

ORDINANCE NO. 2013-12-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS AMENDING CHAPTER 22, ENTITLED "AMUSEMENTS," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, BY DELETING ARTICLE II, ENTITLED "GAMING MACHINES," IN ITS ENTIRETY AND REPLACING SAID ARTICLE WITH A NEW ARTICLE II, ENTITLED "BILLIARD TABLES AND COIN-OPERATED MACHINES," AND BY THE ADDITION OF A NEW ARTICLE III, ENTITLED "AMUSEMENT REDEMPTION MACHINES," TO ESTABLISH A LICENSING AND REGULATORY PROCESS REGARDING THOSE MACHINES WHICH ARE COMMONLY REFERRED TO AS "EIGHT-LINERS"; AND BY AMENDING APPENDIX A "SCHEDULE OF FEES," TO ESTABLISH ADMINISTRATIVE FEES FOR BILLIARD TABLES AND COIN-OPERATED MACHINES, AMUSEMENT REDEMPTION MACHINES, AND AMUSEMENT REDEMPTION MACHINE GAME ROOMS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; PROVIDING FOR INJUNCTIONS; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas ("City") is a Home Rule City possessing the full power of local self-government pursuant to Article XI, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

WHEREAS, the City Council has identified certain negative secondary effects arising out of and related to the operation of gaming machines and gaming establishments; and

WHEREAS, the City Council seeks to revise its regulations to reduce the likelihood of criminal activity, including operating as a gambling facility; and

WHEREAS, the City Council has determined that, in addition to regulating gaming machines through its zoning authority, it is in the public's best interest and in support of the health, safety, and general welfare of the citizens of the City that the operation of gaming establishments requires a permit and licensing process.

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

Section 1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City of McKinney, and they are hereby approved and incorporated into the body of this Ordinance as if restated in their entirety.

Section 2. From and after the adoption of this Ordinance, Chapter 22, entitled "Amusements," is hereby amended by deleting existing Article II, entitled "Gaming Machines" in its entirety and adopting a new Article II, entitled "Billiard Tables and Coin-Operated Machines," to read as follows:

"ARTICLE II. BILLIARD TABLES AND COIN-OPERATED MACHINES

Sec. 22-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Amusement Redemption Machine* means a recreational machine that provides the user with an opportunity to receive something of value other than a right of replay and which complies with all applicable federal, state and local laws and regulations applicable to such machines that includes:
- 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 an opportunity to receive exclusively non-cash merchandise prizes, toys, novelties, or a representation of value redeemable for those items; and
 - 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 \$5.00, whichever amount is less.

Amusement Redemption Machines are regulated under article III to this Chapter 22.

- (2) *Billiard table* means any table surrounded by a ledge or cushion, with or without pockets, coin-operated or non-coin-operated, upon which balls are impelled by a stick or cue.
- (3) *Coin-operated machine* means any kind of machine or device operated by or with a coin or other United States currency, metal slug, token, electronic card, or check, including a music or skill or pleasure coin-operated machine, and includes, but is not limited to, music coin-operated machines and skill or pleasure coin-operated machines.
- (4) *“Eight-liner” or “8-liner” machine* is a coin-operated electronic gaming machine that resembles a slot machine. Depending on the type of machine, a player “wins” if a horizontal, vertical, or diagonal row of objects line up. The machines come in a number of different varieties, themes, or formats. An “eight-liner” or “8-liner” machine is an Amusement Redemption Machine and is regulated under article III to this Chapter 22.
- (5) *Music coin-operated machine* means any kind of coin-operated machine, including a phonograph, piano, or graphophone, that:
- a. Dispenses music or is used to dispense music;
 - b. Is operated by inserting a coin, U.S. currency, metal slug, token, or electronic card or check; and
 - c. Is not a coin-operated machine designed exclusively for a child.

- (6) *Service Coin-Operated Machine*, which dispenses only a service. The term "service coin-operated machine" does not include a machine or device that dispenses merchandise, music, skill, or pleasure.
- (7) *Skill or pleasure coin-operated machine* means any kind of coin-operated machine that dispenses, or is used or is capable of being used to dispense or afford, amusement, skill, or pleasure, or is operated for any purpose, other than for dispensing only merchandise, music, or service.
 - a. The term "skill or pleasure coin-operated machine" includes, but is not necessarily limited to a:
 - i. Marble machine;
 - ii. Marble table machine;
 - iii. Marble shooting machine;
 - iv. Miniature racetrack machine;
 - v. Miniature football machine;
 - vi. Miniature golf machine;
 - vii. Miniature bowling machine;
 - viii. Billiard table or pool game; or
 - ix. Machine or device that dispenses merchandise or commodities or plays music in connection with or in addition to dispensing skill or pleasure.
 - b. The term "skill or pleasure coin-operated machine" does not include a coin-operated machine designed exclusively for a child.

Sec. 22-20. Permit Required.

- (A) No person shall maintain, display for public patronage, or otherwise keep for operation by the public any coin-operated machine without first obtaining a permit issued under the terms and conditions of this article.
- (B) Permits and/or licenses shall be issued by the City Secretary only when the conditions of this article have been complied with and a certificate of occupancy has been issued for the structure, building or facility in which the coin-operated machine is to be placed.
- (C) All application, permit and/or licensing fees due hereunder as well as any occupation tax related to coin-operated machines shall be paid to the City and deposited with the City Secretary's Office at the time of application. All such application, permit and/or licensing fees as well as any occupation tax related to coin-operated machines are non-refundable and shall in no manner or event be pro-rated or reduced in amount.

