

ORDINANCE NUMBER 555

City of Thomson Bona Fide Coin Operated Amusement Machine Ordinance

AN ORDINANCE BY THE MAYOR AND CITY COUNCIL FOR THE CITY THOMSON RELATING TO COIN OPERATED AMUSEMENT DEVICES, PROMOTIONS, AND LOTTERIES; RELATING TO OFFENSES AGAINST PUBLIC HEALTH AND MORALS; TO PROVIDE FOR THE APPLICABILITY OF CERTAIN PROVISIONS TO CERTAIN GAMES AND DEVICES; TO PROVIDE FOR A LIMITATION ON THE ALLOWABLE NUMBER OF SUCH MACHINES AT ONE LOCATION; TO REQUIRE OWNERS AND OPERATORS OF SUCH MACHINES TO COMPLY WITH CERTAIN REGULATIONS; TO PROVIDE FOR THE SUSPENSION AND REVOCATION OF LICENSES; TO PROVIDE FOR FINES; TO MANDATE REPORTING REQUIREMENTS; TO MANDATE SIGN POSTING; TO PROVIDE FOR MINIMUM DISTANCE RESTRICTIONS; TO PROVIDE REQUIREMENTS FOR PLACEMENT OF MACHINES; TO REQUIRE DISCLOSURE OF CERTAIN CONTACT INFORMATION OF THE OWNER AND/OR OPERATOR OF MACHINES; TO PROVIDE FOR LICENSE POSTING; TO PROVIDE FOR SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.

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

WHEREAS, the City has now conducted analysis on the matter and desires to adopt regulatory provisions in regard to amusement game rooms in the City.

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

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.

SECTION ONE

Sec. I. Short title.

This Article shall be known as the "City of Thomson Bona Fide Coin Operated Amusement Machine Ordinance."

Sec. II. 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. III. 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. IV. 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 owned or leased by the same 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 O.C.G.A. § 50-27-70, should that definition differ.

Sec. V. 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. VI. Application for License

(a) An applicant for an Amusement Game Room license must be at least 18 years of age.

(b) A license will be issued only to a person who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States. Where an applicant is other than a natural person, such applicant must be a person representing an entity organized and existing under the laws of the United States or one of its states.

(c) Upon application, the applicant shall consent to a criminal background check and shall release the City, its elected officials, officer, agents, employees and representatives from any liability resulting from any criminal background check performed on the applicant.

(d) No application shall be processed by any applicant convicted or pleading guilty or nolo contendere to any charge under any federal , state or local law, constituting a felony, within ten (10) years prior to the date of the filing of the application for a license.

Sec. VII. License Application

A person desiring to obtain a license shall make application of the forms prescribed by the City.

(a) The application form for a license shall require, but shall not be limited to, the following information:

- 1) The name and address of the applicant.
- 2) The name and location of the proposed Amusement Game Room, and the name and address of the owner of the Location in which the arcade is/will be located.
- 3) A description of all of the Amusement Game Machines, including the name, address and telephone number of the owner of each machine, and the registration number for each machine from the Georgia State Lottery Corporation decal on the Amusement Game Machine.
- 4) Certification from the county tax commissioner that all taxes then due to the City have been paid on the property where the Amusement Game Room is or will be located.
- 5) As required by the provision of Section 6 (c), all applicants shall furnish a background check through the office of the Sheriff of McDuffie County, and copy of the current City of Thomson Occupation Tax Certificate, and other material or information as may be required by the Designee. Failure to furnish data required by the Designee shall be deemed to be a withdrawal of the application.

- 6) Each application for an initial license and renewal license shall provide the name and address of the master license issued by the Georgia Lottery Corporation to the owner of any amusement game machines located in the City as referenced in Section 14.

(b) Application fee(s) as prescribed by the City shall be due and payable upon application for the license. Failure to pay and license, administrative, or investigative fees at the time of filing the application, or failure to furnish all information as required, will cause the application to be deemed as incomplete and no further action will be taken until such application is complete as determined by the Designee.

Sec. VIII. License Review.

When it has to be determined by the Designee that the initial application is complete, and applicable fees paid, the application shall be presented to the City Council for review. Unless otherwise required or requested, no such Council review shall be required for the annual renewal of an Amusement Game Room license.

Applications shall be presented to City Council within 45 days after the date such application is deemed complete. The Designee shall notify the applicant of the date and time that the application will be presented to the City Council. Upon presentment to the City Council, the Council shall conduct a hearing at which time the applicant may appear and present any matters in support of the application, and, any other person may appear and present matters in support of, or in opposition to, the application.

In determining whether or not a license applied for hereunder shall be granted, the following shall be considered in the public interest and welfare:

- 1) Reputation, character. The applicant's reputation, character, trade and business associates or past business ventures, mental, physical and financial capacity to conduct the business.
- 2) Previous violations of City Ordinance code. If the applicant is a previous holder of an Amusement Game Room license, whether or not he/she has violated any law, regulation or ordinance relating to such business.
- 3) Manner of conducting prior Amusement Game Room business. If the applicant is a previous holder of an arcade or Amusement Game license, the manner in which he conducted the business, especially as to the necessity for unusual police observation and inspection in order to prevent the violation of any law, regulation of ordinance relating to such business.
- 4) Location. The location for which the license is sought, as to traffic congestion, general character of the neighborhood, and the effect such an establishment would have on the adjacent and surrounding residents or properties.

