

ORDINANCE NO. 11-15-2017

WHEREAS, the City Council of the City of Frankston ("City Council") is concerned about game rooms and the future development of the City of Frankston; and

WHEREAS, the City is expressly authorized to regulate location of game rooms operating amusement redemption machines such as eight liners by virtue of Texas Occupations Code § 2153.452; and

WHEREAS, Texas Occupations Code CHAPTER 2153, COIN-OPERATED MACHINES, could be construed to apply only to coin operated machines, this ordinance further stipulates that this ordinance applies to game room equipment operating via coin, paper, or electronic media; and

WHEREAS, zoning game rooms is a legitimate and reasonable means of regulation to ensure that operators of game rooms do not knowingly allow their establishments to be located within 1000 feet of a church, school or hospital; and

WHEREAS, game rooms that operate amusement redemption machines, such as but not limited to eight liners, can have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, such as gambling, theft, criminal trespass, criminal mischief, and burglary; and

WHEREAS, game rooms that operate amusement redemption machines have objectionable operational characteristics, contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the City Council desires to minimize and to limit these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect citizens from increased crime; preserve the quality of life; preserve property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the City Council has determined that it is the public's best interest and in support of the health, safety, and general welfare of the citizens of the City that game rooms should be limited in location by zoning in the City of Frankston, Texas.

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

SECTION 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, including sweepstake machines, designed, made, and adapted solely for bona fide amusement purposes, and that by operation of chance or a combination of skill affords the user, in addition to any right of replay, an opportunity to receive exclusively non-cash merchandise prizes, toys, or novelties, or a representation of a value redeemable for those items and is in compliance with Section 47.01(4) of the Texas Penal Code. Amusement Redemption Machine does not include:

1. A machine that awards the user non-cash merchandise prizes, toys, or novelties solely and directly from the machine, including claw, crane, or similar machines; nor
2. 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 objects into the machine or a part thereof, including basketball, golf, bowling, or similar machines. A representation of value means cash paid under authority of sweepstakes contestants as provided by the Texas Business and Commerce Code, Section 43, or a gift certificate or gift card that is presented to a merchant in exchange for merchandise.

Game room means any establishment, building, facility, or other place that is open to the public where one or more amusement redemption machines are present.

Game room owner or *owner* means a person who has an ownership interest in a game room.

SECTION 2. Restrictions, regulations, controls, and limitations.

(a) The City of Frankston, Texas is hereby considered as zoned. No game room shall be situated within 1000 feet of any church, school and hospital. The distance shall be measured in a straight line without regard to intervening objects or structures and from the nearest property line of the game room to the nearest property line of the church, school, or hospital.

(b) Only one game room shall be allowed on any lot or in any single building, structure, or tenant space within a strip center.

(c) All game rooms shall have all doors providing ingress and egress from the

game room unlocked during the hours of operation.

(d) The hours of operation for game rooms shall be limited to the following hours:

- (1) Monday through Thursday, open at 8:30 a.m. and close at 11:00 p.m.; and
- (2) Friday through Sunday, open at 8:30 a.m. and close at 12:00 a.m.

(e) One parking space shall be provided for each two amusement redemption machines within the game room, plus one additional parking space for each employee per shift.

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

(g) All licensees shall post signs on the premises of a licensed establishment, which admits mixed patronage that restricts the play of video gaming devices by persons under the age of twenty-one (21) and restricts the access to areas where gaming is conducted by persons under the age of eighteen (18). The signs shall be placed at the entrances to device areas with lettering at least three (3) inches in height stating that there are gaming devices inside, no one under the age of eighteen (18) allowed in gaming area, and no one under the age of twenty-one (21) allowed to play video gaming devices.

(h) Transparent, uncovered windows required. Every game room shall have transparent unobstructed windows or open space on at least on (1) 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. 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.

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

(j) The total number of amusement redemption machines allowed in one amusement redemption machine game room establishment shall be limited to 30 amusement redemption machine games.

(k) Occupation Tax. An annual Occupation Tax of \$15.00 is hereby levied on every video gaming device by this ordinance. All video gaming devices are subject to the occupation tax when they are placed into operation at the licensed establishment.

1. The tax shall not apply to religious, charitable and educational organizations authorized under the laws of the state. TEX.OCC.CODE §2153.451 (b) Id §2153.401

(1) Nothing contained herein shall be construed or have the effect to permit, authorize, or legalize any machine, device, table, or gaming machine, the keeping, exhibition, operation, display, or maintenance of which is illegal or in violation of any ordinance of the City, any section of the penal code of this State, or the constitution of this State. The game room owner or operator shall not permit any illegal gambling or the possession of gambling materials. Nor shall the game room owner or operator permit unlawful or criminal activity of any kind within the game room.

SECTION 3.

That it is hereby declared to be the intention of the City Council 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 void, ineffective or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such voidness, ineffectiveness 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 herein of any such void, ineffective or unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4.