Sec. 22-21. Term of Permit; Jurisdiction; Scope.

A permit issued under this article:

- (1) Is an annual license which expires December 31 of each year unless it is suspended or cancelled earlier;
- (2) Is effective for a single place of business only;
- (3) Vests no property right in the permittee except to maintain, display for public patronage, and permit the use or skill or pleasure of coin-operated machine in accordance with the terms and conditions of this article.

Sec. 22-22. Application for Permit.

An applicant for a permit under the provisions of this article shall file with the City Secretary a written application on a form provided for that purpose which shall be signed by the applicant, who shall be the owner of the business sought to be licensed. A separate application must be filed for each location sought to be permitted. The following information is required in the application:

- (1) Name, address, and telephone number of the applicant, including the trade name by which applicant does business and the street address of the premises, and, if incorporated, the name registered with the secretary of state;
- (2) Name, address, and telephone number of the operator of the premises to be permitted;
- (3) Number of coin-operated machines in the premises to be permitted and serial number of each coin-operated machine;
- (4) Appropriate evidence showing that the state mandated occupation tax has been paid to the State Comptroller of Public Accounts for each coin-operated machine identified in the application;
- (5) Whether a previous license of the applicant, or, if applicable, a corporate officer of the applicant, has been revoked within two years of filing of the application; and
- (6) A statement that all of the facts contained in the application are true.

Sec. 22-23. Grounds for Denial of Permit; Applicants or Permittees Indebted to City.

- (A) The City Secretary shall refuse to approve issuance or renewal of a permit for one or more of the following reasons:
 - (1) Failure to conform to the City's Zoning Ordinance or any siting, location, spacing, parking, or other requirement contained in this Ordinance;
 - (2) A false statement as to a material matter made in an application for a permit;
 - (3) Failure to pay the state mandated occupation tax to the State Comptroller of Public Accounts for each coin-operated

machine identified in the application and/or otherwise exhibited by the applicant at the licensed premises;

- (4) 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;
 - (5) Denial of a permit to an applicant or corporate officer of the applicant within two years preceding the filing of the application; and/or
 - (6) The applicant or a co-owner for such license has, within the past ten years, been convicted of a crime involving moral turpitude.
- (B) The City Secretary shall not issue or renew a permit under this article and shall suspend or cancel a permit if it be determined that the applicant or permittee is indebted to the city for any fee, costs, penalties, or delinquent taxes.

Sec. 22-24. Cancellation of Permit for Violation of Article.

If any individual, company, corporation or association who owns, operates, exhibits, or displays any coin-operated machine in this City shall violate any provision of this article, the City Secretary shall have the power and authority to cancel all permits issued hereunder to any of the foregoing by giving written notice, stating the reason justifying such cancellation, and the same shall be cancelled ten days from date of such notice. No permit shall be issued within a period of two (2) years to anyone whose permit has been cancelled, except at the discretion of the City Council. If the permit of an individual, company, corporation, or association owning, operating, or displaying coin-operated machines in this City is cancelled, such individual, company, corporation or association shall not operate, display or permit to be operated or displayed such coin-operated machines until the new permit is granted.

Sec. 22-25. Appeal from Denial or Cancellation of Permit.

If the City Secretary refuses to approve the issuance of a permit or the renewal of a permit to an applicant, or cancels a permit issued under this article, this action is final unless the applicant or licensee, within ten days after the receipt of written notice of the action, files a written appeal with the judge of the municipal court, who shall, within ten days after the appeal is filed, consider all the evidence in support of or against the action appealed, and render a decision, either sustaining or reversing the action. If the judge of the municipal court sustains the action, the applicant or licensee may, within ten days of that decision, file a written appeal with the City Secretary to the City Council setting forth specific grounds for the appeal. The City Council shall, within 30 days, grant a hearing to consider the action. The City Council has authority to sustain, reverse, or modify the action appealed. The decision of the City Council is final.

Sec. 22-26. Occupation Tax; Exemptions.

- (A) Every permittee who controls, possesses, exhibits or displays or who permits to be exhibited or displayed in this City any coin-operated machine shall pay for, and there is hereby levied on, each such coin-operated machine an annual occupation tax in the amount of twenty-five percent (25%) the occupation tax charged and collected by the State of Texas, which occupation tax is specifically authorized by Texas Occupations Code § 2153.451, as

set forth in Section 22-26 of Appendix A, "Schedule of Fees," to the Code of Ordinances, City of McKinney, Texas.

- (B) The fee for issuing a replacement occupational tax receipt for one lost, destroyed or mutilated shall be fifty percent (50%) of the original occupation tax paid.
- (C) The City may seal each billiard table or coin-operated machine if the tax imposed by this section is not paid, and there shall be a fee imposed as from time to time shall be determined by the City Council for the release of a sealed billiard table or coin-operated machine, as set forth in Section 22-26 of Appendix A, "Schedule of Fees," to the Code of Ordinances, City of McKinney, Texas.

Sec. 22-27. Display of Permit.

- (A) A permit or license issued under this article shall be displayed at or near the entrance of the business premises, and such display shall be permanent and conspicuous.
- (B) The receipt reflecting payment of the occupation tax shall be attached to the billiard table or coin-operated machine mentioned in the receipt and shall bear the name and serial number of the particular billiard table or coin-operated machine.
- (C) Each billiard table or coin-operated machine must have a serial number that is clearly visible on the OUTSIDE of the billiard table or coin-operated machine. If a billiard table or coin-operated machine is manufactured without a serial number, the Permittee must assign a serial number and stamp or engrave the number on the outside of the billiard table or coin-operated machine.
- (D) A person commits an offense if he or she owns an operational billiard table or coin-operated machine without a permit or with a tampered permit. In addition to other criminal or civil remedies outlined in this article, the City shall have the authority to seal or seize any billiard table or coin-operated machine that is found with evidence of permit tampering of any kind, including a permit issued to a different machine or a change in the game's hardware or software after the date of the permit issuance. The City shall also have the authority to revoke the owner's permit to operate billiard tables or coin-operated machines individually or as a component of a game room.

