

ORDINANCE NO. 404

AN ORDINANCE OF THE CITY OF WINK TITLED PUBLIC AMUSEMENTS; AND CREATING ARTICLE I. COIN-OPERATED MACHINES AND ARTICLE II. GAME ROOMS AND AMUSEMENT REDEMPTION MACHINES; AND REPEALING ALL OTHER ORDINANCES OR PORTIONS THEREOF IN CONFLICT, A SEVERABILITY CLAUSE AND PROVIDING FOR ITS PUBLICATION AND EFFECTIVE DATE.

WHEREAS, the City Council has determined that the revisions set forth would be in the best interest of the citizens of Wink; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINK, TEXAS:

PUBLIC AMUSEMENTS

ARTICLE I. COIN-OPERATED MACHINES AND

ARTICLE II. GAME ROOMS AND AMUSEMENT REDEMPTION MACHINES

ARTICLE I. COIN-OPERATED MACHINES

Sec. 1-1. Adoption of Occupations Code.

All applicable Subchapters of Chapter 2153 "Coin-Operated Machines" of the Texas Occupations Code, most current revision, are hereby adopted by reference by the city of Wink Texas as though they were incorporated herein.

Sec. 1-2. Construction of Article.

This article does not authorize or permit the keeping, exhibition, operation, display, or maintenance of a machine, device, or table prohibited by the constitution of this state or the penal code.

State law reference(s)-Similar provisions, V.T.C.A., Occupations Code§ 2153.003.

Sec. 1-3. Definitions.

(a) "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.

(b) "Music coin-operated machine" means any kind of coin-operated machine, including a phonograph, piano, or graphophone, that:

1. Dispenses music or is used to dispense music;
2. Is operated by inserting a coin, metal slug, token, or check; and
3. Is not an amusement machine designed exclusively for a child.

(c) "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 only merchandise, music, or service. The term:

1. Includes a marble machine, marble table machine, marble shooting machine, miniature racetrack machine, miniature football machine, miniature golf machine, miniature bowling machine, billiard or pool game, or machine or device that dispenses merchandise or commodities or plays music in connection with or in addition to dispensing skill or pleasure; and
2. does not include an amusement machine designed exclusively for a child.

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

(e) "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, corporation, or organization.

Sec. 1-4. Occupation tax levied.

(a) Every person who owns, controls, exhibits, displays, or who permits to be exhibited or displayed in this city any coin-operated machines, shall pay, and there is hereby levied on

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every coin-operated machine, except such as are exempted herein, an annual occupation tax of one-quarter the tax charged and collected by the state.

(b) Provided that nothing in this article shall prevent the operator of such machines from paying the tax levied in this section for the account of the owner, but the payment of such tax by such operator or other person shall not relieve the owner from the responsibility of complying with all provisions of this article.

State law reference(s)-Occupation tax levy limited to one-quarter the state tax, V.T.C.A., Occupations Code § 2153.451.

Sec. 1-5. Payment of tax; receipt to be attached to machine.

- (a) The occupation tax levied hereby shall be paid to the city secretary, who shall issue an occupation tax receipt.
- (b) The occupation tax receipt shall be attached to the coin-operated machine mentioned in the receipt and shall bear the serial number of the particular machine.
- (c) It shall hereafter be unlawful for any person to operate, exhibit or display any coinoperated machine in the city without having attached hereto an occupation tax receipt and no occupation tax receipt issued for a certain coin-operated machine shall be transferred to any other machine.

Sec. 1-6. Nonpayment of tax.

- (a) Nonpayment of tax shall result in the sealing of each machine the levied tax is not paid for.
- (b) A fee of \$5.00 shall be imposed for the release of each sealed coin-operated machine.

Sec. 1-7. Application to illegal machines.

Nothing in this article shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table or coin-operated 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 or the Constitution of this state.

Sec. 1-8. Certain coin-operated machines; proximity to schools, churches and residential areas.

Skill or pleasure coin-operated machines are prohibited within 300 feet of any school or church building or residential area.

