

ORDINANCE NO. 09-08-24
(Amended 11-17-2022)

AN ORDINANCE REGULATING THE EXHIBITION, DISPLAY, LOCATION AND OPERATION OF SKILL OR PLEASURE COIN OPERATED MACHINES, DEFINING TERMS, LEVYING AN OCCUPATION TAX ON EACH MACHINE AND PROVIDING FOR AN EFFECTIVE DATE; REQUIRING A MACHINE PERMIT; REQUIRING APPLICATION FOR ISSUANCE OF A MACHINE PERMIT; PROHIBITING THE DISPLAY OF EXHIBITION OR OPERATION OF A SKILL OR PLEASURE COIN-OPERATED MACHINE WITHIN 300 FEET OF A SCHOOL, DAY CARE, CHURCH OR HOSPITAL **or residence**; REQUIRING A PREMISES LICENSE FOR ANY PREMISES WHERE MORE THAN TWO MACHINES ARE LOCATED, DISPLAYED, EXHIBITED OR OPERATED; PROVIDING AN EFFECTIVE DATE FOR PREMISES LICENSE REQUIREMENT; PROVIDING FOR TERM OF LICENSE AND FOR AMENDMENT THEREOF; PROVIDING FOR **permit (LICENSE)** FEE AND FEE FOR AMENDMENT; REQUIRING APPLICATION FOR ISSUANCE AND STANDARDS FOR GRANTING AND DISAPPROVAL OF **Permit**; PROVIDING FOR **Permit** CANCELLATION AND APPELLATE PROCEDURE IN THE EVENT OF DISAPPROVAL OF CANCELLATION; RESTRICTING OPERATION OF MACHINES TO PERSONS OVER THE AGE OF 17 AND TO PERSONS OVER THE AGE OF 21 IF ALCOHOL IS SERVED WITHIN THE PREMISES; PROVIDING FOR A FINE OF UP TO \$500.00 FOR A VIOLATION OF THIS ORDINANCE; DECLARING OPERATION, DISPLAY OR EXHIBITION OF ANY SUCH MACHINE IN VIOLATION OF THIS ORDINANCE TO BE A PUBLIC NUISANCE AND SUBJECT TO ABATEMENT BY CITY; PROVIDING FOR SEALING OF MACHINES IN CERTAIN CIRCUMSTANCES; PROVIDING FOR HARMONIOUS CONSTRUCTION WITH OTHER ORDINANCES AND FOR SEVERABILITY.

Whereas, the Commission recognizes that Game rooms that are issued a valid game room permit are legal if they operate within the confines of Chapter 47 of the Texas Penal Code and they operate within the confines of the Lyford Game room ordinance and;

WHEREAS, the City **Commission** of the City of Lyford ("City **Commission**") has **experienced** growth and interest in the operation of game rooms in the City and recognizes concern over the number of game rooms, location, and method of operation of the game rooms and possible adverse effects and,

WHEREAS, the City **Commission** desires to provide control over the possible adverse effects and thereby protect the health, safety, and welfare of the citizenry; provide an atmosphere suitable for economic growth within the City and yet support the continuity of businesses that have already been in operation or approved and;

WHEREAS, regulation by the City is deemed desirable to insure that the locations in which such machines **are safe** and have adequate facilities to accommodate the number of persons likely to be attracted by the placement of such machines **and**

to insure that activities conducted on the premises are not deleterious to the health, welfare, safety, and morals of persons under the age of eighteen; to ensure that the peace and order of the community will not be disrupted by persons operating or waiting to operate such machines; to ensure that the persons exhibiting such machines are of good moral character; and to require that the owner or operator of any establishment used for the exhibition of such machines is responsible for protecting the peace and order of the community from disturbances caused by patrons of such establishments;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSIONERS FOR THE CITY OF LYFORD:

Section 1.

Definitions

Skill or Pleasure coin-operated machine: "Skill or Pleasure coin-operated machine," as that term is used herein, includes any machine or device of any kind or character which is operated by or with coins, metal slugs, tokens, **or other currency** or checks and that, when operated, is used or is capable of being used or operated for amusement or pleasure or to afford skill or pleasure. The following machines are expressly included within such term: ~~marble machines, marble table machines, marble shooting machines, miniature race track machines, miniature golf machines, miniature bowling machines, coin-operated billiard and pool games, eight-liner machines,~~ coin-operated electric game machines, and all other coin-operated machines which dispense or vend merchandise.

