

ORDINANCE NO. 2015-033

FIRST AMENDEDED ORDINANCE 2015-033 OF THE CITY OF FLORESVILLE, TEXAS ENACTING AND REQUIRING PERMITS AND FEES FOR THE OPERATION OF "COIN OPERATED MACHINES"; REQUIRING THE POSTING OF PERMITS; LEVYING A MUNICIPAL TAX ON "COIN OPERATED MACHINES," DEFINING COIN OPERATED MACHINES; REQUIRING THE DISPLAY OF THE TAX RECEIPTS; PROHIBITING THE PLACEMENT OF COIN OPERATED MACHINES WITHIN 1,500 FEET OF ANY SCHOOL OR CHURCH BUILDING; REGULATING THE TIME AND MANNER OF OPERATING COIN OPERATED MACHINES; PROVIDING A GRANDFATHERING CLAUSE; PROVIDING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE, SAVINGS AND SEVERABILITY CLAUSE, CONFLICTS AND AN EFFECTIVE DATE.

NOW, THEREFORE BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF FLORESVILLE:

That the following ordinance regulating coin and/or slot operated machines in the City of Floresville is hereby adopted.

Section 1
Definitions

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

- (A) "Business Owner" or "Permit Holder" as used herein shall mean and include a person or sole individual, owning or having the care, control, management or possession of any "coin and/or slot operated machine" who exhibits, displays or permits to be exhibited or displayed, in his location of business or upon premises under his or its control, any "coin and/or slot operated machine" in this City.
- (B) "Manager" as used herein shall mean and include a person or sole individual having the care, control, management of any "coin and/or slot operated machine" in his/her location of business or upon premises under his/her control within this City.
- (C) "Property Owner" as used herein shall mean and include a person, individual, firm, company, association or corporation owning a building, property or facility on which a business will operate within the confines of all laws regulating the business in local, state or federal laws.

- (D) "Coin Operated or Slot Machine" as used herein shall mean and include every machine or device of any kind of character which is operated by or with coins, metal slugs, tokens, checks, debit or credit cards.
- (E) "Skill or Pleasure Coin Operated or Slot Machines" as herein used shall mean and include every coin and slot operated machine of any kind or character whatsoever, when such machines dispense or are used or are capable of being used or operated for amusement or pleasure or when such machines are operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of merchandise, music and movies, or service.
- (F) "Service Coin Operated Machines" as herein used shall mean and include every pay toilet, pay telephone, and all other machines or devices, which dispense services and merchandise.
- (G) "Excluded Machines" as herein used shall mean and include machines that award the user non-cash merchandise prizes, toys, or novelties solely and directly from the machine, including claw, crane, or similar machines and machines 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, including, but not limited to: "Miniature Race Track Machines," "Miniature Football Machines," "Miniature Golf Machines," and "Miniature Bowling Machines."
- (H) "Gambling device" means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (H)(b) 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. The term;
- a. includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and
 - b. does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with non-cash merchandise prizes, toys, or novelties, or a presentation 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 10 times the amount charged to play the game or device once or \$5, whichever is less.

Section 2
Limit of Permits Allowed

To regulate the amount of locations of Skill or Pleasure Coin Operated or Slot Machine businesses within the incorporated City of Floresville, no more than five (5) total locations may operate Skill or Pleasure Coin Operated or Slot Machine businesses within the City of Floresville, allowing for one (1) licensed location per person or business entity. Each location shall be limited to a maximum of twenty five (25) Skill or Pleasure Coin Operated or Slot Machines.

Section 3
Requirements, Local Permit Fees, Expirations and Renewals, Restrictions and Exemptions for Coin Operated Machine Premises Permit

(A) Requirements: All persons, owning, possessing, maintaining, or operating Skill or Pleasure Coin Operated or Slot Machine(s) for use by the general public, private clubs, associations, fraternities or orders shall apply for a license and registration from the city. The license application must contain a complete statement about the identity of the owner of the business seeking to install Skill or Pleasure Coin Operated or Slot Machine: to include name, date of birth, social security number, business name, D.B.A. information, comptroller tax I.D. number, mailing address of owner, address of residence; address of business; the location where the business will operate; the number of machines at the location; a list of serial numbers, one assigned to each machine; the nature of any current business being operated at the location; the date when each Skill or Pleasure Coin Operated or Slot Machine was placed at the location; the owner of the location where the Skill or Pleasure Coin Operated or Slot Machine(s) will operate; and any other pertinent information that may be required by the city in the licensing and registration of Skill or Pleasure Coin Operated or Slot Machine (s). Information provided for records will be updated on a monthly basis. If there is a change in any type of information that is observed and/or completed by the permit holder, property owner and/or manager the information will be immediately advised and/or relayed to the Permit Office.

