



City of Orchard

ORDINANCE NO. 102-2014

AN ORDINANCE OF THE CITY OF ORCHARD, TEXAS, PROVIDING FOR THE ESTABLISHMENT OF PROCEDURES FOR THE LICENSING AND REGULATION OF GAME ROOMS AND THE USE OF "AMUSEMENT REDEMPTION MACHINES", PROVIDING A PENALTY FOR VIOLATION OF ANY PROVISION HEREOF; AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH.

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WHEREAS, "amusement redemption machines", defined herein are becoming a popular method of entertainment and amusement; and,

WHEREAS, there is a potential for abuse in that persons operating establishments with "amusement redemption machines" can exceed the limitations set forth in the Texas Penal Code and become gambling establishments; and,

WHEREAS, the proliferation of these "amusement redemption machines" in the city of Orchard will necessitate increased police and code enforcement regulation and review to ensure that such machines and establishments are operated within lawful parameters; and,

WHEREAS, the City Council of Orchard, Texas, is of the opinion that procedures for licensing and regulating the location and operation of "amusement redemption machines" is in the best interest of the citizens of the City of Orchard, Texas;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORCHARD, TEXAS:

Section 1. – Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicated a different meaning:

Amusement redemption machine means a recreational machine that provides the user with an opportunity to receive something of value other than a right to replay and in which credits, or the equivalent thereof, are accumulated when: a particular configuration of like symbols is displayed in a random fashion by the machine; symbols or numbers are matched to a randomly

selected symbol or number determined by the machine; a combination of cards is arrived at and valued in a traditional hierarchy for purposes of poker; or a combination of cards is arrived at and points assigned for purposes of blackjack.

Game room means a building, facility, or other place that contains six or more amusement redemption machines.

Game room owner means an individual who has an ownership interest in a game room.

Game room operator means any person who owns or leases or rents or manages or is in any way responsible for controlling the operation of a game room.

Section 2. – Unrestricted access by law enforcement officer.

- (a) Any law enforcement officer may inspect a game room or amusement redemption machine located in the city to determine whether the game room for amusement redemption machine complies with this division and state law.
- (b) The building official shall have the authority to designate a person to make periodic inspections of premises licensed under this article for the purpose of determining whether or not such premises are in compliance with the health, plumbing and sanitary and other ordinances of the city.
- (c) An owner, manager, operator, or employee of a game room or other person exercising control over a game room, or an amusement redemption machine, who does not allow a law enforcement officer, or building official, to inspect a game room or amusement redemption machine commits an offense.

Section 4. – License fee levied.

- (a) *Payment of fee and issuance of license.* An owner, manager, operator, or lessee of an amusement redemption machine game room shall be required to secure a license by paying to the designated city department, an annual inspection, and amusement redemption machine game room license fee as adopted in the city's fee schedule. Upon payment of the license or renewal license and compliance with all provisions of this article, the building official shall issue a license.
- (b) *Expiration and renewal.* Annual amusement redemption machine game room licenses issued by the city shall automatically expire on December 31 following its issuance, except as otherwise stated herein. Such license shall automatically expire if the holder thereof sells, transfers equity, or otherwise disposes of such devices. The city shall not refund any portion of a license after the license is issued, not shall it prorate or reduce an amount of any fee due to the city. The license is not assignable after the license is issued.

- (c) *Late penalty.* Upon the expiration of a license, and within thirty (30) days thereafter, the person shall obtain a renewal in the same manner as an original license to continue operating an amusement redemption machine game room. Failure to pay this fee within thirty (30) days will require such person to pay an additional late fee in an amount equal to 20 percent (20%) of the fee actually due or 20 percent (20%) of the previous year's fee, whichever is greater, in order to obtain reinstatement of the license. Nothing here authorizes the licensee to operate after the expiration of a license and before a renewal is effective.
- (d) *Sealing.* The city shall have the authority to seal any coin-operated machine located at any amusement redemption machine game room for which a license fee has not been secured.
- (e) The license shall be conspicuously posted inside the building.

