



City of Lilburn
in Gwinnett County
State of Georgia

**Ordinance
Number:**

2023-598

Date of Reading and Adoption: February 13, 2023

At the meeting of the Lilburn City Council held at 340 Main Street, Lilburn, Georgia.

AN ORDINANCE BY THE MAYOR AND CITY COUNCIL FOR THE CITY OF LILBURN RELATING TO COIN OPERATED AMUSEMENT MACHINE(COAM) 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: Chapter 1 Section 1-6 of the City Code provides for amendments to City Code from time to time by adoption of City Council; and

WHEREAS: In August 2021 Mayor and Council enacted Resolution 2021-06 initiating a moratorium on the issuance of business licenses for "small box" retail stores smaller than 6000 sf; and

WHEREAS: the moratorium, enacted by Resolution 2021-06, expired on December 31, 2022; and

WHEREAS: Coin Operated Amusement Machines are common features of the small retail businesses the resolution sought to regulate; and

WHEREAS: the City has now conducted analysis on the matter and desires to adopt further and more effective regulatory provisions in regard to Coin Operated Amusement Machines in the City; and

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

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

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Lilburn, Georgia, sitting in regular session on January 9, 2023, that Chapter 14, Businesses, of the Lilburn City Code is amended as follows:

SECTION ONE

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The Code of Ordinances of the City of Lilburn, Georgia is hereby amended to repeal and replace Article 5 of Chapter 14, thereof, which shall be titled Article V MECHANICAL/COIN-OPERATED AMUSEMENT DEVICES AND AMUSEMENT GAME ROOMS and which shall read in words as follows:

Article V. MECHANICAL/COIN-OPERATED AMUSEMENT DEVICES AND AMUSEMENT GAME ROOMS

Sec. 14-128. Short Title.

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

Sec. 14-129. Zoning Requirements.

No mechanical amusement device shall be operated or maintained for operation and no license shall be granted to any applicant unless the premises upon which the mechanical amusement devices herein are to be operated or maintained for operation are located within an area zoned as CB according to the zoning ordinance of the city, effective as of the date upon which the application is made.

Sec. 14-130. Minors Playing During School Hours.

No person under the age of 16 years shall be allowed within or on the premises of any establishment to which a license has been issued by the city under this chapter during the hours school is in session from beginning time to dismissal.

Sec. 14-131. 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 violation of this ordinance as well as a misdemeanor pursuant to state law, except as exempted pursuant to O.C.G.A. § 16-12-35(a) through (k).

Sec. 14-132. Gambling Places Prohibited.

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

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Sec. 14-133.**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.

(c) **Class B Machine** shall have the same definition as found in O.C.G.A § 50-27-70.

(d) **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 owner(s) where the Lessor or Lessors allow the space to be used for business purposes.

(e) **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. 14-134.**License Required.**

No person, firm or corporation shall engage in the business of an owner 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 where bona fide coin operated amusement machines are operated.

Sec. 14-135.**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 Manager or his or her designee upon a form to be supplied by the City Manager or his or her designee for this purpose. The license application shall include the following information:

(a) Verification of valid location license in accordance with O.C.G.A §50-27-71(a.1) and (b).

Upon issuing a license for an Amusement Game Room, the City official or employee shall provide the licensee with a copy of this Ordinance. The City shall not require a fee for an Amusement Game Room license. 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 62, Article 2 – Occupation Tax, of the Code of Ordinances of the City of Lilburn.

Sec. 14-136.**Occupation Tax Required.**

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No person, firm or corporation shall engage in the business of an owner 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. 14-137. Minimum Distance Requirements.

