

AN ORDINANCE RELATING TO COIN OPERATED AMUSEMENT DEVICES, PROMOTIONS, AND LOTTERIES; RELATING TO OFFENSES AGAINST PUBLIC HEALTH AND MORALS; TO PROVIDE FOR THE APPLICABILITY OF CERTAIN PROVISIONS TO CERTAIN GAMES AND DEVICES; TO PROVIDE FOR A LIMITATION ON THE ALLOWABLE NUMBER OF SUCH MACHINES AT ONE LOCATION; TO REQUIRE OWNERS AND OPERATORS OF SUCH MACHINES TO COMPLY WITH CERTAIN REGULATIONS; TO PROVIDE FOR THE SUSPENSION AND REVOCATION OF LICENSES; TO PROVIDE FOR FINES; TO MANDATE REPORTING REQUIREMENTS; TO MANDATE SIGN POSTING; TO PROVIDE FOR MINIMUM DISTANCE RESTRICTIONS; TO PROVIDE REQUIREMENTS FOR PLACEMENT OF MACHINES; TO REQUIRE DISCLOSURE OF CERTAIN CONTACT INFORMATION OF THE OWNER AND/OR OPERATOR OF MACHINES; TO PROVIDE FOR LICENSE POSTING; TO PROVIDE FOR SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.

WHEREAS, the duly elected governing authority of the City of Moultrie, Georgia is authorized by O.C.G.A. § 48-17-17 to adopt ordinances regarding bona fide coin operated amusement machines; and

WHEREAS, there is a growing problem in communities throughout the country and the State of Georgia with businesses which are often classified as 'internet sweepstakes cafés' or 'phone card sweepstakes cafés', whereby businesses circumvent state gaming laws by using advances in electronic, mechanical, and computer technology to allow customers to gamble using veiled schemes; and

WHEREAS, this ordinance is adopted to address the interests of public health, welfare, and safety of the citizens of the City of Moultrie.

NOW THEREFORE, the Mayor and City Council find that in the interests of the public safety the immediate enactment of this ordinance by reasonable means, as allowed under state law, and not unduly oppressive is necessary to protect the health, safety, morals, and general welfare of the citizens of the city.

BE IT ORDAINED by the Mayor and Council of the City of Moultrie, and it is hereby ordained by authority of same that:

Section 1.

Chapter 10 of the Municipal Code of the City of Moultrie is amended by adding a new Article, to be numbered Article V, which shall include the following language:

"Article V. - COIN OPERATED AMUSEMENT MACHINES"

Section 2.

“Sec. 10-150. Short Title.

This Article shall be known as the “City of Moultrie Coin Operated Amusement Machine Ordinance.”

Section 3.

“Sec. 10-151. 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

Bona fide coin operated amusement machine shall have the same definition as found in the Official Code of Georgia, Annotated, Section 48-17-1.

Business location means the entire office or area of the business in any one location owned or leased by the same proprietor or proprietors where the Lessor or Lessors allow the space to be used for business purposes.

Business owner or business operator means an owner or operator of a business where one or more bona fide coin operated amusement machines are available for commercial use or play by the public.

Class B machine shall have the same definition as found in the Official Code of Georgia, Annotated, Section 48-17-1.

Distance means the measurement in linear feet from the nearest wall enclosing the proposed building of the licensee to the nearest wall of any church or day care facility licensed as such by the state of Georgia, or to the nearest wall enclosing the building of any other licensee under this chapter, or to the nearest property line of any school, residentially zoned property, or public recreation facility, as measured in all directions in a straight line as commonly referred to "as the crow flies".

Operator means any person, individual, firm, company, association, corporation, or other business entity who exhibits, displays, or permits to be exhibited or displayed, in a place of business other than his own, any bona fide coin operated amusement machine in this state.

Owner means any person, individual, firm, company, association, corporation, or other business entity owning any bona fide coin operated amusement machine in this state.”

Section 4.

“Sec. 10-152. Prohibition on Class B Devices.

Business owners and business operators are prohibited from offering more than nine (9) Class B machines at one business location within the jurisdiction of the city.”

Section 5.

Sec. 10-153. Business Owner and Business Operator Notice.

The owner and/or operator of each bona fide coin operated amusement machine located within the jurisdiction of the city shall inform the business owner and/or operator of each business location in which one of the machine owner's machines is located of the prohibitions and penalties set out in the Official Code of Georgia, Section 16-12-35, subsection (e), (f), and (g).

Section 6.

Sec. 10-154. Employee Notice.

