

ORDINANCE NO.: 2007-18 (Amended July 10, 2007)
SPONSOR: MAYOR CROGHAN
INTRODUCED: JUNE 12, 2007

**AN ORDINANCE REGULATING THE EXISTENCE AND OPERATION OF
"GAMES OF SKILL AND ADULT AMUSEMENT ARCADES" IN THE CITY OF
GREEN, AND DECLARING AN EMERGENCY.**

WHEREAS, current law in Ohio allows skill-based amusement machines but prohibits certain games of chance; and

WHEREAS, adult amusement arcade businesses typically involve the exchange of cash for an opportunity to play a game; and

WHEREAS, electronic and other adult arcade games may be either games of skill or games of chance and it is not always possible to distinguish one from the other simply by observing the game machine; and

WHEREAS, the State of Ohio has recognized the secondary effects of gambling activities on its citizens and many adult video arcade operations are extremely similar to gambling arcades in states where legalized. City Council agrees and finds that some of those secondary effects are:

- a. Certain persons are more vulnerable to the lure of adult arcade gaming activities than others. Because of the potential to win prizes of value, these adult arcades can provide a special challenge to such persons.
- b. Even if the City adopts the position that such persons are totally responsible for their participation in these activities, the player's family members and friends, who cannot be regarded as responsible, also suffer.
- c. The resources of both charitable and public social service agencies are used to deal with the effects of excessive participation in adult arcade activities instead of being used for other beneficial purposes for which they might be used.
- d. The suggestion of easy money is especially attractive to persons interested in acquiring wealth, but who lack the sense of obligation to return value to others in the form of services or products. Even legalized gaming activities threaten to become the focus of illegal activity, thereby costing the City more to ensure the safety of its citizens.
- e. By failing to properly regulate those activities, which may be permitted under current Ohio law, the City would be increasing the likelihood of all of the foregoing negative effects; and
- f. This type of operation induces similar or like businesses to establish in the community.

WHEREAS, a skill-based amusement machine, when played in exchange for something of value and which may pay a prize, is similar in nature to a gambling device in its setting, in its manner of play, and in its general attraction to players and participants; and

WHEREAS, it is necessary to protect the health, welfare, and safety of the citizens of the City of Green by regulating adult amusement arcades.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, AND STATE OF OHIO THAT:

SECTION ONE:

PURPOSE AND FINDINGS.

(a) Purpose. That the purpose of this Chapter is to establish reasonable and uniform regulations to minimize and control the negative effects of amusement arcades within the City in order to promote the health, safety and welfare of the citizens of the City. It is not the purpose or intent of this Chapter to restrict or deny access to recreational and skilled-based amusement machines.

(b) Findings. The State of Ohio currently allows certain games of skill while games of chance are deemed illegal. Certain arcades identified as operating games of skill, have generated various complaints by citizens involving thefts, questionable pay practices, considerable sums of cash being transacted, food management concerns, fire code and access, and other issues of compliance with local and state laws.

It is the specific finding that games of skill operated electronically, may easily be altered to illegal games of chance. Further, that the City has a duty to its citizens to require businesses open to the public to maintain safe ingress and egress, to maintain adequate security where a considerable volume of cash is transacted, and to otherwise operate within the bounds of the law.

SECTION TWO:

DEFINITIONS.

As used in this Chapter, except where the context clearly indicates a different meaning:

(a) "Amusement arcade" means any place of business where ~~three~~ **ONE** or more amusement devices are located for the use or entertainment of persons patronizing the place of business.

(b) "Amusement device" means any machine, device, or instrument which either may be activated for play by a third party, person or device, or upon the insertion of paper money, a coin, token, slug, or card, operates or may be operated as a game, contest, or

test of skill, or other amusement of any kind. "Amusement device" does not include vending machines.