ARTICLE II. GAME ROOMS AND AMUSEMENT REDEMPTION MACHINES

Sec. 1-9. Construction of Article.

This article does not authorize or permit the keeping, exhibition, operation, display, or maintenance of a machine, device, or table prohibited by the constitution of this state or the penal code.

State law reference(s)-Similar provisions, V.T.C.A., Occupations Code§ 2153.003.

Sec. 1-10. Definitions.

- (a) *Amusement redemption machine* means any electronic, electromechanical, or mechanical contrivance, including a sweepstakes machine, designed, made, and adopted for bona fide amusement purposes, and that by operation of chance, skill, or a combination of chance and skill affords the player the opportunity to win merchandise, prizes, toys, novelties, or an item of value, or a representation of value redeemable for those items. A reference to a "coin-operated machine" in this article shall include an amusement redemption machine.
- (b) *Game room* means a building, facility, or other place that is open to the public and that contains one or more operational amusement redemption machines.
- (c) *Game room owner* means a person who has an ownership interest in a game room.
- (d) *Operational machine* means a machine that is ready to be played and accessible to the public.
- (e) *Police officer* means a city police department police officer.

(f) *Sweepstakes* means a contest that awards one or more prizes based on chance or the random selection of entries.

Sec. 1-11. License.

(a) *License required.*

- (1) It shall be unlawful for an owner or operator of a game room to operate, use, or maintain a game room without first obtaining city game room license.
- (2) An application for an existing game room location that is submitted by an individual who is different from the individual named as the owner or operator on the current application or a re-application for an existing game room location after denial or revocation shall be considered a new application and not a renewal.
- (3) 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 in the amount adopted by the city council per machine kept within and about the licensed premises. Upon payment of the fee and compliance with all licensing requirements, the license shall be issued by the city.

(b) *Application; investigation; denial, suspension or revocation; term.*

- (1) A game room owner shall obtain a license from the city for each game room located in the city.
- (2) The game room owner shall submit a completed application in the form provided by the city. Any failure to provide the information required by this section or a determination that inaccurate, erroneous or incomplete information has been submitted shall be grounds for denial of the application.
 - (A) The proposed game room must comply with this article at the time of the submission of the application for a license.
 - (B) Each application [should] be on the form provided by the city [and] shall provide the following information:
 - (i) Name, address, telephone number, and driver's license number of the applicant if the applicant is a natural person;
 - (ii) Name, address, telephone number and driver's license number of all persons who owns an interest in the game room;
 - (iii) Name, address, telephone number and driver's license number of all corporate officers, if any, of the business;
 - (iv) Name, address, telephone number of the business;
 - (v) If incorporated, the name of the business registered with the Texas Secretary of State;
 - (vi) If a partnership, the name, address, telephone number and driver's license of each of the general and limited partners;
 - (vii) The trade name by which the applicant does business and a true and correct copy of the registration of the applicant's assumed name filed in the office of the county clerk, bearing the file mark or stamp that evidences its filing in that office;
 - (viii) The street address of the premises;
 - (ix) If applicant is not the owner of the premises, the applicant shall furnish the name, address, and telephone number of the property owner;
 - (x) Name, address, and telephone number of the operator of the premises to be licensed;
 - (xi) Number of amusement redemption machines in the premises to be licensed and the serial number of each amusement redemption machine;
 - (xii) Whether a previous license of the applicant, or, if applicable, a corporate officer of the applicant, has been revoked within two years of filing of the application;
 - (xiii) The previous occupation(s) of the applicant and, if applicable, all corporate officers and partners of the applicant within the preceding five years;

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

(xv) A floor plan of the amusement redemption machine game room interior depicting the layout of the amusement redemption machine game room interior specifically including, but not limited to, the location of all amusement redemption machines, coin-operated machines or devices, the manager's station(s), restroom facilities, kitchen and bar facilities, if any, and all areas to which patrons will not be permitted;

(xvi) Any other plans that may be required by this code;

