
STATE OF GEORGIA

CITY OF DULUTH

WHEREAS, the duly elected governing authority of the City of Duluth, Georgia is authorized by O.C.G.A. § 48-17-17 to adopt ordinances regarding bona fide coin operated amusement machines; and

WHEREAS, the City has conducted analysis on the matter and desires to adopt further and more effective regulatory provisions in regard to amusement game rooms in the City; and

WHEREAS, this ordinance is adopted to address the interests of public health, welfare, and safety of the citizens of the City of Duluth

NOW THEREFORE, the Mayor and City Council find that in the interests of the public safety the immediate enactment of this ordinance by reasonable means, as allowed under state law, and not unduly oppressive is necessary to protect the health, safety, morals, and general welfare of the citizens of the city and HEREBY ORDAIN that the City of Duluth Code of Ordinance is hereby amended by deleting in its entirety Article IV of Chapter 7 and replacing this Article with a new Article IV to Chapter 7, Sections 7-95 through 7-112 to read as follows:

SECTION ONE

Article IV, Chapter 7

Sec.7-95 Short Title.

This Article shall be known as the “Duluth, Georgia Bona Fide Coin Operated Amusement Machine Ordinance.”

Sec. 7-96. Gambling Devices Prohibited.

Gambling Devices, as that term is defined in O.C.G.A. § 16-12-20(2) are prohibited in the City, and the ownership, use, or transport thereof shall be a misdemeanor pursuant to state law, except as exempted pursuant to O.C.G.A. § 16-12-35(a) through (k).

Sec. 7-97. Gambling Places Prohibited.

Gambling Places, as that term is defined in O.C.G.A. § 16-12-20(3) are prohibited in the City, and the operation thereof shall be a misdemeanor pursuant to state law.

Sec. 7-98. Definitions.

The following words, terms, or phrases, when used in this Ordinance, shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) Amusement Game Room means any location as provided in O.C.G.A. § 16-12-35(b), (c) or (d) where one or more Bona Fide Coin Operated Amusement Machines are operated that permit non-cash redemption as provided in O.C.G.A. § 16-12-35(d)(1)(B), (C), or a combination thereof.

(b) Bona Fide Coin Operated Amusement Machine means the same as this term is defined in O.C.G.A. § 50-27-70(b)(2)(A) and (B) and any applicable regulations of the State of Georgia. Examples of Bona Fide Coin Operated Amusement Machines include, but are expressly not limited to, the following:

- 1) Pinball machines;
- 2) Console machines;
- 3) Video games;
- 4) Crane machines;
- 5) Claw machines;
- 6) Pusher machines;
- 7) Bowling machines;
- 8) Novelty arcade games;
- 9) Foosball or table soccer machines;
- 10) Miniature racetrack, football or golf machines;
- 11) Target or shooting gallery machines;
- 12) Basketball machines;
- 13) Shuffleboard machines;
- 14) Kiddie ride games;
- 15) Skee-Ball® machines;
- 16) Air hockey machines;
- 17) Roll down machines;
- 18) Trivia machines;
- 19) Laser games;
- 20) Simulator games;
- 21) Virtual reality machines;
- 22) Maze games;
- 23) Racing games;
- 24) Coin operated pool table or coin operated billiard table as defined in paragraph (3) of O.C.G.A. § 43-8-1; and
- 25) Any other similar amusement machine which can be legally operated in Georgia.

The term "coin operated amusement machine" does not include the following:

- 1) Coin operated washing machines or dryers;
- 2) Vending machines which for payment of money dispense products or services;
- 3) Gas and electric meters;
- 4) Pay telephones;
- 5) Pay toilets;
- 6) Cigarette vending machines;
- 7) Coin operated vending machines;
- 8) Coin operated scales;
- 9) Coin operated gumball machines;
- 10) Coin operated television sets which provide cable or network programming;
- 11) Coin operated massage beds; and
- 12) Machines which are not legally permitted to be operated in Georgia.

(c) Location means a business within the City that has complied with the provisions of the ordinances of the City relating to occupation taxes and business licenses and the entire office or area of the business in any one location owned or leased by the same proprietor or proprietors where the Lessor or Lessors allow the space to be used for business purposes.

