

ORDINANCE NO. 18-020

AN ORDINANCE ESTABLISHING RULES AND REGULATIONS CONCERNING PLACEMENT AND OPERATION OF GAMING ROOMS AND AMUSEMENT REDEMPTION MACHINES WITHIN THE INCORPORATED CITY LIMITS OF GILMER, TEXAS.

WHEREAS, the City Council of the City of Gilmer, Texas hereinafter referred to as "the City", deems it necessary and proper within the best interest of the citizens of the City to establish rules and regulations for the placement and operations of gaming rooms and amusement redemption machines within the incorporated city limits of Gilmer; providing for findings of fact, savings, severability, repealer, effective date, and proper notice and meeting; and

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

WHEREAS, zoning 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 spread of urban blight.

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

SECTION 1
Findings of Fact

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Gilmer and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

SECTION 2
Authority and Purpose

The purpose of this chapter is to prevent establishments from becoming places of illegal gambling. Illegal gambling often attracts the criminal element. Average citizens often conduct business in these establishments which make them easy victims of robberies, assaults, and thefts. Often times illegal gambling attracts the sale, distribution, and use of illegal narcotics which is detrimental not only to the youth of the incorporated city limits, but also to the general quality of life for the citizens.

SECTION 3 Definitions

For purposes of this chapter the following terms are defined as:

"Gaming Room" any business, building, or place that utilizes 1 or more Amusement Redemption Machines. This definition applies whether Amusement Redemption Machines are the sole purpose for the business or if the Amusement Redemption Machines are part of the business which also offers other merchandise or services.

"Amusement Redemption Machines" any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance 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 10 times the amount charged to play the game or device once or \$5.00, whichever is less. For this chapter, coin operated arcade style games where there are no items given as prizes and claw machines are exempted.

1. A machine that awards the user non-cash merchandise prizes, toys, or novelties solely and directly from the machine, including claw, crane, or similar machines; nor
2. 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 objects into the machine or a part thereof, including basketball, golf, bowling, or similar machines.

"Gambling Device" means any electronic, electromechanical, or mechanical contrivance that for 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. The term: includes, but is not limited to gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that records the number of free games or credits so awarded and the cancellation or removal of the free games or credits. These machines do not include any device that falls under the definition of Amusement Redemption Machine.

SECTION 4
Prerequisites of Licensing

- A. The proposed site of placement of one (1) or more Amusement Redemption Machines or Gaming Room must comply with the following before a City Operations License can be issued:
1. Amusement Redemption machines or gaming rooms may only be permitted in the Business District (B1-B2), Industrial (L1-G1), and with specific use permit, but excluded in the Historic District in the city limits of Gilmer.
 2. No amusement redemption machine or gaming room shall be located within 300 feet of a residential use or residential district, church, school, daycare, city park, library, or public swimming pool/splash park.
 - a. The distance shall be measured in a straight line without regard to interfering objects or structures from property line to property, or property line to district boundary, whichever is more restrictive.
 3. No gaming room or amusement redemption machine shall be located within 1000 feet of any other gaming room or property which contains amusement redemption machines measured from property line to property line.
 4. Any gaming room must provide transparent glass in at least one exterior gaming room window with a dimension of at least four feet in width and four feet in height and shall not cover or otherwise block or obscure the view through the gaming room window by the use of drawn shades, blinds, partitions, tinting or other structures or obstructions. The window shall allow a clear, unobstructed view of the manager station and all amusement redemption machines in a gaming room.
 5. The sale, purchase, possession, or consumption of any alcoholic beverages as defined by the Texas Alcoholic Beverage Code shall not be permitted.
 6. Only one Gaming Room shall be allowed on any lot or in any single building, structure, or tenant space in a strip center.
 7. The establishment must have a Texas State Sales & Use tax on file with the city and displayed in the establishment in a manner that the public can easily locate and read
- B. In addition to the above requirements listed in section 4 "A" the machine owner, proprietor/store owner, and manager must all undergo a background check.
1. No permit shall be issued to a proprietor/business owner who has a felony criminal conviction or
 2. Any conviction pertaining to an offense which promotes gambling.
- C. Existing Gaming Rooms and or businesses with Amusement Redemption Machines must comply with section 4, # 1, 4, 5, 6 & 7 and all new businesses will comply with all of section 4 prerequisites within 60 days of the effective date of this ordinance.

SECTION 5
Licensing

- A. A proprietor of any business, building, or space intent on establishing a gaming room or placing Amusement Redemption machines in their establishment must first apply for a "Gaming Room/Gaming Device" license within City Hall.
1. An onsite inspection will be conducted by the Code Enforcement Officer, Fire Marshal and the Chief of Police to ensure all prerequisites for licensing are met.
 2. If the prerequisites for licensing are not met, the application will be denied.
 - a. The proprietor will be given 30 days from the date of denial to comply with the licensing prerequisites.
 - b. If after 30 days the prerequisites are not met, the application will be denied and the proprietor and/or business will be excluded from reapplying for the license for a period of 6 months.
 3. If all prerequisites are met and the Code Enforcement Officer, Fire Marshal and Chief of Police have approved the application, then the proprietor/business owner must provide a \$1,000 licensing fee to the City. This will ensure a license to operate for a period of one year.
 - a. Operating a gaming room or amusement redemption machine without a City Operations License is a violation of this chapter each day that the business is operating the gaming room or amusement redemption machine.
- B. Once a City Operating License is obtained the proprietor/business owner must register each machine that will be placed in the business.
Each machine must be registered with the City to include the contact information (name, address, phone number) of the gaming software company, serial number of the machine, owner of the machine, the owner of the space, and the manager of the business.
1. A manager of the business or the owner of the business must report any changes of ownership or managers within 10 business days. Any changes of ownership or new transfer of ownership will be subject to all regulations and restrictions contained in this ordinance. Failure to comply is a violation of this chapter.
 2. Any removal or addition of an amusement redemption machine must be reported to the City within 3 business days.
 - a. A new amusement redemption machine must have a proper City Occupations Tax sticker before it can be operated.
 3. A City Occupations Tax of \$150.00 will be imposed on each machine per year pursuant to Texas Occupation Code 2153.451.
 - a. Each machine being operated without a City Occupations Tax sticker will be violation of this chapter each day it is being operated.

