

**ORDINANCE NO. 1301-2020**

AN ORDINANCE AMENDING ARTICLE 4.06 "AMUSEMENT DEVICES"; REVISING SECTION 4.06.001 "DEFINITIONS" SPECIFICALLY FOR "AMUSEMENT MACHINE ESTABLISHMENT"; REVISING SECTION 4.06.004 "PERMIT REQUIRED" SUBSECTION (b) ADDING SECTION 4.06.004(b)(5) THAT ALLOWS FOR THE PERMIT EXEMPTION WHEN INVOLVING THREE OR LESS AMUSEMENT DEVICES IN A SINGLE BUSINESS; REVISING SECTION 4.06.005 "PERMIT FEES" SPECIFICALLY IN SECTION 4.06.005(a) REQUIRING THAT THE ANNUAL PERMIT FEE FOR EACH AMUSEMENT MACHINE ESTABLISHMENT THAT DISPLAYS FOUR (4) OR MORE AMUSEMENT MACHINES SHALL BE THREE HUNDRED DOLLARS (\$300.00); REVISING SECTION 4.06.006 "PERMIT APPLICATIONS" REVISING SECTION 4.06.006(a) PROVIDING THAT THE APPLICATION MUST BE ON A FORM AS PROVIDED FOR IN "EXHIBIT A" ATTACHED HERETO THIS ORDINANCE; REVISING SECTION 4.06.007 "ISSUANCE OF PERMIT AND DECAL; NON ASSIGNABILITY" SPECIFICALLY IN SECTION 4.06.007(a) INVOLVING THE PERMIT ISSUANCE BY THE CITY SECRETARY FOLLOWING INVESTIGATION BY THE AUTHORIZED CITY DESIGNEE; OF THE CODE OF ORDINANCES OF THE CITY OF RIVER OAKS, TEXAS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION THEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City of River Oaks is a home rule City acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

**WHEREAS**, an "amusement machine" by definition is the same as a "skill or pleasure coin-operated machine" pursuant to the V.T.C.A., Occupations Code, chapter 2153, as amended; and

**WHEREAS**, an "amusement machine" is a machine or device of any kind or character, that is operated by or with coins, metal slugs, tokens, or checks, when such machine dispenses or is used or is capable of being used or operated for amusement or pleasure or when such machine is operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of "merchandise or music" or "service" exclusively, as those terms are defined in the V.T.C.A., Occupations Code, chapter 2153, as amended; and

**WHEREAS**, no "amusement machine" will be operated in a way that constitutes an illegal gambling device as defined by Section 47.01(4) of the Texas Penal Code, as amended; and

**WHEREAS**, upon investigation by the Police Chief, it is his recommendation to not continue the current permitting requirements when involving three (3) or less amusement devices since a majority of the machines are already located within the premises of a bona fide business where usually no more than three amusement machines are located therein; and

**WHEREAS**, upon further investigation, the Police Chief finds that there must continue to be permitting control when involving four (4) or more amusement machines that would constitute being an amusement device establishment; and

**WHEREAS**, even with the permitting exemption when involving three (3) or less amusement machines, the provisions provided for in Article 4.06 "Amusement Devices" will remain unchanged for amusement machines when there exists four (4) or more devices per business location; and

**WHEREAS**, when applicable a person desiring a permit to operate an amusement machine establishment shall file a written application with the city secretary as provided for in "Exhibit A" of this Ordinance; and

**WHEREAS**, the City Council has determined after due and careful consideration to concur with the recommendation of the Police Chief since it is a violation of the Texas Penal Code when such amusement machines are used illegally for gambling and especially when such illegal use is already punishable by law.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVER OAKS:**

**SECTION 1.**

That Article 4.06, "Amusement Devices" of the City of River Oaks Code of Ordinances (2020) with the adoption of this ordinance, Section 4.06.001 "Definitions" is amended specifically for "Amusement Machine Establishment" thereby with this revision, the entire Section 4.06.001 "Definitions" shall now read as follows:

