

**ORDINANCE O-01062020-01**

**AN ORDINANCE OF THE ELKHART CITY COUNCIL OF THE CITY OF ELKHART, TEXAS, THAT ESTABLISHES THE AMUSEMENT REDEMPTION MACHINE ORDINANCE O-01062020-1, PROVIDING FOR THE LICENSING AND REGULATION OF AMUSEMENT REDEMPTION MACHINE GAME ROOM, PROVIDING FOR THE PAYMENT OF A FEE FOR THE ISSUANCE OF SUCH LICENSE; IMPOSING RESTRICTIONS ON THE LOCATION OF SUCH ESTABLISHMENT; CONTAINING A SEVERABILITY CLAUSE; PROVIDING FOR THE REPEAL OF ANY AND ALL KINDS OF ORDINANCES, REGULATIONS, RULES OR POLICIES WHICH ARE IN ANY MANNER INCONSISTENT OR IN CONFLICT WITH THIS ORDINANCE; PROVIDING THAT THE VIOLATION OF THIS ORDINANCE SHALL CONSTITUTE AN OFFENSE PUNISHABLE BY A FINE OF NOT THE EXCEED TWO THOUSAND DOLLARS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the City of Elkhart, Texas, is a Type A General Law municipality as defined in Chapter 6 of the Texas Local Government Code; and

**WHEREAS,** Sections 51.012, 54.001, 215.074, 217.042 and Chapter 211 of the Texas Local Government Code authorize the City Council to adopt the provisions of this Ordinance; and

**WHEREAS,** the City Council of Elkhart, Texas, has determined and does hereby now declare that the adoption of this Ordinance is necessary to the health, safety and general welfare of the inhabitants of the City and to persons using amusement redemption machines within the City.

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

**SECTION 1. DEFINITIONS**

- (a) *Amusement redemption machine* means any electronic, electromechanical, or mechanical contrivance that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. An amusement redemption machine also includes a machine that is designed, made, and adapted solely for bona fide amusement purposes, and that by operation of chance or a combination of skill and chance affords the user, in addition to any right of replay, an opportunity to receive exclusively non-cash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items that have a wholesale value available from a single play of the game or device of not more than ten (10) times the amount charged to play the game or device once, or five dollars (\$5.00), whichever is less.
- (b) *Amusement redemption machine establishment* or *establishment* means a building, facility, or other place where one (1) or more amusement redemption machines are present.
- (c) *Amusement redemption machine establishment owner* or *owner* means a person who:
  - 1. Has an ownership interest in, or receives the profits from, an amusement redemption machine establishment or an amusement redemption machine located in an establishment;

2. Is a partner, director, officer or trustee of a business, company, partnership, joint venture, trust, corporation or other entity that has an ownership interest in an amusement redemption machine establishment or in an amusement redemption machine in an establishment;
  3. Is a shareholder that holds more than ten (10) percent of the outstanding shares of a business, company, partnership, joint venture, trust, corporation or other entity that has an ownership interest in an amusement redemption machine establishment or in an amusement redemption machine in an establishment;
  4. Has been issued by the county clerk an assumed name certificate for a business that owns an amusement redemption machine establishment, or an amusement redemption machine located in an establishment;
  5. Signs a lease for an amusement redemption machine establishment;
  6. Receives a certificate of occupancy or certificate of compliance for an amusement redemption machine establishment;
  7. Pays for advertisement of an amusement redemption machine establishment; or
  8. Signs an alarm permit for an amusement redemption machine establishment.
- (d) *City official* means a police officer, code enforcement officer, fire marshal or building official of the city.
- (e) *Licensee* means any person, individual, firm, company, association, partnership, joint venture, trust, corporation or other entity operating an amusement redemption machine establishment in the city.
- (f) *Manager, operator or owner* means an individual who supervises, manages, or participates in the performance of activities that contribute to the functioning of an amusement redemption machine establishment, including, but not limited to, operating cash register/drawer, credit card transaction or some other depository on the premises of an amusement redemption machine establishment; displays, delivers or provides to a customer of an amusement redemption machine establishment merchandise, goods, entertainment or other services; takes orders from a customer of an amusement redemption machine establishment for merchandise, goods, entertainment or other services; or acts as a door attendant to regulate the entry of its customers.
- (g) *Representation of value*. A representation of value includes a gift certificate or gift card that is presented to a merchant in exchange for merchandise.
- (h) *Excluded machines*. An amusement redemption machine does not include:
1. A machine that awards the user noncash merchandise prizes, toys, novelties, solely and directly from the machine, including claw, crane or similar machines; or a representation of value redeemable for those items; or
  2. A machine from which the opportunity to receive noncash 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, skeeball, golf, bowling, pusher, or similar machines.

