

ORDINANCE NO. 2025-05

AN ORDINANCE OF THE CITY OF BRECKENRIDGE, TEXAS AMENDING CHAPTER 13 “OCCUPATIONAL LICENSES AND REGULATIONS”, ARTICLE VI “GAMING MACHINES” OF THE BRECKENRIDGE CODE OF ORDINANCES TO STRENGTHEN REGULATIONS CONCERNING GAMING MACHINES; PROVIDING A PENALTY; PROVIDING REPEALER AND SEVERABILITY CLAUSES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Breckenridge, Texas (the “City”) is a home-rule city operating pursuant to its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution;

WHEREAS, the City has the power to “license any lawful business...that is susceptible to the control of the police power” pursuant to Section 3.24 of the City’s Charter;

WHEREAS, the City Commission of the City of Breckenridge (the “City Commission”) has adopted regulations regarding gaming machines within the City in Chapter 13, Article VI of the Breckenridge Code of Ordinances;

WHEREAS, the City Commission hereby finds Chapter 13, Article IV of the Code, as it currently exists, have allowed gaming machines to be very popular, but establishments containing gaming machines have increased criminal activity within the City generally and may contain illegal gambling machines or be engaging in gambling activities in violation of Chapter 47 of the Texas Penal Code;

WHEREAS, in Chapter 2153 of the Texas Occupations Code, the state regulates music or skill or pleasure coin-operated machines and provides that cities and counties may regulate said machines through zoning and may impose a local occupations tax on said machines;

WHEREAS, the City Commission finds that the City’s ability to regulate gaming machines is not preempted by Chapter 2153 of the Texas Occupations Code and that the City’s full power of self-government allows the City to adopt regulations more restrictive than those contained in state law; and

WHEREAS, the City Commission finds that the regulations contained in this Ordinance are in the best interest of the health, safety, and welfare of the citizens of the City and are in furtherance of conserving the value of property and protecting the safety of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE, TEXAS THAT:

I. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

II. Findings. After due deliberations, the City Commission has concluded that the adoption of this Ordinance is in the best interest of the City of Breckenridge, Texas, and of the public health, safety, morals, and welfare of its citizens.

III. Amendment of Chapter 13, Article VI. Chapter 13 “Occupational Licenses and Regulations”, Article VI “Gaming Machines” of the Breckenridge Code of Ordinances is hereby amended in the following, and all articles, chapters, sections, paragraphs, sentences, phrases, and words not expressly amended hereby are hereby ratified and affirmed.

ARTICLE VI. GAMING MACHINES

Sec. 13-90. Definitions.

The words, terms and phrases as used in this article are defined as follows:

Gambling device means any electronic, electromechanical, or mechanical contrivance that for consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. This includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits. This does not include a gaming machine as defined herein. The possession of any gambling device is a violation of Texas Penal Code Section 47.06.

Gaming machine means any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes and which rewards the player exclusively with noncash merchandise prizes, toys, 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 (10) times the amount charged to play the game or device once or five dollars (\$5.00), whichever is less, or which allows the player to amass or accumulate points, tokens or any other method to accumulate credits towards larger or greater value noncash or merchandise prizes, toys or novelties.

Permittee means any person, individual, firm, company, association, or corporation maintaining, displaying for public patronage, or otherwise keeping for operation by the public any gaming machine in the city.

Sec. 13-91. Permit required.

No person shall maintain, display for public patronage, or otherwise keep for operation by the public any gaming machine without first obtaining a permit issued under the terms and conditions of this article.

Sec. 13-92. Term of permit; jurisdiction; scope.

A permit issued under this article:

- (1) Is an annual permit, which expires on December 31 of each year, regardless of the date of issuance, unless it is suspended or cancelled earlier.
- (2) Is effective for a single, specific business location only.
- (3) Vests no property right in the permittee except to maintain, display for public patronage, and operate or permit the use of gaming machines in accordance with the provisions of this article.

Sec. 13-93. Application for permit.

