

ORDINANCE #15.02

GAME ROOMS AND AMUSEMENT REDEMPTION MACHINES

AN ORDINANCE OF THE CITY OF MERTZON, TEXAS ENTITLED "GAMING ORDINANCE" TO BE PLACED WITHIN THE ORDINANCE BOOK AT CHAPTER 15, ARTICLE 2, WITH 13 SECTIONS AND HEREAFTER REFERRED TO AS SUCH; PROVIDING FOR THE REGULATION OF BUSINESS ESTABLISHMENTS OR GAME ROOMS WITH AMUSEMENT REDEMPTION MACHINES OR VIDEO GAMING DEVICES LOCATED WITHIN THE CORPORATE CITY LIMITS OR THE EXTRATERRITORIAL JURISDCITION OF THE CITY OF MERTZON; PROVIDING DEFINITIONS; ESTABLISHING AUTHORITY TO ENFORCE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR A SEVERABILITY AND REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, many "amusement redemption machines" purport to be games of skill even though the machines use a reflexive percentage arrangement to ensure predetermined outcomes that establish the absolute limit a player may 'win' and therefore cheat the players by failing to disclose this information; and

WHEREAS, there is potential for abuse in the persons operating establishments with "amusement redemption machines" in that operators may fail or refuse to comply with the provisions of the Texas Penal Code and are in fact gambling establishments; and

WHEREAS, the proliferation of these "amusement redemption machines" in the City will necessitate increased law enforcement and City official regulation and review to ensure that such machines and gaming rooms are operated within lawful parameters; and

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

NOW THEREFORE, BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF MERTZON, TEXAS:

1. PURPOSE AND COMMON NAME

This ordinance as herein established has been written for the purpose of promoting and protecting the public health, safety and general welfare of the community and in the furtherance of conserving the value of property and establishing a community desirable to reside therein and will be known and referred to as the "Gaming Ordinance."

2. DEFINITIONS

- A. Business Owner. As used herein shall mean and include any person, individual, firm, company, association, or corporation, owning or having the care, control, management or possession of any "amusement redemption machine" who exhibits, displays or permits to be exhibited or displayed, in his location of business or upon premises under his or its control, any "amusement redemption machine" in this City
- B. Amusement redemption machine. A device that may be referred to in this Ordinance as either a video gaming device or an amusement redemption machine. Any electronic, electromechanical, or mechanical contrivance that 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, including but not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, tic-tac-toe, eight-liner or similar digital, electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so. ("Device")
- C. City. The City of Mertzton, Texas and its extraterritorial jurisdiction (ETJ)
- D. City Official. The City Administrator, a code enforcement officer or building official of the City of Mertzton or any peace officer of the state.
- E. Game room. A building, facility or other place that is open to the public whether by invite or through a membership in a club or organization and that contains one or more operational amusement redemption machines.
- F. Game room owner. A person who has any ownership interest in a game room or an owner, director, or officer of a business entity that has any ownership interest in a game room.
- G. Inspection. The observation or examination by any agent of the City of any premises or motor vehicles of the licensee or applicant where video gaming devices and related equipment may be manufactured, distributed, stored, possessed, or offered for play, or any inquiry procedures necessary to discover facts of things related/connected to video gaming in any way.
- H. Manager. As used herein shall mean and include a person or sole individual having the care, control, management of any "amusement redemption machine" in his or her location of business or upon premises under his or her control within this City.
- I. Licensee. Any applicant or person who is granted a license by the City permitting video gaming activities that are authorized by this article. The authorized activity of all licensees shall be limited to the type of license issued to each.
- J. Operational machine. A machine that is ready to be played and accessible to the public or to members of a private club or organization.
- K. Video Gaming Device. An Amusement redemption machine. A device that may be referred to in this Ordinance as either a video gaming device or an amusement redemption machine. Any electronic, electromechanical, or mechanical contrivance that 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, including but not limited to, gambling device versions of

bingo, keno, blackjack, lottery, roulette, video poker, tic-tac-toe, eight-liner or similar digital, electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so. ("Device")

3. LICENSING REQUIRED

It shall be unlawful to own, possess, maintain, or operate amusement redemption machines or video gaming devices for use by the general public, private clubs, associations, fraternities or orders without first obtaining an appropriate license from the City of Mertzon.