- (c) "Game machine" means any amusement device.
- (d) "Good moral character" means not having been convicted of a crime involving moral turpitude within five years next preceding the date of the application.
- (e) "Malfunction" means failure to operate in accordance with design.
- (f) "Moral turpitude" means a conviction for a theft offense, fraud, falsification, drug offense, sex offense, an offense involving gambling, or a felony.
- (g) "Operator" means any individual, corporation, or other entity conducting the business of an amusement arcade.
- (h) "Owner" means any individual, corporation, or other entity owning title to any amusement device or the real property at which an amusement arcade is operated.
- (i) "Playing area" means that portion of the premises where the primary use is for customer play on amusement devices.
- (j) "Skill-based amusement machine" means a skill-based amusement device, such as a mechanical, electronic, video, or digital device, or machine, whether or not the skill-based amusement machine requires payment for use through a coin or bill validator or other payment of consideration or value to participate in the machine's offering or to activate the machine, provided that all of the following apply:
 - (i) The machine involves a task, game, play, contest, competition, or tournament in which the player actively participates in the task, game, play, contest, competition, or tournament.
 - (ii) The outcome of an individual's play and participation is not determined largely or wholly by chance. For purposes of this Chapter, "largely or wholly" means at least by fifty-one (51%) percent.
 - (iii) The outcome of play during a game is not controlled by a person not actively participating in the game.
 - (iv) The machine only charges one price to play a task, game, play, contest, competition, or tournament.

(aa) All of the following apply to any machine that is operated as described in (j) of this section:

(i) As used in this section, "task," "game," and "play" mean one event from the initial activation of the machine until the results of play are determined without payment of additional consideration. An individual utilizing a machine that involves a single task, game, play, contest, competition, or tournament may be awarded prizes based on the results of play, the prizes or rewards shall be established prior to the individual placing a wager, and the individual shall be aware of what prize or reward will occur prior to the start of play.

(ii) Advance play for a single task, game, play, contest, competition, or tournament participation may be purchased. The cost of the contest, competition, or tournament participation may be greater than a single non-contest, competition, or tournament play.

(iii) To the extent that the machine is used in a contest, competition, or tournament, that contest, competition, or tournament has a defined starting and ending date and is open to participants in competition for scoring and ranking results toward the awarding of prizes without payment of additional consideration.

(iv) No machine shall have a guessing game at the end of a successfully completed task, game, play, contest, competition, or tournament.

SECTION THREE:
OPERATION; LICENSE REQUIRED.

(a) No individual, corporation or other entity shall be an operator of an amusement arcade at any place of business unless such operator holds a valid amusement arcade license for the place of business where such amusement arcade is operated.

(b) No individual, corporation or other entity shall permit or cause to be permitted any amusement machine, game machine, or amusement device to be operated, placed into operation, moved onto the area of play, or played, without a current and valid license for that machine displayed on that machine.

(c) No individual, corporation, or other entity shall play any amusement device unless it is validly licensed by the City.

SECTION FOUR:
APPLICATION INFORMATION.

The original and renewal application for an amusement arcade license and the license for each skill-based amusement machine, game machine, or amusement device shall be upon

a form prescribed by the Director of Public Safety and shall set forth therein information such as the name and address of the operator, the address of the place of business which is to be the licensed amusement arcade, the year for which the license is sought, the number of skill-based game machines or amusement devices located at such place of business, the name and address of the owner of each machine, a detailed explanation of the machine operation, applicable software license authorization, player skills, and training required qualifying each machine as a game of skill, and such other information as the Director of Public Safety reasonably requires. The application shall be signed by the operator in whose name the City licenses are to be issued as well as the owner of the real property.

SECTION FIVE:
CORPORATIONS, TRUSTS, AND PARTNERSHIPS.

(a) If the operator filing the application for a license under this Chapter is a corporation, the application shall list the names and addresses of all officers and directors and any individual, corporation or other entity owning twenty-five percent (25%) or more of the issued and outstanding shares of every class of stock of such corporation.

(b) If the operator filing the application for a license is a partnership, the application shall list the names and addresses of all partners.

