

ORDINANCE NO. 2022-0002

AN ORDINANCE OF THE CITY OF BEVERLY HILLS, TEXAS RELATING TO THE REGULATION AND LICENSING OF INDOOR AMUSEMENT FACILITIES; CREATING A NEW ARTICLE 4.08-INDOOR AMUSEMENT FACILITIES-TO CHAPTER 4 OF THE CODE OF ORDINANCES; PROVIDING FOR LICENSING; PROVIDING FOR ENFORCEMENT; PROVIDING FOR LICENSE APPLICATION AND REVIEW; PROVIDING TERMS FOR LICENSE APPROVAL OR DENIAL; PROVIDING FOR CONTENTS AND POSTING OF LICENSES; PROVIDING FOR SUSPENSION AND REVOCATION OF LICENSES; PROVIDING FOR RENEWAL AND APPEAL; PROVIDING FOR LICENSE FEES; REGULATING OPERATION OF INDOOR AMUSEMENT FACILITIES; PROVIDING FOR THE ADMITTANCE OF CITY OFFICIALS AND PROVIDING DEFINITIONS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS, TEXAS AS FOLLOWS:

Section 1. A new Article 4.08-Indoor Amusement Facilities – to Chapter 4 of the Code of Ordinances of the City of Beverly Hills is hereby created as follows:

Article 4.08 – Indoor Amusement Facilities

Sec. 1. – 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 designed, made, and adapted solely for bona fide amusement purposes, and that rewards the player exclusively with 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 times the amount charged to play the game or device once or \$5.00, whichever is less.

Coin-operated machine means any kind of machine or device operated by or with a coin or other United States currency, metal slug, token, electronic card, or check, including a music or skill or pleasure coin-operated machine.

Facility supervisor means a natural person who manages, controls or operates an indoor amusement facility on behalf of the owner or operator.

Indoor amusement facility means an amusement enterprise wholly enclosed in a building offering entertainment or games to the general public, for a fee, including, but not limited to, a bowling alley, billiard parlor/pool hall, and a facility with video games, computer games, skill or pleasure coin operated machines, or amusement redemption machines. Indoor amusement facility does not include a business that exhibits less than twenty-five video games, computer games, skill or pleasure coin operated machines, or amusement redemption machines as a secondary use of the property, if the business does not otherwise fall into the definition of an indoor amusement facility.

Music coin-operated machine means any kind of coin-operated machine, including a phonograph, piano, or graphophone that dispenses music or is used to dispense music; is operated by inserting a coin, metal slug, token, or check; and is not an amusement machine designed exclusively for a child.

Operator means a person who exhibits or displays, or permits to be displayed, a coin-operated machine in this city in a place of business that is not owned by the person.

Owner shall mean any person owning any "coin-operated machine" or indoor amusement facility in this city.

Person includes an individual, association, trustee, receiver, partnership, corporation, or organization or a manager, agent, servant, or employee of an individual, association, trustee, receiver, partnership, operation, or organization.

Service coin-operated machines shall mean every pay toilet, pay telephone and all other machines or devices which dispense service only and not merchandise, music, skill or pleasure.

Skill or pleasure coin-operated machine means any kind of coin-operated machine that dispenses, or is used or is capable of being used to dispense or afford, amusement, skill, or pleasure or is operated for any purpose, other than for dispensing merchandise, music, or service. The term includes marble machines, marble table machines, marble shooting machines, miniature race track machines, miniature football machines, miniature golf machines, miniature bowling machines, billiard or pool games, or machines or devices that dispense merchandise or commodities or plays music in connection with or in addition to dispensing skill or pleasure; and does not include an amusement machine designed exclusively for a child.

Sec. 2. – License required and exceptions

- (a) A person commits an offense if the person:
- (1) Knowingly, recklessly or with criminal negligence owns or operates an indoor amusement facility without an indoor amusement facility license; or
 - (2) Knowingly allows a building that he has an ownership interest in to be operated as an indoor amusement facility without an indoor amusement facility license.