**"Sec. 4.06.001 Definitions**

The following definitions shall apply throughout this article, unless specifically indicated otherwise:

Amusement machine. Any machine or device of any kind or character, that is operated by or with coins, metal slugs, tokens, or checks, when such machine dispenses or is used or is capable of being used or operated for amusement or pleasure or when such machine is operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of "merchandise or music" or "service" exclusively, as those terms are defined in the V.T.C.A., Occupations Code, chapter 2153, as amended. (An "amusement machine" pursuant to this definition is the same as a "skill or pleasure coin-operated machine" pursuant to the V.T.C.A., Occupations Code, chapter 2153, as amended.) An "amusement machine" shall also include any billiard tables operated for profit, whether operated by or with coins, metal slugs, tokens, or checks inserted into the machine or paid to an attendant.

Amusement machine establishment. Any structure where four or more amusement machines are operated for profit.

Conviction, convicted. For the purposes of this article, a person is considered convicted if a sentence is imposed on the person, the person is placed on community supervision (including deferred adjudication community supervision), or the court defers final disposition of the person's case.

Permittee. Any person to whom a permit has been issued under this article, including without limitation the permittee individually and any agent, employee or other person acting under the authority of the permit issued by the city.

Person. Unless specifically indicated otherwise, any individual, firm, corporation, company, partnership, joint venture, organization, or any other or entity."

**SECTION 2.**

That Article 4.06, "Amusement Devices" of the City of River Oaks Code of Ordinances (2020) with the adoption of this ordinance, Section 4.06.004 "Permit Required" is amended by incorporating subsection 4.06.004(b)(5) thereby with this revision, the entire Section 4.06.004 "Permit Required" shall now read as follows:

**"Sec. 4.06.004 Permit required**

(a) Except as provided in subsection (b), below, it shall be unlawful for any person, individually or in association with others, to operate an amusement machine establishment without having a valid, current annual permit issued by the city and without having a valid, current decal issued by the city for each amusement machine being displayed or operated in the establishment.

(b) The permitting and regulating provisions of this article do not apply to:

- (1) Amusement machines kept in private residences or apartments and used without charge by members of the family or bona fide guests;
- (2) Amusement machines provided on the premises of religious, charitable, educational, or fraternal organizations for the use of members or their guests, and not for private profit, although a charge is made for playing;
- (3) Amusement machines provided on the premises of bona fide clubs or social organizations, not operated for private profit although a charge is made for playing, which provide other membership privileges and activities usual in bona fide private clubs organized for the promotion of some common object and whose members must be individually passed upon and elected as members by a committee or board made up of members of the club and its affairs and management shall be conducted by a board of directors, executive committee or similar body chosen by the members at their annual meetings; or
- (4) Amusement machines provided on the premises of publicly owned facilities; or
- (5) three (3) or less amusement machines located on the premises of bona fide business with an approved certificate of occupancy provided that none of the machines will be operated in a way that constitutes an illegal gambling device as defined by Section 47.01(4) of the Texas Penal Code, as amended."

### **SECTION 3.**

That Article 4.06, "Amusement Devices" of the City of River Oaks Code of Ordinances (2020) with the adoption of this ordinance, Section 4.06.005 "Permit Fees" is amended by revising section 4.06.005(a) thereby with this revision, the entire Section 4.06.005 "Permit Fees" shall now read as follows:

#### **"Sec. 4.06.005 Permit fees**

- (a) The annual permit fee for each amusement machine establishment that displays four (4) or more amusement machines shall be three hundred dollars (\$300.00).
- (b) No permit shall be issued until the applicant has paid the required permit fee."