(d) Location owner or location operator means an owner or operator of a business where one or more bona fide coin operated amusement machines are available for commercial use and play by the public, or shall have the same definition as found in the Official Code of Georgia, Annotated, Section 50-27-70, should that definition differ.

Sec. 7-99. License Required.

No person, firm or corporation shall engage in the business of an owner or proprietor of an Amusement Game Room, as the term is herein defined, without first having obtained an Amusement Game Room license, without first having paid the applicable occupation tax and obtained an occupational tax certificate required under this article. A separate Amusement Game Room license must be obtained for each location in the jurisdiction which bona fide coin operated amusement machines are operated.

Sec. 7-100. Issuance of License.

Application for a license for operating an Amusement Game Room within the corporate limits of the City shall be made to the City Clerk upon a form to be supplied by the City Clerk for this purpose. The license application shall include the following information:

- (a) Name, address, and age of the applicant and the date of the application;

(b) Address or place where the bona fide coin operated amusement machine or machines are to be offered to the public for play and the other business or businesses operated at that place or places;

(c) Name and address of the owner of the machine or machines and a copy of the owner's master license;

(d) Name and address of any other business owned or operated by applicant within the corporate limits of the City; and

(e) List of any other licenses or permits from the City held by the applicant.

Upon issuing a license for an Amusement Game Room, the City official or employee shall provide the license with a copy of this Ordinance. The City shall not require a fee for an Amusement Game Room license or registration. A license issued in accordance with this Ordinance shall be valid until December 31st of the year in which the license was issued. The owner or operator of an Amusement Game Room shall be required to pay occupation taxes in accordance with Chapter ____ of the Code of Ordinances of the City.

Sec. 7-101. Occupation Tax Required.

No person, firm or corporation shall engage in the business of an owner or proprietor of Amusement Game Room, as the term is herein defined, without first having completed the occupation tax certificate application form, paid the required occupational tax and obtained an occupational tax certificate.

Sec. 7-102. Minimum Distance Requirements.

(a) Every Amusement Game Room in the City shall comply with the proximity provision for business licensed to sell alcohol set out in O.C.G.A. § 3-3-21. At a public meeting, the Mayor and Council may waive the application of this provision to an individual location if no alcohol is served or sold at such Location.

(b) Every Amusement Game Room in the City shall comply with the proximity provision for businesses licensed to sell alcohol as set out in Chapter 3 of the Code of Ordinances of the City. At a public meeting, the Mayor and Council may waive the applicability of this provision to an individual Location if no alcohol is served at such Location.

Sec. 7-103. Number of Bona Fide Coin Operated Amusement Machines at a Location.

(Pursuant to O.C.G.A. §50-27-86(1) a local government may prohibit the offering of more than six Class B machines by local ordinance. State law, under O.C.G.A. §50-27-84b)(2) prohibits an operator from having more than nine machines. The local government may change the below restriction from nine to no less than six by local ordinance should it choose to do so.)

No Amusement Game Room in the City shall offer to the public more than nine (9) Class B Bona Fide Coin Operated Amusement Machines offering non-cash redemption in accordance with O.C.G.A. § 16-12-35(c) and (d)(1)(2), or both at the same Location. At a public meeting, the Mayor and Council may, after consideration of the nature and character of the business, waive the applicability of this provision to an individual Location.

Sec. 7-104. Gross Receipts from Bona Fide Coin Operated Amusement Machines and from Business.

(a) Every Amusement Game Room shall keep records available for inspection by City officials that set out separately annual gross receipts for the Class B amusement games and the other products and services sold at the Location.

(b) Any location owner or location operator subject to Official Code of Georgia, Section 50-27-84(b)(1) is hereby required to provide a monthly report to the City Clerk. Such report shall indicate the monthly gross retail receipts for each business location located within the jurisdiction of the city and shall be due by the twentieth day of each month, subsequent to the month in which the sales have taken place. In addition, each owner or operator must allow the local government an annual audit of the reports from the owner or operator to the Lottery Corporation.

