

AN ORDINANCE CREATING PERMITS AND BUSINESS FEES FOR AMUSEMENT AND GAMING DEVICES, BUSINESS OCCUPATION, PROFESSION OR TRADE, TAXATION AND LICENSES OF THE CODE OF ORDINANCES OF THE CITY OF HEARNE, TEXAS; ESTABLISHING DEFINITIONS PERTAINING TO MACHINE RECREATION GAMES, ESTABLISHMENT OF FEES FOR AMUSEMENT DEVICES AND MACHINES; ESTABLISHING BOUNDARIES TO WHICH THE RECREATION AND AMUSEMENT ESTABLISHMENTS MAY BE SET UP WITHIN THE MUNICIPALITY OF HEARNE, TEXAS; PROHIBITION AND OFFENSE; ESTABLISHING PENALTIES UPON CONVICTION OF VIOLATION OF THIS ORDINANCE; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE AND PUBLICATION.

ORDNANCE NO. _____

WHEREAS, the necessity of this ordinance is to protect the public safety, health, and welfare of the citizens of the City of Hearne; and

WHEREAS, the City of Hearne recognizes the Texas Occupations Code 2153.152, 2153.154, 2153.155, 2153.156, and 2153.159 that all facilities housing such machines must be licensed by the State Comptroller of Public Accounts and comply with the State Regulations; and

WHEREAS, Section 2153.451 of the Texas Occupation code specifically authorizes a municipality to impose an occupational permit on an amusement redemption and coin operated machine; the rate of the tax may not exceed one-fourth (1/4) of the tax imposed under Section 2153.401;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HEARNE, TEXAS:

Section 1: Definitions:

- a) "Gaming Place" means any real estate, building, room, tent, vehicle, boat, and other property whatsoever, one of the uses of which is making or settling of bets, bookmaking, or the conduction of a lottery, sweepstakes, or the playing of gaming devices. [Penal Code 47:3] Exemption: Businesses whose income from gaming machines is less than fifty percent (50%) of total business income will not be considered a gaming place.

- b) "Gaming Devices" means any electronic, electromechanical, computerized or mechanical contrivance for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. [Penal Code 47:4] This includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, computerized, or mechanical games, or facsimiles therefore, that operate by chance or partially so, that as a number of free games or credits so awarded and the cancellation or removal of the free games or credits; and does not include any electronic, electromechanical, computerized, or mechanical contrivance design, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with non-cash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5.00, whichever is less.

- c) "Private Places" means a place to which the public does not have access, and excludes, among other places, streets, highways, restaurants, taverns, nightclubs, schools, hospitals, and the common areas of apartment houses, hotels, motels, office buildings, transportation facilities, and shops. [Penal Code 47:8]

- d) "Things of Value" means any benefit, but does not include an unrecorded and immediate right of replay not exchangeable for value. [Penal Code 47:9]

- e) "Amusement Redemption Machine" means a skill or pleasure coin-operated machines that is designed, made and adapted solely for bona fide amusement purposes, and that by operation of chance or a combination of skill and chance affords the user, in addition to any right of replay, an opportunity to receive exclusively non-cash merchandise prizes, toys, or novelties, or a representation of a value redeemable for those items. Amusement Redemption Machines does not include:

- 1) A machine that awards the user non-cash merchandise prizes, toys, or novelties solely and directly from the machines, including claw, crane, or similar machines; nor
 - 2) A machine for which the opportunity to receive non-cash merchandise prizes, toys, or a representation of value redeemable for those items, varies depending upon the user's ability to throw, roll, flip, toss, or drop a ball or other physical objects into the machine or a part thereof, including basketball, golf, bowling pusher, or similar machines.;
- f) "Coin Operated Machines" means a machine or device operated by the payment or insertion of paper currency or any other consideration.
- g) "Representation of Values" means cash paid under authority of sweepstakes contests as provided by Texas Business and Commerce Code, Section 43, or a gift certificate or gift card that is presented to a merchant in exchange for merchandise.
- h) "Total Combined Fee" means the total number of machines times the annual fee per machine or the total number of machines times the semi-annual fee per machines issued by the City of Hearne.
- i) "Placed in the Establishment" means all machines physically located in the establishment whether operating or not.