A license issued for Skill or Pleasure Coin Operated or Slot Machines under this ordinance:

1. Is required for each location and is personal to the applicant and may not be sold, bargained, conveyed, transferred or assigned to any other individual; with the exemptions as noted in Section 3, Subsection C(5) and Section 3, Subsection E of this Ordinance.

2. May only be issued to a single individual, to be referred to herein as “business owner;”
3. Does not vest any property or right in the licensee, except for the right to conduct the licensed business;
4. No firms, clubs, corporations, or other legal entities including private clubs or associations shall be allowed to obtain a license to operate a coin operated Skill or Pleasure Coin Operated or Slot Machine.

(B) Fees: A business owner, manager or lessee of premises on which a Skill or Pleasure Coin Operated or Slot Machine is made available to others shall be required to secure a permit for each machine at such location by paying to the City

1. An initial new permit fee of Five Hundred Dollars and No Cents (\$500.00) at time of application for each machine;
2. All state regulated tax permit fees;
3. An Occupation Tax Fee per Skill or Pleasure Coin Operated or Slot Machine in an amount set at one-fourth of the State Occupation Tax as set in Texas Occupation Code § 2153.401, and as may be amended by the Texas Legislature from time to time;
4. And any other fees required by City Ordinance.

Thereafter a per annual renewal inspection and coin operated machine permit fee for each machine will be as follows;

1. A business renewal permit fee in the amount of Five Hundred Dollars and No Cents (\$500.00) per machine;
2. An Occupation Tax Fee per Skill or Pleasure Coin Operated or Slot Machine in an amount set at one-fourth of the State Occupation Tax as set in Texas Occupation Code § 2153.401, and as may be amended by the Texas Legislature from time to time;
3. All other fees as required by state regulated tax permit fees. If a permit holder, business owner, manager or lessee is found to be operating more machines than previously reported, a of Five Hundred Dollars and No Cents (\$500.00) fee per machine, over the original reported machines, shall be levied against the permit holder, business owner, manager or lessee.

(C) Expiration and Renewal: Permits issued at any point of the calendar year shall automatically expire upon the following:

1. On December 31 of each calendar year; or
2. On the change of ownership of the building where the Skill or Pleasure Coin Operated or Slot Machine(s) are located; or
3. Upon removal or sealing of a Skill or Pleasure Coin Operated or Slot Machine from a licensed location; or
4. Upon revocation of license by the City of Floresville or its designees; or
5. Upon surrender of license by registered business owner; or
6. Upon the death of the applicant.

All permits shall be up for renewal by December 31 of each calendar year. All businesses in operation in accordance with this ordinance are required to have the renewal permit for each machine paid in full prior to January 31 of the renewal year. The City of Floresville shall not refund any portion of a coin operated machine permit fee after the permit has been issued, nor shall it prorate or reduce in the amount any fee due to the City. If in the event, fees are not paid in full by January 31 of each calendar year, the permit holder, business owner, manager or lessee shall be allowed 10 business days, not including official holidays, to pay in full at a rate of 1.5 times the original amount. If fees are not paid within time allotted, permit shall be revoked.

(D) Restrictions:

1. **Persons Under 21 Prohibited:** The presence of persons under 21 years of age on premises subject to coin operated machine location licenses, is prohibited. It is an affirmative defense to prosecution under this ordinance that the person under 21 years of age was a bona fide employee of the establishment subject to a coin operated machine premises permit. A sign notice, informing the public of said restriction, shall be placed at the entrance of the location.
2. **Alcoholic Beverages Prohibited:** The presence of any alcoholic beverages on premise of a coin operated machine businesses is prohibited unless such are contained in retail packaging and sold for consumption off premises. No individual, person, owner or manager shall allow or be allowed to consume any alcoholic beverage on premise of a coin operated machine business location. No individual, person, owner or manager shall give, sell, bring to or allow the bringing of any alcoholic beverage on said premises of a coin operated machine business.