That any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense. Each day that a violation exists shall constitute a separate offense.

SECTION 5.

That the City Secretary of the City of Frankston, Texas, is hereby directed to publish this ordinance in one issue of the official newspaper of the City of Frankston.

SECTION 6.

This ordinance shall take effect after adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY:

By: Eugene Brooks
Eugene Brooks, Mayor

Kelli Landreth-Smith
Kelli Landreth-Smith, City Secretary

Adopted: February 12, 2019

Effective: February 12, 2019

2153.452. ZONING. (a) For purposes of zoning, a political subdivision of this state shall treat the exhibition of a music or skill or pleasure coin-operated machine in the same manner as the political subdivision treats the principal use of the property where the machine is exhibited.

(b) Subsection (a) does not prohibit a municipality from restricting the exhibition of a coin-operated amusement machine within 300 feet of a church, school, or hospital.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

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WHEREAS, Texas Occupations Code CHAPTER 2153, COIN-OPERATED MACHINES, could be construed to apply only to coin operated machines, this ordinance further stipulates that this ordinance applies to game room equipment operating via coin, paper, or electronic media; and

WHEREAS, zoning game rooms is a legitimate and reasonable means of regulation to ensure that operators of game rooms do not knowingly allow their establishments to be located within 1000 feet of a church, school or hospital; and

WHEREAS, game rooms that operate amusement redemption machines, such as but not limited to eight liners, can have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, such as gambling, theft, criminal trespass, criminal mischief, and burglary; and

WHEREAS, game rooms that operate amusement redemption machines have objectionable operational characteristics, contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the City Council desires to minimize and to limit these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect citizens from increased crime; preserve the quality of life; preserve property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the City Council has determined that it is the public's best interest and in support of the health, safety, and general welfare of the citizens of the City that game rooms should be limited in location by zoning in the City of Frankston, Texas.

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

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Definitions.

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1. A machine that awards the user non-cash merchandise prizes, toys, or novelties solely and directly from the machine, including claw, crane, or similar machines; nor
2. 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 objects into the machine or a part thereof, including basketball, golf, bowling, or similar machines. A representation of value means cash paid under authority of sweepstakes contestants as provided by the Texas Business and Commerce Code, Section 43, or a gift certificate or gift card that is presented to a merchant in exchange for merchandise.

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SECTION 2. Restrictions, regulations, controls, and limitations.

(a) The City of Frankston, Texas is hereby considered as zoned. No game room shall be situated within 1000 feet of any church, school and hospital. The distance shall be measured in a straight line without regard to intervening objects or structures and from the nearest property line of the game room to the nearest property line of the church, school, or hospital.

(b) Only one game room shall be allowed on any lot or in any single building, structure, or tenant space within a strip center.

(c) All game rooms shall have all doors providing ingress and egress from the

game room unlocked during the hours of operation.

(d) The hours of operation for game rooms shall be limited to the following hours:

- (1) Monday through Thursday, open at 8:30 a.m. and close at 11:00 p.m.; and
- (2) Friday through Sunday, open at 8:30 a.m. and close at 12:00 a.m.

(e) One parking space shall be provided for each two amusement redemption machines within the game room, plus one additional parking space for each employee per shift.

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

(g) No person under the age of 18 years shall be permitted inside the building, structure, facility, or space housing the game room. A sign shall be posted in plain sight immediately inside the entrance stating that: "No person under the age of 18 shall be permitted inside the building, structure, facility, or space housing the game room."

(h) Amusement redemption machines must be situated within the premises as to be in full and open view, which entails being visible to all customers of the establishment.

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

(j) The total number of amusement redemption machines allowed in one amusement redemption machine game room establishment shall be limited to 30 amusement redemption machine games.

(k) Nothing contained herein shall be construed or have the effect to permit, authorize, or legalize any machine, device, table, or gaming machine, the keeping, exhibition, operation, display, or maintenance of which is illegal or in violation of any ordinance of the City, any section of the penal code of this State, or the constitution of this State. The game room owner or operator shall not permit any illegal gambling or the possession of gambling materials. Nor shall the game room owner or operator permit unlawful or criminal activity of any kind within the game room.

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APPROVED AS TO FORM AND LEGALITY:

By: Eugene Brooks
Eugene Brooks, Mayor

Jan Hamilton
Jan Hamilton, City Secretary

Adopted: 11-14-2017

Effective: 12-14-2017

§ 2153.452. ZONING. (a) For purposes of zoning, a political subdivision of this state shall treat the exhibition of a music or skill or pleasure coin-operated machine in the same manner as the political subdivision treats the principal use of the property where the machine is exhibited.

(b) Subsection (a) does not prohibit a municipality from restricting the exhibition of a coin-operated amusement machine within 300 feet of a church, school, or hospital.

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