

# ORDINANCE NO. 172

AN ORDINANCE OF THE CITY OF WALLIS, TEXAS; PROVIDING FOR THE REGULATION OF CENTERS AND BUSINESS ESTABLISHMENTS WITH RECREATION AND AMUSEMENT MACHINES WITHIN THE CORPORATE CITY LIMITS OF THE CITY OF WALLIS; PROVIDING DEFINITIONS; ESTABLISHING AUTHORITY TO ENFORCE; PROVIDING FOR A PENALTY CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND, PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

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

## I. GENERAL

This Ordinance as herein established has been written for the purpose of promoting and protecting the public health, safety and general welfare of the community and in the furtherance of conserving the value of property and establishing a community desirable to reside therein.

## II. DEFINITIONS

As used in this Ordinance, the terms "owner," "operator", "coin-operated machine", "Music coin-operated machine", "Service coin-operated machine" and "Skill or pleasure coin-operated machine" shall have the meanings assigned to them by the Texas Occupation Code.

## III. ANNUAL TAX

- A. Tax. An annual occupation tax is hereby levied on each coin-operated machines owned, possessed, exhibited or displayed in the city. The tax is to be paid by the owner.
- B. Amount. The amount of the annual occupation tax levied under this division shall be equal to one-fourth (1/4) the state tax levied upon all coin-operated machines under the provisions of the Taxes Occupation Code.
- C. The operator of any coin-operated machine may pay the tax levied in this division for the account of the owner.

D. The occupation tax levied by this article shall be paid to the city secretary, who shall issue an occupation tax receipt.

E. The occupation tax receipt shall be attached to the coin-operated machine mentioned in the receipt. The occupation tax receipt shall be attached to the machine for which it is issued in such manner that it cannot be removed from such machine without showing evidence of such removal. The occupation tax receipt shall state the amount of fee paid, the name of the person paying the same, the character of coin-operated machine covered thereby, the serial number thereof and the year for which such fee has been paid. It shall be unlawful to attach to any such machine any occupation tax receipt other than one issued therefor and bearing the serial number of the machine to which it is attached, and no occupation tax receipt issued for a certain coin-operated machine shall be transferred to any other machine.

F. It shall be unlawful for any person to operate, exhibit or display any coin-operated machine in the city without having attached thereto an occupation tax receipt.

G. Sealing untaxed machines. Any coin-operated machine upon which the required tax has not been paid shall be sealed by the city code enforcement officers or police department in a manner to prevent its full operation. It shall be unlawful for any person to break the seal affixed to any such machine or exhibit, display or remove from location any machine on which the seal has been broken, and such offense is punishable as a misdemeanor with a fine of up to two hundred dollars (\$200.00). The release of any machine sealed as provided herein for nonpayment of tax may be obtained after payment of the city tax for a fee of five dollars (\$5.00) to be paid to the city secretary.

H. Exemption.

1. The tax levied by the provisions of this ordinance shall not apply to coin-operated machines which are exempt under the provisions of the Chapter 2153.004 of the Texas Occupation Code as amended.

2. As applicable the terms of this Ordinance shall not apply to entities, individuals, corporations, associations, common carriers and exhibitors as defined as provided by Chapter 2153.005 thru 2153.008 of the Texas Occupations Code as amended.

I. Illegal machines not authorized. Nothing in this ordinance 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 illegal or in violation of any article of the Penal Code of this state or the constitution of this state.

#### IV.

#### AMUSEMENT REDEMPTION MACHINES AND GAME ROOMS.

A. Licensing and permitting.

1. License. No person shall operate an amusement redemption machine game room in the city without first obtaining a license from the chief of police, as required by this section. No license shall be issued until the occupation tax has been paid by the operator for each machine within the premises, as required by this ordinance.

2. Permit. No person shall operate an amusement redemption machine in the city without first obtaining a permit from the chief of police. No permit shall be issued until the occupation tax has been paid by the operator, as required by this ordinance.