### **SECTION 4.**

That Article 4.06, "Amusement Devices" of the City of River Oaks Code of Ordinances (2020) with the adoption of this ordinance, Section 4.06.006 "Permit Applications" is amended by revising section 4.06.006(a) thereby with this revision, the entire Section 4.06.006 "Permit Applications" shall now read as follows:

#### **"Sec. 4.06.006 Permit applications**

(a) A person desiring a permit to operate an amusement machine establishment shall file a written application with the city secretary. The application must be on a form provided by the city secretary as provided for in Exhibit A attached hereto this Ordinance that includes the following information:

- (1) The full name, home address, and home telephone number of the applicant.
- (2) All of the following business information that applies:

(A) The business trade name and a general description of the business and the address and phone number of the business;

(B) If the applicant is a limited partnership, a certified copy of the certificate of limited partnership;

(C) If the applicant is a corporation, a certified copy of the articles of incorporation and, for an out-of-state corporation, the certificate of authority to do business in the state;

(D) The name and address of all partners or shareholders with 20 percent or greater interest in the business; and

(E) The federal tax identification number of the organization for which the person works or with which the person is affiliated.

(3) The physical location and street address where the establishment will be operated.

(4) The total number of amusement machines that will be located and available for use in the establishment.

(5) A complete description of all amusement machines that will be located in the establishment, including without limitation the name or type of the machine, the serial number of the machine, and every owner of the machine (if different from the applicant).

(6) The total floor area of the establishment, and the total floor area of that portion of the establishment that is to be open to customers or patrons for the use or operation of amusement machines.

(7) If the applicant has been convicted of any crime directly related to an amusement machine establishment, the date, location, and nature of the offense and the penalty received.

(8) Such other and additional information as the city secretary may deem necessary to assure that the applicant meets the requirements of this article.

(b) Applications for all permits shall contain the statements that:

(1) "I understand that the permit applied for shall be subject to all the provisions and regulations of the City Code and all other ordinances of the City and laws of the State, and I certify that I and all of my employees, agents, and operators will comply with said ordinances and laws"; and

(2) "I certify that none of the machines will be operated in a way that constitutes an illegal gambling device as defined by Section 47.01(4) of the Texas Penal Code, as amended."

(c) The application shall be signed and sworn to by the applicant before a notary public."

## **SECTION 5.**

That Article 4.06, "Amusement Devices" of the City of River Oaks Code of Ordinances (2020) with the adoption of this ordinance, Section 4.06.007 "Issuance of permit and decal; non-assignability" is

amended by revising section 4.06.007(a) thereby with this revision, the entire Section 4.06.007 "Issuance of permit and decal; non-assignability" shall now read as follows:

**"Sec. 4.06.007 Issuance of permit and decal; non-assignability**

(a) The city secretary shall issue a permit after the Police Chief has completed the necessary investigation and determined that the applicant meets the requirements of and has fully complied with this article and with all other ordinances and laws of the city and state and the city secretary has verified that the permittee has paid the occupation tax pursuant to section 4.06.002. Permits shall be deemed personal to the permittee and shall not be assignable or transferable from one person to another or one location or place of business to another.

(b) Upon issuance of a permit under subsection (a) above, the city secretary shall issue a decal for every amusement machine located in a permitted amusement machine establishment that is listed on the permit.

(1) The decal for each amusement machine is deemed personal to the machine and location for which it is issued. No decal attached to an amusement machine shall be placed on another amusement machine. No amusement machine may be moved to another business location or business establishment in the city without first amending the permittee's application and obtaining a new decal for the machine.

(2) Before replacing an amusement machine(s) or adding an amusement machine(s) to an establishment, the permittee shall pay an occupation tax pursuant to section 4.06.002 of this article for each replacement or additional amusement machine, and amend the application with the city secretary to update and reflect accurately the information required pursuant to section 4.06.006(a)(5). Upon such payment of the occupation tax and amendment of the application, the city secretary shall issue a decal(s) for the replacement or additional amusement machine(s). If the total number of permitted amusement machines has changed, the city secretary shall also issue an amendment to the permit specifying the revised number of amusement machines allowed in the establishment and the date of such amendment."