(xvii) If the applicant has been convicted of any crime directly related to a game room, the date, location, and nature of the offense and the penalty received;

(xviii) Each applicant shall sign a waiver authorizing the City of Wink to request on behalf of the applicant criminal history reports from the Texas Department of Public Safety, the Texas Comptroller's Office or any appropriate federal agency;

(xix) A copy of any TABC licenses or applications for licenses to sell beer wine or liquor at the premises at which the amusement redemption machines are proposed to be located, if alcohol will be sold at the premises;

(xx) A list of any and all registered companies, 501(c)(3) or other non-profits or groups profiting or receiving money from the playing of any gambling device or amusement redemption machine; and

(xxi) A notarized statement, under oath, that:

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

b. The amusement redemption machines are not and will not be used *as* gambling devices;

c. The location and operation of the game room will not violate any applicable deed restrictions;

d. The game room will be operated in accordance with all laws;

(3) Each application received under this section may be investigated to determine whether the applicant *has* been convicted of one of the following applicable offenses:

(A) Gambling, gambling promotion, keeping a gambling place, communicating gambling information, possession of gambling devices or equipment, or possession of gambling paraphernalia as described in chapter 47 of the Texas Penal Code;

(B) Forgery, credit card abuse or commercial bribery as described in chapter 32 of the Texas Penal Code;

(C) A criminal offense as described in chapter 34 of the Texas Penal Code;

(D) Criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses; or any other offense to the laws of another state or of the United States that, if committed in this state, would have been punishable as one or more of the aforementioned offenses; or

(E) A criminal offense as described in chapter 352, subchapter B of the Texas Local Government Code; and

(i) Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or

(ii) 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, if the conviction is of a felony offense.

(4) The city shall refuse to approve issuance or renewal of a license for one or more of the following reasons:

(A) Any failure to provide the information required by this article;

(B) A determination by the city that inaccurate, erroneous or incomplete information has been submitted;

(C) A false statement as to a material matter made in an application for a license;

(D) Revocation of a license, pursuant to this article, of the applicant or a co-owner or a corporate officer of the applicant within two years preceding the filing of the application;

(E) Refusal or failure to pay the correct license fee amount;

(F) The applicant or a co-owner for such license has, within the past three years, been convicted of any violation of this article; and/or

(G) The applicant or a co-owner for such license has, within the past ten years, been convicted of a crime involving moral turpitude.

(c) *Hearings.* Any applicant desiring to contest the denial, revocation, or suspension of a game room license may request a hearing before the Mayor in accordance with the following procedures:

(1) A request for hearing must be in writing and delivered to the city secretary within ten days of the denial. The applicant waives the right to hearing if the request is not timely received by the city secretary.

(2) The only issue before the Mayor shall be whether or not the proposed game room complies with the requirements of this article.

(3) If the Mayor determines that a proposed game room does not comply with the requirements of this article, then application for a game room license shall be denied. The applicant may re-apply for a game room license if changes are made to bring the proposed game room into compliance with this article.

(4) The decision of the Mayor shall be final.

(d) *Display of license.* The game room owner shall display within plain sight of an accessible public area of each game room a current permit or license for that game room.

(e) *Effect.* Each licensee under this article must meet and comply with all requirements of law applicable to the premises or any activity conducted thereon, and the issuance of a license under this article shall not excuse the licensee, his agents or employees or any patrons of such premises therefrom.

Sec. 1-12. Unrestricted access by police officer; inspection by police officer.

(a) An owner, manager, or employee of a game room, or other person exercising control over a game room, a portion of a game room, or an operational amusement redemption machine, shall provide a police officer with immediate unrestricted access during business hours to all areas of the game room and to all operational amusement redemption machines located in the game room.

(b) A police officer may inspect a game room or an operational amusement redemption machine located within the incorporated city limits to determine whether the game room or operational amusement redemption machine complies with this article and state law.

(c) An owner, manager, or employee of a game room or other person who does not allow a police officer to inspect a game room or operational amusement redemption machine is in violation of this Article.