B. Definitions.

1. Amusement redemption machine game room means any establishment where five or more amusement redemption machines, with the exception of excluded machines, are displayed or exhibited for public use.

2. Amusement redemption machine means (1) a skill or pleasure coin-operated machine that is designed, made and adapted solely for bona fide amusement purposes, and that by operation of chance or a combination of skill and chance affords the user, in addition to any right of replay, an opportunity to receive exclusively non-cash merchandise prizes, toys, novelties, or a representation of value redeemable for those items; (2) 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, 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.

3. Excluded machines: An amusement redemption machine game room does not include:

a. A machine that awards the user non-cash merchandise prizes, toys, or novelties solely and direct from the machine, including claw, crane, or similar machines; nor

b. A machine 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 to throw, roll, flip, toss, hit or drop a ball or other physical object into the machine or a part thereof, including basketball, skeet ball, golf, bowling, pusher, or similar machines; nor

c. A machine or any device defined in Section 47.01, Penal Code, as a gambling device, or any activity prohibited or described in Chapter 47, Penal Code.

C. Local license fee for amusement redemption machine game room required.

1. Payment of fee and issuance of license: An owner, operator, or lessee of an amusement redemption machine game room shall be required to secure a license

annually. An amusement redemption machine game room shall be required to secure a license by paying to the city an annual inspection and amusement redemption machine game room license fee of \$15.00 per machine. Upon payment of fee and compliance with all licensing requirements, the license shall be issued by the chief of police, or designee.

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

a. Name, address, telephone number and driver's license number of the applicant if a natural person; name, address, telephone number and driver's license number of all persons who own 25 per cent or more interest in the amusement redemption machine game room; name, address, telephone number and driver's license of all corporate officers, if any, of the such business; name, address, and telephone number of the business; if incorporated, the name of the business registered with the secretary of state; if a partnership, the name, address, telephone number, and drivers license of each of the general and limited partners; a copy of the applicant's d/b/a, if applicable. If applicant is not the owner of the premises, the applicant shall furnish the name, address and telephone number of the property owner.

b. The previous occupation(s) of the applicant and, if applicable, all corporate officers and partners of the applicant within the preceding five years;

c. Whether a previous license or permit of applicant, or, if applicable, corporate officer or partner of applicant, has been revoked within two years of filing of the application;

d. Number of amusement redemption machines in the amusement redemption machine game room;

e. A statement that (i) the amusement redemption machines are not and will not be used as gambling devices; (ii) that all the facts contained in the application are true and correct; (iii) the location and operation of the amusement redemption machine game room will not violate any applicable deed restrictions; and (iv) the amusement redemption machine game room will be operated in accordance with all laws; and

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

3. Expiration and renewal:

a. Expiration: An annual amusement redemption machine game room license issued by the city shall automatically expire on the 31st day of December following its issuance, except as otherwise stated herein. Such license shall automatically expire if the licensee thereof sells the property or the business, transfers equity to accomplish same, or otherwise disposes of such devices. An amusement redemption machine game room

license is not assignable or transferable. The city shall not refund any portion of a license after the license is issued, nor shall it prorate or reduce in amount any fee due to the city.

b. Late penalty: Upon the expiration of a license, the licensee shall obtain a renewal if the licensee wishes to continue operating an amusement redemption machine game room. Failure to obtain the renewal within 30 days after expiration will require such person to pay an additional late fee in an amount equal to 20 percent of the fee actually due or 20 percent of the previous year's fee, whichever is greater in order to obtain reinstatement of his license. Nothing herein authorizes the licensee to operate after the expiration of a license and before a renewal is effective.

4. Sealing: The city shall have the authority to seal any coin-operated machine located at any amusement redemption machine game room for which a license fee has not been secured. A \$5.00 fee will be charged for the release of any machine sealed for non-payment of said license fee.