- (b) Acquisition of a license under this article is a separate and distinct requirement from any other licensing requirement. Possession of some other license shall not relieve a person of the requirement to obtain a license pursuant to this division.
- (c) It is a defense to prosecution under this section that the person is operating an indoor amusement facility at a:
 - (1) Place owned by the federal, state, or local government;
 - (2) Non-profit organization that operates the indoor amusement facility for the organization's exclusive use and to further the purposes of the organization; or
 - (3) Place licensed by the state lottery commission.

Sec. 3. – Injunction and Prosecution

A person who owns or operates or causes to be operated an indoor amusement facility without the license required under this division is subject to a suit for injunction, as well as prosecution for criminal violations.

Sec. 4. – License application

- (a) An application for a license to operate an indoor amusement facility must be made to the City Secretary on the form prescribed by that official. The application must be accompanied by a sketch or diagram showing the configuration of the premises as well as the location of all coin operated machines, pool tables, and exits. The sketch need not be professionally prepared.
- (b) If a person who wishes to own or operate an indoor amusement facility is an individual, he must sign the application for a license as the applicant. If the person who wishes to own or operate an indoor amusement facility is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license.
- (c) All applications must be accompanied by a nonrefundable application fee in an amount determined as a part of the city's annual budget. An application shall not be considered to have been filed until the application fee is paid and all information required by the application form is submitted.
- (d) All applications must be accompanied by a statement signed by the persons listed in subsection (b) that states that the entertainment or games offered at the indoor amusement facility will not be used as gambling devices and that all facts contained in the application are true and correct.

Sec. 5. – Application review

- (a) *Preliminary inspection.* The City Secretary shall forward a copy of all indoor amusement facility applications to the police department and other departments for review. Upon receipt of the copy of the application, each department shall make such inspection and/or investigation of the applicant and the premises that is necessary for the enforcement of ordinances and laws for which the department has responsibility. Upon completion of the review, the reviewing department shall forward to the City Secretary its recommendation for approval or disapproval of the application. If the recommendation is for disapproval, the department shall clearly set forth its reason for the recommendation. If all departments recommend approval, then a final inspection shall be conducted.
- (b) *Final inspection.* The city shall make a final inspection of the facility after all equipment and furnishings are in place to ensure the facility complies with all applicable codes and ordinances. If after final inspection, the recommendation is for disapproval, the city shall clearly set forth its reason for the recommendation. If the recommendation is for approval, a license shall be issued in accordance with section 5.

Sec. 6. – License issuance or denial; term; time limitation for compliance with division

(a) *Issuance.* The City Secretary shall issue an indoor amusement facility license, upon payment of the license fee, to an applicant within 30 days of the filing of an application, unless the City Secretary finds one or more of the following is true:

- (1) An applicant is under 18 years of age;
- (2) An applicant has falsely answered a question or request for information on the application form;
- (3) The indoor amusement facility is not in compliance with applicable laws and ordinances;
- (4) The applicant has been denied a license or the renewal of a license under this article within the preceding 12 months or has had a license issued under this article revoked within the preceding 12 months and the denial or revocation has not been successfully appealed; or
- (5) An applicant or applicant's spouse has been convicted of a crime involving the gambling, gambling promotion, keeping a gambling place, or possession of a gambling device, equipment or paraphernalia; the sale of an alcoholic beverage without a permit or license from the state; prostitution or promotion of prostitution; manifesting the purpose of engaging in prostitution; or unlawfully carrying a weapon, provided;
 - a. If the conviction was for a misdemeanor offense, less than two years have elapsed since the date of the conviction or the date of release from confinement for the conviction, whichever is the later date; or

- b. If the conviction is for a felony offense, less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date; or
 - c. If the conviction is for two or more misdemeanor offenses or a combination of misdemeanor offenses occurring within any 24-month period, less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction.
 - d. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.
- (b) *Extension of review period.* If the applicant is in the process of correcting conditions on the premises so that the premises will comply with applicable ordinances and laws, the applicant shall have 30 days from date of notice to bring the premises into compliance, or a new application shall be required.
 - (c) *Term.* No license shall be effective until it has been issued. All licenses for indoor amusement facilities issued under the provisions of this article shall be valid for a period of five years from the date of issuance. The date of issuance shall be stated on the license.
 - (d) *Time limitation for compliance with chapter.* Those persons operating an indoor amusement facility prior to February 1, 2022 shall comply with the licensing application provision by August 1, 2022 (with license to be valid for one calendar year after issuance); however, all provisions contained herein shall become effective from and after the date the ordinance from which this division derives has been published as required by law.

