

**ORDINANCE # 248**

**AN ORDINANCE OF THE CITY OF BEVIL OAKS, TEXAS TO REGULATE THE CONDUCT OF GAME ROOMS WITHIN THE CITY BY ESTABLISHING A LICENSING AND REGULATORY PROCESS FOR GAME ROOMS AND AMUSEMENT REDEMPTION MACHINES; AND ADD AN OCCUPATION TAX; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; AND NAMING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Bevil Oaks ("City Council") is concerned about the number of game rooms that have opened in various cities throughout Jefferson and Orange County; and

**WHEREAS**, the City is authorized to regulate game rooms operating amusement redemption machines such as eight liners by virtue of being a Type-A General Law municipality through sections 51.012, 54.001, 215.074, 217.042 and Chapter 211 of the Texas Local Government Code;

**WHEREAS**, licensing game rooms is a legitimate and reasonable means of regulation to ensure that operators of game rooms do not knowingly allow their establishments to be used as places of illegal activities such as gambling, personal and property crimes; and

**WHEREAS**, game rooms that operate amusement redemption machines, such as but not limited to eight liners, can have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, such as gambling, theft, criminal trespass, criminal mischief, and burglary; and

**WHEREAS**, game rooms that operate amusement redemption machines have objectionable operational characteristics, particularly when located within close proximity to each other, contributing to urban blight and downgrading the quality of life in the adjacent area; and

**WHEREAS**, the City Council desires to minimize and to control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect citizens from increased crime; preserve the quality of life; preserve property values and character of surrounding neighborhoods and deter the possible intrusion of urban blight.

**WHEREAS**, the City Council has determined that it is the public's best interest and in support of the health, safety, and general welfare of the citizens of the City that

game rooms should be regulated through a licensing process in addition to the City's use of zoning as a regulator of game rooms.

**NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEVIL OAKS, TEXAS:**

**SECTION 1 - DEFINITIONS:**

*Acceptable method of payment.* Any payment to the City pursuant to this Ordinance may be made in cash so long as such payment (or cumulative payments within a 30 day period) is less than \$599.99. Any payment \$600.00 or greater shall be in the form of a cashier's check.

*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 possibly accompanied by 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 electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so. This term expressly excludes coin-operated music machines, pay toilets, pay telephones, coin-operated rides for children, and other coin-operated machines which dispense or vend merchandise, commodities, or food directly from the machine.

*City official.* A code enforcement officer or building official of the City or any peace officer of the state.

*Game room.* A building, facility or other place that is open to the public or operated as a private club where patrons or their guest has to know, speak, or acknowledge a pass word, code word, or signal of any kind or possess any type of printed or written entry permit or symbol, and that a City official knows or has a good faith belief that the building, facility or other place contains one or more amusement redemption machines.

*Manager, operator or owner.* An individual who supervises, manages, or participates in the performance of activities that contribute to the functioning of a game room, including but not limited to, operating cash register/drawer, credit card transaction or some other depository on the premises of a game room, displays, delivers, or provides to a customer of a game room merchandise, goods, entertainment or other services, takes orders from a customer of a game room for merchandise, goods, entertainment or other services or acts as a door attendant to regulate entry of customers.

*Peace officer.* Any person recognized by the current Texas Code of Criminal Procedure Article 2.12 (Who Are Peace Officers) and Article 2.122 (Special Investigators).

*Professional Designee.* The City Council may appoint a designated professional to assist any City official with activities related to issuance, regulation or enforcement of this ordinance.

**SECTION 2 – LICENSE AND PERMIT:** Regulatory enforcement license and occupation tax permit.

- (a) *Regulatory enforcement license fee.* An owner, operator, or lessee of an amusement redemption machine game room shall be required to secure a regulatory enforcement license annually. An amusement redemption machine game room shall be required to secure a regulatory enforcement license by paying to the City an annual inspection and regulatory enforcement license fee of \$1,200.00 for each amusement redemption machine. Such license fee shall be paid in yearly installments (\$1200/machine/year) and due on the following dates: January 31<sup>st</sup>, unless such day falls on non-business day or federally-recognized holiday, in which case the deadlines shall be the next working day the City offices are open for business. The regulatory license fee is implemented to cover the costs to issue the licenses, regulate the amusement redemption machine game rooms, and to determine whether the provisions of this article are complied with, including the activities of City officials and/or Professional Designees.
- (b) *Occupation tax permit fee.* An owner, operator, or lessee of an amusement redemption machine game room shall be required to secure an occupation tax permit annually. An amusement redemption machine game room shall be required to secure an occupation tax permit by paying to the City an annual fee of \$15.00 for each amusement redemption machine.
- (c) *Application.* An applicant for a license or permit shall file with the code enforcement department a written application on a form provided for that purpose by the City, which shall be signed by the applicant, who shall be the owner, operator, or lessee of the amusement redemption machine game room. Should an applicant maintain an amusement redemption machine game room at more than one location, a separate application must be filed for each location. The following information is required in the application:
  - (1) Location, by address, 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, if 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 an interest in the amusement redemption machine 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. All managers of the property and/or business.