Section 5. – Appeal from refusal.

In the event the designated building official for the city shall refuse to grant a license to any applicant under this division, such action shall be final, unless the applicant shall, within ten (10) days after the refusal to grant such license, file a written appeal with the city secretary addressed to the city council, requesting a hearing upon the question as to whether or not his application shall be granted. In the event such appeal is filed, the city shall provide the city council with a record of all proceedings theretofore had with reference to the application, including the written application, together with the action of the designated building official for the city and the reasons for such action. The council shall, within thirty (30) days grant a hearing thereon to determine the correctness of the action of the city, at which hearing, the council may make such investigation as it may deem fit, whether all the pertinent facts appear in the application or not. Within seven (7) days after final adjournment of the hearing, the city council shall cause a written deduction of its judgment thereon to be filed with the city secretary. Any decision of the city council thereon shall be final and may not be appealed.

Section 6. – Game room sign required.

- (a) Each entrance to a game room shall be marked with a sign that:
 - (1) States "GAME ROOM" in four-inch or larger block letters; and,
 - (2) Is legible and visible at all times from a distance of twenty-five (25) feet by a person outside the building or structure standing in an area open to and accessible by a member of the public at all times the game room is in operation.

Section 7. – Egress doors.

- (a) It shall be the duty of any owner, manager, operator, or employee of a game room, or other person exercising control over a game room or a portion of a game room,

or over a building, facility, or other place that contains amusement redemption machine(s), to provide egress doors during business hours that are readily openable from the egress side without the use of a key or special knowledge or effort in conformance with the fire code and all applicable city ordinances.

- (b) All entrance doors must remain unlocked during the hours of operation.
- (c) All exit doors must comply with the International Fire Code, as amended.

Section 8. – Transparent, uncovered windows required.

- (a) Any building, facility, or other place that contains a minimum of one (1) amusement redemption machine must have at least one (1) window in the front of the building allowing a clear and unobstructed view of all amusement redemption machines by a person outside the building or structure standing in an area open to and accessible by a member of the public at all times the game room is in operation.
- (b) It shall be the duty of any owner, manager, operator, or employee of a game room, or other person exercising control over a game room or a portion of a game room, to provide transparent glass in each game room window.
- (c) It shall be unlawful for any person to cover a game room window or otherwise block or obscure the view of any amusement redemption machine through a game room window.
- (d) It shall be unlawful for any person to exhibit or display, or to permit to be exhibited or displayed, two (2) or more amusement redemption machines unless such machines are located in a game room building or structure with not fewer than two (2) windows or transparent walls or panels of glass or other material that permit a clear, unobstructed view of both the interior of the game room and each amusement redemption machine located therein, by a person outside the building or structure standing in a area open to and accessible by a member of the public at all times the game room is in operation.
- (e) It shall be unlawful for any person to exhibit or display or to permit to be exhibited or displayed, any amusement redemption machine in a game room unless the required transparent walls or windows of the game room:
 - (1) Are located on at least two (2) sides of the game room, and each amusement redemption machine located therein is visible through such walls or windows; and,
 - (2) At the lowest point are not more than four (4) feet above the adjacent sidewalk or ground level; and,
 - (3) At the highest point are at least eight (8) feet higher than the adjacent sidewalk or ground level; and,

- (4) Are at least four (4) feet wide.
- (f) It shall be unlawful for any person to erect or construct on any premises or to cut the building into two (2) or more rooms by constructing partitions therein. This section shall not apply to sanitary facilities which shall be enclosed and adequately ventilated in accordance with the health, plumbing, sanitary and building ordinances of the city.

Section 9. – Regulations governing licensed game rooms.