Sec. 7. – Contents; posting of license; notice of change in ownership

- (a) An indoor amusement facility license issued under this article shall state on its face to whom it is issued, the date of issuance, the date of expiration, the address and location of such indoor amusement facility and shall be signed by the licensing officer.
- (b) The license shall be posted by the licensee in a conspicuous place and in such a manner and position that it may be easily read at any time of day or night.
- (c) A replacement license may be issued for a lost, destroyed or mutilated license upon application. A replacement license shall have the word "REPLACEMENT" stamped across its face and shall bear the same number as the one it replaces.
- (d) A licensee shall notify the City Secretary within ten days of a change or partial change of ownership or change of address or trade name.

Sec. 8. – License transfer

A licensee under this article shall not transfer his license to another, nor shall a licensee operate an indoor amusement facility under the authority of a license at any place other than the address designated on the license.

Sec. 9. – Suspension and revocation of license

- (a) The City Secretary may suspend or revoke a license if it is determined that:
- (1) The owner, operator, or facility supervisor has refused to allow an inspection of the premises, as authorized by this article;
 - (2) The owner, operator, or facility supervisor has demonstrated an inability to operate or manage an indoor amusement facility in a peaceful and law abiding manner;
 - (3) A cause of suspension occurs and the license has already been suspended within the preceding 12 months;
 - (4) An owner or operator gave false or misleading information in the material included on or with his original application or a renewal application or in response to an inquiry by the city;
 - (5) An owner, operator, or facility supervisor has been convicted of a violation set forth in Section 4.08(6)(a)(5);
 - (6) The indoor amusement facility has been operated without a facility supervisor being physically present; or
 - (7) The indoor amusement facility is being operated in violation of the building codes or city ordinances.
- (b) The fact that a conviction is being appealed shall have no effect on the suspension or revocation of the license.
- (c) Notice of suspension shall be served either in person or by certified mail to the owner or operator of the indoor amusement facility and the owner of the building in which the indoor amusement facility is located.

Sec. 10. – License renewal and appeal

- (a) A renewal application on the form prescribed by the licensing officer may be submitted no earlier than 60 days before the expiration of the license. The renewal application must be accompanied by a renewal fee set by the city council as a part of the city's annual budget. When an application for renewal is submitted less than 30 days before the expiration date of the license, the expiration date of the license will not be affected.

- (b) When the renewal application has been filed as required above, the City Secretary shall have seven days to determine whether to issue a renewal license, or to reject the renewal application and require the applicant to file an original application and review the renewal request under the same standards as the original license application. If the Chief of Police requires that the renewal be handled as though it were a new application, the review period set out in section 4.08(6) shall commence upon the filing of the completed original application form, not upon the filing of the renewal application form. The following shall constitute grounds for rejecting the renewal application and requiring the filing of an original application form:
- (1) The receipt by any department of the city of confirmed complaints about the operation of the indoor amusement facility during the period that the license for which renewal is sought has been in force;
 - (2) The discovery by any official of the city of a violation of any ordinance or law during the preceding year on the premises which was related to the operation of the indoor amusement facility; or
 - (3) An increase in police calls to the indoor amusement facility or the area immediately adjacent to the premises that are related to the operation of the indoor amusement facility.
- (c) If a license expires during an extension of the review period, the licensee may continue to operate the indoor amusement facility until a decision on the renewal is rendered. If the renewal is denied, the licensee must cease operation of the indoor amusement facility immediately upon notification. Notice of the denial shall be sufficient if personally given to the owner, operator, or facility supervisor provided for in section 13-126, or if delivered to the owner, operator, or facility supervisor at the address shown on the renewal application by mail, return receipt requested.
- (d) When an application for renewal is ultimately denied, the applicant shall not be issued a license for one year from the date of the denial. If, subsequent to denial, the building official finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days has elapsed since the date the denial of the renewal application was final.
- (e) The rejection of a renewal application and requirement that the renewal be handled as though it were an original application may not be appealed; however, the final denial of a license renewal by the Chief of Police may be appealed in accordance with section 4.08(11).