Section 2. Local Premises Gaming Permit for Amusement Redemption Machines, Coin Operated Machines and Gaming Devices:

- a) Application Fee and License Fee – An owner, operator, or lessee of premises on which an amusement redemption machines I made available to others shall be required to secure a permit by paying to the City an annual Local Premises Gaming Permit for Amusement Redemption Machines, Coin-operated Machines and Gaming Devices. Permit fee as follows:
- 1) \$100.00 Permit Application Fee (one time unless permit expires)
 - 2) Application shall be made on a form as approved by the City Secretary
 - 3) Fee shall be \$100.00 per Machine (operable or inoperable).
 - 4) Upon Approval of the application, and inspection by the Code Enforcement Officer, a fee of \$50.00 per

machine per year shall be paid. By January 15th of each subsequent year, a renewal fee shall be paid of \$50.00 per machine per year. Failure to pay renewal fee by said date shall result in immediate revocation of all permits and license.

- 5) Denial of permits may be appealed to the City Council.
- b) Expiration and Renewal of said fee: The total fee application for the number of machines located on the premises with the addition of new machines after the annual permit is obtained and/or renewed shall be the total fee due upon addition of added machines in one establishment and shall hence forth be the fee due. Permits shall automatically expire December 31st of each year, except as otherwise stated herein; such permit shall also automatically expire if the holder therefor sells, transfers equity, or otherwise disposes of such devices. The City shall not refund any portion of a local premises gaming permit for amusement redemption machines, coin-operated machines and gaming devices fee after the permit is issued, nor shall it prorate or educe in amount any fee due to the City. It is the establishment's responsibility to notify the City Secretary of additional machines to the premises within the permit year. The current permit will be replaced with a renewal permit to include the additional machines and devices at the local premises gaming permit for amusement redemption machines, coin operated machines and gaming in devices fee at the cost per additional machines. Permits for each machine are non-transferable to other machines.
- c) Payment- Payments shall be made by January 15th for the current year. If payment is not made by January 15th for existing businesses, the application will expire and a new application will be due.
- d) Late Penalty – Upon the expiration of a permit, and within 30 days thereafter the person making the device available to others shall obtain a renewal thereof in the same manner as an original permit if he wishes to continue operating premises on which an amusement redemption machine is made available to others.
- e) Sealing – The City shall have the authority to seal any amusement redemption machine located at an establishment for which a local premises gaming permit fee has not been secured. A \$100.00 fee will be charged for the release of any machine sealed for nonpayment of said local premises gaming permit fee.

- f) Permit Posting – The permit shall be conspicuously posted on each device. Permits for each machine are non-transferable to other machines.
- g) Revocation of Permit – The City administrator may revoke any permit to maintain and operate premises on which an amusement redemption machine is made available to others when the licensee has been found guilty by a court of competent jurisdiction of violating any provisions of this ordinance of any applicable state statute. After such conviction, the license may be reissued if the circumstances leading to the conviction have been remedied and the premises are being maintained and operated in full compliance with the law and this ordinance. Provided, however, that an owner, operator, or lease of premises on which an amusement redemption machine is made available to others, who is found to be in violation of this ordinance based on a finding that the number of amusement redemption machines exceeds the number for each the premises is permitted shall be required to pay an amount equal to twice the difference of the original permit fee and the permit fee required for a number of machines actually on the premises.
- h) Inventory – Each owner, operator, or lease of premises on which an amusement redemption machines is made available to others shall be required to provide the City of Hearne with a complete inventory of all machines located on the premises. The inventory shall include the make, model, serial number and date placed in service of each amusement redemption machine.

Section 3: Limits on Permits and Location of Premises (Housing Regulations):

Location of Premises (Housing Regulations) – This housing regulation restricts amusement redemption machines, coin-operated machines and gaming devices from being housed within 500 feet of a school, church, or hospital. The industrial and central business district zoned areas of the City of Hearne shall serve as the authorized boundaries for the operation and housing of amusement redemption machines.