## **SECTION 2. LICENSE FOR AMUSEMENT REDEMPTION MACHINE ESTABLISHMENT**

- (a) *License required.* No person shall maintain, display for patronage, or otherwise keep for operation by the patrons any amusement redemption machine without first obtaining a license from the city.
- (b) *Fee.* An owner, operator, or lessee of premises on which an amusement redemption machine is made available to others shall be required to secure a license by paying to the city an annual inspection and license fee of one thousand dollars, (\$1,000.00) per amusement redemption machine in full at the time of license issuance. The license shall be issued by the code enforcement officer. Upon payment of the fee and compliance with all licensing requirements, the license shall be issued by the city.
- (c) *Expiration, renewal, and late fee.* A license issued under this section shall automatically expire on the anniversary date of the issuance of the license. 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 establishment. A license may be renewed for the following year beginning sixty (60) days before expiration of the current license by filing a completed application and paying the applicable fee. A renewal application shall be subject to the same requirements as an application for a new license. 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 (20) percent of the fee actually due or twenty (20) percent 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. Such license shall also automatically expire if the licensee sells, transfers equity, or otherwise disposes of such amusement redemption machines. The city shall not refund any portion of an amusement redemption machine license fee after the license is issued, nor shall it prorate or reduce in amount any fee due to the city.
- (d) *Sealing.* The city shall have the authority to seal any amusement redemption machine located at an establishment for which an amusement redemption machine establishment license has not been secured. A one thousand dollar (\$1,000.00) fee will be charged for the release of each machine sealed for non-payment of the amusement redemption machine establishment license fee.
- (e) *Posting of license.* The registration of amusement devices certificate shall be conspicuously posted inside the building. The license shall list the date of issue and the date of expiration. The license shall list the name of the licensee, name of the amusement redemption machine establishment, and the physical address of the establishment. If the license holder is a corporation or other legal entity, then the license shall also list the person(s) asserting control over the legal entity. The license shall list any applicable exemption to the requirements of this article for which the licensee is qualified.
- (f) *Transfer or assignment of license.* A license for an amusement redemption machine establishment under this section is not assignable or transferable.
- (g) A license for an amusement redemption machine establishment vests no property right in the licensee except to maintain, display for patronage, and permit the use for skill or pleasure of amusement redemption machines in accordance with the terms and conditions of this article.
- (h) A license for an amusement redemption machine establishment is effective for a single place of business only.

### **SECTION 3. APPLICATION FOR AMUSEMENT REDEMPTION MACHINE PREMISES LICENSE**

A person desiring a license to operate an amusement redemption machine establishment shall file a written application with the code enforcement officer. A separate application must be filed for each location sought to be licensed. The application must be on a form provided by the city, and the following information is required in the application:

- (1) Name, address, telephone number, and copy of government-issued photo identification of the applicant if the applicant is a natural person;
- (2) Name, address, telephone number and copy of government-issued photo identification of all persons who own an interest in the amusement redemption machine establishment;
- (3) Name, address, telephone number and copy of government-issued photo identification of all officers, if any, of the business or entity;
- (4) Name, address, telephone number of the business or entity;
- (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 copy of government-issued photo identification of each of the general and limited partners;
- (7) The trade name by which the applicant does business and true and correct copy of the registration of the applicant's assumed name filed in the office of the 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 and telephone number of the operator of the premises to be licensed;
- (11) Number of amusement redemption machines in the premises to be licensed and the serial number of each amusement redemption machine;
- (12) Whether a previous license of the applicant, or, if applicable, an officer of the applicant, has been revoked within two (2) years of filing of the application;
- (13) The previous occupation(s) of the applicant and, if applicable, all officers and partners of the applicant within the preceding five (5) years;
- (14) Name, address and telephone number of an emergency contact person who can be reached after hours;
- (15) A floor plan of the amusement redemption machine establishment interior depicting the layout of the establishment interior, specifically including, but not limited to, the location of all amusement redemption machines, coin-operated machines or devices, the manager's station(s), restroom facilities, kitchen and bar facilities, if any, and all areas to which patrons will not be permitted;

- (16) If the applicant has been convicted of any crime directly related to an amusement redemption machine establishment, the date, location, and nature of the offense and the penalty received;
- (17) Each applicant shall sign a waiver authorizing the city to conduct a criminal history background check on the applicant; and
- (18) 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 establishment will not violate any applicable deed restrictions;
  - d. The amusement redemption machine establishment will be operated in accordance with all laws.
- (19) Any failure to provide the documents required by this section shall be grounds for denial of the application to which it applies.

#### **SECTION 4. RESTRICTIONS, REGULATIONS, CONTROLS, AND LIMITATIONS.**

- (a) All building and fire code standards must be met. Inspection by the code enforcement officer and the issuance of a certificate of occupancy shall be obtained before a license for an amusement redemption machine establishment is issued.
- (b) Amusement redemption machine establishments shall only be located in existing Commercial District (C-2), Manufacturing, Warehousing and Wholesaling District (M), or General Industrial District (I) zones.
- (c) Distancing restrictions:
  - (1) No amusement redemption machine establishments shall be situated within three hundred (300) feet of any church, school, residential district or use, hospital or any other amusement redemption machine establishment. The distance shall be measured along the property lines of the street fronts and from front door to front door, or to zoning district, park, school, or hospital, as applicable, and direct lines across intersections.
  - (2) Only one (1) amusement redemption machine establishment shall be allowed on any lot or in any single building, structure or tenant space within a strip center.
- (d) Amusement redemption machine establishments are exempt from the zoning and distancing restrictions of this subsection upon proof that the applicant continuously owned and operated the amusement redemption machine establishment at the same location and under the same name prior to the effective date of this section. If the amusement redemption machine establishment changes its name, its owner, or adds another owner after this date, or if the permit is allowed to lapse, then the amusement redemption machine establishment will be considered a new amusement redemption machine establishment and not exempt from the zoning and distancing requirements.

- (e) All amusement redemption machine establishments shall have all doors providing ingress and egress from the establishment unlocked during hours of operation.
- (f) The hours of operation for amusement redemption machine establishments shall be limited to the following hours:
  - (1) Monday through Thursday, open at 8:00 a.m. and close at 11:00 p.m.; and
  - (2) Friday through Sunday, open at 8:00 a.m. and close at 12:00 a.m.
- (g) The owner, operator, or manager of the licensed premises must be present to supervise the operation of the amusement redemption machine establishment. The amusement redemption machine establishment shall not be left unattended.
- (h) Amusement redemption machines must be situated within the licensed premises as to be in full and open view through all windows and public access doors, which entails being visible to all customers of the establishment. Windows and doors must be clear of all items that would obstruct a clear view, including, but not limited to, tinting, signage, advertisements, shelving, and merchandise.
- (i) Amusement redemption machine establishment memberships:
  - (1) Amusement redemption machine establishment memberships are prohibited for any purpose.
  - (2) An amusement redemption machine establishment shall not restrict entry to an establishment or prohibit the participation in any activity inside an establishment by a patron through the requirement of an amusement redemption machine establishment membership.
  - (3) Amusement redemption machine establishments shall not issue membership cards to any individual for any purpose.
  - (4) Amusement redemption machine establishments shall not have, make use of, employ, or require check-in procedures of any kind prior to entering or before exiting a game room.
- (j) No person under the age of eighteen (18) years shall be permitted inside the building, structure, facility or space housing the amusement redemption machine establishment.
- (k) A sign stating that no one under the age of eighteen (18) is allowed inside the amusement redemption machine establishment building shall be posted in plain sight immediately inside the entrance stating that: "No person under the age of eighteen (18) years shall be permitted inside the building, structure, facility or space housing the amusement redemption machine establishment."
- (l) An amusement redemption machine establishment operator must be a person who is at least eighteen (18) years of age.
- (m) A sign shall be posted in plain sight immediately inside the entrance stating that: "If you or anyone you know has a gambling problem, call 1-800-522-4700. Si usted o alguien que usted conoce tiene un problema de adiccion al juego, llame al 1-800-522-4700."
- (n) 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.

