Passed: **12/17/2019**

AN ORDINANCE

No. 2019-33

AN ORDINANCE TO AMEND CHAPTER 6-9 OF THE CODE OF ORDINANCES, WHICH CHAPTER IS ENTITLED "PERMITS," BY ELIMINATING IT IN ITS ENTIRETY AND SUBSTITUTING IN ITS PLACE THE LANGUAGE SET FORTH BELOW; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA, AS FOLLOWS:

SECTION I.

Chapter 6-9 of the Code of Ordinances is hereby amended by eliminating it in its entirety and substituting in its place the language set forth below:

CHAPTER 6-9. - PERMITS AND LICENSES

Sec. 6-9-1. - Grants generally.

The grant or denial of a permit or license under this Chapter shall be based on a consideration of the public welfare, peace, safety, health, good order and convenience. The person who grants such a permit or license may suspend or revoke it based on the same considerations.

Sec. 6-9-2. - Due process.

Any person who believes that he has been denied due process of law under this Chapter in the denial, suspension or revocation of a permit or license shall be entitled to a hearing in front of the administrative hearing officer as provided in section 1-8-1 of the City's Code of Ordinances. Unless such hearing is requested within five (5) working days after the alleged denial of due process, such person shall be presumed to have accepted the denial, suspension or revocation of such person's permit or license.

Sec. 6-9-3. - Sound trucks and sound amplifying systems.

(a) It shall be unlawful for any person to operate or permit to be operated in the City any sound amplifying system for any purpose whatever, whether the same be stationary or operated from a vehicle or other carriage unless a permit has been obtained from the chief of police to do so. However, it shall be unlawful for any person to make any loud and raucous noise to the disturbance of the peace. Any person to whom a permit has been issued under this section who abuses his discretion and causes or permits loud and raucous noises, shall subject the permit to immediate revocation.

(b) The words "sound amplifying system" as used in this section shall mean any loudspeaker system or equipment, sound-amplifying system, and/or any apparatus, equipment, device,

instrument or machine designed for or intended to be used for the purpose of amplifying the sound or increasing the volume of the human voice, musical tone, vibration or sound wave.

Sec. 6-9-4. - Reserved.

Sec. 6-9-5. - Reserved.

Sec. 6-9-6. - Fortune-telling and related practices.

(a) *Occupation tax certificate required, application.*

(1) Any person, firm or corporation desiring to engage in the business, trade or profession of fortune-telling, astrology, phrenology, palmistry, clairvoyance, or related practices where a charge is made, or a donation is accepted for services, shall, before engaging in such business, trade or profession, make application for a business license in the form and manner prescribed by the City manager or his designee.

(2) The application shall include but shall not be limited to the information required on all business license applications submitted under Chapter 6-2 of the City's Code of Ordinances.

(b) *Criminal background investigation required.* Prior to the issuance of a business license, and for all renewal licenses issued, under this section, a criminal background investigation shall be required for every owner(s), manager(s), and employee(s) of the business.

(c) *General operating provisions.*

(1) It shall be the duty of all persons holding a business license under this section to annually file, along with the renewal application for the business license, the names of all employees, their home addresses, home telephone numbers, and any other places of employment. The holder of a business license issued under the provisions of this section must additionally report changes in the list of employees with the names and required supplemental information for new employees to be filed with the City manager or his designee within ten (10) days from the date of such change.

(2) It shall be the duty of any person granted a license under this section to maintain correct and accurate records of the names and addresses of the persons receiving services at such establishment; the type of service administered; and the name of the person at the establishment administering the services. The records shall be subject to inspection at any time by the City manager or his designee, or the City's chief of police.

(3) It shall be unlawful for any person under the age of eighteen (18) to patronize any fortune-telling or related establishment unless such person carries with him/her at the time of such patronage written permission of the underage person's parent or guardian. It shall be the duty of the holder of the business license to determine the age of the person attempting to patronize an establishment and to prohibit patronage by an underage person.

(4) Records required to be maintained under this section shall be kept for a minimum of two (2) years beyond the expiration date of the business license. Records shall be made available to the City manager or his designee, at a location in the City, within ten (10) business days of any such request.

(d) *Inspection of registered establishments.* The City manager or his designee or any City police officer shall have the authority to inspect establishments licensed under this section during the hours in which the premises are open for business. Such inspection shall be made for the purpose of verifying compliance with the requirements of this section.