- (4) The nature of the business (general description) operating the game room;
  - (5) A list of current state permit numbers for each amusement redemption machine one for each machine;
  - (6) Number of amusement redemption machines in the amusement redemption machine game room;
  - (7) A completed background check and authorization permitting the release of this information to the City for all parties listed in subsections (c)(3)(a)—(c)(3)(d) and (c)(3)(f). In addition, a completed background check and authorization permitting the release of this information to the City is also required for property owners if the property owner owns, operates or supervises the business operating the amusement redemption machine. The background check will include a Texas and Federal Bureau of Investigation criminal history record information background check. The form authorization permitting release of results of the background checks to the City is available from the City's code enforcement department. The license/permit will be denied if any individual has a felony conviction, a class "A" misdemeanor conviction in the last ten years, a class "B" misdemeanor conviction in the last five years, or a current arrest warrant even though the issuing state will not extradite from Texas.
    - A. Upon application for a license/permit, the applicant shall be required to pay \$50.00 to the City of Bevil Oaks to cover the costs the City incurs to perform the background check. If the license/permit is issued, the applicant shall receive a \$50.00 credit towards the license fee set forth in Section 2(a). If the license/permit is denied, the applicant shall not receive a refund of the \$50.00.
  - (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 game room will not violate any applicable deed restrictions; and
    - C. The amusement redemption machine game room will be operated in accordance with all laws and City ordinances, including V.T.C.A., Penal Code, chapter 47.
  - (9) Name, address, and telephone number of an emergency contact person who can be reached after hours.
  - (10) Diagram attached of the building showing the specific location of all of the amusement redemption machines along with all exit doors and signs.
- (d) *Expiration and renewal.*
- (1) *Expiration.* A regulatory enforcement license and tax permit issued by the City shall automatically expire on the January 31st following its issuance, except as otherwise stated herein. Such license and permit shall automatically expire if the licensee or permittee sells the property or the business, transfers equity in to accomplish same, or license and/or permit is revoked. A regulatory enforcement license or permit is not assignable or transferable. The City shall not refund any

portion of a regulatory enforcement license or permit after the license or permit is issued, nor shall it prorate or reduce in amount any fee due to the City.

- (2) *Renewal.* A regulatory enforcement license and tax permit issued by the City does not automatically renew. Prior to the expiration of a regulatory enforcement license or permit, the licensee or permittee may apply to obtain a renewal if the person wishes to continue operating an amusement redemption machine game room after the expiration date pursuant to Section 2(a)— 2(c). Nothing herein authorizes the licensee or permittee to operate after the expiration of a license and tax permit and before a renewal is effective. If an application is not made for a renewal before the expiration date, then a new application must be made pursuant to Section 2 subsections (c)(2)(A)—(c)(2)(C) after the expiration date in order to operate an amusement redemption machine game room.
- (e) *Posting.* The license and permit shall be conspicuously posted and securely affixed to a permanent surface of the amusement redemption machine in such a manner that the permit and license are clearly visible and located next to the current State of Texas permit sticker. All permits and stickers must be located in such proximity that they can be viewed together without any manipulation to the amusement redemption machine. A permit or license issued for a certain coin amusement redemption machine shall not be transferred to another machine.
- (f) *Restrictions, regulations, controls, and limitations.* The following restrictions, regulations, controls, and limitations shall apply to all amusement redemption machine game rooms:
  - (1) All building and fire code standards must be met. A certificate of occupancy shall be requested before license is issued.
  - (2) The amusement redemption machine shall be in conformance with the provisions within this article.
  - (3) A game room operator must be a person who is at least 18 years of age.
  - (4) Total number of machines in one establishment shall be limited to 40.
  - (5) All game rooms shall have all doors providing ingress and egress from the game room unlocked during the hours of operation.
  - (6) The hours of operation for game rooms shall be limited to the following hours:
    - (A) Monday through Thursday, open at 8:30 a.m. and close at 11:00 p.m.; and
    - (B) Friday through Saturday, open at 8:30 a.m. and close at 12:00 a.m.
    - (C) Sunday, open at 12:00 pm and close at 6:00 p.m.
  - (9) All machines must be permitted and licensed as stated within this article.
  - (10) One parking space shall be provided for each two amusement redemption machines within the game room, plus one additional parking space for each employee per shift.