Every business or place under this article shall at all times conform to the following regulations:

- (a) All building and fire code standards must be met. Inspection by building official and certificate of occupancy shall be obtained before license is issued.
- (b) In the case of a game room to be operated under an assumed name, a true and correct copy of the registration of the assumed name certificate must be provided.
- (c) No activities allowed outdoors.
- (d) The premises shall be kept and maintained in a clean, healthful and sanitary condition in accordance with all applicable statutes and ordinances, and all room or halls connected thereto shall be well-lighted and kept open and free from blinds, screens and obstructions.
- (e) No loud, boisterous, indecent or suggestive conduct shall be allowed on the premises.
- (f) No alcoholic beverages shall be served or consumed on the premises nor within the same building nor at any other place within 300 feet of the premises which is reasonably under the control of the owner, occupant, operator or custodian of the premises.
- (g) No gambling of any kind shall be allowed on the premises.
- (h) No loitering shall be allowed on the premises either within or without a building.
- (i) Truants, as defined in V.T.C.A., Education Code § 25.088 et seq., shall not be allowed on the premises during regular public school hours.
- (j) No one under the age of eighteen (18) shall be permitted.

- (k) No amusement redemption machine game room shall be located within 300 feet of a church, school, or hospital. The 300-foot measurement shall be made from the closest point of the school, church or hospital building to the closest point of the building containing such amusement redemption machine.
- (l) It shall be the duty of any owner, manager, or employee of a game room, or other person exercising control over a game room or a portion of a game room, to clearly mark their hours of operation on every entrance.
- (m) Amusement redemption machine game rooms may only operate between the hours of 10:00 am. And 12:00 midnight.
- (n) Inside lighting shall be maintained at an intensity of not less than thirty (30) foot-candle power, three (3) 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 the ordinance from which this section derives.
- (o) Parking shall be the greater of one (1) approved on-site parking space for every 45 square feet of each game room or one (1) approved paved on-site parking space for parking must be provided at each game room for each two (2) machines. In addition one (1) space per employee per shift must be provided for each game room.
- (p) All parking areas to serve each game room shall be provided with exterior lighting, which meets the following minimum standards:
 - (1) Proper illumination shall be provided for safety, which at a minimum shall be the equivalent of one-foot candle average of illumination throughout the parking area. Lights should be operable at a minimum of one (1) hour before the game room has closed.
 - (2) All lighting shall be on a time clock or photo sensor system.
 - (3) All lighting shall be designed to confine direct rays to the premises. No spill over beyond the property lines shall be permitted, except onto public thoroughfares provided, however, that such light shall not cause hazard to motorists.
- (q) Either the owner, operator, or manager of the premises must be present to supervise the operation of the machines. The machines shall not be left unattended.
- (r) An amusement redemption machine game room operator must be a person who is at least twenty-one (21) years of age.

Section 10. – Termination of license.

If a person holding a license issued under the terms of this division violates any provision of this article, or the laws of the state, or if a game room licensed under this division is not being conducted in accordance with this ordinance, or any city ordinance, and the laws of the state, or is being conducted in violation thereof, the city may at any time give notice in writing to the owner, operator, licensee, manager, or other person in control of the operation and maintenance of such game room that the license issued for the operation and maintenance of such game room has been revoked, stating therein the reason or reasons for such revocation. Such notice of revocation shall become a final revocation after the expiration of ten (10) days from the date of the service of same upon the owner, operator, licensee, manager or other person in charge of the game room, unless, on or before the expiration of such ten (10) days, the licensee, owner, operator, manager or other person in charge shall file with the city secretary a written appeal addressed to the city council, in which it is requested that the city council grant a hearing upon the question of whether or not the license shall be revoked. Such appeal, if made and filed as prescribed herein, shall operate as a stay or postponement of the revocation, until such time as the city council shall grant a hearing and make final adjudication upon the question of whether or not the license should be revoked. Such hearing shall be held within thirty (30) days after the date of the filing of the appeal. Within seven (7) days after final adjournment of the hearing, the city council shall cause a written judgment thereon to be filed with the city secretary. Any decisions of the city council thereon shall be entered upon the minutes of such meeting. Any decision of the city council thereon shall be final and may not be appealed.

Section 11. – Illegal machines.

This division shall not be construed to authorize or permit the keeping, exhibition, operation, display, or maintenance of any machine that is prohibited by the Constitution of this state or Chapter 47 of the Texas Penal Code.