**SECTION 6.  
CUMULATIVE**

This Ordinance shall be cumulative of all provisions of Ordinances of the city, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

**SECTION 7.  
SEVERABILITY**

It is hereby declared to be the intentions of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of

the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 8.  
SAVINGS**

All rights and remedies of the City of River Oaks are expressly saved as to any and all violations of the provisions of the City of River Oaks Code of Ordinances (2020) or any other ordinances

affecting Amusement Devices 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 9.  
PENALTY**

(a) In case of any willful violation of any of the terms and provisions of this article, the city may institute any appropriate action or proceedings in any court of appropriate jurisdiction to restrain, correct, or abate such violation. For violations of this article, the city may also invoke civil remedies provided by the laws of the state, which shall be cumulative and subject to prosecutions prescribed for such violations.

(b) A fine not to exceed an amount as provided in section 1.01.009 shall be levied against any permittee upon conviction of any violation of any provision of this article. Each day shall constitute a separate offense.

(c) In addition, the city is authorized to seal any coin-operated machine (as that term is defined in V.T.C.A., Occupations Code, chapter 2153, as amended) for which the city's occupation tax has not been paid, and shall charge a fee of \$5.00 for the release of any machine so sealed for nonpayment of tax (as authorized by V.T.C.A., Occupations Code, chapter 2153, as amended).

(d) 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 article shall be fined as provided in section 1.01.009 for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

**SECTION 10.  
PUBLICATION**

The City Secretary of the City of River Oaks is hereby directed to publish in the official newspaper the caption, savings clause, penalty clause, publication clause and effective date clause of this ordinance one (1) time after the adoption of this ordinance as authorized by Chapter 5, Section 5.02(c) of the Charter of the City of River Oaks.

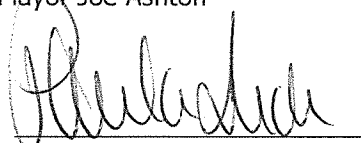
**SECTION 11.  
EFFECTIVE DATE**

This Ordinance shall be in full force and effect after its passage and publication as required by law, and it is so ordained.

**PASSED AND APPROVED THIS THE 12th DAY OF JANUARY 2021.**

  
\_\_\_\_\_  
Mayor Joe Ashton

**ATTEST:**

  
\_\_\_\_\_  
Paula Luck, City Secretary

**“EXHIBIT A”**

**AMUSEMENT DEVICE PERMIT APPLICATION**

**PERMIT # \_\_\_\_\_**

**Section 4.06.006 Permit Applications:** A person desiring a permit to operate an amusement machine establishment (4 or more amusement devices) shall file a written application with the city secretary and include the following information:

DATE APPLIED: \_\_\_\_\_

NAME OF APPLICANT: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

DL NUMBER: \_\_\_\_\_ BIRTH DATE: \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_

ESTABLISHMENT NAME: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

(Note: Physical Location and street address in River Oaks where the establishment will be located)

TOTAL FLOOR AREA: \_\_\_\_\_ FLOOR AREA OPEN TO CUSTOMERS USING DEVICES: \_\_\_\_\_

TOTAL NUMBER OF AMUSEMENT DEVICES THAT WILL BE LOCATED AND AVAILABLE FOR USE: \_\_\_\_\_

**COMPLETE DESCRIPTION OF AMUSEMENT DEVICES** (including the name and type of device or machine, the serial number of the device or machine and every owner of the device or machine (if different from the Applicant) *(For additional devices or machines over 4 please include on separate page)*

1. Name & Type of Device: \_\_\_\_\_  
Serial Number: \_\_\_\_\_ Owners: \_\_\_\_\_
2. Name & Type of Device: \_\_\_\_\_  
Serial Number: \_\_\_\_\_ Owners: \_\_\_\_\_
3. Name & Type of Device: \_\_\_\_\_  
Serial Number: \_\_\_\_\_ Owners: \_\_\_\_\_
4. Name & Type of Device: \_\_\_\_\_  
Serial Number: \_\_\_\_\_ Owners: \_\_\_\_\_