- A. Payment of fee and issuance of license. An owner, operator, or lessee of an amusement redemption machine or video gaming device game room shall be required to secure a license annually.
 1. An amusement redemption machine or video gaming device game room shall be required to secure a license by paying to the City an annual nonrefundable inspection and amusement redemption machine game room license fee of \$2,500.00.
 2. All licensees shall pay their license fee(s) for the year in a single payment.
 3. Application shall not be approved until a completed application has been submitted and found to meet all application requirements.
 4. Any license issued pursuant to this ordinance shall be non-transferrable.
 5. The license shall be posted conspicuously, noticeable to common view.
- B. Initial or Renewal Application. All persons owning, possessing, operating or maintaining video gaming devices for use by the general public, private clubs, associations, fraternities or orders shall apply for a license and registration from the City.
 1. Application for a license shall be made with the City Administrator initially and no later than forty five (45) days prior to the expiration of the license each succeeding year.
 2. An applicant for a license or permit shall file with the City Administrator a written application on a form provided for that purpose, which shall be signed by the applicant, who shall be the owner, operator, or lessee of the amusement redemption machine or video gaming device game room. Should an applicant maintain an amusement redemption machine or video gaming device room at more than one location, a separate application must be filed for each location.
 3. An application is not complete nor is it considered filed with the City unless it is submitted with the appropriate fee, is signed by the applicant, and contains all information required by the City including proof of appropriate and sufficient identification documentation.
 4. All renewal applications shall be submitted in complete form.

5. All applicants shall provide any and all additional information which may be requested by the City in order to evaluate any public safety, health or fire safety issues which may be present. If applicants fail to provide all additional information requested by the City, the application shall be considered incomplete.
6. The applicant shall notify the City in writing of all changes of address, phone numbers, personnel, and other required information in the application within then (10) business days of the effective date of the change. Failure to provide accurate and current identification and information will be cause for suspension of the license to operate until correction is made. Failure to provide and maintain appropriate and current identification of the owners, operator and all employees on more than one occasion within a license year will result in revocation of the license.

C. Denial. An application shall be denied for any of the following reasons.

1. If an applicant has been convicted in any jurisdiction for any of the following offenses within the ten (10) years prior to the date of the application:
 - a. Any offense punishable by imprisonment for more than one (1) year;
 - b. Theft or any crime involving false statements or declarations;
 - c. Gambling as defined by the laws or ordinances of any municipality, county or state, the United States, or any similar offense in any other jurisdiction.
2. Any misrepresentation or false statement, including improperly notarized documents, in any report, disclosure, application, permit form, or any other document required shall be a violation of these rules and this article and shall result in denial, revocation or suspension of an application or license.
3. Incomplete applications, including failure to pay fees may result in a delay or denial of a license.

D. Application Requirements. The following information is required in the application:

1. Location, by address and physical description, of the proposed operation.
2. A copy of the certificate of formation if the business is registered with the secretary of state, or the applicant's d/b/a, as applicable;
3. Name, address, telephone number and driver's license number of the following persons, if applicable:
 - a. Applicant if a natural person;
 - b. All persons who own 25 percent or more interest in the amusement redemption machine or video gaming device game room;
 - c. All corporate officers, if any, of the business;
 - d. If a partnership, each of the general and limited partners;
 - e. The property owner; and
 - f. The manager of the property or business.