SECTION 6
Regulations/Restrictions

- A. Any establishment containing amusement redemption machines:
1. Shall permit operation of the machines between the hours of Sunday-Thursday, 9:00 a.m. to 10:00 p.m. and Friday & Saturday, 9:00 a.m. to 12:00 a.m.
 - a. Playing of these machines after hours is a violation of this Code both for the manager on site and the person playing the machine.
 2. Shall not permit any person under the age of 18 years to play any amusement redemption machine.
 3. Are limited to the operation of amusement redemption machines only. Gambling devices shall not be allowed.
 4. All establishments containing amusement redemption machines must operate as not to violate any portion of Section 4 Prerequisites of Licensing.
 5. Must allow the Chief of Police, Code Enforcement Officer and Fire Marshal, or their designee to inspect the amusement redemption machines during the hours of operation.
- B. Excluding Sections 4 (A) 2, 3, 5 and (B), any gaming room:
1. Must comply with Section 4 Prerequisites of Licensing during any operations of machines.
 2. Must comply with Section 6 (A) of this chapter as well as:
 - a. Not operate more than 10 machines in any game room. Current business with machines prior to the passing of this ordinance may keep the same amount of machines; however if the business currently operates 10 machines or more, no additional machines may be added to this business location. Once this ordinance is passed, the City will do an inventory of machines in each location.
 - b. Must post the words "GAME ROOM" in black four inch letters with a white background on the front of the gaming room's entrance. The sign must be visible for at least 25 feet.
 - c. Must post a sign at the entrance of the game room that states the following in 2 inch black lettering with a white background:
GAMBLING AND THE PROMOTION OF GAMBLING IN THE STATE OF TEXAS IS ILLEGAL. THIS BUSINESS DOES NOT PAY CASH IN LIEU OF WINNINGS FROM ANY AMUSEMENT REDEMPTION MACHINE.
- C. Must allow the Chief of Police, Code Enforcement Officer and Fire Marshal, or their designee to inspect the gaming room and amusement redemption machines during the hours of operation.

SECTION 7
Violations

- A. Any first violation of this code will result in a fine not to exceed \$200.00 for each offense. Each day that a violation is permitted to exist shall constitute a separate offense. Additionally, a 30 day mandatory suspension of the establishment's City Operations License shall take effect upon issuance of citation.

- B. A second violation will result in a fine not to exceed \$350.00 per day for each offense. Each day that a violation is permitted to exist shall constitute a separate offense. Additionally, a 60 day mandatory suspension of the establishment's City Operations License shall take effect upon issuance of citation.

- C. A third violation of this code will result in a fine not to exceed \$500.00 for each offense. Each day that a violation is permitted to exist shall constitute a separate offense. Additionally, an indefinite suspension of the establishment's City Operations License shall take effect upon issuance of citation. An establishment will not be eligible to reapply for a City Operations License for a period of three years from the start date of the indefinite suspension. Said establishment must have all fines paid and current at time of reapplying for an application.

**SECTION 8
SAVINGS**

Any ordinance or part 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 ordinances at the time of passage of this resolution.

**SECTION 9
SEVERABILITY**

If any provision, section, sentence, clause or phrase of this ordinance, or the application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council of the City of Gilmer in adopting, and of the Mayor in approving this ordinance, that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason or any unconstitutionality or invalidity of any portion, provision or regulation.

**SECTION 10
REPEALER**

The provisions of this ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinance or parts of ordinances inconsistent or in conflict with any of the provisions of this resolution are hereby expressly repealed to the extent that such inconsistency is apparent. This ordinance shall not be construed to require or to allow any act which is prohibited by any other ordinance.

**SECTION 11
EFFECTIVE DATE**

This ordinance shall take effect from and after its publication, one time, in the official newspaper of the City of Gilmer, Texas. Said publication shall contain the caption stating in summary the purpose of the Ordinance and penalty for violation thereof.

**SECTION 12
PROPER NOTICE AND MEETING**

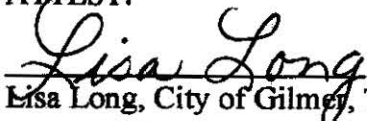
It is hereby officially found and determined that the meeting at which this ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED APPROVED AND ADOPTED this 24 day of July 2018.

APPROVED BY:


Tim Marshall, Mayor

ATTEST:


Lisa Long, City of Gilmer, Texas
Asst City Secretary