(c) If the operator filing the application for a license is a trust, the application shall list the names and addresses of all trustees and/or co-trustees.

(d) The listing required of any corporation, trust or partnership shall be repeated and further repeated for any corporation, partnership or other entity who or which appears as a shareholder, trustee, co-trustee, or partner on the application.

SECTION SIX:
AFFIDAVIT REQUIRED.

The application for a license under this Chapter shall be submitted on forms provided by the Director of Public Safety and be accompanied by an affidavit attesting that the operator and all employees and agents of the operation have not been convicted of a crime of moral turpitude and to the truth of the matters set forth in such application. No person shall swear falsely in any affidavit required to be filed under this section.

SECTION SEVEN:
LICENSE ISSUANCE; EFFECTIVE PERIOD; FEE.

The Director of Public Safety or his/her designee is authorized to issue amusement arcade licenses and amusement and/or game machine licenses, in such form as he or she determines to be appropriate, for a period of up to one year, upon satisfaction of all of the following conditions:

- (a) The operator of the amusement arcade has properly filed the application required by this Chapter. The owner of the game machines and the real property owner shall sign the application;
- (b) A fee of ~~one thousand dollars (\$1000.00)~~ **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** per arcade location per year has been paid;
- (c) A fee of ~~one hundred dollars (\$100.00)~~ **THREE HUNDRED DOLLARS (\$300.00)** per machine per month has been paid in advance annually;
- (d) The operator or any employee of the operator has not been convicted of a crime of moral turpitude within the past five years;
- (e) The Director of Public Safety has determined that no other reasonable cause exists to deny the issuance of such license;
- (f) Compliance with Section 9;
- (g) License fees are non-refundable.

SECTION EIGHT:
LICENSE ADMINISTRATION.

- (a) It shall be the duty of the Director of Public Safety or his designee to administer the licensing regulations of this Chapter.
- (b) The Director of Public Safety or his designee is empowered to adopt and enforce such rules and regulations relating to any matter or thing pertaining to the issuance, administration, and enforcement of this Chapter.
- (c) The burden shall rest on the owner, applicant, operator, and/or agent of the operator, owner, or applicant to timely produce the complete, accurate, and true records, documents, programs source codes, or other data or objects necessary to substantiate the licensing requirements of this Chapter. Absent such substantiation, the decision of the Director of Public Safety shall be final subject to Section 15.
- (d) A license shall be issued within forty-five days of receipt of complete application and compliance with this Chapter.
- (e) No arcade license shall be issued until all individual amusement devices are licensed.

**SECTION NINE:
SUBMISSION OF SOURCE CODE FOR APPROVAL.**

(a) Each applicant submitting an application for an amusement arcade license, shall submit to the Director of Public Safety:

(i) A written report prepared by an independent laboratory satisfactory to the Director of Public Safety stating that the specific amusement device, including but not limited to the source code, has been tested and examined under the requirements of the Ohio Revised Code and this Chapter and the specific amusement device is largely or wholly a game of skill.

(ii) A report must be prepared for each amusement device to be licensed.

(iii) An exact and sealed copy of the source code for each device shall accompany the report. Such sealed code shall be deemed proprietary and shall be held by the Director of Public Safety or his designee until the license is expired, revoked, or there are reasonable grounds to believe a violation of this Chapter has occurred. If reasonable grounds exist, the sealed source code will be provided to law enforcement for investigation. Otherwise, the source code will be returned to the licensee.

(b) The Director of Public Safety shall provide the names of at least two laboratories deemed satisfactory.

**SECTION TEN:
LICENSE VALIDITY AND DISPLAY.**

Each license under this Chapter shall be valid for only so long as the amusement arcade is operated by the operator listed on such license, at the place of business listed thereon. Each skill-based amusement machine and/or amusement device shall be valid for operation or use only so long as the game machine and/or amusement device has displayed on it a current license, or until the license is revoked by the City or until such machines are determined to be games of chance or otherwise deemed illegal by the State of Ohio or a court of competent jurisdiction.