- (a) Applications for a gaming machine permit shall be filed with the Code Compliance Department on a form provided by the city for that purpose for review by the Chief of Police. The applicant must be the owner of the business which will be operating the gaming machines and must personally sign the application.
- (b) A separate application must be filed for each location at which gaming machines will be permitted.
- (c) The city shall assess a permit fee, in an amount set in Appendix A, Fee Schedule, to be paid at the time of submission of the application.
- (d) The following information is required in the application:
 - (1) The name, address, and telephone number of the applicant, including the business name under which applicant conducts business, and, if incorporated, the name and address of the corporation and the name and address of the registered agent of the corporation;
 - (2) The street address of the premises where the gaming machines will be located and the name, address, and telephone number of the owner and manager of the premises to be permitted;
 - (3) The number of gaming machines to be operated on the premises to be permitted; the name, address and telephone number of the owner of each gaming machine; and the serial number and state license or registration number for each machine;
 - (4) Information regarding any previous permit held by the applicant and whether any previous permit of the applicant, or, if applicable, of a corporate officer of the applicant, has been suspended or cancelled; and
 - (5) A statement that the applicant, any corporate officer of the applicant, any owner, and any employee of the applicant have not been convicted of any crime involving moral turpitude and that all of the facts contained in the application are true and correct.
- (e) Applicants shall be required to provide materials deemed necessary by the Chief of Police to determine whether the applicant is eligible for a license. Applicants operating as a corporate entity shall be required to provide proof of good standing with the Texas Secretary of State.

Sec. 13-94. Grounds for denial of permit; applicants or permittees indebted to city.

(a) The Chief of Police shall refuse to approve issuance of a permit for any of the following reasons:

- (1) A false statement as to a material fact made in an application for a permit.
- (2) Cancellation of a permit, pursuant to this article, of the applicant or corporate officer of the applicant within two (2) years preceding the filing of the application.
- (3) The applicant, any corporate officer of applicant, any owner listed on the application, or any employee of applicant has within the past been convicted of a crime involving moral turpitude within the past ten (10) years.
- (4) The premises where the gaming machines will be located does not comply with this article.

(b) The Chief of Police shall not issue a permit under this article and shall suspend or cancel a permit if it be determined that the applicant or permittee is indebted to the city for any fee, costs, penalties, or delinquent taxes of any kind.

(c) No permit shall be issued within a period of two (2) years to anyone whose permit has been cancelled.

(d) If the Chief of Police determines that a permit should not be issued, the Code Compliance Department will notify the applicant of that decision in writing.

Sec. 13-95. Cancellation of permit for violation of article.

(a) If any individual, company, corporation or association who owns, operates, exhibits, or displays any gaming machine in this city shall violate any provision of this article, the Chief of Police shall have the power and authority to cancel all permits issued hereunder. Such cancellation shall be effective ten (10) days from the date the Code Compliance Department provides written notice of said cancellation to the permittee.

(b) If the permit of an individual, company, corporation, or association owning, operating, or displaying gaming machines in this city is cancelled, such individual, company, corporation or association shall not operate, display or permit to be operated or displayed such machines unless and until a new permit is granted.

Sec. 13-96. Appeal from denial or cancellation of permit.

When the Chief of Police denies the issuance of a permit to an applicant or cancels a permit issued under this article, the action is final unless the applicant or permittee, within ten (10) days after the receipt of written notice of the action, files a written appeal with the city manager. Within ten (10) days after receipt of the written appeal, the city manager shall consider all the evidence in support of or against the action appealed and will render a decision, either sustaining or reversing the action. If the city manager sustains the action, the applicant or permittee may, within ten (10) days of that

decision, file a written appeal with the city secretary to the city commission setting forth specific grounds for the appeal. The city commission shall, within thirty (30) days, grant a hearing to consider the action. The city commission has authority to sustain, reverse, or modify the action appealed. The decision of the city commission is final.

Sec. 13-97. Occupation tax; exemptions.