Section 12. – Existing Amusement Redemption Machine Game rooms.

- (a) Any business that contains an amusement redemption machine or operates a game room prior to the date this Ordinance is adopted will be considered an "existing business" and must obtain a license within one hundred twenty (120) days of the enactment of this Ordinance, provided however, any such existing business will be considered a legally nonconforming use and will not be required to comply with all the regulations and requirements of the Ordinance, except that each existing business that continues to operate an amusement redemption machine game room will be required to obtain a license in accordance with Section 4 of this Ordinance. If any such existing business ceases to operate as a game room, or in any way expands or increases the number of amusement redemption machines located in the business establishment, then such business will no longer be considered a legally nonconforming use and shall be required to comply with all the regulations and requirements of this Ordinance.

- (b) Failure to obtain a license within one hundred twenty (120) days and continued operations of an existing Amusement Redemption Machine Game Room will be a violation of this Ordinance.

Section 13. – Violation – Penalty

Any person, owner, manager, operator, or employee of a game room, or other person exercising control over a game room or a portion of a game room, violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon a conviction shall be subject to the following penalty:

- (a) By a fine not to exceed five hundred dollars (\$500.00), except for:
 - (1) Violations of municipal ordinances that govern fire, safety, zoning, public health and sanitation, including dumping of refuse, vegetation and litter violations for which the maximum fine shall be two thousand dollars (\$2,000.00) for each offense; and,
- (b) Each day any violation of this ordinance shall continue shall constitute a separate offense. Violation of any provision of this ordinance, which constitutes an immediate danger to the health, safety, and welfare of the public, may be enjoined in a suit brought by the city for such purposes.
- (c) Unless otherwise specifically stated within the provisions of this ordinance, any violation of this ordinance that is punishable by a fine that does not exceed five hundred dollars (\$500.00) does not require a culpable mental state, and a culpable mental state is hereby not required to prove any such offense.
- (d) Unless otherwise specifically stated within the provisions of this a fine that exceeds five hundred dollars (\$500.00) shall require a culpable mental state of intentionally, knowingly, recklessly, or with criminal negligence.
- (e) The imposition of a penalty/fine under the provisions of this ordinance shall not prevent the revocation or suspension of any license, franchise or permit issued or granted under the provisions of this ordinance nor shall it be deemed to prevent, impede or delay the rights of the city to proceed in any court of competent jurisdiction to secure equitable relief, including, but not limited to, injunctions, or to file suits in the name of the city or as a member of a class for damages for other relief as provided by law.
- (f) Any person or corporation who permits, aids, assists, or employs another person or corporation in doing any prohibited act or failing to do any act as shall be required in this ordinance shall be deemed in violation of this ordinance prohibiting or requiring such act as if such person or corporation had actually committed such act or failed to actually perform such act as herein required. Such person or corporate representative may not actually be present at the time of the violation; and a person

or corporation may be deemed in violation of ordinance whenever the act of permitting, aiding, assisting, or employing occurs before or after the violation.

- (g) In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance shall be deemed a public nuisance and may be abated by the city as provided by law. Each day that such condition continues to exist shall be regarded as a new and separate offense.
- (h) Regarding other remedies applicable to a violation, the City of Orchard hereby declares that it shall have available to it all remedies, rights and relief as shall be from time to time provided for and permitted under the laws of the United States of America and the State of Texas or other political subdivisions of which said city is a part for the enforcement of laws, ordinances, rules, or regulations.

Section 14. – Conflict

All ordinances or parts inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.


Section 2. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Orchard, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

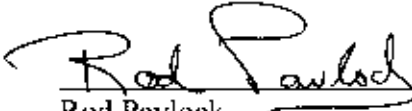
Section 15. – Adoption of ordinance.

This ordinance shall become effective upon its approval and passage.

PASSED, APPROVED, AND ADOPTED this 2nd of June, 2014.

ATTEST:


Merry Sue Hajdik
City Secretary


Rod Pavlock
Mayor