**SECTION ELEVEN:
OPERATION OF ARCADE.**

(a) No person under the age of 18 years shall be permitted on the premises.

(b) No doors shall be locked preventing ingress or egress by members of the public while patrons are on the premises.

(c) The operator shall adopt and enforce a no loitering policy on the premises.

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(d) The premises of every amusement arcade shall be equipped with exterior lighting of sufficient intensity to illuminate every means of ingress and egress and adjacent parking areas.

(e) Each arcade shall be maintained so that it is handicap accessible throughout.

(f) Each arcade shall be smoke free, even if state law permits smoking at such establishments under certain conditions.

(g) Each arcade shall be operated with a glass storefront allowing full visibility at the sidewalk or right-of-way from the front through the playing area to the rear of the facility, exclusive of restrooms. No machines shall be placed in restrooms.

(h) Windows shall be clear and free of tint and signs. No obstructions shall prevent observing at least 50% of the arcade games from outside the front door.

(i) The operator shall maintain a record of each game machine taken out of play for any reason, including but not limited to, machine malfunction. The record shall include, but not be limited to the following: name of operator taking the device out of play; name and address of player who last played; the amount reflected as won but not paid or lost by the arcade; a description of the malfunction; a description of how the game machine was designed to operate; time and date of removal from play; make, model, and serial number of the game machine. Said record shall be maintained on the premises for at least two years from date of removal. Further, the record shall be available for inspection to the Director of Public Safety, his agents, and designees during regular business hours.

(j) No arcade shall operate during the hours of 1:00 a.m. to 7:00 a.m.

(k) Each operator shall maintain a record of the full name, address, telephone number, date, tax identification number, and gross value amount for each player receiving consideration or anything of value exceeding \$200. This record shall be filed with the Director of Finance for the City of Green at least quarterly. Further, such record shall be available for inspection to the Director of Public Safety, his agents, and designees during regular business hours for a period of two years.

(l) Each operator shall clearly post in a conspicuous place all circumstances in which a player may not "cash out", be reimbursed, or receive a cash payment for the value of winnings, credits, rewards, or prepayments.

(m) Each operator, employee, and agent thereof shall wear a full name identification nameplate during working hours.

(n) All on premises food service shall comply with state and local health regulations.

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(o) Each operator shall conspicuously display by posting with each skill-based amusement machine the established prize or reward for each play. This information shall be posted so that the player can observe it prior to and during play.

(p) Each operator shall make available and have on display forms as prescribed by the Director of Public Safety for the recovery of losses pursuant to R.C. 3763.

(q) No weapons, firearms, or dangerous ordnances are permitted on the premises.

SECTION TWELVE:

LICENSE REVOCATION.

It shall be cause for revocation of any license required under this Chapter, by the issuing authority, or for non-renewal of such license, for an operator or operator's officers, directors, agents, or employees, trustee, twenty-five percent of the shareholders of an operator, or any other person to:

(a) Operate an amusement arcade without a valid license;

(b) Operate or permit to be operated an amusement device or game machine without a valid license for that machine or device;

(c) Fail to display any license required by this Chapter;

(d) Provide any false or misleading information in the material submitted during the application process;

(e) Permit any violation of (1) an ordinance or regulation of the City; (2) regulation of the County, including but not limited to rules of the Summit County Department of Health; or (3) statute of the State, any for which a criminal penalty may be invoked, to take place at any amusement arcade operated by such operator; or

(f) Knowingly allow gambling on the premises;

(g) Transfer or alter any license issued under this Chapter;

(h) Failure to comply with any provision of this Chapter;

(i) Be convicted of a crime involving moral turpitude.

**SECTION THIRTEEN:
REVOCAION PROCESS.**

(a) The Director of Public Safety shall notify the licensee in writing, at the address of the amusement arcade, of the reason for revocation. Service shall be made by regular first class mail with proof of service or personally.

