

03/23/2010

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 10, ARTICLE IV, MECHANICAL AND ELECTRONIC AMUSEMENT DEVICES, OF THE CODE OF ORDINANCES OF THE CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, TO UPDATE AND MODIFY APPLICATION REQUIREMENTS AND REGULATIONS APPLICABLE TO ESTABLISHMENTS REQUIRED TO OBTAIN A MECHANICAL AND ELECTRONIC AMUSEMENT DEVICE LICENSE, REPEAL CONFLICTING ORDINANCES AND PRESCRIBE A PENALTY FOR VIOLATIONS.

THE CITY OF ROCHESTER HILLS ORDAINS:

Section 1. Article IV of Chapter 10 of the Code of Ordinances shall be amended as follows:

ARTICLE IV. MECHANICAL AND ELECTRONIC AMUSEMENT DEVICES

DIVISION 1. GENERALLY

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:

Activities center means a business or establishment:

- (1) Dedicated to family, group or individual activities or recreation, entertainment and/or food;
- (2) Where amusement devices are not the primary attraction or revenue source and are located so as to be used only by patrons who have paid an admission to enter;
- (3) Where less than ten percent of usable floor area open to the public is devoted to amusement devices;
- (4) Conducted entirely within an enclosed building;
- (5) Where less than ten percent of usable floor space open to the public is devoted to pool tables; and
- (6) Where no alcoholic beverages are served.

Amusement device means:

- (1) Any machine or device, mechanical or electronic, containing no automatic payoff device, which may, on insertion of a coin or slug, operate or be operated or used as a game or contest, and which shall:
 - a. Not contain any automatic payoff device for the return or discharge of money, coins, tokens, tickets, or merchandise;
 - b. Be so constructed that it may not be converted to contain such an automatic payoff device; and

- c. Not provide for any such payoff by any means whatsoever.
- (2) Also, any machine or device, mechanical or electronic, described in subsection (1) of this definition that is operated without the necessity of inserting a coin or slug into it to make it operate, but for which an admission is charged to use the machine or device or to enter the room or club where the machine or device is located in order to use the machine or device.
- (3) Notwithstanding subsections (1) and (2) of this definition, an amusement device that may contain an automatic payoff device, provided that:
 - a. The automatic payoff device returns or discharges only tokens or tickets that may be redeemed for merchandise;
 - b. Each such token or ticket has a cash equivalent value of not more than \$0.10;
 - c. No such token or ticket may be redeemed for cash; and
 - d. No item of merchandise that may be obtained by redeeming such tokens or tickets may have a cash equivalent value in excess of \$12.00.

Pool table means any pool or billiard table that is used in an establishment open to the public for the playing of pool or billiards.

Sec. 10-152. Purpose.

Mechanical and electronic amusement devices shall be licensed and regulated as provided in this article for the general welfare of the residents.

Sec. 10-153. Inspections.

Under this article, the establishment of any licensee shall be subject to periodic inspections by the city for the purpose of determining whether its operation is in compliance with this article and other city Code sections.

DIVISION 2. LICENSE

Sec. 10-181. Required.

- (a) *Generally.* It shall be unlawful for any person to establish, maintain, control or operate within the city any pool table or amusement device, as defined in division 1 of this article, without having procured a license.
- (b) *Municipal civil infraction.* A person who violates this section is responsible for a municipal civil infraction, subject to payment of a civil fine as set forth in section 66-37. Repeat offenses under this section shall be subject to increased fines as set forth in section 66-37.

Sec. 10-182. Person required to obtain.

The person required to obtain a license under this division is the owner or lessee of the premises who is or should be in control and/or supervision of any pool table and/or amusement device located on the premises; it is the person who is directly or should be directly supervising the day-to-day operation of the establishment. The owner and/or lessee of the premises and the

owner and lessee of each pool table and mechanical amusement device shall be construed as establishing, maintaining, controlling or operating any pool table and/or amusement device if no license has been procured, but the owner and lessee shall be relieved of that responsibility and the effect of this section if, and only if, the person in charge and responsible for obtaining a license has actually obtained a license.

Sec. 10-183. Exceptions.

No license is required for the operation of any pool table or amusement device in a private home, public institution, church or clubhouse of any legally incorporated association, the use of which is confined to the members only of such association and is incidental to its principal activities.

Sec. 10-184. Application.