BUSINESS TRADE NAME: *(according to IRS standards)* \_\_\_\_\_

BUSINESS ADDRESS: \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_

FEDERAL TAX IDENTIFICATION NUMBER: \_\_\_\_\_ (Number of the Organization for which the person works or with which the person is affiliated)

**GENERAL DESCRIPTION OF BUSINESS:** \_\_\_\_\_

- Is Business a Limited Partnership?  YES  NO (if yes, provide certified copy of certificate of limited partnership)
- Is Business a Corporation?  YES  NO (if yes, certified copy of Articles of Incorporation is required) (If out of state corporation, you must provide the certificate of authority to do business in the state.)

**Name of address of all partners and shareholders with 20% or greater interest in the business:**  
*(Include additional partners or shareholders on a separate sheet of paper if needed.)*

	<u>Name</u>	<u>Address</u>
1.	_____	_____
2.	_____	_____

\* **Additional Information Requested by City Secretary:** \_\_\_\_\_  
\* (include on separate page if needed)

**Applicant Certification:** I, \_\_\_\_\_ have not been convicted of any crime directly related to an amusement machine establishment. I understand that the permit applied for shall be subject to all the provisions and regulations of the City Code and all other ordinances of the City and laws of the State, and I certify that I and all of my employees, agents, and operators will comply with said ordinances and laws; and I certify that none of the machines will be operated in a way that constitutes an illegal gambling device as defined by Section 47.01(4) of the Texas Penal Code, as amended.

**Signature of Applicant:** \_\_\_\_\_ **Printed Name:** \_\_\_\_\_

**"EXHIBIT A"**

**NOTARY PUBLIC:**

**ACKNOWLEDGMENT §  
STATE OF TEXAS §  
COUNTY OF TARRANT §**

Before me, the undersigned authority in and for said County, Texas, on this day personally appeared \_\_\_\_\_, known to me (or proved to me through \_\_\_\_\_ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he is duly authorized to execute this Order for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

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**(FOR OFFICE USE)**

**"Sec. 4.06.005 Permit fees**

- (a) The annual permit fee for each amusement machine establishment that displays five or more amusement machines shall be three hundred dollars (\$300.00).
- (c) No permit shall be issued until the applicant has paid the required permit fee."

**DISCOVERY:**

YES  NO PERMITTEE BACKGROUND CHECK APPROVED

If the applicant has been convicted of any crime directly related to an amusement machine establishment, the date, location, and nature of the offense and the penalty received are as follows: \_\_\_\_\_

**Sec. 4.06.011 Permit revocation**

The city secretary shall revoke a permit if it is determined that:

- (1) The establishment is not being operated in accordance with this article or with any ordinances or laws of the city or state;
- (2) Any statement made in the application is untrue;
- (3) The applicant has ever been convicted:
  - (A) Of any felony or class A or B misdemeanor directly related to gambling, theft from a customer of a business owned or operated by the applicant, or any other crime directly related to the applicant's operation of an amusement machine establishment;
  - (B) Within the five years before applying for the permit of any class C misdemeanor directly related to gambling, theft from a customer of a business owned or operated by the applicant, or any other crime directly related to the applicant's operation of an amusement machine establishment; or
- (4) The applicant falsely certified to the statements required by section 4.06.006(b); or
- (5) The applicant displayed or operated an amusement machine that did not have a decal or was not listed on the permit for the amusement machine establishment.

YES  NO PAYMENT OF OCCUPATION TAX

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**APPROVAL/DENIAL:**

- CITY AUTHORIZED DESIGNEE APPROVAL: \_\_\_\_\_  APPLICATION DENIED  APPLICATION APPROVED  
(Signature)
- APPEAL TO COUNCIL (Pursuant to Sec. 4.06.012 "Appeal from denial or revocation of permit") - The city secretary shall give written notice of the reason for denial or revocation of a permit by mailing notice to the applicant at the address shown on the application for the permit.

\_\_\_\_\_  
City Secretary

Date of Approval: \_\_\_\_\_