

ORDINANCE NO. 2020-04

AN ORDINANCE OF THE CITY OF CLARKSVILLE, TEXAS AMENDING TITLE XI "BUSINESS REGULATIONS" OF THE CODE OF ORDINANCES TO, ADD CHAPTER 119 "COIN-OPERATED MACHINES", TO PROVIDE PARAMETERS RELATING TO SUCH MACHINES; REQUIRING AN ATTENDANT TO BE PRESENT AND THAT MACHINES BE IN OPEN VIEW; LIMITING THE HOURS OF OPERATION; PROHIBITING OPERATION WITHIN 300 FEET OF A CHURCH, SCHOOL OR HOSPITAL; PROVIDING FOR EXCEPTIONS; PROVIDING FOR THE LEVY OF AN OCCUPATION TAX ON COIN-OPERATED MACHINES; PROVIDING FOR THE ADOPTION OF FEES TO ADMINISTER, INSPECT AND REGULATE COIN-OPERATED MACHINES; PROVIDING SEVERABILITY, REPEALER AND SAVINGS CLAUSES; PROVIDING FOR A PENALTY; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION.

WHEREAS, the 73rd Texas Legislature during the 1993 Legislative Session adopted amendments to Chapter 47 of the Texas Penal Code by adding Section 47.01(4)(B), providing that a gaming machine or coin operated machine are legal if it is used "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 (10) times the amount charged to play the game or device once or five dollars (\$5), whichever is less"; and

WHEREAS, the laws of the State of Texas, including those found in Chapter 51 of the Texas Local Government Code, provide the City of Clarksville, Texas (the "City") authority to adopt ordinances for the good, peace, order and welfare of the municipality; and

WHEREAS, the City is authorized under Section 2153.452 of the Texas Occupations Code to regulate coin-operated machines through zoning; and

WHEREAS, the City's zoning enforcement is a proper function of the City's police power to regulate for the advancement and protection of the health, morals, safety or general welfare of the community as a whole; and

WHEREAS, the City is authorized under Section 2153.451(b) of the Texas Occupations Code to impose a yearly occupation tax on coin-operated machines that may not exceed one-fourth of the state tax; and

WHEREAS, the City Council of the City of Clarksville, Texas (the "City Council") desires to regulate game rooms and coin operated machines in order to prevent illegal operations of same in the interest of protecting the health, safety, and welfare of both citizens and visitors to the City; and

WHEREAS, the City Council finds and determines that the fees adopted herein are necessary and reasonable for the cost of enforcing these regulations; and

WHEREAS, the City Council finds and determines that it is in the public interest to adopt regulations for game rooms and coin-operated machines as described herein to protect the public health, morals, safety, and welfare of its residents.

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

SECTION 1. FINDINGS INCORPORATED

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2. AMENDMENT

Title XI "Business Regulations" of the Code of Ordinances is hereby amended by adding Chapter 119 "Coin-operated Machines" to read entirely as follows:

CHAPTER 119: COIN-OPERATED MACHINES

SECTION

- 119.01 DEFINITIONS**
- 119.02 OCCUPATION TAX LEVIED**
- 119.03 PAYMENT OF OCCUPATION TAX; RECEIPT TO BE ATTACHED TO MACHINE**
- 119.04 EXEMPTIONS**
- 119.05 ILLEGAL MACHINES NOT AUTHORIZED**
- 119.06 SKILL OR PLEASURE COIN-OPERATED MACHINES AND AMUSEMENT REDEMPTION MACHINES PROHIBITED NEAR SCHOOLS, CHURCHES OR HOSPITALS, IN ACCORDANCE WITH STATE LAW**
- 119.07 AMUSEMENT REDEMPTION MACHINES AND GAME ROOMS**

SECTION 119.01 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COIN-OPERATED MACHINE. Every machine or device of any kind or character which is operated by or with coins, metal slugs, tokens, electronic card, or checks. *MUSIC COIN-OPERATED MACHINES* and *SKILL OR PLEASURE COIN-OPERATED MACHINES*, as defined in this section, shall be included in such term.