- 5) Number of licenses in trading area. The number of licenses already granted for similar business in the trading area of the place for which the license is sought.
- 6) Previous revocation of license. If the applicant is a person and/or other entity whose license issued under public powers of any governing authority has been previously suspended or revoked or who has previously had an arcade or Amusement Game Room license suspended or revoked.
- 7) Payment of taxes and other charges. If the applicant and business are delinquent in the payment of any local taxes, license, or other fees or charges.
- 8) Congregation of minors. Any circumstances which may cause minors to congregate in the vicinity of the proposed location.
- 9) Prior incidents. Evidence that a substantial number of incidents requiring police intervention which have occurred within the immediate area during the twelve (12) months immediately preceding the date of application.
- 10) Previous denial or revocation. The denial of an application, or the revocation of a license, occurring within the preceding 12 months, which was based on the qualifications of the proposed location.

Upon presentation of the report and any recommendations by the Designee to the City Council, the Counsel shall take action denying, approving, conditionally approving, or it may defer action for a period not to exceed 61 days in order to obtain further information. If the application is denied the Council shall set forth the reasons for such denial.

In all instances in which an application is denied under the provisions of this ordinance the applicant may not reapply for a similar license for the same location for at least one year from the date of such denial or revocation.

Sec. IX. 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. X. Minimum Distance Requirements.

(a) No Amusement Game Room operated pursuant to a license issued under this ordinance shall be located closer than:

- 1) 100 yards of a church, shrine, chapel of a mortuary, or other place used exclusively for religious purposes;
- 2) 200 yards of any school or college campus including public, private, or church supported schools which teach the subjects commonly taught in the common

schools and colleges of the state. Such separation shall not be applicable to private residence schooling commonly referred to as "home schooling".

- 3) 200 yards of a private residence. Restriction applicable only for Amusement Game Rooms having more than three (3) Amusement Game Machines.
- 4) 200 yards of a public library or branch of any public library;
- 5) 200 yards of a regular school bus stop for the transportation of school children in the public or private schools within the City which board or discharge passengers;
- 6) 200 yards from an existing licensed arcade or Amusement Game Room, regardless of jurisdiction.

(b) For the purposes of this section, distances shall be measured in a straight line from the nearest property boundary line of the Location of the proposed Amusement Game Room establishment for which the license is sought, or an existing Amusement Game Room, to the nearest property boundary line of those uses referenced in Section 10(a) above. For school bus stops, such measurement shall be made to the approximate location of the point of discharge.

(c) The measurement of such distances shall be confirmed by the McDuffie County/City of Thomson Planning Commission staff using the Geographical Information System (GIS) of McDuffie County/City of Thomson. Should a question arise as to the accuracy or authenticity of such measurement, resolution shall be obtained by the confirmation of same by a state certified land surveyor. The expense for the services of such land surveyor shall be borne by the applicant.

(d) An Amusement Game Room which is operated pursuant to a license issued by the City prior to the adoption of this ordinance shall not be denied, and shall continue operation under such existing license, nor deny and renewal of such license, nor shall any new operator of such Amusement Game Room be denied a new license based upon the measurements set forth in this section. Upon cessation of the operation of the Amusement Game Room pursuant to such license, such exemption shall expire.

(e) If the distance requirements as set forth are met at the time of the issuance of the license, the subsequent establishment of a property use referenced in Section 10(a) shall not prevent the continued operation of the Amusement Game Room pursuant to the license or the renewal of the license to any subsequent operator of such Amusement Game Room as long as the business operation of the Amusement Game Room or establishment does not cease.

(f) The Council may waive the distance requirements of this section as they apply to a City park or playground.

Sec. XI. Number of Bona Fide Operated Amusement Machines at a Location.

No Amusement Game Room in the City shall offer to the public more than six (6) 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. XII. 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 monthly report to the receipts for each business location located with 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. XIII. 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. XIV. Compliance with O.C.G.A. Provision 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 to the Lottery Corporation in order to obtain a valid location license in accordance with O.C.G.A. § 50-27-71(a.1) and (b).

Sec. XV. License Suspension and Revocation.

(a) The City may suspend or revoke any Alcohol license of the owner or 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 O.C.G.A. § 16-12-35(e), (f), or (g).

(b) The City may suspend or revoke any other license issued by the City to the owner or operator as a penalty for the conviction of the owner or operator for a violation of O.C.G.A. § 16-12-35(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 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 of 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 therefore. 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 business 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 proceedings 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, any 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 with 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. XVI. 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 a public hearing.

(c) Offering one or more Bona Fide Coin 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. XVII. 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 as 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, possession, 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. XVIII. 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

The chief of police or his designee is hereby designated as the enforcement officer and shall 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 13th day of March, 2014.

First Reading: Feb 25, 2014

Second Reading: March 13, 2014

Upon Passage: Ayes: 4

No: 0


Kenneth Usry
Mayor City of Thomson

ATTEST:



City Clerk, Dianne Landers