**SECTION 5. GROUNDS FOR DENIAL OF LICENSE; APPLICANTS OR LICENSEES INDEBTED TO CITY.**

- (a) The city shall refuse to approve issuance or renewal of a license for one or more of the following reasons:
- (1) Any failure to provide the information required by section 13-502;
  - (2) A determination by the city that inaccurate, erroneous or incomplete information has been submitted;
  - (3) A false statement as to a material matter made in an application for a license;
  - (4) Revocation of a license of the applicant or a coowner or an officer of the applicant within two (2) years preceding the filing of the application;
  - (5) Refusal or failure to pay the correct license fee amount;
  - (6) The applicant or a co-worker for such license has, within the past three (3) years, been convicted of any level of offense for the following crimes:
    - a. Gambling, gambling promotion, keeping of a gambling place, communicating gambling information, possession of gambling devices or equipment, or possession of gambling paraphernalia as described in Chapter 47 of the Texas Penal Code (V.T.C.A. Penal Code, ch. 47);
    - b. A criminal offense as described in V.T.C.A. Penal Code, ch. 31;
    - c. A criminal offense as described in V.T.C.A. Penal Code, ch. 32;
    - d. A criminal offense as described in V.T.C.A. Penal Code, ch. 34;
    - e. A criminal offense as described in V.T.C.A. Penal Code, ch. 35;
    - f. Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses against the laws of this state; or
    - g. Violation of the law of another state or of the United States that, if committed in this state, would have been punishable as one (1) or more of the aforementioned offenses.
  - (7) An applicant is under eighteen (18) years of age.
- (b) The city shall not issue or renew an amusement redemption machine establishment license 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.

## **SECTION 6. SUSPENSION OR REVOCATION OF LICENSE.**

- (a) *Power and authority.* If any individual, company, partnership trust, firm, joint venture, corporation, association or other entity who owns, operates, exhibits, or displays any amusement redemption machine(s) in an amusement redemption machine establishment in this city shall violate any provision of this article, the city 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 license shall be suspended or revoked ten (10) days from date of such notice.
- (b) *Suspension.* The code enforcement officer shall suspend a license for a period not to exceed thirty (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;
  - (2) Refused to allow or interfered with an inspection of the amusement redemption machine establishment premises; or
  - (3) Demonstrated an inability to operate or manage an amusement redemption machine establishment in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.
- (c) *Revocation for continuing violation.* The code enforcement officer shall revoke a license if a cause of suspension occurs and the license has been previously suspended within the preceding twelve (12) months.
- (d) *Automatic revocation.* The code enforcement officer 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 establishment during a period of time when the licensee's license was suspended.
- (e) *Effect of revocation.* No license shall be issued within a period of one (1) year to anyone whose license has been revoked. If the license of an individual, company, corporation, trust, partnership, association or other entity owning, operating, or displaying amusement redemption machines in this city is revoked, such individual, company, corporation, trust, partnership, association or other entity shall not operate, display or permit to be operated or displayed any amusement redemption machines in any establishment until a new license is granted.

## **SECTION 7. APPEAL FROM DENIAL, SUSPENSION OR REVOCATION OF LICENSE.**

If the city refused to approve the issuance of a license or the renewal of a license to an applicant, or suspends or revokes an amusement redemption machine establishment license, this action is final unless the applicant or licensee, within ten (10) days after the receipt of written notice of the action, files a written appeal with the city administrator, who shall, within ten (10) 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 city administrator sustains the action of the city, the applicant or



licensee may, within ten (10) 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 sixty (60) 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.

#### **SECTION 8. DISPLAY OF LICENSE; DECAL.**

- (a) A license for an amusement redemption machine establishment shall be displayed at or near the entrance of the business premises, and such display shall be permanent and conspicuous.
- (b) A decal shall be issued by the city for every amusement redemption machine located in a licensed amusement redemption machine establishment.
  - (1) The decal for each amusement redemption machine shall be numbered and is deemed personal to the machine and location for which it is issued. No decal attached to an amusement redemption machine shall be placed on another amusement redemption machine. No amusement redemption machine shall be moved to another location in the city without first amending the license and obtaining a new decal for the machine.
  - (2) The decal shall be permanently and conspicuously attached to a permanent surface of the amusement redemption machine. Decals not properly displayed will be invalid.
  - (3) The decal shall be valid until the amusement redemption machine is moved from the location for which it is issued.
  - (4) The decal shall contain the serial number of the machine.

#### **SECTION 9. REPLACEMENT LICENSE.**

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

#### **SECTION 10. INSPECTIONS; RECORDKEEPING.**

- (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 code enforcement officer and the fire marshal may enter into the premises where such amusement redemption machines are located at any time during normal business hours for the purpose of inspecting said premises for fire hazards.
- (b) It shall be the duty of all owners, managers, or employees of an amusement redemption machine establishment to provide any city official with immediate unrestricted access during business hours to all areas of an amusement redemption machine establishment and to all amusement redemption machines.
- (c) Any city official may inspect an amusement redemption machine establishment, or an amusement redemption machine located in the city to determine whether the establishment or amusement redemption machine complies with city ordinances and state laws.
- (d) The city shall have the authority to seal any amusement redemption machine located in any amusement redemption machine establishment for which a license fee has not been paid. A fee of one

thousand dollars (\$1,000.00) will be charged for the release of each machine sealed for non-payment of the license fee.

- (e) The manager, operator, or owner of an amusement redemption machine establishment shall maintain accurate and legible records of the daily intake of cash/credit paid to play amusement redemption machines and maintain records of payouts including rights of replay, non-cash merchandise prizes, toys, or novelties, or a representation of a value redeemable for those items received by customers for play and approximate cost of such. The records or keys to the motherboard shall be presented to city officials upon request. A refusal to comply with such requests shall be grounds for revocation of a license. A refusal to provide a key to the motherboard shall be consent to damaging by physical entry into the machine for the purpose of removal of the motherboard when such entry is otherwise authorized by law.

#### **SECTION 11. 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 defined by the Texas Alcoholic Beverage Code unless the premises is licensed under the provisions of said Code for the sale, purchase, or possession of alcoholic beverages;
- (2) The operation of any amusement redemption machine by a person younger than eighteen (18) years of age;
- (3) Gambling by any person;
- (4) The possession of gambling materials;
- (5) Unlawful or criminal activity of any kind; and
- (6) The storing, displaying or exhibition on the premises of any amusement redemption machine where the license for the establishment is expired or there is no permit.

#### **SECTION 12. VIOLATIONS OF EXISTING LAWS NOT AUTHORIZED.**

This section shall not be construed to authorize or permit the keeping, exhibition, operation, display, or maintenance of any machine that is prohibited by the Constitution of this state or V.T.C.A. Penal Code, ch. 47.

#### **SECTION 13. REPEALER.**

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

**SECTION 14. SEVERABILITY.**

Should any provision of this Ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect.

**SECTION 15. EFFECTIVE DATE**

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

**PASSED AND APPROVED** by the City Council of the City of Elkhart on this 4<sup>th</sup> day of May, 2020.

  
JENNIFER MCCOY, MAYOR

  
Ami Ashworth, City Secretary