Sec. 22-28. Replacement Permit.

A replacement permit may be issued for one lost, destroyed, or mutilated, upon application on a form provided by the City Secretary. A replacement permit shall have the word "REPLACEMENT" stamped across its face and shall bear the same number as the one it replaces.

Sec. 22-29. Transfer of permit.

A permit issued under the provisions of this article shall not be assignable or transferable.

Sec. 22-30. Inspections.

- (A) The premises in which such coin-operated machines are located shall conform to all building codes and fire prevention codes of the City and the Fire Marshal of the City and his assistants and the Chief Building Official may enter into the premises where such

machines are located at any time during normal business hours for the purposes of inspecting said premises for fire hazards.

- (B) All law enforcement personnel of the City shall have the right to enter into said premises at any time during normal business hours for the purpose of enforcement of the terms of this article.

Sec. 22-31. Responsibility of Permittee.

A permittee hereunder shall not permit any of the following activities within the permitted premises:

- (1) The sale, purchase, possession or consumption of any alcoholic beverages as the same is defined by the Texas Alcoholic Beverage Code, unless the premises are licensed under the provisions of said code and the ordinances of the City for the sale, purchase, possession, or consumption of alcoholic beverages.
- (2) The operation of any coin-operated machine by a person younger than 12 years of age except between the hours of 9:00 a.m. and 10:00 p.m.
- (3) The operation of any coin-operated machine by any person 12 years of age or older and under 17 years of age except between the hours of 9:00 a.m. and 12:00 midnight.

Sec. 22-32. Parking Facilities.

Any person who desires a permit for the operation of more than one coin-operated machine in, at, or about a specific location shall be required to provide sufficient off-street parking to accommodate the vehicles and bicycles of the patrons utilizing such coin-operated machines in addition to the parking required for any subsidiary use. If additional coin-operated machines are added in, at, or about a specific location the addition of such machines may result in an increase of the off-street parking for the continued use and operation of the business(es) situated at the specific location notwithstanding the issuance of a certificate of occupancy prior to the exhibition of additional coin-operated machines. Such parking area shall be maintained in a safe, clean manner and shall not interfere with safe and expeditious movement of other vehicular or pedestrian traffic. Depending on the location of licensed premises, bicycle racks may be required.

Sec. 22-33. Bicycle Storage Racks.

A permittee hereunder shall provide sufficient bicycle storage racks so as to adequately provide for the storage of bicycles utilized by patrons of the permitted premises if such racks be needed.

Sec. 22-34. Machines Prohibited Near Certain Locations.

No skill or pleasure coin-operated machines shall be permitted to be placed within 300 feet of any church, school or hospital in this city.

Sec. 22-35. Violations of Existing Laws Not Authorized.

Nothing herein 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 ordinance of the City, any section of the penal code of this State, or the Constitution of this State.”

Section 3. From and after the adoption of this Ordinance, Chapter 22, entitled “Amusements,” is hereby amended by adding a new Article III, entitled “Amusement Redemption Machines,” to read as follows:

“ARTICLE III. AMUSEMENT REDEMPTION MACHINES

Sec. 22-100. Definitions.

The following words, terms and phrases as used in this article are defined as follows:

- (1) *Amusement Redemption Machine* means a recreational machine that provides the user with an opportunity to receive something of value other than a right of replay and which complies with all applicable federal, state and local laws and regulations applicable to such machines that include:
 - 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 an opportunity to receive exclusively non-cash merchandise prizes, toys, novelties, or a representation of value redeemable for those items; and
 - 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 \$5.00, whichever amount is less.
- (2) *Amusement Redemption Machine Game Room or Game Room* means any establishment, building, facility or other place where two or more Amusement Redemption Machines, with the exception of excluded machines, are displayed or exhibited for public use.
- (3) *City Official* means a police officer, code enforcement officer or building official of the City of McKinney.
- (4) *“Eight-liner” or “8-liner” machine* is a coin-operated electronic gaming machine that resembles a slot machine. Depending on the type of machine, a player “wins” if a horizontal, vertical, or diagonal row of objects line up. The machines come in a number of different varieties, themes, or formats. An “eight-liner” or “8-liner” machine is an Amusement Redemption Machine.
- (5) *Excluded machines.* An Amusement Redemption Machine does not include:

- a. 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
 - 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 section 47.01 of the Texas Penal Code as a gambling device, or any activity prohibited or described in Chapter 47 of the Texas Penal Code.
- (6) *Game Room Owner* or *Owner* means a person who has an ownership interest of at least twenty-five percent (25%) in a Game Room.
 - (7) *Licensee* means any person, individual, firm, company, association, or corporation operating an *Amusement Redemption Machine Game Room* in the City.
 - (8) *Operational Machine* means an Amusement Redemption Machine that is ready to be played and which is accessible to the public.
 - (9) *Permittee* means any person, individual, firm, company, association, or corporation maintaining, displaying for public patronage, or otherwise keeping for operation the public any gaming machine in the city.

Sec. 22-101. Permit Required; License Required.

