of Fremont or statute of the State of Ohio to take place upon the premises.

749.12 LICENSE EXPIRATION, SUSPENSION OR REVOCATION.

(a) Expiration. Each sweepstake terminal cafe license issued under this Chapter shall expire upon the transfer or sale of a majority interest in the business, or the discontinuation of the business for a continuous period of thirty days, unless the assignment or transfer is approved by the Safety Service Director, which shall not be unreasonably withheld. Each computerized sweepstake device license issued under this Chapter shall expire upon the transfer or sale of such computerized sweepstake device.

(b) Suspension and Revocation. A license issued under this Chapter shall be suspended or revoked by the finding of the occurrence of any of the following events:

- (1) A false statement by any licensee as to a material matter made in

- (2) an application for license or in a hearing concerning the license; Conviction of any licensee of any felony or of any misdemeanor involving physical violence, gambling activities, controlled substances, alcohol beverages, minors, or any crime committed in violation of the terms of this ordinance;
- (3) Failure to maintain the premises in accordance with the provisions of this Chapter.

(c) Hearing. The suspension or revocation of any license under this Chapter shall not be made without a hearing before the Board of Internet Café Appeals. The procedures for the hearing and notice shall be the same as those for denial of a license contained in Section 735.08 above.

(d) Appeal. The decision of the Board may be appealed to a court of competent jurisdiction under Ohio R.C. Chapters 2505 and 2506.

749.13 LICENSE FEES.

(a) Sweepstake Terminal Café License. The fee for a sweepstake terminal cafe license shall be Four Thousand Dollars (\$4,000.00) per year.

(b) Computerized Sweepstake Device License. The fee for each computerized sweepstake device license shall be one hundred dollars (\$100.00) per device per year.

(c) Replacement License. The fee for a replacement license shall be fifteen dollars (\$15.00).

(d) Filed with Application. License fees under this Chapter shall be paid at the time of the application for license.

(e) Return of Fee. In the event an application is denied under this Chapter, one-half of the license fees shall be returned to the applicant. In the event any license is suspended or revoked under this Chapter, no portion of the license fees shall be returned to the owner. In the event the laws of the State of Ohio explicitly pre-empt the City's authority to license and charge application fees under this Chapter, the Licensee shall be entitled to a refund of all license and device fees paid under this section, on a pro-rata per diem basis from the effective date of the State of Ohio's pre-emption statute through the remainder of the calendar year.

749.99 PENALTY.

(a) Whoever violates any of the provisions of this Chapter is guilty of a misdemeanor of the fourth degree for the first offense, and for each subsequent offense thereafter is guilty of a misdemeanor of the third degree.


(b) A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

SECTION 2. It is hereby found and determined that all formal actions of this

Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and 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 Revised Code of Ohio.

SECTION 3. The immediate operation of the provisions of this ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare of the citizens of the City of Fremont. Said emergency being the need to regulate internet cafes in a timely manner.

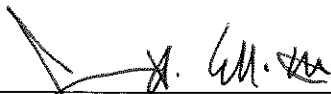
This ordinance, provided it receives a two-thirds yea or nay vote of all the members elected to the Fremont City Council, is hereby declared to be an emergency measure and this ordinance shall be in full force and effect from and after its passage by the Council of the City of Fremont, approval by the Mayor, and publication and posting as required by law.


James G. Weaver
President of Council

PASSED: 7-5-12
Effective date: 7-5-12

YEAS: 6 NAYS: 0


Elaine J. Huntley, City Council Clerk


James H. Ellis III, Mayor

ORDI734 FINAL

Approved as to form by:

James F. Melle, Law Director
City of Fremont, Ohio