

ORDINANCE NO. 425-B

AN ORDINANCE REPEALING ORDINANCE 425-A IN ITS ENTIRETY AND ESTABLISHING ORDINANCE 425-B REGULATING SPECIFIC COIN-OPERATED MACHINES FOR AMUSEMENT WITHIN THE CITY LIMITS OF THE CITY OF WEST ORANGE, TEXAS; PROVIDING A PENALTY FOR VIOLATION HEREOF

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST ORANGE, TEXAS that:

WHEREAS, The City council of the City of West Orange hereby repeals, modifies and/or nullifies any motion, regulation or ordinance that was passed and/or approved prior to this day dealing with amusement redemption machines, and hereby replaces it with the following:

WHEREAS, the City Council of the City of West Orange, Texas, (the "City") finds that it is in the best interest of the City to regulate coin-operated machines operated for amusement and/or pleasure and commonly described as slot machines, eight liners, or amusement redemption machines and businesses that provide such amusement redemption machines; and\

WHEREAS, the proliferation of these amusement redemption machines in the City and this corresponding ordinance will necessitate increased regulation and review to determine if these machines are being operated within lawful parameters;

WHEREAS, the City is expressly authorized to regulate game rooms operating amusement redemption machines by virtue of being a home rule municipality;

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;

WHEREAS, game rooms that operate amusement redemption machines 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;

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 spread of urban blight; and

WHEREAS, the City Council has determined and affirmatively finds 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 continue to be regulated through a licensing process and that the following amendments help in accomplishing these purposes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST ORANGE, TEXAS THAT:

Definitions.

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, building official, city official of the City of West Orange or any peace officer of the state

Game room. A building, facility, room or other place that is open to the public or operated as a private club where patrons or their guest(s) have 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.

Game room owner. A person who rents, leases or 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.

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).

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 \$1,000.00 for each amusement redemption machine. 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.

- (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 Police 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 25 percent or more 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 through (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. The background check shall be conducted through a fingerprint check. The fingerprints will be submitted to the Texas Department of Public Safety and the Federal Bureau of Investigation for criminal records check. All fingerprint checks will be done in compliance with the Texas Government Code(s), specifically section 411.087 and 411.122.
 - a. Upon application for a license/permit, the applicant shall be required to pay \$50.00 to the City of West Orange to cover the costs the City incurs to perform each of the background check(s). Other background costs shall be borne by the applicant and item(s) required for the background check shall be up to the discretion of the Chief of Police. The fee shall be paid whether the application is approved or denied.
- (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 (this license cost is not prorated), 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 or fees paid, 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 this ordinance. 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 this ordinance 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) The maximum amount and/or number of amusement redemption machines licensed, permitted or allowed within the city shall not exceed 20.
 - (5) All machines must be permitted and licensed as stated within this article.
 - (6) It shall be unlawful to have an unlicensed amusement redemption machine on the premises of the business, whether operational or not.
 - (7) It shall be unlawful for a minor (a person under the age of 18) to participate in playing or operating an amusement redemption machine.
 - (8) The hours of operation for a game room shall be limited to between 11 a.m. and 8 p.m.
 - (9) Sufficient parking on the business property must be maintained to allow for at least one parking space for every 2 machines licensed.
 - (10) All game rooms shall have all doors providing ingress and egress from the game room unlocked during the hours of operation.
 - (11) Only one game room shall be allowed on any lot or in any single building, structure or tenant space within a strip or retail center.
 - (12) Any owner, operator or employee of game room under this article is prohibited from owning any interest in another game room, including overseeing or being or being responsible for another game room, within the city.
 - (13) Nothing contained herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table, or gaming machine, the keeping, exhibition, operation, display or maintenance of which is illegal or in violation of any ordinance of the city, any section of the penal code of this state, or the constitution of this state.
- (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.

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.

Nuisance declared.

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 such establishments will be issued a permit or license unless such establishment is at least 1,000 feet in a direct line from any of its public entrances to the nearest property line of a church, school, or hospital. Any businesses existing as of the time of the passage of this article shall be permitted to continue, however, if they should cease operations, violate this article, violate state law, or violate federal law, their permit and license shall be subject to revocation and such may not be renewed unless they meet all provisions of any applicable law including the above spacing requirements.

Inspections.

- (a) The City shall 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 police department, code enforcement department, fire marshal, 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 building and to all amusement redemption machines located in the game room.

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.

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) 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.
- (c) 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. The City shall not bear any expense for damage to any machine in sealing or unsealing such device in non-compliance.

Severability It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph, or section of this

Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

Proper Notice and Meeting It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

Publication and Effective Date This Ordinance shall take effect from and after its passage by the City Council and publication. The City Secretary is hereby directed to give notice hereof by causing the caption of this Ordinance to be published in the official newspaper of the City of West Orange.

PASSED, APPROVED AND AUTHENTICATED this the 11th day of October, 2021.



Randy Branch, Mayor

ATTEST:



Theresa Van Meter, City Secretary



APPROVED:


Chris Leavins, City Attorney