Owner: "Owner," as used herein, is, according to context, the person, individual, firm, company, association or corporation who owns a skill or pleasure coin-operated machine or the person, firm, company, association, individual or corporation who holds either legal or equitable title to the **machines** ((premises upon which a skill or pleasure coin-operated machine is to be located, displayed, exhibited or operated.))

Permit Holder: (("Operator,")) as used herein, means any person, firm, company, association or corporation **who holds a City issued permit** to exhibit, display or permit to be exhibited, displayed or operated in a place of business owned by him or under his control any " Skill or Pleasure coin-operated machine," in the City of Lyford.

Premises: "Premises," as used herein, means a designated piece of real property within the corporate limits of the City of Lyford, together with all the buildings and structures thereon, upon where a skill or pleasure coin-operated machine is located or proposed to be located.

City Official: "City Official" means a police officer, designated game room regulator, code enforcement, or building official of the City of Lyford.

Section 2.

Occupation Tax Levied

There is hereby levied on each skill or pleasure coin-operated machine within the corporate limits of the City an annual occupation tax in the sum of \$20.00 per machine payable on or before January 31st of each year in which tax hereby levied remains in full force and effect. No tax is hereby levied on any such machine, which is exempt from the payment of State Tax.

Section 3.

Machine Permit Required

No skill or pleasure coin-operated machine may be exhibited, located, or operated within corporate limits of the City without a permit authorizing such exhibition, location, and operation issued by the City Secretary. Payment of an occupation tax as herein before required shall be a condition precedent to obtaining such a permit, ((but no additional permit fee shall be charged)) Any skill or pleasure coin-operated machine located, exhibited, or operated without a permit shall be subject to being sealed by the City Secretary **or his** authorized representative in such a manner as to prevent its operation. Any machine so sealed by the City or State of Texas for nonpayment of tax shall not have the seal removed except upon payment to the City of a fee of **\$50.00** for the release of each machine in addition to any other fees required by law to be paid to the State of Texas. Any person who breaks or removes a seal placed by the City on a skill or pleasure coin-operated machine or who removes from its location any machine, which has been sealed, shall be guilty of a misdemeanor and be subject to a fine not to exceed \$500.00.

Section 4.

Permit to be Affixed to Machine: Duplicate Permits Authorized

The permit required above shall be evidence of payment of the occupation tax hereby levied and shall be securely attached to the machine in a manner that will require the continued application of steam and water to remove it. In the event, a valid permit is lost, stolen, or destroyed the City Secretary shall issue a duplicate permit for a fee of **\$50.00**. No permit is required for any machine exempt from taxation under the State Law.

Section 5.

Information required for issuance of permit

Any person wishing to **obtain a permit to** exhibit, locate or display a skill or pleasure coin-operated machine within the corporate limits of the City and any person wishing to continue exhibit, locate or display such machines within the City **must be a resident of the state of Texas and must** apply to the City Secretary **who** shall require the applicant to furnish the following information:

A. The name, address, telephone number and nature of the business entity wherein a machine is proposed to be located, displayed or exhibited.

B. The make, type and serial number of each machine proposed to be placed in such location.

C. The name, address and telephone number of the owner of each machine listed on the application.

D. Whether each machine listed on the application has affixed a valid permit issued by the State of Texas and the number of such permit.

E. The application must be submitted under oath **by the person intending to hold the permit** (~~owner of the premises at which the machines are intended to be located, displayed, exhibited or operated~~)) and the application must be accompanied by the permit fee and occupation tax hereinabove imposed and levied.

Section 6.

Location, Exhibition or Operation within 300 feet of a School, Church, Day Care or Hospital Prohibited

No permit shall be issued for the display, exhibition, or operation of any skill or pleasure coin-operated machine "eight liners" **that is** within three hundred (300) feet of a school, church, daycare, hospital, **or residence. The three hundred (300) feet limitation hereby imposed shall be measured from the nearest point on the property line of ??? the premises upon which the machine is to be located, displayed, or operated to the nearest point on the property line of a school, church, daycare facility, hospital, or residence** in a straight line between the two points. A Day Care is defined as a school. In computing this distance limitation, it shall not be necessary to measure from entrance to entrance nor to measure along streets.

Section 7.

Premises License Required in Certain Circumstances; Fee

Any applicant applying for a permit for pleasure coin-operated machines must also, at the time the applicant applies for the machine permit or permits, apply to the City Secretary for a Premises License. The initial annual fee for a Premises License shall be Fifty thousand dollars (\$50,000.00) payable in advance for each location to be licensed, which

fee is charged to defray administration costs of investigation and licensing and the hiring of additional police and/or city employees for the regulation and enforcement of this ordinance. The annual renewal fee thereafter shall be the same **Five-Twenty thousand dollars** (\$50,000.00), The Premises Licenses Fee shall be non-refundable to the applicant in the event the license is denied or revoked,

Section 8.