(e) *Applicant disqualification.* No business license shall be granted to any person under the age of eighteen (18) or to any person who has been convicted, pled guilty or entered a plea of nolo contendere under any federal, state or local law of any crime involving moral turpitude, illegal gambling, any felony, criminal trespass, public indecency, misdemeanor involving any type of sex-related crime, any theft or violence against person or property, any crime of possession, sale or distribution of illegal drugs, distribution of material depicting nudity or sexual conduct as defined under state law, criminal solicitation to commit any of these listed offenses, attempts to commit any of these listed offenses, within the ten (10) year period preceding the date of application for such license and provided that the person has been released from parole or probation.

(f) *Permitted locations.* Fortune-telling, astrology, phrenology, palmistry, clairvoyance, or related businesses are permitted uses only in general business (G-B), light industrial (L-I), or heavy industrial (H-I) zoning districts. See Table 9-6-1 of the City's Unified Land Development Code. However, these businesses are not permitted in the midtown overlay district. See ULDC Sec. 9-8-7-6.

(g) *Violations; penalty; additional remedies.*

(1) Any person, firm, corporation, association or partnership violating any provisions of this section as the same exists or as it may hereinafter be amended, or failing to do anything required by this section as the same exists or as it may hereafter be amended, will be in violation of the law, and said violations shall be punishable as provided in section 1-1-7 of the City Code of Ordinances. Each person, firm, corporation, association or partnership shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this section is committed, continued or permitted by such person, firm, corporation, association or partnership and shall be punished accordingly.

(2) Any fortune-telling, astrology, phrenology, palmistry, clairvoyance, or related business operated, conducted, or maintained contrary to the provisions of this section shall be and is hereby declared to be unlawful and a public nuisance. In addition to or in lieu of any other penalties or remedies, the City may commence an action or actions to enjoin, abate, or remove any violations of the provisions of this section.

(3) Any violation of the provisions of this section shall be considered due cause for the suspension or revocation of any licenses issued by the City to the violating party. Such revocation or suspension shall occur by way of a hearing before the administrative hearing officer as provided in section 1-8-1 of the City Code of Ordinances.

Sec. 6-9-7. - Sale of goods, articles, or services.

It shall be unlawful for any person to sell goods, articles, or services of any nature on any street, park or other property of the City without first obtaining written permission from the City manager, or his designee, which permission will not be granted unless the request and

proposed use of the property will be in full accordance and compliance with all written policies, procedures, guidelines and fees as mandated by the City's governing body.

Sec.6-9-8. - Poolrooms regulated.

No person shall operate a poolroom or billiard room, except under the following rules:

(1) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Licensee shall mean any person, firm or corporation who is duly licensed under the provisions of this section to conduct the business of a poolroom in the City of Gainesville.

Poolroom or *billiard room* shall mean any public place where there exists more than two (2) pool or billiard tables and where a person is permitted to play the game of pool or billiards for a charge imposed for the use of the equipment.

(2) *License required.*

a. A license shall be required to own and operate a poolroom or billiard room in the City. Licenses for the operation of a poolroom or billiard room in the City will be issued by the City manager or his designee and pursuant to this article.

b. No person shall engage in the operation of a poolroom or billiard room without first obtaining all applicable licenses issued by the City.

c. Upon the issuance of a license to operate a poolroom or billiard room, said license shall be displayed prominently at all times on the premises for which the license is issued.

d. The City governing body designates the City manager for the purpose of administering this section. Any powers granted to or duties imposed upon the City manager may be delegated by the City manager to other City personnel.

(3) *Application for license.*

a. 1. An application for a license under this section shall be filed with such City personnel and/or department as designated by the City manager upon forms provided by the City and shall be verified under oath.

2. Each applicant is required to submit to a background investigation which shall include a criminal history check.

3. If the applicant is a person other than the sole proprietor of the business, all owners, members, partners, officers, and/or stockholders holding a ten (10) percent or more interest in the entity shall be subject to the provisions of this section.

b. 1. The application shall be made in the owner's name.

2. An applicant must be at least twenty-one (21) years of age and be a citizen of the United States or an alien admitted for permanent residence.

3. An applicant, and if other than a sole proprietor, all owners, members, partners, officers, and/or stockholders shall not have been convicted, entered a plea of guilty or nolo contendere, been on probation, parole or been

imprisoned within a period of ten (10) years prior to the date of the application for the violation of any of the following offenses of the United States, the State of Georgia, or any other state, or of any political subdivisions thereof:

i. Contributing to the delinquency of a minor;

ii. Any crime(s) involving children;

iii. Prostitution;

iv. Keeping a place of prostitution;

v. Possession, sale or distribution of illegal drugs;

vi. Driving under the influence of alcohol or drugs;

vii. Any felony;

viii. Criminal solicitation to commit any of these listed offenses;

ix. Attempts to commit any of these listed offenses.

c. The applicant shall furnish proof that all licenses required by the State of Georgia have been obtained prior to the operation a poolroom or billiard room.

d. The applicant shall submit with the application both payment of the proper licensing fee as provided in title 10 of the City Code of Ordinances and the proper occupation tax calculated in accordance with Chapter 6-2 of the City's Code of Ordinances.