5. Posting of license: The license shall be conspicuously posted inside the building.

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

a. Condition of premises: All building and fire code standards must be met. Inspection by building official and certificate of occupancy shall be obtained before license is issued. Game room must be located in area zoned for that activity.

b. Methods of conduction of business: No alcoholic beverages shall be served or allowed on premises. No activities allowed outdoors.

c. Hours of operation: May only be operated between the hours of 7:00 a.m. and 2:00 a.m.

d. Parking requirements: One space for each two machines, plus one space per employee per shift.

e. Location requirements: Premises shall not operate within 300 feet of an established church, school, day care or hospital.

f. The owner, operator or manager of the premises must be present to supervise the operation of the machines. The machines shall not be left unattended.

g. Machines must be so situated within the premises as to be in full and open public view, which entails being visible to all patrons of the establishment.

h. Minors may not operate machines during school hours on days when school is in session.

i. A game room operator must be a person who is at least 18 years of age.

j. Total number of machines in one establishment shall be limited to 50.

D. Termination of license: The chief of police may terminate any license to maintain and operate an amusement redemption machine game room when the licensee is in violation of any

provision of this article, any other ordinance of the city or any applicable state or federal law on regulation, or licensee was found to have submitted false information in licensee's application. Such termination shall be upon the decision of the chief of police which shall be final no less than ten calendar days after receipt of written notice sent by certified mail, return receipt requested and addressed to the licensee at the premises, specifying the particular violation or violations. If requested before the ten-day period has expired, the licensee may request a hearing before the chief of police to contest the termination. Any decision of the chief thereon shall be final and non-appealable.

E. Disclaimer: By issuing the required license, the city is not certifying the installation or use of the amusement redemption machines applying for a license, the applicant shall acknowledge that the city is not certifying or sanctioning the installation or use of such machine.

## V. INSPECTIONS

The Mayor or his designee shall appoint or designate an authorized representative to make periodic inspections of premises licensed under this Ordinance to determine compliance with the building provisions, the maintenance of toilets and other sanitary facilities and compliance with the health, plumbing, sanitary and other applicable code provisions and any other ordinance of the City.

## VI. REVOCATION

A. The City Council is authorized and empowered to revoke the license of any person licensed under this Ordinance, after giving such licensee ten (10) days notice of a hearing and after conducting such hearing for the purpose of determining whether such license should be revoked.

B. The power of revocation shall be exercised upon the following grounds only:

1. For the violation of any of the provisions of this Ordinance.
2. For knowingly permitting the sale, use or consumption of any alcoholic beverage in or upon the licensed premises which is a game room as defined in Article IV. Sec. B(1).
3. For violation of the prescribed hours of operation provided in this Ordinance.
4. For knowingly permitting the presence on the premises of a person under the influence of intoxicating liquor.

5. For knowingly permitting disorderly conduct or immoral practices on the premises.
6. For knowingly permitting the violation of the laws of the state or of this Ordinance or any other ordinance of the City.
7. For failure to comply with the regulations of this Ordinance relating to minors.

**VII.  
PENALTY CLAUSE**

Any person who violates any provision of this Ordinance for which no other penalty is set forth shall, upon conviction, be subject to a penalty of not more than one thousand dollars (\$1,000.00) per incident or per day in which such condition exists. Each day that such violation is permitted to continue shall constitute a separate offense. The term "person" as used in this section shall include the owner, occupant, mortgagee or vender in possession, assignee or rents, receiver, executor, trustee, or lessee, agent or another person, firm or corporation directly, or indirectly, in control of a building or tract of land.

**VIII.  
SEVERABILITY CLAUSE**

That it is hereby declared to be the intention of the City Council of the City of Wallis that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared invalid or unconstitutional be the valid judgment or decree of any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such invalid or unconstitutional phrase, clause, sentence, paragraph or section.

**EFFECTIVE DATE**

This Ordinance shall take effect immediately after its passage and publication as required by law.

**PASSED AND ADOPTED** by the City Council of the City of Wallis, Texas, this the 21st day of May, 2008.

**APPROVED:**

  
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**MAYOR, Tony I. Salazar Jr.**

**ATTEST:**

  
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**CITY SECRETARY, DJ Sommers**