(c) No location owner or location operator may derive more than 50 percent of such location owner's or location operator's monthly gross retail receipts for this business location in which the Class B machines are situated from such Class B machines and any location owner or location operator found in violation of such provision may be fined and may have any city issued license suspended or revoked as allowed under this article. Compliance with this section requires both the availability of records for inspection and compliance with the fifty (50%) percent of gross retail receipts requirement. Any violations of this provision shall be reported to the Georgia Lottery Corporation.

Sec. 7-105 Notice Requirements.

(a) Every Amusement Game Room shall post a conspicuous sign with the following or substantially similar language:

'GEORGIA LAW PROHIBITS GIVING OR RECEIPT OF ANY MONEY FOR WINNING A GAME OR GAMES ON AN AMUSEMENT MACHINE; GIVING OR RECEIPT OF MONEY FOR FREE REPLAYS WON ON AN AMUSEMENT MACHINE; GIVING OR RECEIPT OF MONEY FOR ANY MERCHANDISE, PRIZE, TOY, GIFT CERTIFICATE, OR NOVELTY WON ON ANY AMUSEMENT MACHINE; OR AWARDING ANY MERCHANDISE, PRIZE, TOY, GIFT CERTIFICATE, OR NOVELTY OF

A VALUE EXCEEDING \$5.00 FOR A SINGLE PLAY OF AN AMUSEMENT MACHINE.'

(b) Every Amusement Game Room shall post the license issued by the City conspicuously and permanently.

(c) The owner or proprietor of each Amusement Game Room shall inform every employee of the acts and omissions prohibited by O.C.G.A. § 16-12-35 and by this Ordinance, and of the penalties for violation of O.C.G.A. § 16-12-35 and this Ordinance.

Sec. 7-106. Compliance with O.C.G.A. Provisions Relating to Master Licenses, Location Licenses, and Stickers for Individual Machines.

Bona Fide Coin Operated Amusement Machines may be used in an Amusement Game Room within the City only if the machines are owned by a person who holds a valid master license in accordance with O.C.G.A. § 50-27-71, and each machine offered to the public for play has a valid permit sticker in accordance with O.C.G.A. § 50-27-78. In addition, the business owner where the machines are available for play by the public must pay a location license fee in order to obtain a valid location license in accordance with O.C.G.A. § 50-27-71 (a.1) and (b). The City official in charge of issuing business licenses shall notify the State Commissioner of Revenue of any observed violation of O.C.G.A. § 50-27-71 or § 50-27-78.

Sec. 7-107. License Suspension and Revocation.

(a) The city may suspend or revoke the city issued license of any location owner or location operator to manufacture, distribute, or sell alcoholic beverages as a penalty for the conviction of the business owner or business operator of a violation of the Official Code of Georgia, Section 16-12-35, subsection (e), (f), or (g).

(b) The city may suspend or revoke the license of any location owner or location operator of any other license granted by the municipality as a penalty for the conviction of the business owner or business operator of a violation of the Official Code of Georgia, Section 16-12-35, subsection (e), (f), or (g).

(c) The suspension or revocation of licenses under this Code section shall be in accordance with the following guidelines of due process:

(1) No license which has been issued or which may be issued pursuant to this Article shall be suspended or revoked except for due cause and after providing the licensee with an opportunity for a hearing and upon prior three-day written notice to the holder of the license of the time, place and purpose

of the hearing and a statement of the charges upon which the hearing shall be held.

(2) The term "due cause" for the purposes of this section shall include, but not be limited to:

(A) Conviction of, or the entering of a plea of guilty or nolo contendere by, the licensee or any of his employees or any person holding an interest in the license for any felony, any law, administrative regulation or ordinance involving alcoholic beverages, gambling or narcotics, or tax laws.

(B) Conviction of, or the entering of a plea of guilty or nolo contendere by, the licensee or any of his employees or any person holding an interest in the license for any sex offense when the licensed business is for on-premises consumption.

(C) Suspension or revocation of any state license required as a condition for the possession, sale or distribution of alcoholic beverages.

(D) Material falsification of any fact given in an application for a license issued under this chapter or bearing upon the licensee's qualification therefor. Any act which may be construed as a subterfuge in an effort to circumvent any of the qualifications for a license under this chapter shall be deemed a violation of the requirement attempted to be circumvented.