Sec. 11. -- Appeal

- (a) *Procedure to appeal.* If either an original application or a renewal application for a license is denied, suspended or revoked, the applicant or owner shall be informed of that action by written notice that states the basis for the action. The applicant may appeal that action to the city council by filing a written appeal with the city secretary's office within ten days of

receiving the notice of the denial, suspension or revocation of the license. In the notice of appeal, the appealing party shall clearly set out his reasons for believing that the action to deny, suspend or revoke the license was in error. If the appeal is from the denial of a license renewal, suspension or revocation, the denial, suspension or revocation shall be stayed during the pendency of the appeal and the indoor amusement facility may continue to operate.

- (b) *Council procedures.* The city council shall conduct a public hearing within 30 days of the filing of the appeal. Opportunity shall be afforded to all parties and interested persons to present evidence or argument on the issues involved in the appeal. Within 30 days of the closing of the public hearing, the city council shall make its decision on whether to overturn the denial, suspension or revocation of the license. A written notice setting out the city council's decision shall be given to the appealing party. If the city council fails to act within the timeframe stated herein, the denial, suspension or revocation of the license shall be overturned. Provided, that if the appeal is from a denial of an initial license application, not a denial of a license renewal, suspension or revocation, the city council must conduct its hearing and make its decision on whether to overturn the license denial within 30 days from the filing of the appeal.
- (c) *Standards for review of initial license denial.* At the appeal hearing on a denial of an initial license application, the appealing party must present evidence clearly indicating that the City Secretary was incorrect in determining that the stated grounds for the license denial existed.
- (d) *Standards for review of license suspension, revocation or denial of renewal.* At the appeal hearing on a license suspension, revocation, or refusal to renew, the building official must present evidence clearly indicating that the stated grounds for the suspension, revocation, or denial of renewal existed.

Sec. 12. – License fees

Before any license for an indoor amusement facility shall be issued by the city, the person applying for the license shall pay to the city the fees that are established by the city council as part of the city's annual budget. These fees may include an application fee to cover the costs associated with processing the application in addition to an annual license fee.

Sec. 13. – Operation of indoor amusement facilities

- (a) *Indoor amusement facility supervisor.* A person who owns or operates an indoor amusement facility must designate one or more persons as facility supervisors. The names of the facility supervisors must be included in a license application or renewal application. Whenever a change in the facility supervisors occurs, notice of that change shall be given to the City Secretary. A facility supervisor must remain on the premises of the indoor amusement facility during operating hours.

- (b) *Authority to vacate premises.* The chief of police, fire marshal or building official shall have the power to cause an indoor amusement facility to be vacated whenever any provision of this article is being violated or when a situation that poses an immediate threat to safety exists. In addition, where a violation of any ordinance of the city or state law is discovered, the chief of police, fire marshal or building official may order that an indoor amusement facility be vacated and remain closed for up to 24 hours after it is determined that the violation that resulted in the order to close has been corrected.
- (c) *Hours of operation.* The indoor amusement facility shall not be operated between 3:00 a.m. and 8:00 a.m.
- (d) *Layout.* All skill or pleasure coin-operated machines, pool tables, and bowling lanes shall be in full and open public view. No skill or pleasure coin-operated machine, pool table, or bowling lane shall be in a room that is closed off from the main area of the facility.

Sec. 14. – Admittance of officials

Any police officer, fire marshal, health officer, building official or other person authorized to enforce the provisions of this Code and applicable ordinances shall have the right to enter, inspect, and remain for so long as is reasonably necessary to conduct an inspection related to the enforcement of this Code and applicable ordinances any place of public amusement. The owner, proprietor, manager, facility supervisor, or agent of such owner, proprietor, manager, or facility supervisor of any place of public amusement commits an offense if the owner, proprietor, manager, facility supervisor, or agent of such owner, proprietor, manager, or facility supervisor of any place of public amusement recklessly or with criminal negligence refuses to admit any such official in the discharge of his duties without the payment of an admission fee.

PASSED on this the 8th day of February, 2022.

CITY OF BEVERLY HILLS, TEXAS

By: _____
Mayor

ATTEST:

City Secretary