Sec. 1-13. Recordkeeping and responsibilities of licensee.

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

(b) A licensee hereunder shall not permit any of the following activities within the licensed premises:

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

Sec. 1-14. Game room sign required.

A game room owner shall mark each entrance to a game room with a sign that:

- (1) Bears the words "GAME ROOM" in one and one-half inch or larger block letters; and
- (2) Is legible from a distance of 25 feet.

Sec. 1-15. Transparent, uncovered windows required.

- (a) 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 or using a corridor, lobby or other room to which the public has access and is admitted without charge.
- (b) 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.

Sec. 1-16. Hours of operation; ingress and egress.

- (a) All game rooms shall have their hours of operation clearly marked on every entrance.
- (b) All game rooms shall have all doors providing ingress and egress from the game room unlocked during the hours of operation.
- (c) It shall be unlawful for any person to keep, conduct or operate any game room for profit or to allow or permit any game room to remain open for business or open to the public before the hour of 5:00 a.m. or after the hour of 12:00 a.m. within 300 feet of any property zoned for residential use.

Sec. 1-17. Location restriction.

- (a) No coin-operated machines may be located for operation within 300 feet of a church, school or hospital.
- (b) Game rooms shall only be permitted in Commercial zoned districts.

Sec. 1-18. Illegal machines.

Issuance of any license by the city under this article shall not be construed to authorize or permit any persons or organization to violate the current or future laws/rules set out by the Texas Penal Code, Alcoholic Beverage Code, Texas Government Code, the Texas Alcoholic Beverage Rules or any other law or rule created to regulate gambling.

Sec. 1-19. Penalty.

- (a) A person who fails to comply with the requirements of this article commits a class C misdemeanor punishable by a fine of up to \$500.00.
- (b) Proof of a culpable mental state is not required for a conviction of an offense under this article.
- (c) Each day that a violation occurs is a separate offense.

Sec. 1-20. Exemptions.

This article shall not be construed to embrace bona fide fraternal organizations and lodges, social clubs or social gatherings in private residences for the sole purpose of sociability and amusement.

Sec. 1-21. Fees.

1. Game Room License Permit (1/4 amount of State License Amount).		
POST MARK DATE	GENERAL BUSINESS FEE 50	GENERAL BUSINESS FEE
	OR FEWER MACHINES	51-200 MACHINES
Nov. 30 or earlier	\$50.00	\$100.00
Dec. 1 - Dec. 31	\$62.50	\$112.50
Jan. 1 - Mar. 31	\$75.00	\$150.00
Apr. 1 - or after	\$100.00	\$200.00

Due Date

Renewals and fees due annually on December 31. Penalties for late filing: Possible rejection of renewal and late fee of \$25.00 per each day filing is late.

- 2. Occupation Tax Permit Fee (Annual) \$15.00 Per Machine.
- 3. Game Room & Amusement Certificate of Occupancy \$75.00.
- 4. Application Review Fee \$100.00 (Adm in Fee \$50.00, Plan Review Fee \$50.00).

Sec. 1-22 – 1-30 Reserved.

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Severability. If any provisions, section, exception, subsection, paragraph, sentence, clause or phrase of this ordinance or the application of same to any person or set of circumstances, shall for any reason be held unconstitutional, void or invalid, such invalidity shall not affect the validity of the remaining provisions of this ordinance or their application to other persons or sets of circumstances and to this end all provisions of this ordinance are declared to be severable.

Conflicts. All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

This ordinance shall become effective after its approval and adoption upon first and final reading and its publications pursuant to law.

PASSED AND APPROVED THIS 12th DAY OF NOVEMBER 2024.



CITY OF WINK

A blue ink signature of Eric Hawkins, Mayor of Wink, is written over a horizontal line. The signature is stylized and cursive.

Eric Hawkins, Mayor

Attest:

A blue ink signature of Gina Funderburg, City Secretary, is written over a horizontal line. The signature is cursive.

Gina Funderburg, City Secretary