- (A) No person shall maintain, display for public patronage, or otherwise keep for operation by the public any Amusement Redemption Machine without first obtaining a permit from the City of McKinney issued under the terms and conditions of this article. No permit shall be issued until the occupation tax has been paid for each Amusement Redemption Machine as required by this article.
- (B) No person shall operate an Amusement Redemption Machine Game Room in the city without first obtaining a license from the City of McKinney, as required by this section. No license shall be issued until the occupation tax has been paid by the Game Room Owner for each Amusement Redemption Machine within the premises, and the applicable Game Room license fee has been paid by the Game Room Owner, as set forth in Section 22-26 of Appendix A, "Schedule of Fees," to the Code of Ordinances, City of McKinney, Texas.
- (C) All application, permit and/or licensing fees, whether initial or renewal, due hereunder as well as any occupation tax related to Amusement Redemption Machines and Amusement Redemption Machine Game Rooms shall be paid to the City and deposited with the City Secretary's Office at the time of application. All such application, permit and/or licensing fees, whether initial or renewal, as well as any occupation tax related to Amusement Redemption

Machines and Amusement Redemption Machine Game Rooms are non-refundable and shall in no manner or event be pro-rated or reduced in amount.

- (D) A person commits an offense if he or she owns an operational Amusement Redemption Machine without a permit or with a tampered permit. In addition to other criminal or civil remedies outlined in this article, the City shall have the authority to seal or seize any Amusement Redemption Machine that is found with evidence of permit tampering of any kind, including a permit issued to a different Amusement Redemption Machine or a change in the Amusement Redemption Machine's hardware or software after the date of the permit issuance. The City shall also have the authority to revoke the owner's license to operate an Amusement Redemption Machine Game Room.

Sec. 22-102. Occupation Tax Levied.

- (A) Every person who owns, controls, exhibits, displays, or permits to be exhibited or displayed in this city any Amusement Redemption Machine shall pay, and there is hereby levied on every Amusement Redemption Machine except such as are exempted in this article, an annual occupation tax per machine equal to twenty-five percent (25%) of the occupation tax charged and collected by the State of Texas, which occupation tax is specifically authorized by Texas Occupations Code § 2153.451, as set forth in Section 22-102 of Appendix A, "Schedule of Fees," to the Code of Ordinances, City of McKinney, Texas.
- (B) Nothing in this section shall prevent the operator of the Amusement Redemption 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 article.

Sec. 22-103. Payment of Occupation Tax; Receipt to be attached to Amusement Redemption Machine.

- (A) The occupation tax levied by this article shall be paid to the City of McKinney. The City shall issue a receipt reflecting payment of the occupation tax per machine. Said occupation tax is non-refundable and shall in no manner or event be pro-rated or reduced in amount
- (B) The receipt reflecting payment of the occupation tax shall be attached to the Amusement Redemption Machine mentioned in the receipt and shall bear the name and serial number of the particular Amusement Redemption Machine.
- (C) Each Amusement Redemption Machine must have a serial number that is clearly visible on the OUTSIDE of the Amusement Redemption Machine. If an Amusement Redemption Machine is manufactured without a serial number, the Permittee must assign a serial number and stamp or engrave the number on the outside of the Amusement Redemption Machine.
- (E) It shall be unlawful for any person to operate, exhibit, or display any Amusement Redemption Machine in the City without having attached thereto an occupation tax receipt. It shall also be unlawful for any occupation tax receipt issued for a certain Amusement Redemption Machine to be transferred to any other Amusement Redemption Machine.

- (F) The fee for issuing a replacement occupational tax receipt for one lost, destroyed or mutilated shall be fifty percent (50%) of the original occupation tax paid.

Sec. 22-104. Payment of Annual Inspection and License Fee; Issuance of License.

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 fee in the amount identified in Section 22-104 of Appendix A, "Schedule of Fees," to the Code of Ordinances, City of McKinney, Texas per machine kept within and about the licensed premises. The annual inspection and Amusement Redemption Machine Game Room license fee shall be paid to the City and deposited with the City Secretary's Office at the time of application. Said annual inspection and Amusement Redemption Machine Game Room license fee is non-refundable and shall in no manner or event be pro-rated or reduced in amount

Sec. 22-105. Term of License; Jurisdiction; Scope.

A license issued for an Amusement Redemption Machine Game Room under this article:

- (1) Is an annual license which expires December 31 of each year unless it is suspended or cancelled earlier;
- (2) Is effective for a single place of business only;
- (3) Vests no property right in the Licensee except to maintain, display for public patronage, and permit the use for skill or pleasure of Amusement Redemption Machines in accordance with the terms and conditions of this article;
- (4) Shall automatically expire if the licensee thereof sells the property or the business, transfers equity to accomplish same, or otherwise disposes of Amusement Redemption Machines; and
- (5) Is not assignable or transferable.

In addition, the City shall not refund any portion of a license fee after the license is issued, nor shall it prorate or reduce in amount any fee due to the City. Notwithstanding the foregoing, the initial license issued to an existing Amusement Redemption Machine Game Room following the adoption of this Ordinance and the Game Room's compliance with the requirements of this Ordinance shall not expire until December 31, 2014. Thereafter, any such license shall expire as provided herein-above.

Sec. 22-106. Amusement Redemption Machine Restrictions, Regulations, Controls, and Limitations.

- (A) No individual Amusement Redemption Machine shall be situated within 300 feet of any church, school, or hospital. The distance between the location at which an Amusement Redemption Machine is exhibited and a church, school, or hospital shall be measured in a straight line from the nearest lot, property, or tract line of the property on which the Amusement Redemption Machine is exhibited to the nearest lot line of the church, school, or hospital without regard for intervening objects or structures.