- g. All employees whether part time or full time.
- h. All independent contractors operating or working on the premises whether contracted with by the operator or owner of the establishment.
- 4. The previous occupation(s) of the applicant and, if applicable, all corporate officers and partners of the applicant within the preceding five years;
- 5. Whether a previous license or permit of the applicant, or, if applicable, corporate or partner of applicant, has been revoked in Mertz on or any other jurisdiction within two years of filing of the application;
- 6. The number of amusement redemption machines or video gaming devices in the amusement redemption machine or video gaming device game room;
- 7. An authorization to conduct a background check for all individuals included in item 3 of the application requirements. The license will be denied if any individual has any convictions, guilty pleas, or deferred adjudications related to gambling or organized crime or any felony within the prior five (5) years.
- 8. A sworn statement that:
 - a. All the facts contained in the application are true and correct,
 - b. The location and operation of the amusement redemption machine or video gaming device game room will not violate any applicable deed restrictions,
 - c. The amusement redemption machine game room will be operated in accordance with all laws and City ordinances, including chapter 47 of the Texas Penal Code,
 - d. The information contained therein is true and correct,
 - e. The applicant has read this ordinance and these rules, and any other informational materials supplied by the City that pertain to video gaming, and
 - f. The applicant agrees to comply with the rules and this ordinance.
- 9. Name, address, and telephone number of an emergency contact person who can be reached twenty-four (24) hours a day.
- 10. A Name, telephone number and permanent mailing address for the Registered Agent or responsible party who will receive correspondence and service of documents on behalf of the owners of the establishment from the City.

E. Expiration and renewal

- 1. Expiration. An annual amusement redemption machine game room license issued by the City shall automatically expire on the thirty-first day of December following its issuance, except as otherwise stated herein. Such license shall automatically expire if the licensee sells the property or the business, transfers equity to accomplish same, or otherwise disposes of such devices. An amusement redemption machine or video gaming device game room license is not assignable or transferable. The City shall not refund any portion of a license after the license is issued, nor shall it prorate or reduce in amount any fee due to the City.

2. Late penalty. Upon the expiration of a license, the licensee shall obtain a renewal if the licensee wishes to continue operating an amusement redemption machine game room. Failure to obtain the renewal within thirty (30) days after expiration will require such person to pay an additional late fee in an amount equal to twenty (20) percent of the fee actually due or twenty (20) percent of the previous year's fee, whichever is greater, in order to obtain reinstatement of his license. Nothing herein authorizes the licensee to operate after the expiration of a license, before a renewal is effective.

F. Requirements for Licensing.

1. No person shall be granted a license, and no license shall be renewed unless the applicant demonstrates to the City that the applicant is suitable for licensing, and thereafter continues to maintain suitability, as provided.
2. Once a license has been issued by the City, the license shall be conspicuously displayed by the licensee in his place of business so that it can be easily seen and read by the public.
3. If a licensee fails to file a complete renewal applicant on or before forty-five (45) days prior to the license expiration date, the City may assess a civil penalty of \$250.00 for the first violation, \$500.00 for the second violation and \$1,000 for the third violation, subsequent offenses shall require administrative action, including, but not limited to, suspension or revocation of licensee's license.
4. The appropriate annual fee shall be paid by all licensees regardless of the expiration date of the license on or before January 1st of each year.
5. All nonrefundable fees required for application or renewal and any administrative fines or penalties shall be made payable to the City and remitted to the address provided by the City.
6. Applicants and licensees shall disclose full ownership of a company so that the aggregate of percentages of individual ownership total 100 percent, regardless of the percentage of ownership.
7. All licensees shall maintain compliance with all applicable federal/state/local gambling laws and requirements. Failure to maintain compliance with any applicable law or requirement shall be a basis for suspension or revocation of license.
8. All licensees shall continue to operate the business described in the application during the term of the license. In the event either the business or the amusement redemption machines or video gaming devices at the location are not in operation for a period of thirty (30) consecutive calendar days during which the business would normally operate, the licensed and device owner shall immediately notify the City of such fact and the licensee shall immediately surrender its license to the City.

- a) If surrendered in accordance with the above provision no gaming activities may be conducted at the premises unless and until the license is returned to the licensee.
- b) The license may be returned to the licensee when business operations are resumed for the unexpired term and is not under suspension and further provided that no more than one hundred eighty (180) days has elapsed from the date the license was surrendered.
- c) Licenses surrendered in accordance shall not be subject to renewal unless the license has been returned to the licensee.
- d) Failure to return the license as provided shall constitute grounds for revocation or suspension of the license.

