

ORDINANCE NO. 2019-04-09-001

AN ORDINANCE OF THE CITY OF KEMPNER, TEXAS, REGULATING GAME ROOMS AND AMUSEMENT REDEMPTION MACHINES; ESTABLISHING A PENALTY; ESTABLISHING A LICENSING FEE; AND PROVIDING FOR RELATED MATTERS

WHEREAS, the City of Kempner, Texas, (the “City”) desires to regulate gaming machines to ensure that machines that are located within the City are not illegal gambling machines;

WHEREAS, the City Council finds that the regulations set forth herein promote the public health, morals, safety, and welfare; and

WHEREAS, the City may enact fees to defray the expenses of administering this Ordinance;

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

Section 1. Adoption of Findings of Fact. The findings and recitations set out in this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Game Room and Amusement Redemption Machine Regulations Adopted. The game room and amusement machine regulations set forth in Exhibit A are hereby adopted.

Section 3. Application and License Fee. The City’s fee schedule, as applicable, shall be amended to add the following fees:

(A) Game Room and Amusement Redemption Machine Fees:

- | | |
|------------------|----------------------|
| (1) Facility Fee | \$2,000.00 per annum |
| (2) Machine Fee | \$500.00 per annum |

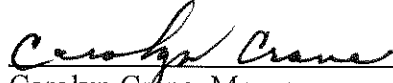
Section 4. Severability. If any provision of this Ordinance is illegal, invalid, or unenforceable under present or future laws, the remainder of this Ordinance will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this Ordinance.

Section 5. Effective Date. This Ordinance will become effective upon its adoption, passage by the City Council in accordance with the procedures on the date of passage as required and publication as required by law.

Section 6. Public Meetings. It is hereby officially found and determined that this meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by the Open Meetings Act, *Chapter 551, Texas Government Code.*

PASSED AND APPROVED this 9th day of April, 2019.

CITY OF KEMPNER, TEXAS



Carolyn Crane, Mayor

ATTEST:



Stacy Roberts, City Secretary

Exhibit "A"
To Ordinance 2019-04-09-001

REGULATION OF GAME ROOMS AND AMUSEMENT REDEMPTION MACHINES

A. DEFINITIONS.

In this Ordinance:

- (1) **AMUSEMENT REDEMPTION MACHINE** means any electronic, electromechanical, or mechanical contrivance designed, made, and adopted for bona fide amusement purposes that rewards the player exclusively with noncash 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 ten times the amount charged to play the game or device once, or \$5.00, whichever amount is less.
- (2) **GAME ROOM** means a building, facility, or other place that is open to the public and that contains one (1) or more operational amusement redemption machines.
- (3) **GAME ROOM OWNER** means a person who has an ownership interest in a game room.
- (4) **OPERATIONAL MACHINE** means a machine that is ready to be played and accessible to the public.
- (5) **POLICE OFFICER** means a Kempner Police Department police officer.

B. LICENSE REQUIREMENTS AND FEES.

(1) **License Required and Fees**

(a) It shall be unlawful for an owner or operator of a Game Room to operate, use, or maintain a Game Room without first obtaining a Game Room license from the City.

(b) An application for an existing Game Room location that is submitted by an individual who is different from the individual named as the owner or operator on the current application or a re-application for an existing Game Room location after denial or revocation shall be considered a new application and not a renewal.

(c) Applications for a Game Room license and any subsequent renewals shall include a facility license fee of \$2,000.00 and there shall be a \$500.00 per machine license fee.

(2) **Game Room License.**

(a) A Game Room Owner shall obtain a license from the city for each game room located in the city.

(b) The Game Room Owner shall submit a completed application in the form provided by the City. Any failure to provide the information required by this section or a determination that inaccurate, erroneous or incomplete information has been submitted shall be grounds for denial of the application.

1. The proposed Game Room must comply with this Ordinance at the time of the submission of the application for a license.

2. Each application shall also be accompanied by (i) 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 filed in the office of the County Clerk, bearing the file mark or stamp that evidences its filing in that office; and (ii) non-refundable fee(s) for the license. Any failure to provide the documents required by this item shall be grounds for denial by the director.

(c) Each application received under this section shall be investigated to determine whether the applicant has been convicted of one of the following applicable offenses:

1. Gambling, gambling promotion, keeping a gambling place, communicating gambling information, possession of gambling devices or equipment, or possession of gambling paraphernalia as described in Chapter 47 of the Texas Penal Code;

2. Forgery, credit card abuse or commercial bribery as described in Chapter 32 of the Texas Penal Code;

3. A criminal offense as described in Chapter 34 of the Texas Penal Code;

4. Criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses; or any other offense to the laws of another state or of the United States that, if committed in this state, would have been punishable as one or more of the aforementioned offenses; or

5. A criminal offense as described in Chapter 352, Subchapter B of the Texas Local Government Code; and

[1] Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date if the conviction is of a misdemeanor offense; or

[2] Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense.