MUSIC COIN-OPERATED MACHINE. Every coin-operated machine of any kind or character which dispenses or vends or which is used or operated for dispensing or vending music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included within this term: phonographs, pianos, graphophones and all other coin-operated machines which dispense or vend music.

OPERATOR. Any person who exhibits, displays or permits to be exhibited or displayed, in a place of business other than his or her own, any coin-operated machine in the city.

OWNER. Any person owning or having the care, control, management or possession of any coin-operated machine in the city.

SERVICE COIN-OPERATED MACHINE. Every pay toilet or pay telephone and all other machines or devices which dispense service only and not merchandise, music, skill or pleasure.

SKILL OR PLEASURE COIN-OPERATED MACHINE.

- (1) Every coin-operated machine, of any kind or character whatsoever, when the machines dispense or are used or are capable of being used or operated for amusement or pleasure or when the machines are operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of merchandise or music or service exclusively as those terms are defined in this section.
- (2) The following are expressly included within this term: marble machines, marble table machines, marble shooting machines, miniature racetrack machines, miniature football machines, miniature golf machines, miniature bowling machines and all other coin-operated machines which dispense or afford skill or pleasure.
- (3) Every machine or device of any kind or character which dispenses or vends merchandise, commodities or confections or plays music in connection with or in addition to these games or dispensing of skill or pleasure shall be considered as *SKILL OR PLEASURE MACHINES* and taxed at the higher rate fixed for these machines.

SECTION 119.02 OCCUPATION TAX LEVIED

- (A) Every person who owns, controls, exhibits, displays or permits to be exhibited or displayed in the city any coin-operated machines shall pay, and there is hereby levied on every coin-operated machine, except such as are exempted in this chapter, an annual occupation tax of one-fourth the tax charged and collected by the state.
- (B) Nothing in this section shall prevent the operator of the machines from paying the tax levied in this section for the account of the owner, but the payment of the tax by the operator or other person shall not relieve the owner from the responsibility of complying with all provisions of this chapter.

SECTION 119.03 PAYMENT OF OCCUPATION TAX; RECEIPT TO BE ATTACHED TO MACHINE

- (A) The occupation tax levied by this chapter, with the exception of amusement redemption machines, shall be paid to the City of Clarksville and shall receive an occupation tax receipt.
- (B) The occupation tax levied on amusement redemption machines in the amount of \$15 a year per machine shall be paid to the City of Clarksville and shall be issued an occupation tax receipt. The occupational tax shall apply to all amusement redemption machines, regardless if located in an amusement redemption machine game room.
- (C) The occupation tax receipt shall be attached to the coin-operated machine mentioned in the receipt and shall bear the serial number of the particular machine.
- (D) It shall be unlawful for any person to operate, exhibit or display any coin-operated machine in the city without having attached thereto an occupation tax receipt, and no occupation tax receipt issued for a certain coin-operated machine shall be transferred to any other machine.

SECTION 119.04 EXEMPTIONS

Gas meters, pay telephones, pay toilets, food vending machines, confection vending machines, beverage vending machines, merchandise vending machines and cigarette vending machines which are subject to an occupation or gross receipts tax and service coin-operated machines are expressly exempt from the tax levied in this chapter and the other provisions of this chapter.

SECTION 119.05 ILLEGAL MACHINES NOT AUTHORIZED

Nothing in this chapter shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table or coin-operated machine, the keeping, exhibition, operation, display or maintenance of which is illegal or in violation of any article of the Penal Code of the State or the Constitution of the State.

SECTION 119.06 SKILL OR PLEASURE COIN-OPERATED MACHINES AND AMUSEMENT REDEMPTION MACHINES PROHIBITED NEAR SCHOOLS, CHURCHES OR HOSPITALS, IN ACCORDANCE WITH STATE LAW

No skill or pleasure coin-operated machine or amusement redemption machine shall be permitted within 300 feet of any school, church or hospital, in accordance with state law.