- (a) No firm or corporation shall engage in the business of an owner or operator of Amusement Game Room, as the term is herein defined, in or within 100 yards of a church building or within 200 yards of any school grounds.
- (1) The school buildings referred to in this section shall apply only to state county, city or church school buildings and to such buildings at such other schools in which are taught subjects commonly taught in the common school and colleges of this state, and does not include a pre-kindergarten program. The term "school building" includes only those structures in which instruction is offered.
- (2) The term "church building," as used herein, means the main structure used by any religious organization for purposes of worship.
- (3) For purposes of this section, distance shall be measured by the most direct route of travel on the ground and shall be measured in the following manner:
- (A) In a straight line from the front door of the structure from which alcoholic beverages are sold or offered for sale;
- (B) To the front door of the building of a church, government-owned treatment center, or a retail package store, or
- (C) To the nearest property line of the real property being used for school or educational purposes.
- (4) The subsequent opening and operation of a church or school within the distance prohibited herein shall not prevent the continuance of an existing license or the renewal thereof. However, notwithstanding any other provisions of this section and chapter, said use shall not be reestablished after discontinuance of 12 months, unless it shall meet the requirements of subsection (a).
- (5) An applicant for a license for an Amusement Game Room must submit written documentation from the City's director of planning and economic development or his/her designee that the applicant meets the distance requirements as set forth herein.

Sec. 14-138. Number of Bona Fide Coin 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) at the same location.

Sec. 14-139. Gross Receipts from Bona Fide Coin Operated Amusement Machines

- (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 Manager or his or her designee. 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

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month in which the sales have taken place. In addition, each owner or operator must allow the City to perform 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. Any location owner or location operator found in violation of such provision may be fined in conjunction with an action in Municipal Court and/or 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 50 percent of gross retail receipts requirement. Any violations of this provision shall be reported to the Georgia Lottery Corporation.

Sec. 14-140. 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 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. 14-141. Compliance with State Law 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 location owner, as herein defined, 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). Failure to have a valid location license from the State of Georgia will result in the Amusement Game Room license application not being processed by the City. The City Manager or his or her designee responsible for 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. 14-142. License Suspension and Revocation.

- (a) The City Manager and/or his/her designee and/or the City Council may suspend or revoke the city issued license of any location owner or location operator to manufacture, distribute, or sell alcoholic

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beverages as a penalty for the conviction of the owner or operator of a violation of the Official Code of Georgia, Section 16-12-35, subsection (e), (f), or (g).

(b) The City Manager and/or his/her designee and/or the City Council may suspend or revoke the license of any location owner or location operator of any other license granted by the City as a penalty for the conviction of the owner or operator of a violation of the Official Code of Georgia, Section 16-12-35, subsection (e), (f), or (g).

(c) The City Manager and/or his/her designee and/or the City Council (upon appeal) may suspend or revoke any license issued under this Article in accordance with the following guidelines of due process:

(1) No license which has been issued pursuant to this Article shall be suspended or revoked until the City Manager and/or his/her designee holds an evidentiary hearing. The holder of the license shall be notified in writing of the time, place and purpose of the hearing, including a statement of the charges upon which the hearing shall be held. Said notice shall be provided to the holder of the license at least three (3) days prior to the hearing. No license which has been issued pursuant to this Article shall be suspended or revoked except upon a finding of due cause.

(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/her employees for any felony and/or any law, administrative regulation or ordinance involving alcoholic beverages, gambling, 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 for any sex offense, but only when the Amusement Game Room location also is licensed for on-premises consumption of alcohol.

(C) Suspension or revocation of any state license and/or City-issued 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 fact known to or discovered by the City whereby it is objectively shown the licensee, any of the licensee's employees, has engaged in conduct at or involving the Amusement Game Room location or has permitted conduct at the Amusement Game Room location that constitutes a violation of federal or state law, local ordinance or administrative regulations involving alcoholic beverages, gambling or narcotics, but only when the Amusement Game Room location also is licensed to manufacture, produce, sell, or serve alcohol and including any sex offense under state law or local ordinances with respect to Amusement Game Room locations that are also licensed for on-premises consumption of

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alcohol. With respect to this section, it shall be rebuttably presumed that the violative act was done with the knowledge or consent of the licensee.