- (11) The owner, operator, or manager of the licensed premises must be present to supervise the operation of the game room. The game room shall not be left unattended.
- (12) Amusement redemption machines must be situated within the licensed premises as to be in full and open view, which entails being visible to all customers of the establishment.
- (13) No person under the age of 18 years shall be permitted inside the building, structure, facility or space housing the game room.
- (14) Any business that contains an operational amusement redemption machine shall be at least 1,000 feet from any other business that contains an operational amusement redemption machine. The distance is measured from the two closest property lines along any common public road.
- (15) No alcohol served or consumed on the premises, consistent with current Texas Alcoholic Beverage Commission regulations.
- (g) *Replacement.* The City shall provide a duplicate permit or license for a valid permit or license that has been lost, stolen, or destroyed at a charge of \$10.00. The original permit or license for which a duplicate permit or license was issued shall be void.
- (h) *Initial license and permit.* On the effective date of this article, all amusement redemption machines must obtain a valid permit and license as described herein within 30 days.
- (i) *Payments.* All funds transmitted to the City shall be an acceptable method of payment as defined by this ordinance.

**SECTION 3 – VISIBILITY STANDARD:** Transparent, uncovered windows required.

- (a) Every game room shall have transparent unobstructed windows or open space on at least one side so that the area is open to view by the general public passing by on a public street. 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 a code enforcement officer 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 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.

**SECTION 4 – VIDEO OR DIGITAL SURVEILLANCE:** Use of video or digital surveillance required.

- (a) *Managers, Operators and Owners* shall:

- (1) Install, maintain in proper working order, and operate during all hours the store is open to customers, a video or digital monitoring camera and recording system, which shall be capable of recording time and can produce a retrievable image on film, tape, or removable media device of a quality capable of clear recognition. Such video or digital monitoring cameras and recording systems shall be placed in a conspicuous location to record all activity in the amusement redemption machine areas, and if possible, the entry and exit doors.
    - a. If digital, images captured on the systems hard drive shall be in a retrievable format and able to be reviewed on demand.
    - b. Stored files must be able to be transferred to a removable media device.
    - c. Transferred images must retain highest resolution for a stored file.
    - d. Systems must record at a minimum of 640/480 pixels resolution.
    - e. Video or digital images shall be maintained for a minimum of 90 days.
  - (2) Post signs, which state the premises are under video surveillance, by all entrances. The signs shall not be smaller than eight inches by 12 inches.
- (b) Game room employees shall:
- (1) Ensure video or digital monitoring and recording equipment is in operation and functional during his or her working hours; and
  - (2) Report nonfunctioning video or digital monitoring and recording equipment immediately to managers, operators or owners.
- (c) Managers and operators shall:
- (1) Report lack of video or digital monitoring and recording equipment to the owner; and
  - (2) Ensure video or digital monitoring and recording equipment is in operation and functional during hours the game room is open for business; and
  - (3) Report nonfunctioning video or digital monitoring and recording equipment immediately to the owner.

**SECTION 5 – NUISANCE:** - Nuisance declared.

- (a) Because of the increased traffic and congestion around, late hours, and potential for being an attractive nuisance to minors, the City hereby finds that a further proliferation and concentration of such amusement redemption machine businesses constitutes a nuisance to the health, safety, and welfare of the citizens. Accordingly, subsequent to the passage of this article, no game room shall be situated within 300 feet of any church, school, or hospital. The distance shall be measured in a straight line without regard to intervening objects or structures and from the nearest property line of the game room seeking a license to the nearest property line of the church, school, hospital or any other game room or property line to district boundary, whichever is more restrictive.

**SECTION 6 – ADMINISTRATIVE ACCESS:** Inspections.

- (a) The City shall be required to perform periodic inspections to determine if the amusement redemption machine owner is complying with the provisions of this article and not endangering the public safety. The City shall effectuate these inspections through its City Secretary, code enforcement department, Jefferson County Sheriff's Office, or any of their designees.
- (b) 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 amusement redemption machine, shall provide a City official with immediate unrestricted access during business hours to all areas of the Amusement Facilities and to all amusement redemption machines located in the game room.
- (c) All video or digital surveillance images shall be accessible or provided in a portable memory format for review by city officials, peace officers or professional designees upon request during business hours.