- (B) Amusement Redemption Machines shall not be exhibited or operated outdoors.

Sec. 22-107. Amusement Redemption Machine Game Room Restrictions, Regulations, Controls, and Limitations.

- (A) All building and fire code standards must be met. Inspection by building officials and the issuance of a certificate of occupancy shall be obtained before a license for an Amusement Redemption Machine Game Room is issued.
- (B) Amusement Redemption Machine Game Rooms shall be permitted only in the ML - Light Manufacturing zoning district or the MH - Heavy Manufacturing zoning district upon the granting of a Specific Use Permit (SUP) by the City Council.
- (C) Only one Amusement Redemption Machine Game Room shall be permitted on any lot or in any single building, structure or strip center.
- (D) No Amusement Redemption Machine Game Room shall be situated within 1,000 feet of any church, school, daycare, hospital or any other Amusement Redemption Machine Game Room. The distance between such uses shall be measured in a straight line from the nearest lot, property, or tract line of the of the property on which the Amusement Redemption Machine Game Room seeking a license is situated to the nearest lot line of a church, school, daycare, hospital or any other Amusement Redemption Machine Game Room without regard to intervening objects or structures.
- (E) No alcoholic beverages shall be served or allowed on the licensed premises of an Amusement Redemption Machine Game Room. No Amusement Redemption Machines or related business activities shall be allowed to be situated and/or performed outdoors.
- (F) The hours of operation for an Amusement Redemption Machine Game Room shall be limited to the following hours:
 - (1) Monday through Thursday, open at 10:00 a.m. and close at 11:00 p.m.: and
 - (2) Friday through Sunday, open at 10:00 a.m. and close at 12:00 a.m.
- (G) A minimum of one on-premise parking space shall be provided for each two Amusement Redemption Machines within the Amusement Redemption Machine Game Room, plus at least one additional parking space for each employee per shift and such additional parking spaces as may be required to serve any other uses within the Amusement Redemption Machine Game Room. Notwithstanding the foregoing, the parking facilities necessary to support the Amusement Redemption Machine Game Room shall also conform to the requirements of Section 22-118 and any parking study that may be required by the City.
- (H) The owner, operator, or manager of the licensed premises must be present to supervise the operation of the Amusement Redemption Machine Game Room at all times. The Amusement Redemption Machine Game Room shall not be left unattended.

- (I) Amusement Redemption Machine Game Rooms shall have transparent unobstructed windows and/or open space so that the Amusement Redemption Machine Game Room 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. No owner, manager, operator, or employee of an Amusement Redemption Machine Game Room shall allow or otherwise permit any obstruction of such public view by or through the use of drawn shades, blinds, partitions, tinting, structures or other obstructions of any kind or nature.
- (J) Amusement Redemption Machines must be situated within the licensed premises as to be in full and open public view, which entails being visible to all patrons of the establishment.
- (K) No person under the age of 18 years shall be permitted inside the building, structure, facility or space housing the Amusement Redemption Machine Game Room.
- (L) A sign stating that no one under the age of 18 is allowed inside the Amusement Redemption Machine Game Room building shall be posted in plain sight immediately inside the entrance stating that:

"No person under the age of 18 years shall be permitted inside the building, structure, facility or space housing the Amusement Redemption Machine Game Room."
- (M) All Amusement Redemption Machine Game Room owners, managers, operators or employees must be at least 18 years of age.
- (N) The total number of Amusement Redemption Machines allowed in one Amusement Redemption Machine Game Room establishment shall be limited to a maximum of 50 Amusement Redemption Machines.
- (O) Any back-up or replacement Amusement Redemption Machines shall be secured in a locked storage area or closet to which the public is not allowed to enter and such machines shall not be connected to electricity or otherwise operational. The occupation tax on such back-up or replacement Amusement Redemption Machine Games shall be paid annually regardless of whether such machines are used by the Game Room's patrons.
- (P) 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.

Sec. 22-108. Application for Amusement Redemption Machine Game Room License.

An applicant for a license under the provisions of this article shall file with the City Secretary a written application on a form provided for that purpose by the City of McKinney which shall be signed by the applicant, who shall be the Owner of the Amusement Redemption Machine Game Room sought to be licensed. A separate application must be filed for each location sought to be licensed. The following information is required in the application:

- (1) Name, address, telephone number, and driver's license number of the applicant if the applicant is a natural person;
- (2) Name, address, telephone number and driver's license number of all persons who own twenty-five percent (25%) or more interest in the Amusement Redemption Machine Game Room;
- (3) Name, address, telephone number and driver's license number of all corporate officers, if any, of such business;
- (4) Name, address, telephone number of the business;
- (5) If incorporated, the name of the business registered with the Texas Secretary of State;
- (6) If a partnership, the name, address, telephone number and driver's license of each of the general and limited partners;
- (7) The trade name by which the applicant does business and a true and correct copy of the registration of the applicant's assumed name filed in the office of the Collin County Clerk, bearing the file mark or stamp that evidences its filing in that office;
- (8) The street address of the premises;
- (9) If applicant is not the owner of the premises, the applicant shall furnish the name, address, and telephone number of the property owner;
- (10) Name, address, telephone number and driver's license number of the manager or operator of the premises to be permitted;
- (11) Number of Amusement Redemption Machines in the premises to be permitted and the serial number of each Amusement Redemption Machine;
- (12) Appropriate evidence showing that the state mandated occupation tax has been paid to the State Comptroller of Public Accounts for each coin-operated machine identified in the application;
- (13) Whether a previous license of the applicant, or, if applicable, a corporate officer of the applicant, has been revoked within two years of filing of the application;
- (14) The previous occupation(s) of the applicant and, if applicable, all corporate officers and partners of the applicant within the preceding five years;
- (15) A notarized statement, under oath, that:
 - a. All the facts contained in the application are true and correct;
 - b. The Amusement Redemption Machines are not and will not be used as gambling devices;