(E) Failure to meet or maintain any standard prescribed by this Article as a condition or qualification for holding a license.

(F) Any other factor known to or discovered by the city whereby it is objectively shown the licensee, any of the licensee's employees or any person holding an interest in a license, has engaged in conduct at or involving the licensed business or has permitted conduct on the licensed premises that constitutes a violation of federal or state law, local ordinance or administrative regulations involving alcoholic beverages, gambling or narcotics for all alcohol licensed businesses and including any sex offense under state law or local ordinances with respect to businesses licensed for on-premises consumption. With respect to this section, it shall be rebuttably presumed that the violative act was done with the knowledge or consent of the licensee; provided, however, that such presumption may be rebutted only by evidence which precludes every other reasonable hypothesis save that such licensee did not know, assist or aid in such occurrence, or in the exercise of full diligence that such licensee could not have discovered or prevented such activity.

- (3) Notice of suspension or revocation and the opportunity for a hearing shall be served on the person named as licensee in the application. Notice shall be in writing. The notice may be served personally or by first class mail. If by mail, the notice shall be addressed to the licensee at its address as provided by the licensee to the municipality. The burden shall be on the licensee to provide notice, in writing, of any change of address for service of notices and process. In the case of service by mail of any notice required by this chapter, the service is complete at the time of deposit in the United States Postal Service.
- (4) The hearing shall be conducted by a hearing officer appointed by the mayor of the city council. The hearing officer shall be an attorney licensed to practice in the state who is disinterested in the proceeding.
- (5) Hearings shall be only as formal as necessary to preserve order and shall be compatible with the principles of justice. The city attorney shall present the city's case and bear the burden of proving by a preponderance of the evidence that due cause exists to suspend or revoke the license. At the hearing the licensee shall have the right to represent itself or be represented by counsel, may cross examine all witnesses offered by the city, and may call witnesses and present evidence in its own behalf. Formal rules of evidence shall not apply to hearings under this section, although the hearing officer shall have the right to exclude evidence which carries no indicia of reliability. All testimony shall be offered under oath or affirmation.
- (6) The hearing officer shall make his final determination within ten business days of the completion of the hearing. The decision shall be placed in writing and contain the hearing officer's findings of fact, conclusions of law, and decision as to sanction, if any. Such sanction may include one or more of the following: revocation of the license, suspension of the license for no more than 12 months, imposition of a probationary period not to exceed 12 months, and/or a civil monetary penalty not to exceed the amount allowed under the city charter. Progressive sanctions, depending on the severity of the violation, are encouraged but not required. Where the remaining term of the license is less than 12 months, imposition of suspension or probation for a period in excess of the term of the existing license shall be applied to any renewal license. A subsequent violation within a probationary period shall be cause for revocation and/or denial of license renewal. A total of three separate and unrelated violations within 24 months, whether or not within a probationary period, shall be grounds for permanent revocation.
- (7) The hearing officer's decision shall be personally served or mailed by certified mail, return receipt requested to the licensee and his attorney, with a copy to the city attorney, within ten business days of the close of the hearing. The decision of the hearing officer shall constitute final action by the city, subject to review upon petition for certiorari to the superior court.

- (8) Upon receipt of notice of adverse action against the licensee under this section, the licensee may waive its right to a hearing and stipulate to a sanction, as recommended by the city manager, in consultation with the chief of police. Any stipulation entered under this subsection shall be in writing, signed by the licensee, and non-appealable.

Sec. 7-108. Criminal Penalties for Violations by Owners or Operators of Amusement Game Rooms.

(a) Penalties for violation of the provisions of this Ordinance by the owner or operator of an Amusement Game Room, after conviction in the Municipal Court of the City, or other court of competent jurisdiction are as follows:

(1) First Offense: Fine not to exceed Five Hundred (\$500.00) Dollars for each violation.

(2) Second Offense: Fine not to exceed Seven Hundred Fifty (\$750.00) Dollars for each violation, suspension of the owner or operator's license for offering any amusement game at the Location for not more than three (3) months, or both.

(3) Third Offense: Fine not to exceed One Thousand (\$1,000.00) Dollars for each violation, suspension or permanent revocation of the owner or operator's license for offering any amusement game at the Location, or suspension of other permits and licenses granted by the City for not more than six (6) months, or any combination of these penalties.