Application for a license to operate pool tables or amusement devices shall be made to the city clerk, in writing and verified, on a form such as may be determined by the city clerk, and shall contain the following information:

- (1) The name and address of the applicant; if the applicant is other than a natural person, the nature of the entity and the names and addresses of all those having an ownership interest in the entity.
- (2) The address of the proposed establishment where the licensed activity will be maintained.
- (3) The number of pool tables or amusement devices to be operated in the licensed establishment.
- (4) The age of the applicant.
- (5) The length of the applicant's residence within this state.
- (6) Whether the applicant has ever been convicted of any crime involving moral turpitude.
- (7) If video games will be played or used by patrons, the applicant shall include with the application the applicant's proposed policy concerning whether and how the applicant will observe and enforce the entertainment software rating board's (ESRB) video game ratings.

Sec. 10-185. Check of criminal record.

Each applicant for a license required under this division shall ~~have taken a complete set of fingerprints which shall be placed on file in the noncriminal files of the city~~ undergo a criminal record check. The city clerk shall ~~submit the fingerprints to the appropriate police authorities for a check of any order, at the applicant's cost,~~ a criminal record check of any applicant. The clerk shall report to the city council the results of the inquiry. No license shall be granted to any person who has been convicted of a crime involving moral turpitude.

Sec. 10-186. Restrictions.

- (a) *Age.* No license required under this division shall be granted to any person under 18 years of age.

- (b) *Residence.* No license shall be granted to any person who has not resided within this state for a period of at least one year prior to application for a license.
- (c) *Types of establishments.*
 - (1) *Generally.* No license shall be issued to establish, maintain, control or operate a pool table or amusement device for the following establishments unless the establishment:
 - a. Has a class C liquor license issued in good standing;
 - b. Is located in ~~an enclosed shopping mall, does not have any public entrances or exits directly to the outside of the shopping mall, has a full-time a B-1, B-2, B-3 or CI zoning district and has an adult attendant, and has a uniformed security guard in attendance in the shopping mall on duty~~ at all times the establishment is open;
 - c. Is licensed under Article III, Dancehalls and Roller Rinks, of this chapter;
 - d. Is a bowling alley with at least 20 lanes;
 - e. Is a movie theater with at least four auditoriums, and the amusement device is located where it may be used only by a patron of the theater who has paid the price of admission to the theater and no pool table is available for use; and
 - f. Is an activities center.
 - (2) *Location.* No license shall be issued to establish, maintain, control or operate a pool table or amusement device, unless the establishment, except for an establishment with a class C liquor license, is to be located in excess of 2,000 feet of ~~the following:~~
 - a. ~~Another~~ Another establishment licensed under this division.
 - b. ~~The property of an elementary or secondary school. This restriction on distance shall not apply to activities centers.~~

Sec. 10-187. Fees.

- (a) *Application.* Fees for an application for a license required under this division shall be as follows:
 - (1) *Initial.* At the time of initial application for a license, the applicant shall pay a nonrefundable initial application fee as provided in section 54-123.
 - (2) *Renewal.* At the time of application for renewal of a license, the applicant shall pay a nonrefundable renewal application fee as provided in section 54-123.
- (b) *License.* Upon approval or renewal of a license, a license fee as provided in section 54-123 shall be paid for each pool table or amusement device to be maintained in the establishment of the applicant.

Sec. 10-188. Issuance.

- (a) *Submission to council.* The city clerk, upon receiving an application and required information and documents in a form in compliance with this division, shall submit the application, information and documents to the city council at a meeting within 20 days.
- (b) *Requirements for approval.* The city council shall approve a license if it finds that:
 - (1) The applicant has met all of the requirements for a license as set forth in this division.
 - (2) The proposed operations would be in compliance with chapter 138 pertaining to zoning.
 - (3) The business establishment, for which a license is requested, would not be a place for loitering and the congregation of persons under the age of 17 years in violation of this article.
 - (4) There is not the likelihood, based upon the particular facts and circumstances involved with the application, of the establishment becoming a nuisance or otherwise being in violation of this article because of hours of operation, the physical location of the amusement devices or pool tables in the place of business, the location of the business establishment in the community or the nature of the business.
- (c) *Conditions and prohibitions.* In granting approval, the city council may set conditions and prohibitions for the issuance of the license.
- (d) *Duration and form.* Once a license is approved by the city council, the city clerk shall issue the license for a term of one year in a form to be determined by the city clerk. In addition, the following shall pertain to licenses issued by the clerk:
 - (1) *Content.* Such license shall contain the name, address, and place of business of the licensee; the number of pool tables and/or amusement devices to be maintained at the place of business; and the expiration date of the license.
 - (2) *Authentication.* Each license shall be authenticated by the signature of the city clerk.
- (e) *Display.* The license and a list of the applicable prohibitions of this article and the prohibitions and/or conditions of the issuance of the license shall be prominently displayed at all times within the establishment.