G. Restrictions, regulations, controls, responsibilities, and limitations. The following restrictions, regulations, controls, responsibilities, and limitations shall apply to all amusement redemption machine or video gaming device game rooms:

1. Condition of premises. All building and fire code standards must be met.

2. Methods of conduction of business.

- a. Amusement redemption machines are not allowed outdoors.
- b. Licensees shall not advertise or participate in any promotion or scheme which is contingent upon the play of an amusement redemption machine or video gaming device and which results in an enhanced payoff other than that set by the internal mechanism of the video gaming device.
- c. All licensees shall post signs on the premises of a licensed establishment, which admits mixed patronage that restricts the play of amusement redemption machines or video gaming devices by persons under the age of twenty-one (21) and restricts the access to areas where gaming is conducted by persons under the age of eighteen (18). The signs shall be placed at the entrances to device areas with lettering at least three (3) inches in height stating that there are gaming devices inside, no one under the age of eighteen (18) allowed in gaming area, and no one under the age of twenty-one (21) allowed to play video gaming devices.

3. Employees.

- a) All video gaming employees shall have knowledge of these rules and the provisions of this ordinance.
- b) The licensee or designated representative of the licensed establishment shall be required to be physically present and available within the licensed establishment at all times during hours of operation; shall ensure that the devices are not tampered with, abused or altered in any way; and shall prevent the play of amusement redemption machines or video gaming devices by persons under the age of twenty one (21) and prevent access to the gaming area by persons under the age of eighteen (18). The penalty for violation of this subsection shall be \$500.00. Subsequent offenses shall result in administrative action, including, but not limited to, suspension or revocation of licensee's license.

- c) Licensees and employees of a licensee shall not loan money, extend credit, or provide any financial assistance to patrons.
- d) Licensees and employees of a licensee shall not permit any person who appears to be intoxicated to participate in the play of the video devices.
- e) All licensees shall supervise employees to ensure compliance with the laws and regulations relating to the operation of video gaming devices.
- f) A game room operator or employee must be a person who is at least eighteen (18) years of age.

4. Transparent, uncovered windows required

- a) In order to provide for the public safety of the patrons, every game room shall have transparent unobstructed windows or open space on at least one (1) side so that the area in which the machines are maintained is open to view by the general public from a public place. The owner, manager or employee of a game room shall not permit any obstruction of such public view by the use of drawn shades, blinds, partitions, tinting or other structures or obstructions.
- b) The requirements of subsection (a) above may be waived or modified by the building official if the game room owner can demonstrate:
 - 1. The game room is located in a structure deemed a historic landmark, or the structure is within a historic district, and deemed to have architectural or historic significance; and
 - 2. Compliance with the unobstructed view requirement shall require alterations to the structure that will have a substantially detrimental effect on its historic or architectural features.

5. Hours of operation.

- a) It shall be unlawful for any person to keep, conduct or operate any game room for profit or to allow or permit any game room to remain open for business or open to the public before the hour of 10:00 a.m. or after the hour of 8:00 p.m.
- b) All game rooms shall have their hours of operation clearly marked on every entrance.
- c) All game rooms shall have all doors providing ingress and egress from the game room unlocked during the hours of operation.

6. Parking requirements. One space for each two machines, plus one space per employee during hours of operation must be provided.

7. Location requirements. Premises shall not operate within five hundred (500) feet by direct line from the property line of the establishment's lot, tract or parcel of land to the property line of an established church, school, day care or hospital. Premises shall not operate within fifteen (1,500) feet by direct line from the property line of the establishment's lot, tract or parcel of land to the property line of another amusement redemption machine or video gaming device game room.

8. Alcoholic beverages.

- a. No amusement redemption machine or video gaming device game room may be located on premises where alcoholic beverages are sold or served, unless that premises is operation by a congressionally chartered, nonprofit organization.
- b. It shall be unlawful for any person to possess, consume, or otherwise bring any alcoholic beverage in or upon any premises licensed as an amusement redemption machine or video gaming device game room location by the City.