**SECTION 7 – STATUTORY AND COMMON LAW APPLICABILITY:** Existing laws.

- (a) Nothing herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table, coin operated, or slot machine, the keeping, exhibition, operation, display or maintenance of which is now illegal or in violation of any Article of the Penal Code of this State of Texas and of any federal laws of the United States of America.
- (b) "Gambling devices" as defined by V.T.C.A. Penal Code, chapter 47, and as interpreted by judicial decision (*Hardy v. State*, 102 S.W.3d 123 (Tex. 2003); *State v. One Super Cherry Master Video 8-Liner Machine*, 102 S.W.3d 132 (Tex. 2003)) are prohibited from use as an amusement redemption machine.

**SECTION 8 – PENALTIES AND APPEAL:** Penalty, revocation, and sealing.

- (a) Any person who violates a section of this article shall, upon conviction of such violation, be deemed guilty of a misdemeanor and shall be fined a sum not to exceed \$500.00 per machine, per violation for each day that violation occurs. The unlawful operation of any amusement redemption machine shall constitute a distinct and separate offense for each day that the same is operated or exhibited.
- (b) Grounds for denial or revocation.
  - (a) The City, acting through a City official, shall refuse to approve the issuance or renewal of a permit or shall revoke a permit for one or more of the following reasons:
    - (1) A false statement as to a material matter made in an application for a permit;
    - (2) Revocation of a permit, pursuant to this article, of the applicant or corporate officer of the applicant within two years preceding the filing of the application;

- (3) The applicant or a co-owner for such permit has, within the past ten years, been convicted of a crime involving moral turpitude or gambling.
- (b) The City, acting through a City official, shall not issue or renew a permit under this article and shall suspend or revoke a permit if it is determined that the applicant or permit holder is indebted to the city for any fee, costs, penalties, or delinquent taxes at the time of application or renewal.
- (c) The City, acting through a City official, shall have the authority to deny or revoke all permits issued under this provision for any violation of this article by giving written notice, stating the reason for denial or revocation, and same shall be cancelled ten days from the date of receipt of such notice.
- (d) If the city manager denies, refuses to approve the issuance of a permit or the renewal of a permit to an applicant, or revokes a permit issued under this article, this action is final unless the applicant or permit holder, within ten days after the receipt of written notice of the action, files a written appeal to the city council by delivering said notice to the city secretary setting forth specific grounds for the appeal. The city council shall either hear the appeal or select a hearing officer to preside over the appeal hearing. The city council or hearing officer shall within 14 days of the notice of appeal grant a hearing to consider the action. The city council and hearing officer have the authority to sustain, reverse, or modify the action appealed. The decision of either the city council or hearing officer is final.
- (e) The City Council is authorized and empowered to revoke the regulatory enforcement license or permit of any person licensed or permitted under this article, after giving such person ten-days' notice of a hearing and after conducting such hearing for the purpose of determining whether such license should be revoked because of the violation of this article.
- (f) No permit shall be issued within a period of one year to anyone whose permit has been revoked, except at the discretion of the city council.
- (g) The City may seal any amusement redemption machine on which the permit and/or license has not been paid. The City shall charge a fee of \$25.00 for the release of any machine sealed as provided herein for nonpayment. It shall be unlawful for any person to break the seal affixed in the name of the City or exhibit, display or remove from location any machine on which the seal has been broken. Upon proof that all fees have been paid in full and an inspection of the location of business has been completed any and/or all sealed machines may be unsealed by a City official.

#### **SECTION 9 - SEVERABILITY OF PARTS OF ORDINANCE.**

- (a) If any section, subsection, sentence, clause or phrase of this Ordinance, or the application of the same to a particular set of persons or circumstances, should for any reason be challenged through formal pleading in a court of competent jurisdiction or held to be invalid, such invalidity shall in no way affect the remaining portion of this

Ordinance and to such end the various portions and provisions of this Ordinance are declared to be severable.

**PASSED AND APPROVED FROM this 26<sup>th</sup> day of June, 2017.**

**EFFECTIVE FROM this 26<sup>th</sup> day of June, 2017.**

**ATTEST:**

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Rebecca M. Ford, Mayor  
City of Bevil Oaks, Texas

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City Secretary  
City of Bevil Oaks

DATES OF PUBLICATION: \_\_\_\_\_, VIA