3. Posting of Permits: The location license shall be posted conspicuously, noticeable to common view. Permits for each machine shall be affixed within easy view of the public and inspectors.
4. License and Permit Limitations: Solely one license to operate a location with a Skill or Pleasure Coin Operated or Slot Machines shall be issued to any one person, business, or individual. No more than twenty five (25) Skill or Pleasure Coin Operated or Slot Machines shall be allowable at any single licensed location. A transfer of permit shall not be allowed except as allowed in Section 3, Subsection E. A new permit may only be issued to replace a permit that has been voluntarily relinquished or revoked. New permits may only be issued to qualified registrants on the city's waiting list, in the order of their registration, or first qualified applicant if there are no applicants on the waiting list.
5. Window Visibility: Windows shall be unobstructed and/or unpainted, as to allow for visibility. All windows sun screened or tinted must allow light transmission of 20% or more. No luminous reflectance, mirror, or reflective type material shall be allowed to be placed on same windows.
6. Sign Requirements: All signs for advertisement, shall comply with City of Floresville Zoning Ordinances. No unauthorized signs shall be placed or allowed to be placed on the permitted business property without prior approval from the City. Any signs deemed to be out of compliance with zoning ordinance shall be grounds for revocation of Skill or Pleasure Coin Operated or Slot Machine location license.

(E) Exemptions:

1. Exemption arising under Section 3, Subsection C(5): Upon the death of the holder of a Skill or Pleasure Coin Operated or Slot Machine permit, the executor/administrator of the estate, business successor, or immediate next of kin may continue operations of the a Skill or Pleasure Coin Operated or Slot Machine business and have the permit transferred over to said entities name. All requirements still apply and continued operation must conform with this and other City of Floresville ordinances that apply to business operations.
2. Locations which, at the time of passage of this Ordinance, do not meet the distance requirements as set forth in Section 5(A) or exceed the maximum number of machines or number of locations as set forth in Section 2 shall not be required to comply with those sections of this Ordinance until one of the events as outlined in Section 3(C)(2)-(6) occurs, additional machines are installed at a subject location, or the timeline as set forth in Section 15 shall occur, whichever is first. At

such time the subject location shall immediately lose its exempted status and become subject to all other provisions of this ordinance as though it was a new application. During the term of this exemption, each of the locations subject to this section must comply with all other terms of this Ordinance, including but not limited to: permit fees, sale of alcoholic beverages, age limits, and other restrictions.

Section 4

Waiting List and Maintaining of List

The waiting list, comprised of all applicants, resident and non-resident both, shall be one single waiting list. The waiting list shall not be utilized until the number of locations in Floresville exempt from this Ordinance under Section 3(E)(2) is reduced to an amount less than the total number of locations allowed under Section 2 and no new locations shall be licensed or permitted until such time. The list will be on a first come, first serve basis, based on the initial application dates that are filed. This shall be a continuous working list to not allow for any modifications or advantages to solely benefit any one person. This is to allow for all persons a fair, balanced and reasonable opportunity to receive a permit.

- (A) All persons, or sole individuals, who are not eligible for an initial permit under Section 3 on the effective date of this Ordinance, but who desire to obtain a permit when the opportunity to do so becomes available, shall register with the City of Floresville code enforcement department and be placed on a single waiting list by preparing the appropriate forms required by the City's Code Compliance department.
- (B) The City shall create and maintain one waiting list. This waiting list shall be for resident applicants and for non-resident applicants. A place on this waiting list for permits is on a first-come, first served basis.
- (C) The total number of location licenses issued to residents and non-residents is as defined in Section 2 of this Ordinance.
- (D) The waiting list shall be comprised of the business owner or sole individual that will hold the location license, and shall not differ from that person.