(b) The fines listed in the penalties for violation of this Ordinance may be imposed by the Judge of the Municipal Court of the City, or the judge of any other court of competent jurisdiction. Suspension or revocation of the owner or operator's license for offering any amusement game at the Location where the violation occurred, and suspension of other permits and licenses granted by the City may be imposed by the Mayor and Council after the opportunity for a public hearing as described in Sec.7-107 of this article.

(c) Offering one or more Bona Fide Coin Operated Amusement Machine games in violation of an order suspending or revoking the license for the offering of any amusement game at the Location is punishable, after conviction in the Municipal Court of the City, by a fine not to exceed One Thousand (\$1,000.00) Dollars, imprisonment not to exceed thirty (30) days, or both such fine and imprisonment.

Sec. 7-109**Penalties for Violations by Those Who Play Bona Fide Coin Operated Machines in Violation of Law or Ordinance.**

The Municipal Court of the City, or any other court of competent jurisdiction is authorized to impose the following penalties on any person convicted of receiving money as a reward for the successful play or winning of any Bona Fide Coin Operated Amusement Machine from any person owning, possessing, controlling or overseeing such Bona Fide Coin Operated Amusement Machine or any person employed by or acting on behalf of a person owning, possessing, controlling or overseeing a Bona Fide Coin Operated Amusement Machines:

(1) First Offense: Fine not to exceed Two Hundred Fifty (\$250.00) Dollars for each violation.

(2) Second and Subsequent Offense: Fine not to exceed Five Hundred (\$500.00) Dollars for each violation.

Sec. 7-110. Operating Regulations.

All businesses operating as an Amusement Game Room hereunder shall be subject to the following regulations:

(a) Devices to Be Kept in Plain View; Gambling Devices Prohibited. All bona fide coin operated amusement machines shall at all times be kept and placed in plain view of and open and accessible to any person(s) who may frequent or be in any place of business where such machines are kept or used. Nothing in this section shall be construed to authorize, permit or license any gambling device of any nature whatsoever.

(b) Inspection. The chief of police may inspect or cause the inspection of any location in which any such bona fide coin operated amusement machine(s) are operated or set up for operating, and may inspect, investigate and test such machines as needed.

(c) Attendant Required. It shall be unlawful for any location owner or location operator to open the location to the public unless an attendant is present. Said attendant shall be of sufficient mental and physical capacity so as to be able to provide aid to patrons if needed or desired. Said attendant shall not be less than 18 years of age.

(d) Loitering. As used in this section, "loitering" shall mean remaining idle in essentially one location and shall include the concepts of spending time idly, loafing or walking about aimlessly, and shall be unlawful for any person, firm or corporation licensed to operate an Amusement Game Room to permit loitering on or in the immediate vicinity of any machine or business premises regulated hereunder in such a manner as to:

- (1) Create or cause to be created a danger of a breach of the peace;
- (2) Create or cause to be created any disturbance of the peace, as defined by law;;
- (3) Obstruct the free passage of pedestrians or vehicles;
- (4) Obstruct, molest or interfere with any person lawfully in a public place.
- (5) Shirt and shoes required. All location owners and location operators shall require shirts and shoes to be worn at all times by any person frequenting their location.

Sec. 7-111. Licenses and Permits Nontransferable.

(a) Licenses required in this article are nontransferable. All businesses that have bona fide coin operated amusement machines on the premises shall display, in plain view, the current Amusement Game Room license and occupational tax certificate issued by the City.

(b) The issued license shall not be transferred to another owner at the same site within the City. A new owner or proprietor must first obtain a new license if they are going to operate in the same or different location in the City.

Sec. 7-112 Enforcing Officer.

The **chief of police and city clerk or their** designees are hereby designated as the enforcement officers and shall work together to execute all requirements of this article.

SECTION TWO

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION THREE

If any section, clause, sentence or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

SECTION FOUR

This ordinance shall become effective immediately upon its adoption by the City Council.

SO ORDAINED, this ____ day of _____, 2013

Mayor
City of _____

ATTEST:

Clerk of Council