

ORDINANCE NO. 22-_____

AN ORDINANCE AMENDING CHAPTER 10, AMUSEMENTS AND ENTERTAINMENTS, OF THE CITY OF BROWNWOOD CODE OF ORDINANCES BY ADDING AN ARTICLE IV., ENTITLED GAME ROOMS AND AMUSEMENT REDEMPTION MACHINES; PROVIDING A PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00) FOR CONVICTION OF ANY VIOLATION THEREOF; PROVIDING A SEVERABILITY CLAUSE; A SAVINGS CLAUSE; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Brownwood (the “City”) recognizes that the unregulated operation of game rooms and amusement redemption machines contribute to inappropriate and illegal activities which may include gambling, fraud, truancy, disorderly conduct and use of controlled substances; and

WHEREAS, as a home-rule municipality established and operating under the Texas Constitution and the City Charter of the City of Brownwood, the City Council finds that it has the authority to adopt regulations contained in this Ordinance to address the negative effects of game rooms and amusement redemption machines; and

WHEREAS, the City Council finds and determines that the adoption of this Ordinance is in the best interests of the City and its citizens and will promote the health, safety and welfare of the citizens of Brownwood and the general public.

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

Section 1. FINDINGS INCORPORATED.

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2. ENACTMENT. Chapter 10 of the City of Brownwood Code of Ordinances is hereby amended by adding an Article IV., entitled Game Rooms and Amusement Redemption Machines, and is hereby set out in its entirety as follows:

“ARTICLE IV. - GAME ROOMS AND AMUSEMENT REDEMPTION MACHINES

Secs. 10-183 – 10-200. Reserved

Sec. 10.201 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:

Amusement Redemption Machine means any electronic, electromechanical, or mechanical contrivance, including sweepstake machines, designed, made, and adapted solely for bona fide

amusement purposes, and that by operation of chance or a combination of skill 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 a value redeemable for those items and is in compliance with section 47.01(4)(b) of the Texas Penal Code. 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 objects into the machine or a part thereof, including basketball, golf, bowling, or similar machines where the theme of the machine is not one (1) traditionally recognized or associated as a casino-type gambling activity or game such as eight-liners, games played with cards, dice or other playing boards or mediums, such as Poker, blackjack, keno, bingo, slots, Craps, Roulette, Baccarat or similar games. A representation of value means cash paid under authority of sweepstakes contestants as provided by the Texas Business and Commerce Code, section 43.
- (c) A machine or any device defined in V.T.C.A., Penal Code section 47.01 as a gambling device, or any activity prohibited or described in V.T.C.A., Penal Code chapter 47.

Applicant means a natural person who applies for a game room license on behalf of the Licensee.

Arcade game means any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes that does not afford the user any opportunity of a free replay or a chance to receive any additional consideration other than amusement through playing.

Chief Building Official means the Chief Building Official for the City of Brownwood or the chief building official's authorized representative.

Chief of Police means the Chief of Police of the City of Brownwood authorized to enforce and administer this article or the chiefs authorized representative.

City means the City of Brownwood.

City Manager means the City Manager of the City of Brownwood authorized to enforce and administer this article or the City manager's authorized representative.

City Secretary means the City Secretary of the City of Brownwood or the City Secretary's authorized representative.

Compensation means any and all forms of payment as remuneration for the provision of playing an amusement redemption machine.

Fire Marshal means the Fire Marshal of the City of Brownwood of the fire marshal's authorized representative.

Game Room means a building, facility, or other place, including private club or commercial business location that derives any revenue directly or indirectly from the operation of one (1) or more amusement redemption machines, or from patrons playing non-electronic games of any type, including without limitation, cards, dice, dominos, board games, but specifically excluding bingo

establishments operated under other law; or possesses one (1) or more amusement redemption machines, whether operating or not on the premises.

Game room owner or *owner* means a person who has an ownership interest in a game room.

Licensee means any person, individual, firm, company, association, or corporation operating an amusement redemption machine game room in the City.

Manager, operator or *owner* means an individual who supervises, manages, or participates in the performance of activities that contribute to the functioning of a game room, including but not limited to, operating cash register/drawer, credit card transaction or some other depository on the premises of a game room, displays, delivers, or provides to a customer of a game room merchandise, goods, entertainment or other services, takes orders from a customer of a game room for merchandise, goods, entertainment or other services or acts as a door attendant to regulate entry of customers.

Sec. 10-202 License required.

No person shall operate a game room in the City without first obtaining a license from the City, as required by this article. No license shall be issued until:

- (a) The state occupation tax has been paid for each amusement redemption machine within the premises;
- (b) The City's occupation tax, sometimes referred to herein as the annual tag fee, has been paid for each amusement redemption machine within the premises; and
- (c) The annual inspection and game room license fee has been paid; and
- (d) All other licensing requirements as set forth in this Ordinance have been met.

Sec. 10-203 Payment of annual inspection and license fee; issuance of license.

An owner, operator, or lessee of a game room shall be required to secure a license annually. A game room shall be required to secure a license by paying to the City an annual inspection and game room license fee (the "license fee") in the amount of two thousand four hundred dollars (\$2,400.00). Upon payment of the license fee, payment of the annual tag fee of the City for each amusement redemption machine within the premises, and compliance with all licensing requirements, the license shall be issued by the City.

Sec. 10-204 Occupation tax assessed; display of tax certificates.

- (a) An occupation tax permit issued by the state and all seals required by the state shall be securely affixed to each amusement redemption machine. Such permits and seals shall be affixed on the front of each machine in a clearly visible location.
- (b) The City hereby assesses, and the City Secretary shall collect an annual occupation tax in the amount of fifteen (\$15.00), per machine, which shall be paid before a tax certificate ("tag") may be issued.
- (c) A tag issued by the City shall be securely affixed to each amusement redemption machine. This tag shall bear the name of the machine, and the serial number of the machine to which

it is issued to and affixed. The tag shall be affixed on the front of the machine in a clearly visible location. The tag shall, for its valid period, remain legible and undamaged.

- (d) All tags shall be issued on the basis of a calendar year. Occupation taxes shall not be prorated. Tags issued at any time during a calendar year shall automatically expire on December 31st of each year.
- (e) Replacement tags issued by the City must meet all requirements listed in this section. Replacement tags shall not be prorated and shall bear the word "REPLACEMENT". Replacement tags will be issued for damaged original tags. The original tag must be surrendered to the City before a replacement tag is issued. Replacement tags for lost original tags will be issued only when an affidavit is completed explaining the loss. The affidavit will also include serial number and name of the amusement redemption machine to which the replacement tag shall be issued.

Sec. 10-205 Term of license; jurisdiction; scope.

A license issued for a game room under this article:

- (a) Is an annual license which expires December 31st of each year unless it is suspended or cancelled earlier;
- (b) Is effective for a single place of business only;
- (c) Vests no property right in the licensee except to maintain, display for public patronage, and permit the use or skill or pleasure of amusement redemption machines in accordance with the terms and conditions of this article;
- (d) 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
- (e) Is not assignable or transferable.
- (f) 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.

Sec. 10-206 Restrictions, regulations, controls, and limitations.

- (a) Game rooms shall have windows on at least two (2) sides on the building, affording a clear and unobstructed view of each amusement redemption machine is available through the windows.
 - (1) Windows shall, at a minimum, be four (4) feet wide and five (5) feet tall.
 - (2) Windows shall not be tinted.
 - (3) Windows shall not be obstructed in anyway, to include but not limited to blinds, drapes, writing, signage, banners, or graphics on or covering the windows during hours of operation.
 - (4) Security devices for windows, if installed, shall be retractable or otherwise able to be removed during hours of operation.

- (b) No Amusement Redemption Machines or related business activities shall be allowed to be situated or performed outdoors.
- (c) The hours of operation for a game room shall be limited to the following hours:
 - (1) Monday through Thursday, open at 9:00 a.m. and close at 10:00 p.m.; and
 - (2) Friday through Sunday, open at 9:00 a.m. and close at 11:00 p.m.
- (d) The owner, operator, or manager of the licensed premises must be present to supervise the operation of the game room. The game room shall not be left unattended during hours of operation.
- (e) 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.
- (f) No person under the age of eighteen (18) years shall be permitted inside the building, structure, facility, or space, housing the Game Room.
- (g) A sign in one and one-half inch (1-½") or larger typed block letters and which is legible from a distance of at least twenty-five feet (25') stating that no one under the age of eighteen (18) is allowed inside the game room 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 game room."
- (h) A Game Room owner, operator or lessee must be a person who is at least eighteen (18) years of age.
- (i) The total number of operational Amusement Redemption Machines allowed in one (1) Game Room establishment shall be based on the Game Room building's occupancy limit and shall not exceed the lower of one (1) amusement redemption machine per five (5) occupants or a maximum number of twenty (20) amusement redemption machines. Any back-up, nonoperational 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 be otherwise operational. The occupation tax on such back-ups or replacement Amusement Redemption Machines shall be paid annually regardless of whether such machines are used by the game room's patrons.
- (j) The owner, operator, or manager of the licensed premises shall mark each entrance to a game room with a typed sign which bears the words "GAME ROOM" in one and one-half inch (1-½") or larger block letters and which is legible from a distance of at least twenty-five feet (25').
- (k) Game Rooms are deemed to be public places to which the public has access.
- (l) All entrances and exits to Game Rooms are to remain unlocked during hours of operation. Entrances and exits may not make use of a "buzzer" system or any other system or device that prevents individuals from freely opening a door during hours of operation. This does not apply to emergency exits, which must meet all applicable fire codes and regulations:
 - (1) The exterior of all entrances and exits must be clearly illuminated during hours of darkness.

(2) The exterior of all emergency exits must be clearly illuminated during hours of darkness.

(m) 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 regulation of the county, any section of the penal code of this state, or the constitution of this state.

Sec. 10-207 Compensation.

Compensation for the playing of an Amusement Redemption Machine is limited to tangible, physical merchandise awarded from the game room, or replays on the amusement redemption machine. Prohibited compensation includes, but is not limited to, money, vouchers for utilities, vouchers for other businesses or services, food, beverages, services, gift certificates, or prepaid credit/debit cards.

Sec. 10-208 Application for Game Room license.

(a) It shall be unlawful for any person to operate any Game Room within the City without first obtaining a license from the City Secretary's office. The license shall at all times be displayed in a conspicuous place within the licensed premises. Any license issued to operate a game room shall expire on the 31st day of December in the year of issuance. Licenses shall be issued to the owner or documented lessee of the premises only and shall not be transferable.

(b) Contents of Game Room license application. The application for a Game Room license to be issued pursuant to this article shall be sworn and shall contain information required by the City Secretary on a form provided for that purpose, including:

1. The full and correct business name of the Licensee, as currently filed with the Texas Secretary of State's office;
2. The trade name of the Licensee, if different from the business name on file with the Texas Secretary of State's office;
3. The Texas Tax ID number of the Licensee, as issued by the Texas Comptroller of Public Accounts;
4. All addresses and telephone numbers of the Licensee;
5. The names and dates of birth of each and every officer, managing member, or person who owns ten percent (100%) or greater interest in the Licensee.
6. A list of all prior criminal convictions of each and every officer, managing member, or person who owns ten percent (10%) or greater interest in the Licensee, for all felony offenses, and for misdemeanors involving drug offenses, fraud, theft, gambling, or weapons offenses, or offenses against public administration;
7. Whether alcoholic beverages will be sold or permitted on the premises of the business;

8. The address of the premises where the Licensee will operate the Game Room, and the full and correct name of the property owner of such premises as recorded in the deed records of Brown County;
 9. A Scaled Floor Plan of each public space of the game room in which amusement redemption machines may be located during the term of the license, including the following;
 - a. The maximum number of Amusement Redemption Machines in each space;
 - b. The total square footage of the building, and each space within the building;
 - c. Dimensions of each amusement redemption machine;
 - d. Location and measurements of entrances and exits;
 - e. Measured foot traffic pathways/aisles;
 - f. Location and measurements of office, bathrooms;
 - g. Number of fixtures, such as HVAC units, sinks, toilets, windows, and walls; and
 - h. Location and area of any redemption area, snack bar, and/or customer service area.
 10. A list of all cities and/or counties that the applicant and every officer, managing member or person who owns ten percent (10%) or greater interest in the Licensee has operated and whether or not they had a license or permit of the type requested revoked, denied or suspended within the past 5 years.
- (c) Background check.
1. The Chief of Police, or a duly authorized representative, shall conduct an investigation into the publicly filed business records of the Licensee and the background of all Applicants and each officer, managing member, or owner of ten percent (10%) or greater interest in the Licensee. The investigation may be completed by the Brownwood Police Department or by a third-party vendor approved in advance by the Chief of Police. The investigation shall include fingerprinting the individual and a check of the individual's local, state, and national criminal records in accordance with Texas Government Code, Sections 411.087 and 411.122. The investigation shall include making a permanent record of the identity of all individuals described in this paragraph.
 2. The Chief of Police shall deny issuance of a permit if the application or investigation shows any of the following:
 - a. The Applicant or an officer, managing member, or owner of 10% or greater interest in the Licensee has been convicted, within the five (5) years preceding the date of the application, of any crime required to be listed on the permit application and not disclosed thereupon, or of a felony, or for gambling, gambling promotion, keeping a gambling house, fraud, theft, an offense against public administration, or another crime that directly relates to the duties and responsibilities of a Licensee pursuant to this article;
 - b. The permit application includes a false statement by the Applicant;
 - c. The City of Brownwood or any other City or County has revoked the Applicant's or Licensee's license or permit of the type requested within the past five years.

- (d) As part of the licensure process Applicant shall make the premises to be licensed available for City inspection, which shall include without limitation, inspection by the Chief of Police, Chief Building Official and City Fire Marshal, or their respective authorized representatives. No license shall be issued until such premises conforms to the requirements of this article and the Code of Ordinances.
- (e) The City Secretary shall collect a license fee as set forth in this article as established by the City Council for each game room license issued.

Sec. 10-209 Renewal of amusement redemption machine game room license.

- (a) A license may be renewed for the following calendar year beginning October 1st 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 in this section as for a 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 may require such person to pay an additional late fee in an amount equal to fifty (50) percent of the fee as currently established or as hereafter adopted by City Council from time to time. Nothing herein authorizes the licensee to operate after the expiration of a license and before a renewal is effective.

Sec. 10-210 Grounds for denial of license; suspension or revocation of license.

The City 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 or costs related to this article until such time as the amount due is paid.

Sec. 10-211 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 a game room 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 same shall be suspended or revoked ten (10) days from the date of such notice.
- (b) Suspension. The City Manager shall immediately suspend a license for a period not to exceed thirty (30) days if he or she 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 game room premises; or
 - (3) Demonstrated an inability to operate or manage a game room in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.
- (c) Revocation for continuing violations. The City Manager 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 City Manager or the City Manager's authorized representative shall revoke a license if:
 - (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 operated the Amusement Redemption Machine Game Room 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, 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 Game Room until a new license is granted.

Sec. 10-212 Appeal from denial, suspension or revocation of license.

If the City Manager or Chief of Police 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 (10) days after the receipt of written notice of the action, files a written appeal with the City Secretary, who shall, within ten (10) days after the appeal is filed forward same to the City Council for its consideration at a public meeting following a hearing. The City Council shall, within thirty (30) days, grant such 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. 10-213 Display of license.

A valid license issued under this article for a game room shall be displayed at or near the entrance of the business premises, and such display shall be permanent and conspicuous.

Sec. 10-214 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, the City inspector/code enforcement officer, 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 and the inspector/code enforcement officer of the City shall have the right to enter into said premises at any time during normal business hours for the purpose of inspection and enforcement of the terms of this article.
 - (1) The Chief of Police or chief's authorized representation from the police department shall conduct regular, recurring inspections.

- (c) The City shall have the authority to seal any amusement redemption machine located in any game room for which the license fee, occupation tax, or City tag fee has not been paid. A fee in the amount of five dollars (\$5.00) will be charged for the release of any machine sealed for nonpayment of said tax or fee.
- (d) The manager, operator, owner shall maintain accurate and legible records of the daily intake of cash/credit paid to play Amusement Redemption Machines and maintain records of compensation including rights of replay and merchandise compensation received by customers for play and approximate cost of such. The records and keys to the motherboard shall be presented to City officials upon request. A refusal to comply with such requests is a violation of this article and shall be grounds for revocation of a license.

Sec. 10-215 Responsibility of Licensee.

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

- (a) The operation of any amusement redemption machine by a person younger than eighteen (18) years of age;
- (b) Gambling by any person;
- (c) The possession of gambling materials; and
- (d) Unlawful or criminal activity of any kind, to include violations of this code.

Sec. 10-216 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 regulation of the county, any section of the penal code of this state, or the constitution of this state.”

Secs. 10-217 – 10-230. Reserved

Section 3. MISCELLANEOUS.

A. **PENALTY:** A person who fails to comply with any requirement of this code commits a class C misdemeanor punishable by a fine not less than two hundred and fifty dollars (\$250.00) and not more than five hundred dollars (\$500.00); except that:

- (a) Proof of a culpable mental state is expressly not required for a conviction of an offense under this article, unless specifically required in this article or state law.
- (b) Each violation is considered a separate offense.
- (c) Each day that a violation occurs is a separate offense.
- (d) In addition to the penalties described in above, the City may pursue other remedies that the City may have under state or federal law.

B. **SEVERABILITY:** If any section, subsection, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holdings shall not affect the validity of the remaining portions thereof.

C. SAVINGS CLAUSE: All ordinances, or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed. The balance of such ordinance is hereby saved from repeal.

D. EFFECTIVE DATE: This ordinance shall be in full force and effect from and after its final passage and publication thereof as required by the Charter of the City of Brownwood and State law.

PASSED ON FIRST READING this the 14th day of June, 2022.

PASSED ON SECOND/THIRD READING this the ____ day of June, 2022.

STEPHEN E. HAYNES, Mayor

ATTEST:

CHRISTI WYNN, City Secretary

APPROVED AS TO FORM:

PAT CHESSER, City Attorney