(a) Any permittee under this article or any other person who controls, possesses, or operates or who permits to be exhibited, displayed, or operated in this city any gaming machine shall pay an annual occupations tax of fifteen dollars (\$15.00) for each gaming machine, which tax is hereby levied.

(b) The occupation tax imposed by this section must be paid by the permittee at the time that a permit application is issued.

Sec. 13-98. Display of permit.

A permit issued under this article shall be displayed at or near the entrance of the business premises on which the gaming machines are permitted to be located, and such display shall be permanent and conspicuous.

Sec. 13-99. Replacement permit.

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

Sec. 13-100. Transfer of permit.

A permit issued under the provisions of this article shall not be assigned or transferred.

Sec. 13-101. Inspections.

(a) Gaming machines must be situated within the premises where they are located so as to be in full and public view.

(b) The premises in which gaming machines permitted under this article are located shall conform to all building codes and fire prevention codes of the city, and the fire marshal and the building official of the city, or the designee of same, may enter into the premises where such 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 and code enforcement officials of the city shall have the right to enter into premises where gaming machines are located at any time during normal business hours for the purpose of determining compliance with, and enforcement of, the provisions of this article.

(c) An inspection shall be performed by the Chief of Police or his/her designee before the issuance of a gaming machine permit and the Chief of Police or his/her designee shall conduct regular, recurring inspections throughout the duration of any gaming machine permit.

Sec. 13-102. Responsibility of permittee.

A permittee hereunder shall not permit any of the following activities within the permitted premises:

- (1) The sale, purchase, possession or consumption of any alcoholic beverage as defined by the Texas Alcoholic Beverage Code.
- (2) The operation of any gaming machine by a person younger than eighteen (18) years of age.
- (3) Gambling and related activities which are prohibited by Chapter 47 of the Texas Penal Code.
- (4) Unlawful or criminal activity of any kind, including violations of this article.

Sec. 13-103. Parking facilities.

Any person who applies for a permit for the operation of ten (10) or more gaming machines in one (1) location shall be required to provide evidence of sufficient off-street parking to accommodate the vehicles, motorcycles and bicycles of the patrons; such evidence shall be submitted with the application. Depending on the location of the permitted premises, bicycle racks may be required. Any 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 in the area.

Sec. 13-104. Machines prohibited near certain locations.

Gaming machines requiring a permit under this article shall not be permitted to be placed within three hundred (300) feet of any church, school, playground or park in this city.

Sec. 13-105. Violations of existing laws not authorized.

Nothing herein shall be construed or have the effect of licensing, permitting, authorizing or legalizing 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, or any section of the Texas Penal Code or the Constitution of the State of Texas.

Sec. 13-106. Penalty for violation of this article.

A fine not to exceed five hundred dollars (\$500.00) will be assessed against any person possessing, displaying or operating any gaming machine within the City of Breckenridge in violation of this ordinance. Each machine will constitute a separate offense and each day a violation occurs or continues to occur is a separate offense.

Secs. 13-107—13-109. Reserved.

IV. Repeal. Any prior ordinances or ordinance provisions are hereby repealed to the extent they are in conflict with the terms of this Ordinance. Any remaining provisions of said ordinances shall remain in full force and effect.

V. Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Breckenridge hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, clauses, or phrases be declared unconstitutional or invalid.

VI. Penalty. Any person, firm, entity or corporation who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction therefor, shall be fined in a sum not exceeding \$500.00 for each violation, or a fine not exceeding \$2,000.00 if the violation relates to public health or sanitation. Each continuing day's violation shall constitute a separate offense.

VII. Open Meetings. It is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered at such meeting, including this Ordinance was given, all as required by Chapter 551, as amended, Texas Government Code.

VIII. Effective Date. This Ordinance shall become effective immediately upon its adoption and after publication as required by law.

PASSED, APPROVED, AND ADOPTED on this the 4th day of March 2025.

Bob Sims, Mayor

ATTEST:

Jessica Sutter, City Secretary

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