

**CITY OF CANTON
ORDINANCE 2018-29**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CANTON, TEXAS, ESTABLISHING A LICENSING AND REGULATORY PROCESS REGARDING THOSE MACHINES WHICH ARE COMMONLY REFERRED TO AS "EIGHT-LINERS"; AND ESTABLISHING THE ANNUAL INSPECTION AND LICENSE FEE REQUIRED FOR AN "AMUSEMENT REDEMPTION MACHINE GAME ROOM" OR "GAME ROOM" AS THOSE TERMS ARE DEFINED HEREIN AND ADOPTED HEREBY; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING A REPEALER CLAUSE; PROVIDING FOR PUBLICATION; PROVIDING ENGROSSMENT AND ENROLLMENT; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Canton ("City Council") is concerned about the number of Amusement Redemption Machine Game Rooms that have opened in the area surrounding the City of Canton; and

WHEREAS, the City has identified certain negative secondary effects arising out of and related to the operation of Amusement Redemption Machine Game Rooms; and

WHEREAS, the City Council of the City of Canton has determined that it is in the public's best interest and in support of the health, safety, and general welfare of the citizens of the City that Amusement Redemption Machine Game Rooms should be regulated through a permitting and licensing process in addition to the City's use of zoning as a regulator of Amusement Redemption Machine Game Rooms.

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

SECTION 1. FINDINGS INCORPORATED

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Canton, and they are hereby approved and incorporated into the body of this Ordinance as if restated herein in their entirety.

SECTION 2. 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:

A. *Amusement Redemption Machine* means:

- (1) a recreational machine that provides the user with an opportunity to receive something of value other than a right of replay and which complies with all applicable federal, state and local laws and regulations applicable to such machines.
- (2) 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 an opportunity to receive exclusively non-cash merchandise prizes, toys, novelties, or a representation of value redeemable for those items.

- (3) 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 amount is less.
- B. *Amusement Redemption Machine Game Room or Game Room* means any establishment, building, facility or other place where two or more Amusement Redemption Machines, with the exception of excluded machines, are displayed or exhibited for public use.
- C. *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.
- D. *Excluded machines.* An Amusement Redemption Machine game room does not include:
- (1) a recreational machine that provides the user with an opportunity to receive something of value other than a right of replay and which complies with all applicable federal, state and local laws and regulations applicable to such machines.
 - (2) 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
 - (3) 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
 - (4) A machine or any device defined in Section 47.01 of the Texas Penal Code as a gambling device, or any activity prohibited or described in Chapter 47 of the Texas Penal Code.
- E. *Game Room Owner or Owner* means a person who has an ownership interest of at least twenty-five percent (25%) in a Game Room.
- F. *Licensee* means any person, individual, firm, company, association, or corporation operating an *Amusement Redemption Machine Game Room* in the City.
- G. *Operational Machine* means an Amusement Redemption Machine that is ready to be played and which is accessible to the public.
- H. *Permittee* means any person, individual, firm, company, association, or corporation maintaining, displaying for public patronage, or otherwise keeping for operation the public any gaming machine in the city.

SECTION 3. Permit Required; License Required

- A. No person shall maintain, display for public patronage, or otherwise keep for operation by the public any Amusement Redemption Machine without first obtaining a permit from the City of Canton issued under the terms and conditions of this article. No permit shall be issued until the occupation tax has been paid for each Amusement Redemption Machine as required by this article.
- B. No person shall operate an Amusement Redemption Machine Game Room in the city without first obtaining a license from the City of Canton, as required by this section. No license shall be issued until the occupation tax has been paid by the Game Room Owner for each Amusement Redemption Machine within the premises, and the applicable Game Room license fee has been paid by the Game Room Owner.

SECTION 4. Occupation Tax Levied.