- c. The location and operation of the Amusement Redemption Machine Game Room will not violate any applicable deed restrictions;
 - d. The Amusement Redemption Machine Game Room will be operated in accordance with all laws;
- (16) Name, address, and telephone number of an emergency contact person who can be reached after hours;
 - (17) A floor plan of the Amusement Redemption Machine Game Room interior depicting the layout of the Amusement Redemption Machine Game Room interior specifically including, but not limited to, the location of all Amusement Redemption Machines, coin-operated machines or devices, the manager's station(s), office space(s), restroom facilities, kitchen and bar facilities, if any, lobbies, foyers, doors, windows, seating, and all areas to which patrons will not be permitted;
 - (18) Any other plans that may be required by the City's Code of Ordinances; and
 - (19) Written authorization(s) consenting to a background check by the City for all individuals identified in response to any provision of this Section 22-108.

Any failure to provide the documents required by this section shall be grounds for denial of the application to which it applies.

Sec. 22-109. Renewal of Amusement Redemption Machine Game Room License.

- (A) A license may be renewed for the following calendar year beginning October 1 of each year by filing a completed application for each license and paying the applicable fee set forth in this article. A renewal application shall be subject to the same requirements as an initial license application.
- (B) Upon the expiration of a license, the licensee shall be required to obtain a renewal of the expired license if the licensee wishes to continue operating an Amusement Redemption Machine Game Room. Failure to obtain the renewal within thirty (30) days after expiration will require such person to pay an additional late fee in an amount equal to twenty percent (20%) of the fee actually due or twenty percent (20%) of the previous year's fee, whichever amount is greater, in order to obtain reinstatement of his license. Nothing herein authorizes the licensee to operate after the expiration of a license and before a renewal is effective.

Sec. 22-110. Grounds for Denial of License; Applicants or Licensees Indebted to City.

- (A) The City Secretary shall refuse to approve issuance or renewal of a permit for one or more of the following reasons:
 - (1) Failure to conform to the City's Zoning Ordinance or any siting, location, spacing, parking, or other requirement contained in this Ordinance;
 - (2) Any failure to provide the information required by this article;

- (3) A determination by the City Secretary that inaccurate, erroneous or incomplete information has been submitted;
 - (4) A false statement as to a material matter made in an application for a license;
 - (5) Failure to pay the state mandated occupation tax to the State Comptroller of Public Accounts for each coin-operated machine identified in the application and/or otherwise exhibited by the applicant at the licensed premises;
 - (6) Revocation of a license, pursuant to this article, of the applicant or a co-owner or a corporate officer of the applicant within two years preceding the filing of the application;
 - (7) Denial of a permit to an applicant or corporate officer of the applicant within two years preceding the filing of the application;
 - (8) Refusal or failure to pay the occupation tax on any Amusement Redemption Machine;
 - (9) Refusal or failure to pay the correct license fee amount;
 - (10) The applicant or a co-owner for such license currently has or has had at any time within the preceding five years any convictions, guilty pleas, or deferred adjudications related to gambling or organized crime or any felony.
 - (11) The applicant or a co-owner for such license currently has or has had at any time within the preceding five years any convictions, guilty pleas, or deferred adjudications related to any violation of this Ordinance; and/or
 - (12) The applicant or a co-owner for such license has, within the past ten years, been convicted of a crime involving moral turpitude.
- (B) The City Secretary shall not issue or renew a license under this article and shall suspend or cancel a license if it be determined that the applicant or licensee is indebted to the City for any fee, costs, penalties, or delinquent taxes.

Sec. 22-111. Suspension or Revocation of License for Violation of Article.

- (A) *Power and Authority.* If any individual, company, corporation or association who owns, operates, exhibits, or displays any Amusement Redemption Machine(s) in an Amusement Redemption Machine Game Room in this City shall violate any provision of this article III, the City of McKinney shall have the power and authority to suspend or revoke the license(s) issued hereunder to any of the foregoing by giving written notice, stating the reason justifying such suspension or revocation, and the same shall be suspended or revoked ten days from date of such notice.
- (B) *Suspension.* The City Manager or his designee shall suspend a license for a period not to exceed 30 days if he determines that a licensee or an employee of a licensee has:

- (1) Violated or is not in compliance with any of the provisions of this article III;
 - (2) Refused to allow or interfered with an inspection of the Amusement Redemption Machine Game Room premises; or
 - (3) Demonstrated an inability to operate or manage an Amusement Redemption Machine Game Room in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.
- (C) *Revocation for Continuing Violations.* The City Manager or his designee shall revoke a license if a cause of suspension occurs and the license has been previously suspended at any time within the preceding twelve (12) months.
- (D) *Automatic Revocation.* The City Manager or his designee shall revoke a license if he determines that:
- (1) A licensee gave false or misleading information in the material submitted to the City during the application process;
 - (2) A licensee or an employee of a licensee knowingly allowed the possession, use, or sale of a controlled substance on the premises; or
 - (3) A licensee or an employee of a licensee knowingly operated the Amusement Redemption Machine Game Room during a period of time when the licensee's permit was suspended.
- (E) *Effect of Revocation.* No license shall be issued within a period of two years to anyone whose license has been revoked, except at the discretion of the City Council. If the license of an individual, company, corporation, or association owning, operating, or displaying Amusement Redemption Machines in this City is cancelled, such individual, company, corporation or association shall not operate, display or permit to be operated or displayed such Amusement Redemption Machines in any Amusement Redemption Machine Game Room until a new license is granted.