- (3) Notice of the license 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 City. 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) Hearings shall be only as formal as necessary to preserve order and shall be compatible with the principles of justice. The City Clerk or designee shall be authorized to issue no more than three (3) subpoenas on behalf of each party regarding witnesses for said hearing, unless further subpoenas are approved in writing by the City Manager. 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. Any witnesses called by licensee shall be subject to cross examination by the City Attorney. Formal rules of evidence shall not apply, although evidence which carries no indicia of reliability may be excluded. All testimony shall be offered under oath or affirmation.
- (5) The City Manager and/or his/her designee shall make a final determination within ten (10) days of the completion of the hearing. The decision shall be in writing and contain findings of fact, conclusions of law, and the 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, and/or imposition of a probationary period not to exceed 12 months, with any conditions thereon specified. 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 (3) separate and unrelated violations within 24 months, whether or not within a probationary period, shall be grounds for permanent revocation.
- (6) The decision of the City Manager and/or his/her designee 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 15 days of the close of the hearing. A review of the decision of City Manager and/or his/her designee may be made by appeal to the City Council on the record only; no further evidentiary hearings shall be held before the City Council. Such appeal shall be by written petition, filed in the office of the City Clerk or designee within 15 days after entry of the final decision of the City Manager and/or his/her designee. It shall be the duty of the City Clerk or designee to forward a copy of said appeal and the record to the City Council. In order to defray administrative costs, said written petition must be accompanied by a filing fee of \$500.00 from licensee.
- (7) 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

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Manager or his or her designee, in consultation with the Chief of Police. Any stipulation entered under this subsection shall be in writing, signed by the licensee, and non-appealable.

(8) Appeal to City Council

- (A) Either party may file an appeal, and the filing of such appeal to the City Council shall act as a supersedeas until such time as the City Council votes on the appeal or for a period of 45 days, whichever period of time is shorter.
- (B) The City Council may affirm, reverse, or modify the findings of the City Manager and/or his/her designee.
- (C) The findings of the City Manager and/or his/her designee shall be affirmed unless found to be contrary to law or ordinances, or there is no evidence in the record to support the findings, provided, however, that the city council may modify the findings as set forth herein.
- (D) The findings of the City Council shall be final unless appealed within 30 days of the date of said findings by certiorari to the Superior Court of Gwinnett County. The filing of such an appeal shall not act as a supersedeas, unless the City Council so states in its decision.

Sec. 14-143. Criminal Penalties for Violations by Owners or Operators of Amusement Game Rooms.

- (a) Any violation of any provision of this Article may result in a citation issued by the City, to be tried in Municipal Court.
- (b) Penalties after conviction 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.
 - (3) Third Offense: Fine not to exceed One Thousand (\$1,000.00) Dollars for each violation.
- (c) Offering one or more Bona Fide Coin Operated Amusement Machine games in violation of a decision of probation or of an order suspending or revoking an Amusement Game Room license 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. 14-144. Penalties for Violations by Those Who Play Bona Fide Coin Operated Machines in Violation of Law or Ordinance.

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 is a violation of this Article and may result in a citation issued by the City, to be tried in Municipal Court. Penalties after conviction are as follows:

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

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

Sec. 14-145. 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) 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 not be less than 18 years of age.
- (c) 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 location 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. 14-146. 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 at the licensed location.
- (B) The issued Amusement Game Room license shall not be transferred to another person or corporate entity at the same location within the City. A new owner must first obtain a new license if they are going to operate an Amusement Game Room in the same or different location in the City.

Sec. 14-147. Enforcing Officer.

The City Manager or his or her designee shall serve as the enforcement officer and shall execute all requirements of this Article.

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Sec. 14-148. Repealer All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Sec. 14-149. Severability 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.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Lilburn, Georgia, sitting in regular session on February 13th, 2023, that The Code of Ordinances of the City of Lilburn, Georgia is hereby amended to repeal and replace Article 5 of Chapter 14, thereof, which shall be titled Article V as set forth in this ordinance.


BE IT FURTHER RESOLVED that this Ordinance shall be effective upon its adoption.

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SO ORDAINED this the 13th day of February 2023.

APPROVED:



Tim Dunn, Mayor

ATTEST:



Rick Badie, City Clerk

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