Section 5

Business Location Restrictions and Relocation Requirements

- (A) The City may not issue a Skill or Pleasure Coin Operated or Slot Machine location license for use within one thousand five hundred feet (1,500') from door entry of business to property line of the following:

- a. All places of education or higher learning. To include pre-school facilities, child day care, elementary, middle or intermediate schools, high schools, places of higher learning colleges, technical schools or universities, or
 - b. Hospitals or places where medical attention is received or pharmaceuticals are dispensed. To include pharmacies, clinics, night clinics, adult day care, veteran hospitals, hospitals, major trauma units, or where ambulatory services are stationed, or
 - c. Any place of religious worship. To include any established building of gathering for worship, to include but not limited to a building of a denomination or other location where a group of people (a congregation) comes to perform acts of religious praise, honor, or devotion, or
 - d. Any city, county, school district, or other property owned or operated by a political subdivision of the state of Texas or the Federal Government; or
 - e. Any location where children congregate to include, but not limited to, playgrounds, parks, city maintained swimming pools, restaurants or eateries that facilitate a playground area or day care centers; and
- (B) In accordance with Floresville Zoning Ordinances, the City may only issue a Skill or Pleasure Coin Operated or Slot Machine location license in zoned areas as follows; a Commercial or Industrial zone.
- (C) There shall be required to be an amount of parking spaces for each location as calculated under the Ordinances of the City of Floresville for commercial property locations.
- (D) Relocation of Premises: Active business permit holders who wish to relocate the licensed establishment for which they are permitted to another location must notify the City of Floresville's Code Compliance Department immediately and receive an amended permit prior to relocating. Upon immediate notice to the City of Floresville's Code Compliance Department, the business owner shall be allowed forty-five (45) days to move all operations to new location. The forty-five (45) days shall commence at 12:00 midnight on the same day after notice was received, and shall continue to 12:00 midnight on the forty-fifth day. The City reserves the right to deny the relocation in the event that it finds significant negative impact for the surrounding properties or is a violation of this Section 5 Subsection A or B of this Ordinance.

Section 6
Issuance of Permits and Licenses

The following section shall apply specifically to all Skill or Pleasure Coin Operated or Slot Machine locations in accordance with this ordinance as well as state and federal laws. Those Skill or Pleasure Coin Operated or Slot Machines herein not specifically mentioned are not exempt from state and federal laws as applied to tax fees.

- (A) Every location which owns, controls, possesses, exhibits, or displays any Skill or Pleasure Coin Operated or Slot Machine, shall require a location license issued by the City of Floresville in accordance with this Ordinance.
- (B) Every owner hereinabove, who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in the City of Floresville any Skill or Pleasure Coin Operated or Slot Machine, shall pay and there is hereby levied on every coin operated and/or slot machine as defined in this ordinance, except such as are exempted herein, an annual permit fee as set forth in Section 3 of this Ordinance.
- (C) All permits for Skill or Pleasure Coin Operated or Slot Machines are payable annually in advance. Prior to the placement by an owner of a Skill or Pleasure Coin Operated or Slot Machine, there shall be attached or affixed thereto a valid permit for the machine.
- (D) Machines defined in this Ordinance as Skill or Pleasure Coin Operated or Slot Machines, capable of independent operation with separate activating coin mechanisms whether placed separately or in series and regardless of any electrical mechanical or manual component, shall be considered separate machines in regard to permitting.

Section 7

Replacement of Lost, Stolen and Destroyed Valid Permits

The City of Floresville shall not make a cash refund of the permit fee paid on any Skill or Pleasure Coin Operated or Slot Machine. The City shall provide a duplicate permit if a valid permit has been lost, stolen, or destroyed. The fee for each duplicate permit is \$10.00. An original permit for which a duplicate permit has been issued is void.

Section 8

Registration of Machines

Each Skill or Pleasure Coin Operated or Slot Machine shall be registered with the City of Floresville by make, type and serial number. A permit issued by the City or State shall be affixed to each such registered machine. Each Skill or Pleasure Coin Operated or Slot Machine shall have a serial number, which is clearly visible on the outside surface of the machine. If a Skill or Pleasure Coin Operated or Slot Machine is not manufactured

with a serial number, an owner shall assign a serial number to the machine and either stamp or engrave the assigned number on the machine.