Sec. 22-112. Appeal from Denial, Suspension or Revocation of License.

If the City of McKinney refuses to approve the issuance of a license or the renewal of a license to an applicant, or suspends or revokes a license issued under this article, this action is final unless the applicant or licensee, within ten days after the receipt of written notice of the action, files a written appeal with the judge of the municipal court, who shall, within ten days after the appeal is filed, consider all the evidence in support of or against the action appealed, and render a decision, either sustaining or reversing the action. If the judge of the municipal court sustains the action of the City of McKinney, the applicant or licensee may, within ten days of that decision, file a written appeal with the City Secretary to the City Council setting forth specific grounds for the appeal. Similarly, if the judge of the municipal court overturns the action of the City Manager or his designee, the City Manager may, within ten days of that decision, file a written appeal with the City Secretary to the City Council setting forth specific grounds for the appeal. The City Council shall, within 30 days, grant a hearing to consider the action. The City Council has authority to sustain, reverse, or modify the action appealed. The decision of the City Council is final.

Sec. 22-113. Restrictions on Applications.

- (A) An applicant shall not seek the reinstatement or renewal or issuance of a new Amusement Redemption Machine Game Room license at a location for which the previous license was denied, suspended, and/or revoked outside of the appeal processes set forth herein-above.
- (B) An applicant shall not seek an Amusement Redemption Machine Game Room license at a location for which the previous license was revoked for a period of at least two (2) years from the date of final ruling regarding the revocation of such Amusement Redemption Machine Game Room license.
- (C) A person or business that was denied a new or renewal Amusement Redemption Machine Game Room license shall not apply or re-apply for an Amusement Redemption Machine Game Room license for a period of at least two (2) years from the date of denial of the most recent application submitted by such applicant.

Sec. 22-114. Display of License.

A license issued under this article for an Amusement Redemption Machine Game Room shall be displayed at or near the entrance of the business premises, and such display shall be permanent and conspicuous.

Sec. 22-115. Replacement License.

A replacement license may be issued for one lost, destroyed, or mutilated, upon application on a form provided by the City of McKinney. A replacement license shall have the word "REPLACEMENT" stamped across its face and shall bear the same number as the one it replaces.

Sec. 22-116. Inspections.

- (A) The premises in which such Amusement Redemption Machines are located shall conform to all building codes and fire prevention codes of the City and the Fire Marshal of the City and his assistants and the Chief Building Official may enter into the premises where such Amusement Redemption Machines are located at any time during normal business hours for the purposes of inspecting said premises for fire hazards.
- (B) All law enforcement personnel of the City shall have the right to enter into said premises at any time during normal business hours for the purpose of enforcement of the terms of this article.
- (C) The City shall have the authority to seal any coin-operated machine located in any Amusement Redemption Machine Game Room for which the occupation tax has not been paid. A fee in the amount identified in Section 22-116 of Appendix A, "Schedule of Fees," of the Code of Ordinances, City of McKinney, Texas will be charged for the release of any machine sealed for non-payment of said occupation tax.
- (D) The City shall have the authority to seal any coin-operated machine located in any Amusement Redemption Machine Game Room for which a license fee has not been paid for the Amusement Redemption Machine and/or the Amusement Redemption Machine Game Room. A fee in the amount identified in Section 22-116 of

Appendix A, "Schedule of Fees," of the Code of Ordinances, City of McKinney, Texas will be charged for the release of any machine sealed for non-payment of said license fee(s).

Sec. 22-117. Responsibility of Licensee.

A licensee hereunder shall not permit any of the following activities within the licensed premises:

- (1) The sale, purchase, possession or consumption of any alcoholic beverages as the same is defined by the Texas Alcoholic Beverage Code;
- (2) The operation of any Amusement Redemption Machine by a person younger than 18 years of age;
- (3) Gambling by any person;
- (4) The possession of gambling materials; and
- (5) Unlawful or criminal activity of any kind.

Sec. 22-118. Parking Facilities.

Any person who desires a license for the operation of two or more Amusement Redemption Machines in one specific location shall be required to provide sufficient off-street parking to accommodate the vehicles of the patrons and employees as provided herein-above. Off-street parking for subsidiary uses to the Amusement Redemption Machine Game Room such as restaurants, offices, etc., shall also be required for each such subsidiary use in addition to the minimum standards required for Amusement Redemption Machine Game Rooms. Such parking area(s) shall be maintained in a safe, clean manner and shall not interfere with safe and expeditious movement of other vehicular or pedestrian traffic. Depending on the location of licensed premises, bicycle racks may also be required.

Sec. 22-119. Violations of Existing Laws not Authorized.

Nothing 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."

Sec. 22-120. Pre-existing "Game Rooms" or Amusement Redemption Machine Game Rooms.