- A. Every person who owns, controls, exhibits, displays, or permits to be exhibited or displayed in this city any Amusement Redemption Machine shall pay, and there is hereby levied on every Amusement Redemption Machine except such as are exempted in this article, an annual occupation tax per machine equal to twenty-five percent (25%) of the occupation tax charged and collected by the State of Texas, which occupation tax is specifically authorized by Texas Occupations Code § 2153.451.
- B. Nothing in this section shall prevent the operator of the Amusement Redemption Machines from paying the tax levied in this section for the account of the Owner, but the payment of the tax by the operator or other person shall not relieve the Owner from the responsibility of complying with all provisions of this article.

SECTION 5. Payment of Occupation Tax; Receipt to be Attached to Amusement Redemption Machine.

- A. The occupation tax levied by this article shall be paid to the City of Canton. The City shall issue a receipt reflecting payment of the occupation tax per machine.
- B. The receipt reflecting payment of the occupation tax shall be attached to the Amusement Redemption Machine mentioned in the receipt and shall bear the serial number of the particular Amusement Redemption Machine.
- C. It shall be unlawful for any person to operate, exhibit, or display any Amusement Redemption Machine in the City without having attached thereto an occupation tax receipt. It shall also be unlawful for any occupation tax receipt issued for a certain Amusement Redemption Machine to be transferred to any other Amusement Redemption Machine.
- D. The fee for issuing a replacement occupational tax receipt for one lost, destroyed or mutilated shall be fifty percent (50%) of the original occupation tax paid.

SECTION 6. Payment of Annual Inspection and License Fee; 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 in the amount identified in Section 21 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 of Canton.

SECTION 7. Term of License; Jurisdiction; Scope.

A license issued for an Amusement Redemption Machine Game Room under this article:

- A. Is an annual license which expires December 31 of each year unless it is suspended or cancelled earlier;
- B. Is effective for a single place of business only;
- C. Vests no property right in the Licensee except to maintain, display for public patronage, and permit the use or skill or pleasure of Amusement Redemption Machines in accordance with the terms and conditions of this article;
- D. Shall automatically expire if the licensee thereof sells the property or the business, transfers equity to accomplish same, or otherwise disposes of Amusement Redemption Machines; and
- E. Is not assignable or transferable.

In addition, the City shall not refund any portion of a license fee after the license is issued, nor shall it prorate or reduce in amount any fee due to the City. Notwithstanding the foregoing, the initial license issued to an existing Amusement Redemption Machine Game Room following the adoption of this Ordinance and the Game Room's compliance with the requirements of this Ordinance shall not expire until December 31, 2018. Thereafter, any such license shall expire as provided herein-above.

SECTION 8. Restrictions, Regulations, Controls, and Limitations

- A. All building and fire code standards must be met. Inspection by building officials and the issuance of a certificate of occupancy shall be obtained before a license for an Amusement Redemption Machine Game Room is issued.
- B. Only one Amusement Redemption Machine Game Room shall be permitted on any lot or in any single building, structure or strip center.
- C. No Amusement Redemption Machine Game Room shall be situated within 300 feet of any church, school, daycare, hospital or any other Amusement Redemption Machine Game Room. The distance shall be measured in a straight line without regard to intervening objects or structures and from the nearest lot line of the Amusement Redemption Machine Game Room seeking a license to the nearest lot line of the church, school, daycare, hospital or any other Amusement Redemption Machine Game Room.
- D. No alcoholic beverages shall be served or allowed on the licensed premises. No Amusement Redemption Machines or related business activities shall be allowed to be situated and/or performed outdoors.