Offenses involving gambling and the possession of gambling paraphernalia shall be grounds for denial, revocation or refusal for renewal of such licenses because these businesses offer special opportunities for gambling activities.

If it appears that the applicant has been convicted of such an offense, the City may deny the issuance of a license to the applicant.

(d) A license issued under this section shall be subject to revocation by the City pursuant to section B(2)(c).

(e) Any failure of a proposed Game Room to meet all requirements of this Ordinance shall be grounds for denial, revocation, or suspension of a game room license.

(f) Each Game Room license issued by the City is valid for one (1) year and shall expire on the anniversary date of the issuance of the license. A license may be renewed for the following calendar year beginning sixty (60) days before the expiration of the current license by filing a completed application for each license and paying the applicable fees as established herein. A renewal application shall be subject to the same requirements in this section as for an initial city Game Room license application.

(3) Hearings.

(a) Any applicant desiring to contest the denial, revocation, or suspension of a Game Room license may request a hearing before the City Council in accordance with the following procedures:

1. A request for hearing must be in writing and delivered to the City Secretary within ten (10) days of the denial. The applicant waives the right to hearing if the request is not timely received by the City Secretary.

2. The only issue before the City Council shall be whether or not the proposed Game Room complies with the requirements of this Ordinance.

3. If the City Council determines that a proposed game room does not comply with the requirements of this Ordinance, then application for a Game Room license shall be denied. The applicant may re-apply for a Game Room license if changes are made to bring the proposed Game Room into compliance with this Ordinance.

4. The decision of the City Council shall be final.

(4) License displayed. The Game Room Owner shall display within plain sight of an accessible public area of each Game Room a current permit or license for that Game Room.

(5) Effect. Each licensee under this Ordinance must meet and comply with all requirements of law applicable to the premises or any activity conducted thereon and the issuance of a license under this article shall not excuse the licensee, his agents or employees or any patrons of such premises therefrom.

C. UNRESTRICTED ACCESS BY POLICE OFFICER.

An owner, manager, or employee of a game room, or other person exercising control over a game room, a portion of a game room, or an operational amusement redemption machine, shall provide a police officer with immediate unrestricted access during business hours to all areas of the game room and to all operational amusement redemption machines located in the game room.

D. INSPECTION BY POLICE OFFICER.

(1) A police officer may inspect a game room or an operational amusement redemption machine located within the City of Kempner, Texas' incorporated city limits to determine whether the game room or operational amusement redemption machine complies with this Ordinance and state law.

(2) An owner, manager, or employee of a game room or other person who does not allow a police officer to inspect a game room or operational amusement redemption machine commits an offense.

E. GAME ROOM SIGN REQUIRED.

A game room owner shall mark each entrance to a game room with a sign that:

- (1) bears the words "GAME ROOM" in one and one-half inch or larger block letters; and
- (2) is legible from a distance of twenty-five (25) feet.

F. TRANSPARENT, UNCOVERED WINDOWS REQUIRED.

(1) Every game room shall have transparent unobstructed windows or open space on at least one (1) side so that the area is open to view by the general public passing by on a public street or using a corridor, lobby or other room to which the public has access and is admitted without charge.

(2) 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.

G. HOURS OF OPERATION, INGRESS AND EGRESS.

- (1) All game rooms shall have their hours of operation clearly marked on every entrance.
- (2) All game room shall have all doors providing ingress and egress from the game room unlocked during the hours of operation.
- (3) 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 8:00 a.m. or after the hour of 10:00 p.m.

H. LOCATION RESTRICTION.

No coin-operated machines may be located for operation within three hundred (300) feet of a church, school or hospital.

I. ILLEGAL MACHINES.

This Ordinance 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.

J. OFFENSE; PENALTY.

- (1) A person who fails to comply with the requirements of this Ordinance commits a Class C misdemeanor punishable by a fine not to exceed \$500.00.
- (2) Proof of a culpable mental state is not required for a conviction of an offense under this chapter.
- (3) Each day that a violation occurs is a separate offense.

K. EXEMPTIONS.

This Ordinance shall not be construed to embrace bona fide fraternal organizations and lodges, social clubs or social gatherings in private residences for the sole purpose of sociability and amusement.