Section 9

Attachment of Permits to Coin Operated Machines

A permit shall be securely affixed to any permanent surface of a machine in such a manner that the permit may be clearly seen by the public. A permit issued for a certain Skill or Pleasure Coin Operated or Slot Machine shall not be transferred to another machine.

Section 10

Sealing of Machines

- (A) The City of Floresville may seal any Skill or Pleasure Coin Operated or Slot Machine on which the initial premises permit fee or the yearly renewal premises permit fee has not been paid. The City shall charge an administrative fee of \$5.00 for the release of any machine sealed as provided herein for nonpayment of fees. 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.
- (B) Every Skill or Pleasure Coin Operated or Slot Machine subject to the payment of the fees levied in this article, and upon which the fee has not been paid as provided herein, is hereby declared to be a public nuisance, and the business displaying said machines may be denied operation by the City of Floresville, as well as denying the continued operation of said business. All permits allowing said business, as referred to in this Ordinance, to operate may be denied and/or discontinued.
- (C) 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 the Code Compliance Department, Police Department or their designees.

Section 11

Existing Laws & Inspections

- (A) Nothing herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table or 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 Texas Penal Code, Chapter 47, and as interpreted by judicial decision (Hardy v. State, No 01-0779, Tex. 2003 and One

Super Cherry Master Video 8-Liner Machine v. State, No. 01-0673, Tex. 2003) are prohibited from use as coin operated or slot machines or any machine for which a permit may be lawfully issued.

- (C) In addition to any other penalty or punishment imposed by law, violation of this Ordinance shall be cause for revocation of a Skill or Pleasure Coin Operated or Slot Machine location license issued pursuant to this Ordinance. The City reserves the right to inspect the premises of any Skill or Pleasure Coin Operated or Slot Machine business establishment in order to investigate compliance with this Ordinance. The Owner of a Skill or Pleasure Coin Operated or Slot Machine business or their employees shall not prohibit City of Floresville inspectors, police or fire personnel, at any time, to enter the premise of operation of the permit to ensure there are no violations of city, state or federal laws to include correct machine count issued to the permit, correct licenses or permits per machine, fire code violations or penal code violations. The entries and exits shall be maintained as to allow unobstructed, unregulated, free entry into said location by inspectors, police or fire personnel without any delay of entry. Any violations of this section shall be considered a violation of this Ordinance and will be considered grounds for revocation.

Section 12 **Violations**

Any person, business owner, manager violating any provision of this Ordinance shall, upon conviction of such violation, be deemed guilty of a Class C misdemeanor and shall be fined in any sum not to exceed Two Hundred Dollars and No Cents (\$200.00) per machine, per violation for each day that the violation occurs. The unlawful operation of any single Skill or Pleasure Coin Operated or Slot Machine shall constitute a distinct and separate offense for each day that the same is operated, or exhibited and is punishable by a fine not to exceed that as set forth in this Section. In addition to any other penalty or punishment imposed by law, violation of this section shall be cause for revocation of a Skill or Pleasure Coin Operated or Slot Machine premises permit issued pursuant to this Ordinance.

The City Council, or its designees, reserves the right to revoke any location license or permit to maintain and operate a Skill or Pleasure Coin Operated or Slot Machine business of this Ordinance.

Section 13 **Conflicts**

All ordinances or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

Section 14
Savings and Severability

If for any reason any section, paragraph, subdivision, clause phrase, word or provision of this Ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

Section 15
Effective Date

This Ordinance shall take effect ten days following publication of the caption of this Ordinance. Establishments subject to this Ordinance in existence at 12:00 A.M. on January 11, 2016, regardless of compliance with existing Ordinance 2015-033 prior to this amendment, are allowed to operate with the exemptions as set forth in Section 3(E)(2) until 12:00 A.M. on January 1, 2017.

Upon motion of Councilman Nieto, seconded by Councilman Ortiz with the following 3 voting in the affirmative, 1 voting in the negative, 0 absent, and 0 abstaining, the above Ordinance is duly **PASSED and APPROVED** this 11th day of January, 2016.



Sherry Castillo
SHERRY CASTILLO
Mayor

Attest:

Monica Cordova
MONICA CORDOVA
City Secretary