SECTION 119.07 AMUSEMENT REDEMPTION MACHINES AND GAME ROOMS

(A) *Licensing and permitting.*

- (a) *License.* No person shall operate an amusement redemption machine game room in the city without first obtaining a license from the City of Clarksville as required by this section.
- (b) *Permit.* No person shall operate an amusement redemption machine in the city without first obtaining a permit from the City as required by this section. The current state and county tax stamps, as well as the city permit, will be attached to the front of the amusement redemption machine. All expired tax stamps and permit stickers will be removed from the machine by the owner/operator. Only current, valid official stamps may be displayed. The annual permit fee shall be \$500.00 for the cost of enforcing the regulations under this chapter. Permits shall automatically expire on December 31 following date of issuance.

(B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AMUSEMENT REDEMPTION MACHINE.

- (a) A skill or pleasure coin-operated machine 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, novelties or a representation of value redeemable for those items;
- (b) Any electronic, electromechanical or mechanical contrivance designed, made and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with non-cash merchandise, prizes 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, whichever is less.

AMUSEMENT REDEMPTION MACHINE GAME ROOM. Any establishment where five or more amusement redemption machines, with the exception of excluded machines, are displayed or exhibited for public use.

COIN-OPERATED MACHINE. A machine or device operated by the payment or insertion of paper currency, card or any other consideration.

CONVICTED SEX OFFENDER. A person that has received a rendition of an order by a court imposing a punishment of incarceration, probation or fine for a crime of: aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual assault 65 years or older, aggravated kidnapping (violate/abuse victim sexually), indecency with child sexual-contact, sexual assault, sexual assault of a child, sexual performance of child, prohibited sexual conduct, compelling prostitution, possession/promotion of child pornography,

indecent exposure, kidnapping with victim under 17 years of age, unlawful restraint with victim under 17 years of age, aggravated kidnapping (with no sexual intent and victim under 17 years of age), indecent exposure-second conviction, preparatory offense attempt, conspiracy and solicitation to commit any sexual offense. Also included herein is a conviction involving the violations of any statute from another state regardless of title, that the elements of which meet the above offenses.

CONVICTION. A conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated or pardoned.

EMPLOYEE. Any person who performs any service or entertainment upon the premises of an amusement redemption machine game room business, whether or not the person is denominated an employee, independent contractor, agent or otherwise, and regardless of whether the person paid is paid a salary, wage or other compensation by the owner or operator of the business. The term *EMPLOYEE* does not include a person exclusively on the premises for any of the following:

- (a) The repair or maintenance of the premises;
- (b) The delivery of goods to the premises; or
- (c) The delivery of services, such as legal, accounting, insurance or other similar services provided to businesses generally.

EXCLUDED MACHINES. An amusement redemption machine game room does not include:

- (a) A machine that awards the user non-cash merchandise prizes, toys or novelties solely and direct from the machine, including claw, crane or similar machines; nor
- (b) A machine from which the opportunity to receive non-cash merchandise prizes, toys or novelties, or a representation of value redeemable for those items, varies depending upon the user's ability to throw, roll, flip, toss, hit or drop a ball or other physical object into the machine or a part thereof, including basketball, skeet ball, golf, bowling, pusher or similar machines; nor
- (c) A machine or any device defined in Tex. Penal Code § 47.01, as a gambling device, or any activity prohibited or described in Tex. Penal Code Ch. 47.

KNOWINGLY. With actual knowledge of a specific fact or, with reasonable inquiry, a reasonable person should have known a specific fact.

OPERATOR. Any person who is both present on and in charge of any amusement redemption machine game room business premises.

OWNER. The legal owner of an amusement redemption machine game room business and includes the following:

- (a) The owner of a sole proprietorship;
- (b) Each member of a firm, association, LLC or general partnership;
- (c) Each general partner in a limited partnership; or
- (d) Each officer, director and owner of 50% or more of the stock of a corporation.

REPRESENTATION OF VALUE. Cash paid under authority of sweepstakes contests as provided in Tex. Business and Commerce Code Ch. 43(B), or a gift certificate or gift card that is presented to a merchant in exchange for merchandise.