- E. The hours of operation for an Amusement Redemption Machine 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.
- F. One parking space shall be provided for each two Amusement Redemption Machines within the Amusement Redemption Machine Game Room, plus one additional parking space for each employee per shift.
- G. The owner, operator, or manager of the licensed premises must be present to supervise the operation of the Amusement Redemption Machine Game Room. The Amusement Redemption Machine Game Room shall not be left unattended.
- H. Amusement Redemption Machines must be situated within the licensed premises as to be in full and open public view, which entails being visible to all patrons of the establishment.
- I. No person under the age of 18 years shall be permitted inside the building, structure, facility or space housing the Amusement Redemption Machine Game Room.
- J. A sign stating that no one under the age of 18 is allowed inside the Amusement Redemption Machine Game Room building shall be posted in plain sight immediately inside the entrance stating that:
- "No person under the age of 18 years shall be permitted inside the building, structure, facility or space housing the Amusement Redemption Machine Game Room."
- K. An Amusement Redemption Machine Game Room operator must be a person who is at least 18 years of age.
- L. The total number of Amusement Redemption Machines allowed in one Amusement Redemption Machine Game Room establishment shall be limited to the maximum number of 20 Amusement Redemption Machine Games. Any back-up or replacement Amusement Redemption Machine Games shall be secured in a locked storage area or closet to which the public is not allowed to enter and such machines shall not be connected to electricity or otherwise operational. The occupation tax on such back-up or replacement Amusement Redemption Machine Games shall be paid annually regardless of whether such machines are used by the Game Room's patrons.
- M. Nothing contained herein shall be construed or have the effect to license, 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.

SECTION 9. Application for Amusement Redemption Machine Game Room License

An applicant for a license under the provisions of this article shall file with the City Secretary a written application on a form provided for that purpose by the City of Canton which shall be signed by the applicant, who shall be the Owner of the Amusement Redemption Machine Game Room sought to be licensed. A separate application must be filed for each location sought to be licensed. The following information is required in the application:

- A. Name, address, telephone number, and driver's license number of the applicant if the applicant is a natural person;
- B. Name, address, telephone number and driver's license number of all persons who own twenty-five percent (25%) or more interest in the Amusement Redemption Machine Game Room;
- C. Name, address, telephone number and driver's license number of all corporate officers, if any, of the such business;
- D. Name, address, telephone number of the business;
- E. If incorporated, the name of the business registered with the Texas Secretary of State;
- F. If a partnership, the name, address, telephone number and driver's license of each of the general and limited partners;
- G. 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 Van Zandt County Clerk, bearing the file mark or stamp that evidences its filing in that office;
- H. The street address of the premises;
- I. If applicant is not the owner of the premises, the applicant shall furnish the name, address, and telephone number of the property owner;
- J. Name, address, and telephone number of the operator of the premises to be permitted;
- K. Number of Amusement Redemption Machines in the premises to be permitted and the serial number of each Amusement Redemption Machine;
- L. 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;
- M. The previous occupation(s) of the applicant and, if applicable, all corporate officers and partners of the applicant within the preceding five years;
- N. A notarized statement, under oath, that:
 - (1) All the facts contained in the application are true and correct;

- (2) The Amusement Redemption Machines are not and will not be used as gambling devices;
 - (3) The location and operation of the Amusement Redemption Machine Game Room will not violate any applicable deed restrictions;
 - (4) Amusement Redemption Machine Game Room will be operated in accordance with all laws;
- O. Name, address, and telephone number of an emergency contact person who can be reached after hours;
- P. 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; and
- Q. Any other plans that may be required by the City's Code of Ordinances.

Any failure to provide the documents required by this section shall be grounds for denial of the application to which it applies.

SECTION 10. Renewal of Amusement Redemption Machine Game Room License

- A. A license may be renewed for the following calendar year beginning October 1 of each year by filing a completed application for each license and paying the applicable fee set forth in this article. A renewal application shall be subject to the same requirements in this section for a license application.
- B. Upon the expiration of a license, the licensee shall be required to obtain a renewal of the expired license if the licensee wishes to continue operating an Amusement Redemption Machine Game Room. Failure to obtain the renewal within thirty (30) days after expiration will require such person to pay an additional late fee in an amount equal to twenty percent (20%) of the fee actually due or twenty percent (20%) of the previous year's fee, whichever amount 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

SECTION 11. Grounds for Denial of License; Applicants or Licensees Indebted to City

- A. The City of Canton shall refuse to approve issuance or renewal of a permit for one or more of the following reasons:
 - (1) Any failure to provide the information required by this article;
 - (2) A determination by the City of Canton that inaccurate, erroneous or incomplete information has been submitted;
 - (3) A false statement as to a material matter made in an application for a license;