- (A) Those Amusement Redemption Machine Game Rooms that were existing on or before the effective date of this Ordinance ("Pre-existing Amusement Redemption Machine Game Rooms"), may be issued a license under the provisions of this Ordinance regardless of zoning classification and/or their location or proximity to a church, school, daycare, hospital or any other Amusement Redemption Machine Game Room for so long as such Pre-existing Amusement Redemption Machine Game Room retains its nonconforming use rights under the City's Zoning Ordinance, the Pre-existing Amusement Redemption Machine Game Room is continuously licensed and operated, and such license remains in full force and effect and is not revoked pursuant to the provisions of this Ordinance. Pre-existing Amusement Redemption Game Rooms shall comply with all provisions of this article III of Chapter

22, "Amusements," of the Code of Ordinances of the City of McKinney, Texas, save and except the location and proximity requirements, beginning immediately upon the adoption of this Ordinance. Such Pre-existing Amusement Redemption Game Rooms shall submit the application required by Section 22-108 and pay all related occupation taxes and permitting fees beginning with their first permit renewal following the adoption of this Ordinance.

- (B) In the event that an Amusement Redemption Game Room was operating prior to the adoption of this Ordinance, such pre-existing Amusement Redemption Game Room may be treated as a non-conforming use. If the pre-existing Amusement Redemption Game Room was exhibiting and operating more than 50 Amusement Redemption Machines at the time this Ordinance is adopted, it may continue to exhibit and operate the same number of Amusement Redemption Machines provided however that the Amusement Redemption Machines being so operated and exhibited shall not be repaired, replaced, re-programmed, or updated. Rather, the Amusement Redemption Machines requiring repair, replacement, re-programming, or updating shall be removed from the Amusement Redemption Machine Game Room until such time as no more than 50 Amusement Redemption Machines are being exhibited or operated within the Amusement Redemption Machine Game Room. Once the number of Amusement Redemption Machines being exhibited or operated within the Amusement Redemption Machine Game Room is reduced to no more than 50 Amusement Redemption Machines, the proprietor may continue to exhibit and operate 50 Amusement Redemption Machines.

Sec. 22-121. Exemptions.

A congressionally chartered fraternal organization that exhibits Amusement Redemption Machines for its own benefit and the benefit of its members in, on or about premises that are owned by or leased to said congressionally chartered fraternal organization shall be exempt from the licensing provisions of this article III, save and except the requirement to pay the occupation tax on any and all Amusement Redemption Machines so exhibited. Notwithstanding the foregoing, a third-party vendor or operator shall not exhibit Amusement Redemption Machines on behalf of or for the benefit of a congressionally chartered fraternal organization or its members absent compliance with all of the permitting and licensing procedures of this article III."

- Section 4. From and after the adoption of this Ordinance, Appendix A, "Schedule of Fees," of the Code of Ordinances, City of McKinney, Texas, is hereby amended by deleting the fees listed for "Chapter 22. Amusements." In its entirety and replacing said provisions with a new listing of fees also entitled "Chapter 22. Amusements." to read as follows:

Chapter 22. Amusements.

Section 22-26. Occupation Tax; Exemptions.

Annual Occupation Tax, each coin-operated machine \$15.00
(Twenty-five percent (25%) of the occupation tax charged and collected by the State of Texas)

Replacement Occupation Tax Receipt for one Lost, Destroyed or Mutilated \$7.50
(Fifty percent (50%) of the occupation tax charged and collected by the City of McKinney)

Release of Seal on any machine for which Occupation Tax Was Not Properly Paid.... \$10.00 Plus Payment of occupation tax

Sec. 22-101. *Permit Required; License Required.*

Amusement Redemption Machine Game Room Application Fee . . .
A base application fee of \$3,000.00 plus \$100.00 per Amusement Redemption Machine proposed
(The initial license, if granted, expires on December 31 of the year in which the initial application is filed.)

Section 22-102. *Occupation Tax Levied.*

Annual Occupation Tax, each Amusement Redemption Machine . .
. . \$15.00
(Twenty-five percent (25%) of the occupation tax charged and collected by the State of Texas)

Section 22-103. *Payment of Occupation Tax; Receipt to be Attached to Amusement Redemption Machine.*

Replacement Occupation Tax Receipt for one Lost, Destroyed or Mutilated \$7.50
(Fifty percent (50%) of the occupation tax charged and collected by the City of McKinney)

Sec. 22-104. *Payment of Annual Inspection and License Fee; Issuance of License.*

A base fee of \$3,000.00 plus \$100.00 per Amusement Redemption Machine
(The license, if granted, expires on December 31 of the year in which it is granted.)

Section 22-116. *Inspections.*

Release of Seal on any Amusement Redemption Machine for which Occupation Tax Was Not Properly Paid.... \$10.00 Plus Payment of Occupation Tax

Release of seal on any Amusement Redemption Machine for which the Amusement Redemption Machine Game Room License Fee was not properly paid...\$50.00 per Amusement Redemption Machine + payment of Amusement Redemption Machine Game Room License Fee”

Release of seal on any Amusement Redemption Machine for which the per Amusement Redemption Machine portion of the Amusement Redemption Machine Game Room License Fee was not properly paid...\$50.00 per Amusement Redemption Machine + payment of the \$100 per Amusement Redemption Machine portion of the Amusement Redemption Machine Game Room License Fee”

Section 5. Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of McKinney, Texas, shall be punished by a fine not to exceed the sum of five hundred dollars (\$ 500.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

Section 6. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held

invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

- Section 7. That this Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.
- Section 8. All rights and remedies of the City of McKinney are expressly saved as to any and all violations of the provisions of any Ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.
- Section 9. Any violation of this Ordinance may be enjoined, and this remedy shall be in addition to any penal provision in this Ordinance.
- Section 10. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 17th DAY OF DECEMBER, 2013.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA, TRMC
Assistant City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney