

ORDINANCE NO. 05112023

**AN ORDINANCE REGULATING AMUSEMENT
REDEMPTION MACHINE BUSINESSES, AMENDING
ORDINANCE NO. 04112022, ADOPTED APRIL 11, 2022, TO
SET THE MAXIMUM NUMBER OF GAMING MACHINES
IN THE CITY AT 265 AND THE MAXIMUM NUMBER OF
GAME ROOMS IN THE CITY AT FIVE (5); PROVIDING
PENALTIES FOR THE VIOLATION THEREOF, AND
SETTING AN EFFECTIVE DATE**

WHEREAS, it has been ascertained that the ORDINANCE regulating AMUSEMENT REDEMPTION MACHINE BUSINESSES of the City of ROSE CITY, Texas, as contained in Ordinance No. 04112022 adopted April 11, 2022, should be amended;

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

The ordinance regulating AMUSEMENT REDEMPTION MACHINE BUSINESSES of the City of ROSE CITY, Texas, as contained in Ordinance No. 04112022 adopted April 11, 2022, is hereby amended.

Paragraph (l) of Sec. 3. - Restrictions, regulations, controls, and Limitations, is hereby amended, and shall henceforth read as follows:

The maximum amount of amusement redemption machines allowed, licensed and permitted within the city shall not exceed 265, and the maximum amount of game rooms allowed, licensed and permitted within the city shall not exceed five (5).

Effective Date.

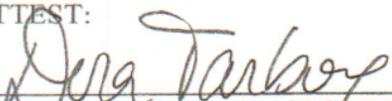
This Ordinance becomes effective from and after its publication.

Passed by an affirmative vote of all members of the City Council present on the 11th day of May, 2023.



Tony Wilcoxson, MAYOR
CITY OF ROSE CITY, TEXAS

ATTEST:



DORA TARBOX, CITY SECRETARY
CITY OF ROSE CITY, TEXAS

**AN ORDINANCE REGULATING AMUSEMENT
REDEMPTION MACHINE BUSINESSES, AMENDING
ORDINANCE NO. 02232022, ADOPTED FEBRUARY 23,
2022, PROVIDING PENALTIES FOR THE VIOLATION
THEREOF, AND SETTING AN EFFECTIVE DATE**

WHEREAS, it has been ascertained that the ORDINANCE regulating AMUSEMENT REDEMPTION MACHINE BUSINESSES of the City of ROSE CITY, Texas, as contained in Ordinance No. 02232022 adopted February 23, 2022, should be amended;

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

The ordinance regulating AMUSEMENT REDEMPTION MACHINE BUSINESSES of the City of ROSE CITY, Texas, as contained in Ordinance No. 02232022 adopted February 23, 2022, is hereby amended its entirety, and shall henceforth read as follows:

AMUSEMENT REDEMPTION MACHINE BUSINESSES

Sec. 1. - Definitions.

Amusement redemption machine means any electronic, electromechanical, or mechanical contrivance, including sweepstake machines, 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 possibly accompanied by skill, whether or not the prize is automatically paid by the contrivance, including but not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, tic-tac-toe, eight-liner or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, and is in compliance with V.T.C.A., Penal Code 47.01(4). This term expressly excludes coin-operated music machines, pay toilets, pay telephones, coin-operated rides for children, and other coin-operated machines which dispense or vend merchandise, commodities, or food directly from the machine.

City official means a code enforcement officer or building official of the city or any peace officer of the state.

Game room means a building, facility or other place that is open to the public, or operated as a private club where patrons or their guest has to know, speak, or acknowledge a pass word, code word, or signal of any kind or possess any type of printed or written entry permit or symbol, where one or more amusement redemption machines are present.

Game room owner means a person who has any ownership interest in a game room or an owner, director, or officer of a business entity that has any ownership interest in a game room, and the name that appears on all permits and licenses required under this article.

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

Non-compliant business means any game room that existed and was in possession and operating as a game room, including the operation of amusement redemption machines, as of the date of the passage of the ordinance from which this article is derived.

Operator or employee means any person on site who is in charge, or oversees, a game room.

Peace officer means any person recognized by the current V.T.C.A. Code of Criminal Procedure, article 2.12 (Who Are Peace Officers) and article 2.122 (Special Investigators).

Sec. 2. - Regulatory enforcement license and occupation tax permit.

(a) Regulatory enforcement license fee. A game room owner of an amusement redemption machine game room shall be required to secure a regulatory enforcement license annually. An amusement redemption machine game room shall be required to secure a regulatory enforcement license by paying to the city an annual inspection and regulatory enforcement license fee of \$1,200.00 for each amusement redemption machine. The regulatory license fee is implemented to cover the costs to issue the licenses, regulate the amusement redemption machine game rooms, and to determine whether the provisions of this article are complied with.

(b) Occupation tax permit fee. A game room owner of an amusement redemption machine game room shall be required to secure an occupation tax permit annually. An amusement redemption machine game room shall be required to secure an occupation tax permit by paying to the city an annual fee of \$15.00 for each amusement redemption machine.

(c) Application. An applicant for a license or permit shall file with the code enforcement department a written application on a form provided for that purpose by the city, which shall be signed by the applicant, who shall be the game room owner of the amusement redemption machine game room. Should an applicant maintain an amusement redemption machine game room at more than one location, a separate application must be filed for each location. The following information is required in the application:

(1) Location, by address, of the proposed operation;

(2) A copy of the certificate of formation if the business is registered with the secretary of state, or the applicant's d/b/a, if applicable;

(3) Name, address, telephone number and driver's license number of the following persons, if applicable:

a. Applicant if a natural person;

b. All persons who own any interest in the amusement redemption machine game room;

c. All corporate officers, if any, of the business;

d. If a partnership, each of the general and limited partners;

e. The property owner; and

f. All operators and employees of the property and/or business.

(4) The nature of the business (general description) operating the game room;

(5) A list of current state permit numbers for each amusement redemption machine one for each machine;

(6) Number of amusement redemption machines in the amusement redemption machine game room;

(7) A completed background check and authorization permitting the release of this information to the city for all parties listed in subsections (c)(3)a—(c)(3)d and (c)(3)f. In addition, a completed background check and authorization permitting the release of this information to the city is also required for property owners if the property owner owns, operates or supervises the business operating the amusement redemption machine. The background check will include a Texas and Federal Bureau of Investigation criminal history record information background check. The form authorization permitting release of results of the background checks to the city is available from the city's code enforcement department. The license/permit will be denied if any individual has a felony conviction, a class "A" misdemeanor conviction in the last ten years, a class "B" misdemeanor conviction in the last five years, or a current arrest warrant even though the issuing state will not extradite from Texas.

a. Upon application for a license/permit, the applicant is required and shall be financially responsible for obtaining and ensuring that the city has received all background checks as provided and required under this article.

(8) A sworn statement that:

a. All the facts contained in the application are true and correct;

b. The location and operation of the amusement redemption machine game room will not violate any applicable deed restrictions; and

c. The amusement redemption machine game room will be operated in accordance with all laws and city ordinances, including V.T.C.A., Penal Code ch. 47.

(9) Name, address, and telephone number of an emergency contact person who can be reached after hours.

(10) Diagram attached of the building showing the specific location of all of the amusement redemption machines along with all exit doors and signs.

(d) Expiration and renewal.

(1) Expiration. A regulatory enforcement license and tax permit issued by the city shall automatically expire on the January 31st following its issuance, except as otherwise stated herein. Such license and permit shall automatically expire if the licensee or

permittee sells the property or the business, transfers equity in to accomplish same, or license and/or permit is revoked. A regulatory enforcement license or permit is not assignable or transferable. The city shall not refund any portion of a regulatory enforcement license or permit after the license or permit is issued, nor shall it prorate or reduce in amount any fee due to the city.

(2) Renewal. A regulatory enforcement license and tax permit issued by the city does not automatically renew. Prior to the expiration of a regulatory enforcement license or permit, the licensee or permittee may apply to obtain a renewal if the person wishes to continue operating an amusement redemption machine game room after the expiration date pursuant to subsections 2(a)—2(c). Nothing herein authorizes the licensee or permittee to operate after the expiration of a license and tax permit and before a renewal is effective. If an application is not made for a renewal before the expiration date, then a new application must be made pursuant to subsections 2(a)—2(c) after the expiration date in order to operate an amusement redemption machine game room.

(e) Posting. The license and permit shall be conspicuously posted and securely affixed to a permanent surface of the amusement redemption machine in such a manner that the permit and license are clearly visible and located next to the current State of Texas permit sticker. All permits and stickers must be located in such proximity that they can be viewed together without any manipulation to the amusement redemption machine. A permit or license issued for a certain coin amusement redemption machine shall not be transferred to another machine.

(f) Replacement. The city shall provide a duplicate permit or license for a valid permit or license that has been lost, stolen, or destroyed at a charge of \$10.00. The original permit or license for which a duplicate permit or license was issued shall be void.

(g) Initial license and permit. On the effective date of this article, all amusement redemption machines must obtain a valid permit and license as described herein within 30 days.

Sec. 3. - Restrictions, regulations, controls, and Limitations

Restrictions, regulations, controls, and limitations. The following restrictions, regulations, controls, and limitations shall apply to all amusement redemption machine game rooms:

- (a) All building and fire code standards must be met. A certificate of occupancy shall be requested before license is issued.
- (b) The amusement redemption machine shall be in conformance with the provisions within this article.
- (c) A game room owner, operator and employee must be a person who is at least 18 years of age.
- (d) 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 machines shall be paid annually regardless of whether such machines are used by the game rooms.

(e) All machines must be permitted and licensed as stated within this article.

(f) Only one game room shall be allowed on any lot or in any single building, structure or tenant space within a strip or retail center.

(g) No game room shall be situated within 1,000 feet of any church, school, residential district or use, hospital or any other game room. The distance shall be measured in a straight line without regard to intervening objects or structures and from the nearest property line of the game room seeking a license to the nearest property line of the church, school, residential district or use, hospital or any other game room or property line to district boundary, whichever is more restrictive.

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

(i) All game rooms must provide immediate and unrestricted access, without delay of any kind, to a city official during hours of operation to all areas of the game room and to all amusement redemption machines located in the game room.

(j) The game room owner, operator and/or employee of the licensed premises must be present to supervise the operation of the game room. The game room shall not be left unattended.

(k) 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.

(l) The maximum amount of amusement redemption machines allowed, licensed and permitted within the city shall not exceed 240.

(m) Every game room shall have transparent unobstructed windows or open space on at least one side so that the area is open to view by the general public passing by on a public street. 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.

(n) All game rooms shall have a licensed, uniformed security officer present on the premises between the hours of 8:00 PM to 6:00 AM.

(o) Intoxicating liquids or substances or any type of controlled substance may not be sold, consumed, or possessed on the premises of any game room.

(p) All game rooms must have sufficient lighting requirements in parking areas and around the building for safety and crime prevention purposes.

(q) All game rooms must have loitering restrictions to be enforced in parking areas or building surroundings by the Security Officer, who must periodically check the parking areas for loitering

and/or suspicious activity. Any suspicious activity, vehicles, persons or loitering should be reported and/or addressed immediately by the Security Officer.

(r) All game rooms must have Closed Caption Television (CCTV) camera systems and/or security monitoring system at the owner's expense, which systems and any records or recordings of such systems made available to law enforcement or city officials upon request for any investigatory purpose.

(s) All game rooms must have and maintain a sign-in logs for identification of all persons present in the gameroom, which ID logs must be available to law enforcement or city officials upon request.

Sec. 4. - Nuisance declared.

Because of the increased traffic and congestion around late hours, and potential for being an attractive nuisance to minors, the city hereby finds that a further proliferation and concentration of such amusement redemption machine businesses constitutes a nuisance to the health, safety, and welfare of the citizens. Accordingly, subsequent to the passage of this article, no such establishments will be issued a permit or license unless such establishment is at least 1,000 feet in a direct line from any of its public entrances to the nearest property line of a church, school, or hospital. Any businesses existing as of the time of the passage of this article shall be considered a non-compliant business. A non-compliant business will be exempt from the requirements under this section. However, if a non-compliant business should cease operations, have a change in the game room owner, violate this article, violate state law, or violate federal law, their permit and license shall be subject to revocation and such may not be renewed unless they meet all provisions of any applicable law including the above spacing requirements.

Sec. 5. - Inspections.

(a) The city shall be required to perform periodic inspections to determine if the amusement redemption machine owner is complying with the provisions of this article and not endangering the public safety. The city shall effectuate these inspections through its police department, city manager, code enforcement department, fire marshal, or any of their designees.

(b) A game room owner, operator and/or employee of a game room or other person exercising control over a game room, a portion of a game room or an amusement redemption machine, shall provide a city official with immediate unrestricted access, without delay of any kind, during hours of operation to all areas of the game room and to all amusement redemption machines located in the game room.

(c) Any city official may inspect a game room or an amusement redemption machine located in the city to determine whether the game room or amusement redemption machine complies with this division and state laws.

Sec. 6. - Existing laws.

(a) Nothing herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table, coin operated, or slot machine, the keeping, exhibition, operation,

display or maintenance of which is now illegal or in violation of any article of the Penal Code of this State of Texas and of any federal laws of the United States of America.

(b) "Gambling devices" as defined by V.T.C.A. Penal Code, chapter 47, and as interpreted by judicial decision (*Hardy v. State*, 102 S.W.3d 123 (Tex. 2003); *State v. One Super Cherry Master Video 8-Liner Machine*, 102 S.W.3d 132 (Tex. 2003)) are prohibited from use as an amusement redemption machine.

Sec. 7. - Penalty, revocation, and sealing.

(a) Any person who violates a section of this article shall, upon conviction of such violation, be deemed guilty of a misdemeanor and shall be fined a sum no less than \$250.00, but not to exceed \$500.00, per machine, per violation for each day that violation occurs. The unlawful operation of any amusement redemption machine shall constitute a distinct and separate offense for each day that the same is operated or exhibited.

(b) The city council is authorized and empowered to revoke the regulatory enforcement license or permit of any person licensed or permitted under this article, after giving such person ten days' notice of a hearing and after conducting such hearing for the purpose of determining whether such license should be revoked because of the violation of this article.

(c) The city may seal any amusement redemption machine on which the permit and/or license has not been paid. The city shall charge a fee of \$25.00 for the release of any machine sealed as provided herein for nonpayment. It shall be unlawful for any person to break the seal affixed in the name of the city or exhibit, display or remove from location any machine on which the seal has been broken. Upon proof that all fees have been paid in full and an inspection of the location of business has been completed any and/or all sealed machines may be unsealed by a city official.

(d) Upon three convictions or deferred adjudications, including a plea of guilty or no contest resulting in a game room owner placed on deferred adjudication, for violation of any provision of this article, all permits or licenses under this article issued to the game owner shall immediately be terminated, removed and revoked.

Sec. 8. - Investigation.

This chapter 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.

Sec. 9. - Felony convictions.

There shall be no amusement redemption machines in any game room within the city if there has been a state or federal felony conviction of any offenses involving amusement redemption machines or illegal gambling at the premises, including previous owners.

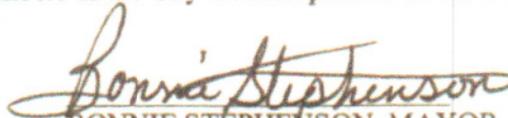
Sec. 10. - Severability.

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

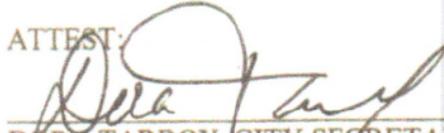
Sec. 11. - Effective Date.

This Ordinance becomes effective from and after its publication.

Passed by an affirmative vote of all members of the City Council present on the 14th day of April, 2022.


BONNIE STEPHENSON, MAYOR
CITY OF ROSE CITY, TEXAS

ATTEST:


DORA TARBOX, CITY SECRETARY
CITY OF ROSE CITY, TEXAS