Limit on number of premises licenses

There shall not be more than **Six (6) skill or coin-operated machines “Eight Liners” businesses operating within the city limits of the City of Lyford, Texas at any one time**. In the event any city-authorized **game room** (eight-liner) business independently ceases operations or is forced to cease due to enforcement by the City, state or Federal rules and statutes, the total number of **game room** (eight-liner) businesses thereafter permitted within the city will be reduced by one. If two or more **game room** (eight-liner) businesses cease operations, the number of **game room** (eight-liner) businesses thereafter permitted to operate within the city will be reduced by that number.

Section 9.

Effective Immediately

No person, partnership, corporation, estate, trust, or any other form of legal business entity whatsoever shall locate, exhibit, display or permit to operate (any kind of skill or pleasure) **two or more** coin-operated machines on any premises located within the corporate limits of the City of Lyford without having first applied for and obtained a Premises License. ((and) **Any person who locates, exhibits, or displays more than two (2) skill or pleasure coin-operated machines (((to be located, exhibited, displayed, or operated)))** on any premises within the corporate limits of the City **without** first having obtained a Premises License shall be guilty of a misdemeanor and fined an amount not to exceed \$500.00. Each day such violation exists shall constitute a separate offense and shall be subject to a like penalty.

Section 10.

Term of license

The Premises license hereby required shall expire one (1) year from the date issued but may be renewed upon submitting to the City Secretary an application for the renewal fee of Fifty-thousand dollars (\$50,000.00), which shall likewise be **non-refundable**. The Premises License fee and Renewal License fee shall be in addition to the Permit fee hereinabove required.

Any existing **permit (license) holder**, at the end of any license period, will be given priority for renewal as long as that **permit (license) holder** continues to with all of the requirements of this Ordinance. While it is the duty of the **permit (license) holder** to maintain compliance with this Ordinance and with State Law, the City will give written notice to the **permit (license) holder** of any non-compliance it is made aware of and allow the **permit (license) holder**

(license) holder thirty days to come into compliance. If the **permit (license) holder** fails to come into compliance, the permit is lost.

Section 11.

Amendment License

Should ownership of the licensed premises change during the period of the license or renewal license or should the premises be leased to some person, firm, or corporation other than a lessee or licensee operating such premises at the time the Premises License or Renewal License was issued, the Premises License shall expire.

New building ???

Permit Holder change. A permit holder may transfer the permit to another person only on approval of the city, the owner of the premises currently housing the machines, and the game room.

Section 12.

Standards for Issuance or Disapproval of Application

It shall be grounds for disapproval for any application for any Premises License or any renewal thereof and no license shall be issued if the City Secretary finds that:

- A. Premises sought to be licensed are located within three hundred (300) feet of a school, church, daycare (school) or hospital, **or residence**.
- B. The **permit holder** or the owner, operator, or lessee of the premises has been convicted of a felony or of any other classification of a crime involving moral turpitude; or
- C. The premises to be licensed does not have separate sanitary facilities for both men and women; or
- D. The premises to be licensed, **based on the square footage of the premises**, do not have adequate parking space (which will be considered based on the square feet of the facility located on the premises.)
- E. The premises do not have proper lighting in the front area of the building or structure.
- F. The premises in question does not fully comply with City fire, health, safety, building, plumbing or electrical codes; or
- G. The owner or operator of the premises is delinquent in the payment of any City, School, or County taxes or assessments including utility charges, or
- H. The machines to be located on the premises have not been issued permits by both the State of Texas and the City of Lyford.

I. A city permit has not been requested for all machines at the time a permit is applied for (((a twenty-five (\$25.00) release fee will be added along with the regular permit fees.)))

I. No permit shall be issued for any skill or pleasure coin-operated machine "eight liners" that has been used or commissioned in connection with **any act prohibited** by the State of Texas.

J. A **permit holder** (licensee) or an employee of the **permit holder or the owner or employee of the licensed premises** (license) knowingly allowed the possession, use, or sale of a controlled substance on the premises.

K. During the operation of any game room any violation of the above or any other city ordinance can result in a fine of \$500 or suspension or loss of the operating permit.

Section 13.

Additional License Agreements

In addition to meeting the criteria set forth in Section 11 above, the applicant shall agree as a condition precedent to the issuance of Premises License that:

A. If the premises to be licensed is also a premise licensed by the State of Texas permitting the on-premises consumption of alcoholic beverages, no person under the age of twenty-one (21) years will be permitted to enter or remain on the premises unless accompanied by his or her parent or legal guardian, except in connection with such minor's employment.