(b) When the City revokes a license, the licensee shall not be issued another license for one year from the date the revocation became effective. If the City finds, subsequent to revocation, that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety days have elapsed since the date the revocation became effective.

**SECTION FOURTEEN:
TRANSFER OF LICENSE.**

(a) An amusement arcade license is not transferable from one licensee to another or from one location to another. Any purported transfer of an amusement arcade license shall automatically and immediately revoke that license.

(b) A skill-based amusement machine or amusement device license is not transferable from one machine or device to another or to a machine or device moved to a different location. Any purported such transfer of a license shall automatically and immediately revoke that license.

**SECTION FIFTEEN:
APPEAL.**

(a) Any licensee may appeal the decision of the Director of Public Safety for the denial of the issuance of a license, the denial of a renewal of a license or the revocation of a license. An appeal must be filed within ten days of notice of non-issuance, non-renewal or revocation, in writing, to the Board of Zoning Appeals, c/o Public Service Director, P.O. Box 278, Green, Ohio 44223-0278 stating the reason for the appeal.

(b) Any decision of the Board shall be a final, appealable order, and the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

**SECTION SIXTEEN:
INSPECTION.**

(a) The ~~Summit County Sheriff's Department~~ **DIRECTOR OF PUBLIC SAFETY OR HIS DESINGEE** shall, from time to time and at least four times a year, inspect that portion of the arcade business open to the public licensed hereunder in order to assess compliance with the provisions of this Chapter.

(b) The Director of Public Safety shall, from time to time, request the Summit County Health Department to inspect that portion of each arcade business open to the public and licensed in order to assess compliance with the provisions of this Chapter and relevant Health Department regulations.

(c) That the Fire Chief shall, from time to time, and at least four times a year, inspect that portion of the arcade business open to the public and licensed hereunder in order to assess compliance with all applicable fire, building, and zoning code regulations.

**SECTION SEVENTEEN:
NUISANCE.**

A violation of this Chapter shall constitute a nuisance and is subject to civil proceedings, including an injunction, in addition to prosecution for criminal violations of the State of Ohio and the Codified Ordinances of the City of Green.

**SECTION EIGHTEEN:
EFFECT OF PARTIAL INVALIDITY.**

If any section, subsection, or clause of this Chapter shall be deemed to be unconstitutional or otherwise invalid, the validity and enforcement of the remaining sections, subsections, and clauses shall not be affected.

**SECTION NINETEEN:
FEES COLLECTED.**

All license fees collected shall be deposited into the General Fund of the City. Such monies shall be used for expenses incurred during enforcement of this Code.

**SECTION TWENTY:
PENALTY.**

Whoever violates or fails to comply with any of the provisions of this Chapter, for which no penalty is otherwise provided, is guilty of a second degree misdemeanor and shall be subject to the penalties set forth in Section 501.99.f A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs.

SECTION TWENTY ONE:

The City finds and determines that all formal actions of this Council concerning and relating to the enactment of this Ordinance were taken in open meetings of this Council and all deliberations of this Council or any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with Section 121.22, Revised Code.

SECTION TWENTY TWO:

City Council declares this Ordinance to be an emergency immediately necessary for the preservation of the public peace, health, safety, and welfare of the citizens of Green. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: July 10, 2007

Shelly McKellar
~~Molly Kapeluck, Clerk~~
Shelly McKellar, Acting Clerk

Bruce Manwaring
Bruce Manwaring,
Council President

APPROVED: July 10, 2007

Daniel L. Croghan
Daniel L. Croghan, Mayor

COPIED Sheriff
SVCE ZONE PARK ROAD ENG
LAW FIN MAY PLAN FIRE

ENACTED EFFECTIVE: July 10, 2007

ON ROLL CALL: Colopy ya Croce ya France ya. Manwaring ya
Padrutt ya Ridgeway ya Smole ya Adopted 7-0

Suburbanite publication on July 16 and July 23

Shelly McKellar
~~Molly Kapeluck, Clerk~~
Shelly McKellar, Acting Clerk