9. Machines.

- a. Must be situated within the premises as to be in full and open public view, which entails being visible to all patrons of the establishment.
- b. Total number of machines in one establishment shall be limited to thirty (30).
- c. All machines must be permitted according to the permitting requirements of section IV of these regulations.

4. GAMING DEVICE PERMITTING

- A. Permit application. An owner, operator, or lessee of an amusement redemption machine or video gaming device game room shall be required to obtain a permit for each amusement redemption machine or video gaming device. As part of the application, the owner, operator, or lessee must submit, at their own expense, each amusement redemption machine or video gaming device, including hardware and software source code, to an independent gaming compliance and testing laboratory approved in advance by the City to ensure that the machine does not generate the resultant outcome independent of the skillful actions of the player. Any game that is determined to be beyond the ability of a player to predict or control the outcome will not be permitted or allowed to operate within the incorporated limits of the City.
- B. Permit. Following approval by the independent gaming compliance and testing laboratory, the City shall issue a permit that will be permanently affixed to the approved machine. The permit shall include the name of the machine and the machine's serial number.
- C. Device Operation Fees. A non-refundable annual device operation fee of \$300.00 per device shall be paid by the device owner for each video gaming device placed at a licensed establishment.
- D. Sealing or seizure. A person commits an offense if he or she owns an operational machine without a permit or with a tampered permit. In addition to other criminal or civil remedies outlined in this article, the City shall have the authority to seal or seize any video gaming device or amusement redemption machine located in any amusement redemption machine game room for which a permit is not displayed. If any amusement redemption machine is found with evidence of permit tampering of any kind, including a permit issued to a different machine or a change in the game's hardware or software after the date of the permit issuance, the City shall have the authority to seal or seize all amusement redemption machines in the game room for retesting at the owner's expense or to revoke the owner's license to operate a game room.

5. INSPECTION BY CITY OFFICIALS

- A. The City Administrator, City Fire Marshal, Building Official or Code Enforcement officer or their designee may inspect a game room or an operational amusement redemption machine or video gaming device anywhere located within the incorporated City limits or its extraterritorial jurisdiction to determine whether the game room or the operational amusement redemption machine complies with the City code and State law.
- B. An owner, manager or employee of a game room or other person who seeks to prevent or obstructs in any way a City official from inspecting a game room, amusement redemption machine or video gaming device commits an offense.

6. OFFENSE; PENALTY

Any person who shall violate any of the provisions of this article or fail to comply therewith shall be deemed guilty of a class C misdemeanor and, upon conviction, shall be fined not to exceed the maximum amount allowable by law. This offense is hereby declared to be a strict liability offense and the culpable mental state required by chapter 6.02 of the Texas Penal Code is hereby specifically negated and clearly dispensed with. Each day that the violation occurs shall constitute a distinct and separate offense.

7. REPEALER

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

8. CONFLICTING PROVISIONS

If any provision of this Ordinance conflicts with any provision in other City ordinances the stricter provision shall prevail.

9. SEVERABILITY CLAUSE

If any paragraph, clause, phrase or provision of this Ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any part of provision thereof, other than the part so decided to be invalid or unconstitutional.

10. SAVINGS CLAUSE

The repeal of any ordinance or parts of ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinance at the time of passage of this Ordinance.

11. EFFECTIVE DATE

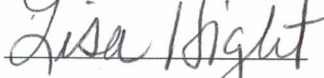
This Ordinance shall become effective up on passage and approval of the City Council of the City of Mertzon, Texas and after publication as may be required by governing law.

12. PROPER NOTICE & OPEN MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, as required by law, and that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act, Texas Government Code, Chapter 551.

PASSED AND APPROVED THIS DAY OF MAY 13, 2019, by a vote of
3 (ayes) to 0 (nays) and 2 (abstentions) of the City Council of the City of Mertzon, Texas.

CITY OF MERZON



by: Lisa Hight, Mayor

ATTEST



by: Sheri Benson, City Administrator