(C) *Local license fee for amusement redemption machine game room required.*

- (a) An owner, operator or lessee of an amusement redemption machine game room shall be required to secure a license annually. An amusement redemption machine game room shall be required to secure a license by paying to the city an annual inspection and amusement redemption machine game room license or permit fee of \$500 for the cost of enforcing the regulations under this chapter. Upon payment of fee and compliance with all licensing requirements, the license shall be issued by the City.
- (b) Any person submitting an application for an amusement redemption machine game room license shall not have been convicted of any of the following:
 - i. Felony offense in the preceding five years;
 - ii. Class A or B misdemeanor in the past two years, for which:
 - 1. Less than two years have elapsed since the date of conviction, the date of release from confinement imposed for the conviction, or termination of probation whichever is the later date, if the applicant was convicted of a misdemeanor offense;
 - 2. Less than five years have elapsed since the date of conviction, the date of release from confinement for the conviction, or the termination of probation or parole whichever is the later date, if the applicant was convicted of a felony offense; or
 - 3. A convicted sex offender.
- (c) An applicant for a license or permit shall file with the City Manager 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 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:

- i. Name, address, telephone number and driver's license number of the applicant if a natural person; name, address, telephone number and driver's license number of all persons who own 25% or more interest in the amusement redemption machine game room; name, address, telephone number and driver's license of all corporate officers, if any, of the such business; name, address and telephone number of the business; if incorporated, the name of the business registered with the Secretary of State; if a partnership, the name, address, telephone number and driver's license of each of the general and limited partners; a copy of the applicant's d/b/a, if applicable. If applicant is not the owner of the premises, the applicant shall furnish the name, address and telephone number of the property owner;
 - ii. The previous occupation(s) of the applicant and, if applicable, all corporate officers and partners of the applicant within the preceding five years;
 - iii. Whether a previous license or permit of applicant or, if applicable, corporate officer or partner of applicant, has been revoked within two years of filing of the application;
 - iv. Number of amusement redemption machines in the amusement redemption machine game room;
 - v. A statement that:
 1. The amusement redemption machines are not and will not be used as gambling devices;
 2. All the facts contained in the application are true and correct;
 3. The location and operation of the amusement redemption machine game room will not violate any applicable deed restrictions; and
 4. The amusement redemption machine game room will be operated in accordance with all laws.
- (d) Name, address and telephone number of an emergency contact person who can be reached after hours.

(D) *Expiration and renewal.*

- (a) Expiration. An annual amusement redemption machine game room license or permit 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 licensee thereof sells the property or the business, transfers equity to accomplish same or otherwise disposes of such devices. An amusement redemption machine 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.
- (b) 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 30 days after expiration will require such person to pay an additional late fee in an amount equal to 20% of the fee actually due or 20% of the previous year's fee, whichever is greater in order to obtain reinstatement of his or her license. Nothing herein authorizes the licensee to operate after the expiration of a license and before a renewal is effective.

(E) 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. A \$5.00 fee will be charged for the release of any machine sealed for non-payment of said license fee, plus the \$15.00 annual occupational tax and the \$500 annual permit fee, if delinquent and not paid for the current year.

(F) Posting of license. The license shall be conspicuously posted inside the building and viewable by all patrons of the establishment.

(G) Restrictions, regulations, controls and limitations. The following restrictions, regulations, controls and limitations shall apply to all amusement redemption machine game rooms.

- (a) Condition of premises. All Building and Fire Code standards must be met. Inspection by the Building Official and certificate of occupancy shall be obtained before license is issued. The game room must be located in area zoned for that activity. Each location must have an annual fire inspection for the premises prior to the expiration of their obtained permit and shall not have their permit renewed until such time the fire inspection is passed.
- (b) Methods of conduction of business. No alcoholic beverages shall be served or allowed on premises. No activities allowed outdoors.
- (c) Hours of operation. May only be operated between the hours of 7:00 a.m. and 2:00 a.m.