The business owner and/or operator of each business location within the jurisdiction of the city which offers to the public the use of a bona fide coin operated amusement machine and which rewards the player as allowed under Georgia law shall inform all employees of that business in which one of the machine is located of the prohibitions and penalties set out in the Official Code of Georgia, Section 16-12-35, subsection (e), (f), and (g).

Section 7.

“Sec. 10-155. License Suspension and Revocation.

- (a) The city may suspend or revoke license of any business owner or business operator to manufacture, distribute, or sell alcoholic beverages as a penalty for the conviction of the business owner or business operator of a violation of Official Code of Georgia, Section 16-12-35, subsection (e), (f), or (g).
- (b) The city may suspend or revoke any other license granted by the city of any business owner or operator as a penalty for the conviction of the business owner or business operator of a violation of the Official Code of Georgia, Section 16-12-35, subsection (e), (f), or (g).
- (c) *Right to inspect and examine books and records.* The city council, any member thereof, the city manager and his designee shall have the right to inspect and

examine the books and records of all operators or owners of any bona fide coin operated amusement machine located within the jurisdiction of the city ages at any time during the normal hours of business operation.

(d) The suspension or revocation of licenses under this Code section shall be in accordance with the following guidelines:

- (1) *Notice; hearing.* Any license which has been issued or which may be issued by the city to any licensee may be suspended or revoked by the mayor and council for due cause. Before the city council shall revoke or suspend any existing license, the applicant shall be given notice in writing from the city clerk to show cause before the city council at a time and place specified therein, not less than three days nor more than ten days from the date of service of the notice, why the license should not be revoked or suspended, as the case may be, stating the grounds therefore, and at the appointed time and place the licensee shall have the opportunity to show cause, if any exists, why the application should not be denied or the license revoked or suspended, after which the city council shall take such action as it, in its judgment and discretion, shall deem warranted under the facts, including suspension, probation, or revocation, and/or may impose a civil monetary penalty not to exceed the amount allowed under the city charter. The hearing herein provided for need not be at a regular meeting of the city council, but may be at such time and place as shall be fixed in the notice. All decisions suspending or revoking any license shall be in writing, with the reason therefore stated, and mailed or delivered to the applicant. In addition, at any hearing as provided herein, the party afforded the hearing shall have the opportunity to present evidence, have an attorney, to cross-examine opposing witnesses and have testimony recorded at his expense. Formal rules of evidence shall not apply to hearings under this section, although the mayor and council shall have the right to exclude evidence which carries no indicia of reliability. All testimony shall be offered under oath or affirmation.
- (2) *Due cause generally.* The term "due cause" for the purposes of this section shall include, but not be limited to:
 - (A) Conviction of, or the entering of a plea of guilty or nolo contendere by, the licensee or any of his employees or any person holding an interest in the license for any felony, any law, administrative regulation or ordinance involving alcoholic beverages, gambling or narcotics, or tax laws.

- (B) Conviction of, or the entering of a plea of guilty or nolo contendere by, the licensee or any of his employees or any person holding an interest in the license for any sex offense when the business is licensed for on-premises consumption.
- (C) Suspension or revocation of any state license required as a condition for the possession, sale or distribution of alcoholic beverages.
- (D) Revelation of any material falsification of any fact or representation given in an application for a license issued under this chapter or bearing upon the licensee's qualification therefor. Any material omission from, or untrue or misleading information which is contained in, an original, or renewal application for license hereunder shall be cause for the denial or refusal of a license, and if any license has previously been granted under such circumstances, the same shall constitute due cause for suspension or revocation of such license. Any act which may be construed as a subterfuge in an effort to circumvent any of the qualifications for a license under this chapter shall be deemed a violation of the requirement attempted to be circumvented.
- (E) Failure to meet or maintain any standard prescribed by this Article as a condition or qualification for holding a license.
- (F) Due cause may also be found should the licensed establishment have become a trouble spot in the judgment of the council by reason of disturbances or acts of disorderly conduct or violence having occurred in the business or on the premises thereof; provided that when the license of any establishment has been revoked or renewal of license denied because the establishment has become a trouble spot, no further license shall be issued under this chapter to any person at the location for a period of at least 12 months from the date of revocation.
- (G) Due cause shall also consist of the business or the operation or location thereof of the owner or any person connected therewith ceasing to meet any of the qualifications for the issuance of license as stated in this chapter.
- (H) Failure to control operation resulting in public nuisance. If the failure to control the operation either inside the building or outside on the property results in controlled substance abuse, prostitution, gambling, flagrant indecent conduct or obscenity, fighting,

excessive noise, loitering or illegal parking, to the number of times and extent that the city council, should find the establishment to have become a public nuisance, then such failure may be declared to be due cause for suspension or revocation of the license for such establishment, or the denial of renewal application for same.