Sec. 10-189. Renewal.

- (a) *Same terms and requirements.* Any license issued in accordance with this division may be renewed for the same or a different number of pool tables and/or amusement devices by the city clerk, subject to the same terms and requirements that were provided in this division for the original license, without submittal to and approval by the city council. An application for renewal and proof of insurance shall be submitted to the city clerk, and the required fees shall be paid.
- (b) *Different location, terms or requirements.* If the licensee desires to change the place of business or the terms or requirements, a new application shall be made by the licensee.

This new application, which shall be submitted to and approved by the city council in the same manner as specified in this division for an original application, shall contain the address and name of the new location, but it need not contain other information that was furnished for the license that was in effect for the previous place of business and which is still valid for the new application.

Sec. 10-190. Transferability.

No license issued pursuant to this division shall be assignable or transferable, nor shall any person, excepting the person to which the license was issued, be permitted to do business under the license, either directly or indirectly.

Sec. 10-191. Revocation or suspension.

- (a) *Basis for action.* Every license issued under this division may be revoked for violation of any of the prohibitions of this article.
- (b) *Written notice.* If there are violations, the city clerk shall forward by first class mail to the licensee, at the address specified in the application, whether the license has been temporarily revoked and the nature of the violations, along with notice of the date, time and location of a hearing to be held on such violations.
- (c) *Hearing.* The hearing shall be held within 14 days from mailing of such notice. The city council may act as the hearing officer or may appoint some other hearing officer. Following the hearing, the hearing officer shall determine whether or not a violation of this article has occurred and, if so, what penalty shall be invoked.
- (d) *Penalty.* The hearing officer may revoke or suspend any license issued under this division for any violation of this article or state law.
- (e) *Costs.* If a violation shall have occurred, the hearing officer may assess costs as administrative expense, fees for the hearing officer and any other expenses incurred in the hearing.

DIVISION 3. OPERATING REQUIREMENTS

Sec. 10-221. Gambling or alcoholic liquors.

It shall be unlawful to permit any gambling or alcoholic liquors in any establishment in which there are maintained any pool tables or amusement devices, except alcoholic liquors may be allowed in an establishment holding a liquor license issued by the state.

Sec. 10-222. Payoffs.

It shall be unlawful for any person to establish, maintain, control or operate any amusement device or any slot machine or other type of machine containing any automatic or semiautomatic payoff device or which shall be so constructed that the machine or device may be converted into an automatic payoff device for the return or discharge of coins, tokens, slugs, merchandise or checks to operators thereof. However, notwithstanding the foregoing, an amusement device may contain an automatic payoff device, provided that:

- (1) The automatic payoff device returns or discharges only tokens or tickets that may be redeemed for merchandise;

- (2) Each such token or ticket has a cash equivalent value of not more than \$0.10;
- (3) No such token or ticket may be redeemed for cash; and
- (4) No item of merchandise that may be obtained by redeeming such tokens or tickets may have a cash equivalent value in excess of \$12.00.

Sec. 10-223. Frequenting of premises by minors.

- (a) It shall be unlawful to permit any person under 17 years of age to remain in or loiter in or about any establishment maintaining pool tables or amusement devices unless such person is accompanied by a parent or guardian.
- (b) No person under 17 years of age, unaccompanied by a parent or guardian, may remain in or loiter in or about such establishment or falsely represent his age in order to gain admittance into such establishment.

Sec. 10-224. Proof of age.

Any person allowed to remain in an establishment licensed under this article, who is not with a parent or guardian, shall have in his possession proof of his age, such as a driver's license, birth certificate, school registration, etc. No licensee shall allow a person to remain on the premises who does not have proof of age as required in this section.

Sec. 10-225. Minors permitted in certain establishments.