- (4) 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;
 - (5) Refusal or failure to pay the occupation tax on any Amusement Redemption Machine;
 - (6) Refusal or failure to pay the correct license fee amount;
 - (7) The applicant or a co-owner for such license has, within the past three years, been convicted of any violation of this Ordinance; and/or
 - (8) The applicant or a co-owner for such license has, within the past ten years, been convicted of a crime involving moral turpitude.
- B. The City of Canton shall not issue or renew a license under this article and shall suspend or cancel a license if it be determined that the applicant or licensee is indebted to the City for any fee, costs, penalties, or delinquent taxes.

SECTION 12. Suspension or Revocation of License for Violation of Article

- A. *Power and Authority.* If any individual, company, corporation or association who owns, operates, exhibits, or displays any Amusement Redemption Machine(s) in an Amusement Redemption Machine Game Room in this City shall violate any provision of this article, the City of Canton shall have the power and authority to suspend or revoke the license(s) issued hereunder to any of the foregoing by giving written notice, stating the reason justifying such suspension or revocation, and the same shall be suspended or revoked ten days from date of such notice.
- B. *Suspension.* The City Manager or his designee shall suspend a license for a period not to exceed 30 days if he determines that a licensee or an employee of a licensee has:
- (1) Violated or is not in compliance with any of the provisions of this article;
 - (2) Refused to allow or interfered with an inspection of the Amusement Redemption Machine Game Room premises; or
 - (3) Demonstrated an inability to operate or manage an Amusement Redemption Machine Game Room in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.
- C. *Revocation for Continuing Violations.* The City Manager or his designee shall revoke a license if a cause of suspension occurs and the license has been previously suspended within the preceding twelve months.
- D. *Automatic Revocation.* The City Manager or his designee shall revoke a license if he determines that:

- (1) A licensee gave false or misleading information in the material submitted to the City during the application process;
- (2) A licensee or an employee of a licensee knowingly allowed the possession, use, or sale of a controlled substance on the premises; or
- (3) A licensee or an employee of a licensee knowingly operated the Amusement Redemption Machine Game Room during a period of time when the licensee's permit was suspended.

D. *Effect of Revocation.* No license shall be issued within a period of one year to anyone whose license has been revoked, except at the discretion of the City Council. If the license of an individual, company, corporation, or association owning, operating, or displaying Amusement Redemption Machines in this City is cancelled, such individual, company, corporation or association shall not operate, display or permit to be operated or displayed such Amusement Redemption Machines in any Amusement Redemption Machine Game Room until a new license is granted.

SECTION 13. Appeal from Denial, Suspension or Revocation of License

If the City of Canton refuses to approve the issuance of a license or the renewal of a license to an applicant, or suspends or revokes a license issued under this article, this action is final unless the applicant or licensee, within ten days after the receipt of written notice of the action, files a written appeal with the judge of the municipal court, who shall, within ten days after the appeal is filed, consider all the evidence in support of or against the action appealed, and render a decision, either sustaining or reversing the action. If the judge of the municipal court sustains the action of the City of Canton, the applicant or licensee may, within ten days of that decision, file a written appeal with the City Secretary to the City Council setting forth specific grounds for the appeal. Similarly, if the judge of the municipal court overturns the action of the City Manager or his designee, the City Manager may, within ten days of that decision, file a written appeal with the City Secretary to the City Council setting forth specific grounds for the appeal. The City Council shall, within 30 days, grant a hearing to consider the action. The City Council has authority to sustain, reverse, or modify the action appealed. The decision of the City Council is final.

SECTION 14. Display of License

A license issued under this article for an Amusement Redemption Machine Game Room shall be displayed at or near the entrance of the business premises, and such display shall be permanent and conspicuous.

SECTION 15. Replacement License

A replacement license may be issued for one lost, destroyed, or mutilated, upon application on a form provided by the City of Canton. A replacement license shall have the word "REPLACEMENT" stamped across its face and shall bear the same number as the one it replaces.