(4) *Application; investigation.*

a. The City manager or his designee shall conduct an investigation of the applicant.

b. The City will issue a license for the location designated in the application if it determines that:

1. The required fees have been paid;

2. The applicant meets all the requirements of this Chapter and other provisions of the City's Code of Ordinances;

3. The applicant has not knowingly made any false statements in the application;

4. The building, structure or location of the business as proposed by the applicant complies with all applicable zoning and building codes;

5. The applicant has not had a poolroom license or other similar license or permit previously suspended or revoked; and

6. The applicant, if a previous holder of any license to operate a business of this type, has not violated any law, regulation or ordinance relating to this type of business.

(5) *General regulations.*

a. The poolroom or billiard room shall always be open to the inspection by City code enforcement officers or City police officers during operating hours, and no disorder of any kind will be allowed under penalty of forfeiting the license granted to operate the same.

b. The poolroom or billiard room shall not permit any screens, curtains, blinds, partitions, or other obstructions to be used to prevent a clear view of the interior of

the establishment from outside the establishment, which clear view must be maintained at all times. No partitions forming rooms, stalls or other enclosures shall be permitted within the establishment.

c. No billiard or pool tables shall be operated or played upon unless located on the ground floor of the business establishment.

d. No person under the age of eighteen (18) years shall be allowed on the premises of the poolroom or billiard room by the licensee, or an agent or employee of a licensee. It shall be the duty of the licensee, agent or employee to verify the age of persons patronizing the poolroom or billiard room.

e. No owner, operator, manager, employee or agent of a poolroom or billiard room open for public use, shall allow the use of any dice, cards, dominoes or other games of chance or any form of gambling on the premises, nor shall any checks, tokens or tickets be given which can be redeemed for merchandise or cash.

f. No poolroom shall allow any noise or music to be so loud as to be heard outside the walls or ceiling of the business establishment.

g. Alcoholic beverages are prohibited on the premises of any poolroom or billiard room.

h. No poolroom shall open on Sundays, or between the hours of midnight and 6:00 a.m. during any weekday.

(2) *License; denial, transfer, revocation or suspension*.

a. Before the denial of any application for a poolroom or billiard room license, or for the transfer of any poolroom or billiard room license, or the revocation or suspension of any existing poolroom or billiard room license, the applicant or licensee, as the case may be, shall be given notice in writing from the City manager or his designee to show cause before the administrative hearing officer at a time and place specified in the notice not less than three (3) days nor more than thirty (30) days from the date of service of the notice why such application for license or for transfer of license should not be denied, or why such license should not be revoked or suspended as the case may be, stating the grounds therefore, and at the appointed time and place the applicant or licensee shall have an opportunity to show cause, if any exist, why such application or transfer should not be denied or such license revoked or suspended, after which the administrative hearing officer shall take such actions as he or she, in his or her judgment and discretion, shall deem warranted under the facts. All decisions of the administrative hearing officer shall be in writing with reasons therefore stated and mailed or delivered to the applicant or licensee.

b. Any person aggrieved by the action or decision of the administrative hearing officer to deny an application or request to transfer a license applied for under the provisions of this section or the revocation or suspension of a license shall have the right to appeal such action or decision to the city council within thirty (30) days after the action or decision has been mailed to the applicant or licensee's address as shown on the license application form, or to his last known address.

c. An appeal shall be taken by filing with the City clerk a written statement setting forth the grounds for the appeal.

d. The clerk shall transmit the written statement to the City manager within ten (10) days of its receipt and the City manager shall set a time and place for a hearing on the appeal before the City governing body.

e. A hearing shall be set not later than thirty (30) days from the date of receipt of the appellant's appeal.

f. The hearing herein provided for need not be at a regular meeting of the City governing body, but may be at such time and place as shall be fixed in such notice of hearing.

g. At any hearing as provided herein, the party afforded the hearing shall have the opportunity to present evidence and cross-examine witnesses.

h. The hearing herein provided shall be de novo.

i. All decisions denying, approving, suspending or revoking any application or request for transfer of license shall be in writing with the reasons therefor stated and mailed or delivered to the applicant.

j. The decision of the City governing body shall be final unless appealed by certiorari to the Superior Court of Hall County, Georgia.

k. In all instances of a denial of any application for a poolroom or billiard room license or the revocation of any existing poolroom or billiard room license, the applicant, licensee or any person(s) with twenty-five (25) percent or more interest in the applicant or licensee, shall not reapply for a license for at least one (1) year from the final date of the denial or revocation.