Section 4: Restrictions, Regulations, Controls, and Limitations:

- a) Persons under 21: The presence of persons under twenty-one (21) years of age on premises subject to a Local Premises Gaming Permit for Amusement Redemption Machines is

prohibited and is punishable by a fine as provided in Section 1-6. In addition to any other penalty or punishment imposed by law, violation of this section shall cause for revocation of a Local Premises Gaming Permit for Amusement Redemption Machines issued pursuant to this ordinance

- b) Alcoholic Beverages: The presence of alcoholic beverages on premises subject to a Local Premises Gaming Permit for Amusement Redemption Machines that operate more than ten (10) amusement redemption machines is prohibited and punishable by a fine as provided in section 1-6. In addition to any other penalty or punishment imposed by law, violation of this section shall be cause for revocation of a local premises gaming permit for amusement redemption machines issued pursuant to this ordinance.
- c) Person Commits an Offense: if he makes a bet on the partial or final results of a game or contest or on the performance of a participant in a game or contest. Plays and bets for money or other things of value at any game played with cards, dice, balls, or any other gambling device. If he played for money using an electronic, electromechanical, computerized or mechanical contrivance including the definition of a gambling device under section 1(b) of this ordinance and the Penal Code Sections 71.01 (4) (b)
- d) An offense under this section is a Class "C" Misdemeanor. Any person who violates any provision of this ordinance for which no other penalty is set forth shall, upon conviction, be subject to a penalty as provided in Section 1-6 per incident or per day in which such condition exists. Each day that such violation is permitted to continue shall constitute a separate offense. The term "person" as used in this section shall include the owner, occupant, mortgager or vender in possession, assignee or renter, receiver, executor, trustee, lessees, agent or another person, firm or corporation directly, or indirectly, in control of a building or tract of land.
- e) Hours of Operation. May only be operated between the hours of 12:00 p.m. an 12:00 a.m.
- f) Parking Requirements. One space for each two machines, plus one space per employee per shift.
- g) Machines must be situated within the premises as to be in full and open view, which entails being visible to all patrons of the establishment.
- h) A game room operator must be a person who is at least 21 years of age.

- i) Total number of machines in one establishment shall be limited to 50.
- j) All machines must be permitted according to the permitting requirements of this ordinance.
- k) Every business establishment displaying five or more skill or pleasure coin-operated machines and/or amusement redemption machines, or eight-liners shall have unobstructed windows or open space on at least one side, so that the area is open to view by members of the public passing by on a public street, or using a corridor, lobby or other room to which the public resorts and is admitted without charge. A minimum of 65 percent of said side that is more than three feet above sidewalk grade and not more than seven feet above sidewalk grade shall be of transparent glass, unobscured by obstructions.
- l) Lighting shall be maintained at an intensity of not less than 30 foot-candle power, three feet from the floor, measured at any location in any room open to the public, which shall be operative during all hours of operation of any place of business covered under this article.

Section 5: If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgement of a court of competent jurisdiction, it shall not affect any other sections, paragraph, subdivision, clauses, phrase, word, or provision of this ordinance, for it is the definite intent of this city council that every section, paragraph, subdivision, clause, word, or provisions hereof be given full force and effect for its purpose.

Section 6: All ordinances or parts of ordinances in conflict with this ordinance are repealed to the extent of such conflict only.

Section 7: Should any portion or part of this ordinance be held for any reason invalid or unenforceable, the same shall not be construed to affect any other valid portion hereof, but all valid portions hereof shall remain in full force and effect.

Section 8: This ordinance shall not be recorded in length in the minutes of the City Council meeting, but shall be filed for permanent record in the office of the City Secretary.

Section 9: This ordinance shall become effective on and after the adoption and publication as required by law.

PASSED AND APPROVED this _____ day of _____ 2018.

City of Hearne, Texas

By: _____

Mayor,

Ruben Gomez

Attest:

Linda Pecina, City Secretary