~~B. If the premise to be licensed is not licensed for the on-premise consumption of alcoholic beverages by the State of Texas, then the applicant will not permit the consumption of such beverages by any person on the premises.~~

C. No person in an intoxicated condition will be permitted to enter or remain on the licensed premises. No loud or boisterous behavior will be tolerated either inside or outside the premises by patrons or potential patrons on the premises. Should the Lyford Police Department receives more than three (3) disturbance calls in any **one** calendar year by persons complaining of loud and boisterous behavior on or about the premises and should the Police determine that patrons of the premises(are) **to be** responsible for the disturbance, the receipt of such calls to the Police Department and the determination by the Police Department as to the fact that the patrons of the licensed premises

are responsible for the disturbance shall be grounds for cancellation or suspension of the license.

D. No **person** under the age of eighteen (18) years shall be permitted to play or operate a skill or pleasure coin-operated machine.

E. It shall be unlawful for any person to keep, conduct or operate any game room for profit or to allow or permit any game room to operate outside the hours of operation.

**A Game Room Shall operate only between the hours of:
Monday thru Wednesday 12 p.m. (Noon) TO 12:00 a.m. and
Thursday thru Sunday 10:00 a.m. to 2:00 a. m.**

F. No obscene material shall be permitted to be sold, viewed, or available for viewing or sale on the premises. No material of a sexually-explicit nature or which is defined as "Harmful Material" in Section 43.24 Texas Penal Code may be displayed on the premises in such a way that any person under seventeen (17) years might view the material and thereby become offended or alarmed by the display.

G. 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 operational amusement redemption machine, shall provide a City Official with immediate unrestricted access during business hours to all areas of the game room and to all operational amusement redemption machines located in the game room.

H. A city official, **law enforcement officer, or designee** may **at any time** inspect a game room or an operational amusement redemption machine located within the City of Lyford, Texas incorporated city limits to determine whether the game or the operational amusement redemption machine complies with the City of Lyford Code of Ordinances and State Law.

An owner-manager or employee of a game room or other person who does not allow a city official to inspect a game or operational amusement redemption machine commits an offense.

I. Operation of the permitted game room without transparent unobstructed windows or open space on at least one (1) side so that the open area 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. 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.

(a) The requirements of subsection (l) of this section may be waived or modified by the building official if the establishment owner can demonstrate:

- (1) The establishment 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
- (2) Compliance with the unobstructed view requirement shall require alterations to the structure that will have substantially detrimental effect its historic or architectural features.

J. All game rooms shall have all doors providing ingress and egress from the game room unlocked during the hours of operation.

K. During the operation of any game room any violation of the above or any other city ordinance can result in a fine of \$500 or suspension or loss of the operating permit.

Section 14.

Required Information on Application

The application for a **permit** shall also require the applicant to furnish the name, address, telephone number, and type of business entity of the owner of premises, supported by three (3) forms of recognized identification. Likewise, the names and addresses of any person, firm, corporation, partnership or other types of legal or business entity whatsoever having a financial interest in the ownership or operation of the licensed premises shall be disclosed together with the percentage of financial interest applicable to each person or entity. Any renewal or amended application shall likewise require such information. The application shall be sworn to by the applicant that the information contained therein is true and correct.

Section 15.

Issuance or Disapproval of License: Cancellation of License

Should the **permit** application, renewal application, or amended application reveal that the applicant is qualified in all respects for the issuance or re-issuance of the license applied for, and inspection of the premises reveals that the premises for which the license is sought meet the requirements of this Ordinance, then the City Secretary shall issue the license upon the applicant's written acceptance of the terms and conditions of the license and payment of required fees. Should the applicant not qualify for the **permit**, or should the premises be deficient in meeting any of the requirements hereof or should the applicant not accept any of the license conditions then such application will be denied by the