Sec. 6-9-9. - Licensing of bingo games.

(a) No nonprofit, tax exempt organization shall be permitted to operate a bingo game until it has obtained a license from the City authorizing it to do so.

(b) Any nonprofit, tax exempt organization desiring to obtain a license to operate bingo games shall make application to the City on forms prescribed by the City and shall pay an annual fee as provided in Title 10 of the City Code of Ordinances. No license shall be issued to any nonprofit, tax exempt organization unless such organization has been in existence for twenty-four (24) months immediately prior to the issuance of the license. Such license will expire at midnight on December thirty-first, following the granting of such license. Renewal applications for each calendar year shall be filed with the City sixty (60) days prior to January first of each year and shall be on a form prescribed by the City. Each application for a license and each application for renewal of a license shall contain the following information:

(1) The name and home address of the applicant, and if the applicant is a corporation, association or other similar legal entity, the names and home addresses of each of the officers, members, partners, or shareholders of the organization as well as the names and addresses of the directors, or other persons similarly situated, of the organization.

(2) The names and home addresses of each of person who will be operating, advertising or promoting the bingo game.

(3) The names and home addresses of any person, organization or other legal entity that will act as surety for the applicant, or to whom the applicant is financially indebted, or to whom any financial obligation is owed by the applicant.

(4) A determination letter from the federal internal revenue service certifying that the applicant is an organization exempt under federal tax law.

(5) A determination letter from the state department of revenue certifying that the applicant is exempt under the tax laws of the state.

(6) The location at which the applicant will conduct the bingo games, and if the premises on which the games are to be conducted is to be leased, a copy of the lease or rental agreement.

(7) A statement showing the convictions, if any, for criminal offenses, other than minor traffic offenses, of each of the persons listed in (1), (2) and (3) above.

The City shall refuse to grant a bingo license to any applicant who fails to fully provide the information required by this section.

(c) Bingo games shall be operated only on premises owned by the nonprofit, tax exempt organization operating the bingo game, on property leased by the nonprofit, tax exempt organization and used regularly by that organization for purposes other than the operation of bingo games, or on property leased by the nonprofit, tax exempt organization operating the bingo game, from another nonprofit, tax exempt organization.

(d) The licensee shall:

(1) Own all the equipment used to conduct a bingo game or lease such equipment from an organization that is also licensed to conduct a bingo game.

(2) Display its bingo license conspicuously at the location where the bingo game is conducted.

(3) Conduct bingo games only at the single location specified in the licensee's application.

(4) Not conduct more than one (1) bingo session during any one (1) calendar day and such session shall not exceed five (5) hours.

(e) No person under the age of eighteen (18) years shall be permitted to play any game or games of bingo conducted pursuant to any license issued under this section or issued by the state unless accompanied by an adult. No person under the age of eighteen (18) years shall be permitted to conduct or assist in the conduct of any game of bingo pursuant to any license issued under this section or issued by the state.

(f) The City manager or his designee shall have the specific authority to suspend or revoke any license for any violation of the provisions of this section after hearing before the administrative hearing officer in accordance with the rules and regulations governing the revocation and suspension of alcoholic beverage licenses.

(g) By making applications for a license under this section, every applicant herewith consents that the City, as well as any of its agents for the City police department may come upon the premises of any licensee or upon the premises on which any licensee is conducting a bingo game for the purpose of examining the accounts and records of the licensee to determine if a violation of any provisions of this section have occurred.

(h) The licensee shall provide to the City notice immediately upon receiving a suspension, notice of the violation, or revocation of its license issued by the state. In the event the licensee fails to provide such information to the City, then the licensee shall have its license revoked hereunder.

(i) Notwithstanding the foregoing provisions, the licensee shall at all times comply with all state laws and rules and regulations issued by the state department of revenue pertaining to O.C.G.A. § 16-12-50 et seq.

Sec. 6-9-10. - Itinerant carnivals or amusements, to be permitted.

It shall be unlawful for any person to set up, maintain or exhibit any itinerant carnivals or similar forms of itinerant amusement within the City limits without first obtaining a special event permit as provided for in Chapter 6-7 of the City's Code or Ordinances.

SECTION II.

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION III.

If any portion of this ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid and unconstitutional.

SECTION IV.

The effective date of this ordinance shall be upon approval by the governing body of the City of Gainesville, Georgia.

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C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this ordinance was adopted as stated and will be recorded in the official minutes.

ATTEST:

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Denise O. Jordan, City Clerk