SECTION 16. Inspections

- A. The premises in which such Amusement Redemption Machines are located shall conform to all building codes and fire prevention codes of the City and the Fire Marshal of the City and his assistants and the Chief Building Official may enter into the premises where such Amusement Redemption Machines are located at any time during normal business hours for the purposes of inspecting said premises for fire hazards.
- B. All law enforcement personnel of the City shall have the right to enter into said premises at any time during normal business hours for the purpose of enforcement of the terms of this article.
- C. The City shall have the authority to seal any coin-operated machine located in any Amusement Redemption Machine Game Room for which the occupation tax has not been paid. A fee in the amount identified in Section 21 will be charged for the release of any machine sealed for non-payment of said occupation tax.
- D. The City shall have the authority to seal any coin-operated machine located in any Amusement Redemption Machine Game Room for which a license fee has not been paid. A fee in the amount identified in Section 21, will be charged for the release of any machine sealed for non-payment of said license fee.

SECTION 17. Responsibility of Licensee

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

- A. The sale, purchase, possession or consumption of any alcoholic beverages as the same is defined by the Texas Alcoholic Beverage Code;
- B. The operation of any Amusement Redemption Machine by a person younger than 18 years of age;
- C. Gambling by any person;
- D. The possession of gambling materials; and
- E. Unlawful or criminal activity of any kind.

SECTION 18. Parking Facilities

Any person who desires a license for the operation of two or more Amusement Redemption Machines in one specific location shall be required to provide sufficient off-street parking to accommodate the vehicles of the patrons as provided herein. Such parking area shall be maintained in a safe, clean manner and shall not interfere with safe and expeditious movement of other vehicular or pedestrian traffic. Depending on the location of licensed premises, bicycle racks may be required.

SECTION 20. Violations of existing laws not authorized

Nothing herein shall be construed or have the effect to license, 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.”

SECTION 21. Master Fee Schedule, Occupation Tax, Annual Inspection and License Fee

Service	Fee
Amusement Redemption Machine” occupation tax (per machine)	25% of state occupation tax to be paid annually = \$15.00 per machine
Release of seal on any machine for which occupation tax was not properly paid	\$5.00 plus payment of occupation tax
Amusement Redemption Machine Game Room License	\$100 per machine located in the Game Room
Release of seal on any machine for which Game Room License Fee was not properly paid	\$50.00 plus payment of Game Room License Fee

SECTION 22. PENALTY

Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of Canton, Texas, shall be punished by a fine not to exceed the sum of five hundred dollars (\$500.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 23. SEVERABILITY

It is hereby declared to be the intention of the City Council that the several provisions of this Ordinance are severable, and if any court of competent jurisdiction shall judge any provisions of this Ordinance to be illegal, invalid, or unenforceable, such judgment shall not affect any other provisions of this Ordinance which are not specifically designated as being illegal, invalid or unenforceable.

SECTION 24. REPEALER

This Ordinance shall be cumulative of all other Ordinances, resolutions, and/or policies of the City, whether written or otherwise, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Any and all ordinances, resolutions, and/or policies of the City, whether written or otherwise, which are in any manner in conflict with or inconsistent with this Ordinance shall be and are hereby repealed to the extent of such conflict and/or inconsistency.

SECTION 25. PUBLICATION

The City Secretary of the City of Canton is hereby directed to publish in the Official Newspaper of the City of Canton the Caption, Penalty and Effective Date Clause of this Ordinance as required by Section 52.011 of the Texas Local Government Code.

SECTION 26. ENGROSSMENT AND ENROLLMENT

The City Secretary of the City of Canton is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date clause in the minutes of the City Council of the City of Canton and by filing this Ordinance in the Ordinance records of the City.

SECTION 27. SAVINGS

All rights and remedies of the City of Canton are expressly saved as to any and all violations of the provisions of any Ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 28. EFFECTIVE DATE

This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by Texas law.

PASSED, ADOPTED, AND APPROVED on this the 20th day of November, 2018.



Lou Ann Everett, Mayor



ATTEST:
Debra Johnson, City Secretary