City Secretary and no permit will be issued. In the event any applicant should, after issuance of the Premises License, whether original, renewal, or amended become disqualified to hold such a license, or should the premises become deficient in any respect, or should the applicant, owner, or operator suffer, allow or permit a violation of any of the terms and conditions of the Ordinance or the license issued hereunder, the City Secretary shall immediately cancel such license and instruct the owner, operator or applicant to cease operation of all machines permitted under such license or any city permit issued. Grounds for cancellation of any permit shall include the use of any machine used to commit an act in violation of the laws of the State of Texas. Any licensee whose license is canceled by the City Secretary may appeal to the City Commissioners by filing a written notice of appeal within five (5) days of receipt of the cancellation notice issued by the City Secretary, which cancellation notice shall be personally delivered to any person in charge of the licensed premises or mailed by certified or registered mail, return receipt requested, to the licensee at the address of the licensee shown on the application that is on file with the City Secretary. If no appeal is filed, the action of the City Secretary shall be final and non-appealable on the sixth (6th) calendar day, the next following delivery of such notice. In the event an appeal is filed, such appeal shall be heard by the City Commissioners not less than ten (10) calendar days nor more than thirty (30) calendar days from the date the notice of legal appeal is received by the City Secretary unless the time for hearing shall be extended for good cause shown by either party or by mutual consent of the parties. In any event, written notice of the time, date, and place of the hearing shall be provided to the appellant at least seven (7) days prior to the scheduled date of such hearing.

After written notice of appeal is filed, the action of the City Secretary in canceling the license shall stay pending a decision on the appeal. The City Secretary shall file with the Mayor an affidavit to the effect that the continued operation of the machines by members of the public pending hearing by the City Commissioners constitutes an immediate threat to the health, safety, or morals of the public entering the purpose of operating such a machine, specifying the grounds of such opinion. Should the Mayor determine on the basis of such an affidavit that probable cause exists for such opinion, the Mayor shall order the license suspended pending a hearing before the City Commissioners and no machine operation shall thereafter be permitted except after the hearing before the City Commissioners and reinstatement of the license.

At any hearing held by the City Commissioners wherein an appeal is filed complaining of the City Secretary's cancellation of a Premises License, the appellant shall be afforded the right to be present and to confront and cross-examine any witnesses adverse to the appellant. The appellant shall be permitted to offer witnesses on his own behalf. The appellant shall be entitled to be represented by legal counsel employed by him at any such hearing at his own expense. All testimony given shall be under oath. The City staff shall be afforded privileges as the appellant and the City Commissioners shall be the judge of the credibility of the witnesses and the weight given their testimony. At least three (3) days prior to the scheduled date of the hearing, the City Attorney shall provide a list of witnesses to be called by the City to the appellant, respectively, and a written memorandum of the expected testimony of each witness. The Mayor shall rule on all evidentiary questions. After the hearing the City Commissioners shall vote as to whether the action

of the City Secretary should be sustained and the license canceled, overruled or the license continued in full force and effect or whether the license should be suspended for a specific period of time set by the City Commissioners.

Section 16.

Violations shall be punished by Fine; Grounds for Revocation of License; Abatement of Nuisance

A violation of the terms of this Ordinance shall constitute a misdemeanor and subject the person violating same to a fine of up to \$500.00. Each day violation shall continue it shall constitute a separate offense. Likewise, any violation of this Ordinance by an owner, operator, permittee, or licensee shall constitute grounds for revocation of any license or permit issued by the City. Further, a violation of any condition hereby imposed shall render any machine covered by this Ordinance to be a public nuisance and subject to abatement by the City in the manner allowed for abatement of public nuisances otherwise by law.

Section 17.

Construction with other Ordinances

The provisions of this Ordinance shall govern the location, operation, display, or exhibition of skill or pleasure coin-operated machines and any other Ordinances imposing conflicting regulations shall be construed as inapplicable to the extent of the conflict. A conditional use permit under the City's Zoning Ordinance shall be required only if the location, operation, display, or exhibition of ten (10) or more such machines is proposed. In such case, a conditional use permit shall be required in addition to the premised license and machine permit.

Section 18.

Severability Clause

The provisions of the Ordinance shall be construed in accordance with applicable Federal and State Constitutional provisions and State Laws governing the regulation of skill and pleasure coin-operated machines. To the extent of any conflict with the State and Federal Constitutions, and statutory provisions, the provisions of the U. S. Constitution, the Constitution of the State of Texas, and laws passed by the Congressional Legislature of the State of Texas shall control. Likewise, should any part of this Ordinance be finally determined to be invalid, such provision is hereby declared and found to be severable from the valid portions hereof and such valid provisions shall remain in full force and effect, notwithstanding the invalidity of any particular part or section hereof, and the remainder of this ordinance shall remain in full force and effect.

Section 19.

Effective Date

This ordinance shall be in full force and effect on January 1, 2023, after the passage, approval, adoption, and publication of its description caption.

APPROVED TO AMEND ON THIS THE 17th DAY OF NOVEMBER 2022.

Rick Salinas, Mayor

Attest:

Benito Estrada, City Secretary