- (d) Parking requirements. One space for each two machines (exclusive of handicapped), plus one space per employee per shift. The area utilized for parking shall be form poured concrete or asphalt. The spaces will be striped with a minimum of ten feet in width for each space.
 - (e) Location requirements. Premises shall not operate within 300 feet of an established church, school, day care or hospital.
 - (f) Presence required. 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.
 - (g) Public view. Machines must be so situated within the premises as to be in full and open public view, which entails being visible to all patrons of the establishment.
 - (h) Minors. Minors may not operate machines during school hours on days when school is in session.
 - (i) Operators. A game room operator must be a person who is at least 18 years of age.
 - (j) Number of machines. Total number of machines in one establishment shall be limited to 50.
 - (k) Private rooms prohibited. All game rooms shall be open to the public and no “private game rooms” or private “members-only” establishments shall be permitted.
- (H) Employees qualification. A person may not be an employee/operator of an amusement redemption machine game room if he or she does not meet the requirements set forth in section (C) Local license fee for amusement redemption machine game room required subsection (b) above. The owner of an amusement redemption machine game room who knowingly employs an employee/operator who is in violation of section (C) Local license fee for redemption machine game room required subsection (b) above will be in violation of this chapter.
- (I) Termination of license. The City Manager may terminate any license to maintain and operate an amusement redemption machine game room when the licensee is in violation of any provision of this section, any other ordinance of the city or any applicable state or federal law on regulation, or licensee was found to have submitted false information in licensee’s application. Such termination shall be upon the decision of the City Manager which shall be final no less than ten (10) calendar days after receipt of written notice sent by certified mail, return receipt requested and addressed to the licensee at the premises, specifying the particular violation or violations. If requested before the ten (10) day period

has expired, the licensee may request a hearing before the City Manager to contest the termination. Any decision of the City Manager thereon shall be final and non-appealable.

- (J) Suspension and/or termination. An amusement redemption machine game room license holder can have his or her license suspended and/or terminated if, at any time, the City Manager or designee determines that an amusement redemption machine game room license holder is not qualified under this section, and/or is under indictment, and/or has charges pending for any offense involving a Class A or B misdemeanor or a felony offense. The City Manager or designee shall suspend or terminate the license holder's license until the City Manager or designee determines that the license holder is qualified or that the charges against the license holder have been finally adjudicated.
- (K) Re-application. If a license is terminated pursuant to divisions (I) or (J) above, the licensee shall not be eligible to re-apply until two years after the date of termination.
- (L) Audit. The books and records of the amusement redemption machine game room shall be open for inspection and copying during regular business hours by the City Manager or designee. Application and receipt of a license shall constitute implied consent for the City Manager or designee to inspect the premises and obtain any video/audio surveillance tapes of the premises.
- (M) Disclaimer. By issuing the required license, the city is not certifying the installation or use of the amusement redemption machines applying for a license, the applicant shall acknowledge that the city is not certifying or sanctioning the installation or use of such machines.

SECTION 3. PENALTY

Any person, firm, corporation or business entity violating this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00, unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000.00. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this Chapter shall not preclude the city from filing suit to enjoin the violation. Clarksville retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 4. SEVERABILITY CLAUSE

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Clarksville hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences clauses and phrases be declared unconstitutional or invalid.

SECTION 5. SAVINGS/REPEALING

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 6. EFFECTIVE DATE

This Ordinance shall become effective immediately upon its passage and publication as required by law.

SECTION 7. OPEN MEETINGS

That it is hereby 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, all as required by Article 551.041, Texas Government Code.

SECTION 8. PUBLICATION

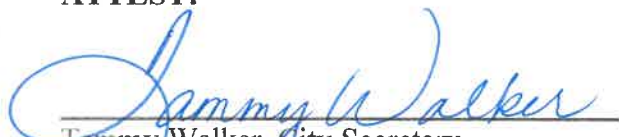
The City Secretary is hereby directed to post or publish the caption, penalty clause and effective date clause of this ordinance in accordance with Section 52.011 of the Texas Local Government Code.

PASSED AND APPROVED by the City Council of the City of Clarksville, Texas, on this the 19 day of Nov, 2019.



Ann Rushing, Mayor

ATTEST:



Tammy Walker, City Secretary

APPROVED AS TO FORM:

Will Trevino, City Attorney