- (I) Any other factor known to or discovered by the city whereby it is objectively shown the licensee, any of the licensee's employees or any person holding an interest in a license, has engaged in conduct at or involving the licensed business or has permitted conduct on the licensed premises that constitutes a violation of federal or state law, a violation of any law or ordinance regulating such business, or violation of regulations made pursuant to authority granted for the purpose of regulating such business, local ordinance or administrative regulations involving alcoholic beverages, gambling or narcotics for all alcohol licensed businesses and including any sex offense under state law or local ordinances with respect to businesses licensed for on-premises consumption, and of failure of the licensee or his employee to promptly report to the police department any violation of the law or ordinances, breach of peace, disturbance or altercation resulting in violence occurring inside the building or on the premises. With respect to this section, it shall be rebuttably presumed that the violative act was done with the knowledge or consent of the licensee; provided, however, that such presumption may be rebutted only by evidence which precludes every other reasonable hypothesis save that such licensee did not know, assist or aid in such occurrence, or in the exercise of full diligence that such licensee could not have discovered or prevented such activity.
- (J) *Emergency due cause; failure or refusal to cooperate with police acting in line of duty.* On evidence of failure or refusal of the licensee or any employee hereunder to cooperate with any police officer on any reasonable request or action within such officer's duties, responsibilities or powers, including all police powers, rights and duties to investigate to determine any pertinent fact relating to the establishment, the licensee, any employees or corporate officers or partners, the city manager or his designee shall immediately order all operation of any bona fide coin operated amusement machine discontinued until after a hearing is set out in the due cause hearing provided for in subsection (d)(1) of this section, such hearing to be concerning such failure or refusal to cooperate.

- (e) Notice of suspension or revocation proceedings shall be served on the person named as licensee in the application and shall be in writing. The notice may be served personally or by first class mail. If by mail, the notice shall be addressed to the licensee at its address as provided by the licensee to the municipality. The burden shall be on the licensee to provide notice, in writing, of any change of address for service of notices and process. In the case of service by mail of any notice required by this chapter, the service is complete at the time of deposit in the United States Postal Service.
- (f) *Sanctions generally.* Mayor and council may impose any such sanction(s), or no sanctions, in its judgment and discretion. Such sanction(s) may include one or more of the following: revocation of the license, suspension of the license for no more than 12 months, imposition of a probationary period not to exceed 12 months, and/or a civil monetary penalty not to exceed the amount allowed under the city charter. Where the remaining term of the license is less than 12 months, imposition of suspension or probation for a period in excess of the term of the existing license shall be applied to any license renewal. A subsequent violation within a probationary period shall be cause for revocation and/or denial of license renewal. A total of three separate and unrelated violations within 24 months, whether or not within a probationary period, shall be grounds for permanent revocation.
- (g) Upon receipt of notice of adverse action against the licensee under this section, the licensee may waive its right to a hearing and stipulate to a sanction, as recommended by the city manager, in consultation with the chief of police. Any stipulation entered under this subsection shall be in writing, signed by the licensee, and non-appealable.”

Section 8.

“Sec. 10-156. Monthly Reports.

- (a) Any business owner or business operator subject to Official Code of Georgia, Section 48-17-15(b)(1) is hereby required to provide a monthly report to the City Clerk of the city. Such report shall indicate the monthly gross retail receipts for each business location located within the jurisdiction of the city and shall be due by the fifth business day of each month, subsequent to the month in which the sales have taken place.
- (b) No business owner or business operator may derive more than 50 percent of such business owner’s or business operator’s monthly gross retail receipts for this business location in which the Class B machines are situated from such Class B machines and any business owner or business operator found in

violation of such provision may be fined as allowed under this article and may have any city issued license suspended or revoked as allowed under the Official Code of Georgia, Section 48-17-15 and 48-17-17.”

Section 9.

“Sec. 10-157. Posting of Signs.

Any business owner or business operator with a business location within the jurisdiction of the city which offers to the public one or more bona fide coin operated amusement machine is hereby required to post prominently a notice including the following or substantially similar language:

GEORGIA LAW PROHIBITS PAYMENT OR RECEIPT OF MONEY FOR WINNING A GAME OR GAMES ON THIS AMUSEMENT MACHINE; PAYMENT OR RECEIPT OF MONEY FOR FREE PLAYS WON ON THIS AMUSEMENT MACHINE; PAYMENT OR RECEIPT OF MONEY FOR ANY MERCHANDISE, PRIZE, TOY, GIFT CERTIFICATE, OR NOVELTY WON ON THIS AMUSEMENT MACHINE; OR AWARDING ANY MERCHANDISE, PRIZE, TOY, GIFT CERTIFICATE, OR NOVELTY OF A VALUE EXCEEDING \$5.00 FOR A SINGLE PLAY ON THIS MACHINE.