The prohibition and requirements of sections 10-223 and 10-224 shall not apply, and children under the age of 17 years may be allowed in the establishment and may use amusement devices without a parent or guardian present in the following establishments:

- (1) Bowling alleys with at least 20 lanes.
- (2) Public recreation halls licensed under article III of this chapter.
- (3) If the establishment ~~does not contain any pool tables, is a part of an enclosed shopping mall, does not have any public entrances or exits directly to the outside of the shopping mall, has a full-time is located in a B-1, B-2, B-3 or CI zoning district and has an adult attendant, has a uniformed security guard in attendance in the shopping mall on duty~~ at all times the establishment is open, and is in conformity with the following hours:
 - a. Monday through Saturday, 9:00 a.m. to 9:30 p.m.
 - b. Sunday, 12:00 noon to 6:00 p.m.
 - c. On school days, no one under 17 years of age shall be allowed in the establishment before 3 p.m. or after 9 p.m. unless accompanied by a parent or legal guardian.
- (4) Movie theaters with at least four auditoriums, and the amusement devices are located where they may be used only by a patron of the theater who has paid the price of admission to the theater and no pool tables are available for use.
- (5) Activities centers.

Sec. 10-226. Nuisance.

It shall be unlawful to operate pool tables and/or amusement devices or the combination of them so as to constitute a public nuisance.

Sec. 10-227. - Disorder.

It shall be unlawful for a person issued a license under this article to allow any disorder to occur on the premises.

Sec. 10-228. Overcrowding.

It shall be unlawful for a person issued a license under this article to allow the licensed premises to become overcrowded so as to constitute a hazard to the health or safety of persons therein.

Sec. 10-229. Hours of operation.

- (a) *Establishment with liquor license.* If an establishment licensed under this article holds a liquor license issued by the state, the hours may be as allowed by the liquor license and state law.
- (b) *Other establishments.* It shall be unlawful to operate any establishment in which there are operated any pool tables or amusement devices, except during the following hours:
 - (1) Monday through Thursday, 7:30 a.m. to 12:00 midnight.
 - (2) Friday and Saturday, 7:30 a.m. to 1:00 a.m.
 - (3) Sunday, 12:00 noon to 12:00 midnight.
 - (4) On school days, no one under 17 years of age shall be allowed in the establishment before 3 p.m. or after 9 p.m. unless accompanied by a parent or legal guardian.

Sec. 10-230. Obscenity.

No coin-operated or electronic amusement device shall display, expose, produce or emit any motion picture, printed matter, advertisement, writing, song, recitation, speech, music, video game or other matter that depicts or describes nudity, which means uncovered or less than completely and opaquely covered human genitals, pubic regions, buttocks, and human female breasts below a point immediately above the top of the areola or the covered human male genitals in a discernibly turgid state. For the purpose of this definition, a female breast is considered uncovered if the nipple only or the nipple and areola only are covered. No such device shall depict or describe the following:

- (1) Sexual intercourse, fellatio, cunnilingus, masturbation, sodomy, bestiality, flagellation or any other act by a person involving the touching or contacting of the genitals or any sexual acts that are prohibited by law.
- (2) The touching caressing or fondling of the breast, buttocks, pubic region or genitals or the stimulation thereof by any device, tool, implement or object.
- (3) The actual or simulated displaying or exposure or simulations of the pubic hair, pubic region, anus, vulva or genitals of humans, brutes, beasts or animals.

- (4) The exposure of the postpubertal female breast. For the purpose of this subsection, a female breast is considered exposed if any portion of the breast below a line immediately above the top of the areola is exposed.
- (5) Scenes wherein artificial devices or inanimate objects are employed to depict any of the prohibited activities described in this section.

Section 2. Severability. This ordinance and each article, section, subsection, paragraph, subparagraph, part, provision, sentence, word and portion thereof are hereby declared to be severable, and if they or any of them are declared to be invalid or unenforceable for any reason by a court of competent jurisdiction, it is hereby provided that the remainder of this ordinance shall not be affected thereby.

Section 3. Penalty. All violations of this ordinance shall be municipal civil infractions and upon a determination of responsibility therefore shall be punishable by a civil fine of not more than \$500, or as otherwise prescribed herein.

Section 4. Repeal, Effective Date, Adoption.

(1) Repeal. All regulatory provisions contained in other City ordinances, which are inconsistent with the provisions of this ordinance, are hereby repealed.

(2) Effective Date. This ordinance shall become effective on _____, following its publication in the *Rochester Post* on _____, 2010.

(3) Adoption. This ordinance was adopted by the City Council of the City of Rochester Hills at a meeting thereof held on _____, 2010.

Bryan K. Barnett, Mayor
City of Rochester Hills

CERTIFICATE

I HEREBY CERTIFY THAT THE FOREGOING ORDINANCE WAS ADOPTED BY THE CITY COUNCIL OF THE CITY OF ROCHESTER HILLS AT A MEETING THEREOF ON _____, 2010.

Jane Leslie, Clerk
City of Rochester Hills