Any such notice shall be at least 11.5 inches by 17.5 inches in size. Words and letters shall be in bold print and shall be at least one centimeter in size.”

Section 10.

“Sec. 10-158. Minimum Distance Requirements; Building Regulations.

Any business location which offers to the public one or more bona fide coin operated amusement machines shall be subject to the following restrictions:

- (a) No license for shall be granted to any person unless the proposed location is in compliance with state law.
- (b) No license shall be granted unless the following distance requirements are met:
 - (1) The proposed location of a business shall be situated more than 600 feet from any school ground, college campus, or public recreation facility.
 - (2) The proposed location of a business shall be situated more than 200 feet from any church, or day care facility licensed as such by the state of Georgia,

provided that this restriction shall not apply to those places of business licensed to sell alcoholic beverages prior to the location of a church or day care facility within the prohibited distance.

- (3) No license hereunder shall be issued to any proposed location which is within 50 feet of any residentially zoned property.
- (c) Each application for a license shall include a scale drawing of the location of the proposed building and a certificate of a registered surveyor indicating therein that such location complies with this section.
- (d) Any business owner or business operator with a business location within the jurisdiction of the city which offers to the public one or more bona fide coin operated amusement machine shall have installed and properly maintained in the building video camera or cameras which will photograph and record motion video of all persons entering and leaving the building as well as persons appearing at the cash register or registers, the exact location or locations thereof shall be approved prior to placement by a representative of the city police department.
- (e) An administrative penalty of \$500.00 for the first offense and \$1,000.00 for the 2nd and each subsequent offense by a license holder for a violation of subsection (d) at the same store or location shall be imposed. The administrative penalty set forth herein shall be in addition to any other penalties imposed in this chapter.”

Section 11.

“Sec. 10-159. Disclosure of Machine Owner.

Any business owner or business operator seeking to locate a business within the jurisdiction of the city and offer to the public one or more bona fide coin operated amusement machines must first submit in writing the name, physical address and mailing address of the owner of the bona fide coin operated amusement machine to the City Clerk of the city before any occupational tax certificate or license granted by the municipality is issued or renewed.”

Section 12.

“Sec. 10-160. Location of Machines.

Any business owner or business operator who offers to the public one or more bona fide coin operated amusement machines is required as a condition of doing business in the jurisdiction of the city to locate each and every bona fide coin operated

amusement machine in plain view and accessible to any person who is at the business location.”

Section 13.

“Sec. 10-161. Posting of Occupational Tax Certificate.

Any business owner or business operator who offers to the public one or more bona fide coin operated amusement machines is required as a condition of doing business in the jurisdiction of the city to post its occupational tax certificate (also known as its business license) in plain view to any person who is at the business location.”

Section 14.

“Sec. 10-162. Violations.

Any business owner, business operator, machine owner, machine operator, or employee of such who violates any provision of this Article shall be subject to the maximum fine and term of imprisonment allowed under the charter of the city for each individual violation.”

Section 15.

This ordinance shall become effective immediately upon its adoption by the City Council.

Section 16.

a. It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

c. In the event any section, paragraph, sentence, clause or phrase of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not

render invalid, unconstitutional or otherwise unenforceable any of the remaining sections, paragraphs, sentences, clauses and phrases of this Ordinance and that, to the greatest extent allowed by law, all remaining sections, paragraphs, sentences, clauses and phrases of the Ordinance shall remain valid, constitutional, enforceable and of full force and effect.

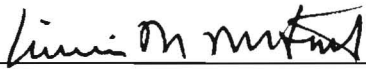
Section 17. The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out therein.

Section 18. The Ordinance shall be codified in a manner consistent with the laws of the State of Georgia and City of Moultrie.

Section 19. It is the intention of the governing body, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the code of Ordinances, City of Moultrie, Georgia and the sections of this Ordinance may be renumbered to accomplish such intention and that all ordinances and parts of ordinances in conflict herewith be and the same are hereby repealed.

BE IT FURTHER ORDAINED that should any portion of this ordinance be declared unconstitutional, the remaining portions thereof shall not be affected thereby and shall remain in full force and effect. It is the intention of the City Council and it is hereby enacted that the provisions of this ordinance shall become and be made a part of the Code of the City of Moultrie, Georgia, and that sections of this ordinance be renumbered or relettered to accomplish such intention.

CITY OF MOULTRIE

By: 
Mayor

Attest: 
Clerk

Read first and second times

11/06/12

Read third time and passed

11/20/12