

ORDINANCE NO. 2013-55

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 18 ENTITLED "BUSINESSES" OF THE CODE OF ORDINANCES AND IN PARTICULAR, ARTICLE III ENTITLED "AMUSEMENT MACHINES", AND IN PARTICULAR, INCREASING THE HAULING FEE IN CONNECTION WITH THE SEIZURE OF AMUSEMENT MACHINES FROM \$125.00 TO \$250.00 FOR EACH MACHINE; INCREASING THE STORAGE FEE FROM \$10.00 TO \$50.00 FOR EACH MACHINE FOR EACH DAY IN STORAGE; AND FURTHER PROVIDING THAT THE CERTIFICATE OF AUTHORIZATION FEE AND THE FEE FOR TYPE II MACHINES ARE NONREFUNDABLE; REVISING DEFINITIONS TO COMPLY WITH CHANGES IN STATE LAW; AND PROVIDING FOR A SECOND DECAL WITH WARNING THAT THE AMUSEMENT MACHINE MAY NOT BE USED FOR GAMBLING AND THAT VIOLATORS ARE SUBJECT TO CRIMINAL PROSECUTION. REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is in the best interest of health, safety and general welfare of the community and the residents of the City of Hialeah to regulate the operation of amusement machines within the City in compliance with state law and municipal laws, rules and regulations; and

WHEREAS, the primary purpose and intent of this ordinance is to increase hauling fees and storage fees to cover reasonable costs and expenses in connection with the seizure of amusement machines as part of the City's enforcement of its regulations and the issuance of second decal to be placed on the machine with a warning that the machine may not be used for gambling and violators are subject to criminal prosecution; and

WHEREAS, the regulations also provide that the certificate of authorization fee and the regulatory fee for type II machines are nonrefundable once paid to the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 18 entitled "Businesses" of the Code of Ordinances of the City of Hialeah, Florida, particularly Article III. Coin- or Currency-Operated Machines, is hereby amended to read as follows:

Chapter 18

BUSINESSES

* * *

**ARTICLE III.
AMUSEMENT MACHINES**

Sec. 18-61. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. However, nothing in this article may be construed contrary to state law.

* * *

Type I amusement machines means any machine, contrivance or device that provides for the bona fide entertainment or amusement of the public and that, as a result of the ~~payment of a fee, money, compensation or exchange of anything of value or~~ insertion of a coin, slug, or token, ~~credit or paper currency,~~ the machine or device is set in motion, permitted to function or operate and that by application of skill, may entitle the person playing or operating the machine to:

- (i) Receive points or coupons that may be exchanged for merchandise only, (limited to noncash prizes, toys, or novelties, excluding cash, gift cards or any other cash equivalents, alcoholic beverages, beer or wine), provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed \$0.75 on any game played; or
- (ii) Replay the game or device at no additional cost if the game or device can accumulate or react to no more 15 replays, can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay, and can make no permanent record, directly or indirectly, of free replays.

This definition shall not be interpreted shall not be interpreted to include any game or machine that may be construed as a gambling

device under state law. This definition excludes pinball machines, pool or billiard tables, vending machines, laundry machines, soda machines, kiddie rides, and automatic music machines.

Type II amusement machine means a type I machine whose ~~game content, them, design or~~ graphics depict, exhibit, illustrate, describe or relate to casino-style games ~~sexual conduct or specified anatomical areas as defined in section 98-1796 of the code, or whose game content, them, design, or graphics simulates slot machines.~~ This definition shall not be interpreted to include any game or machine that may be construed as a gambling device under state law.

* * *

Sec. 18-65. Business tax receipts and amusement machine decals.

One business tax receipt for all machines at each location shall be issued in the name of the machine operator. The business owner at each location shall provide written notice to the property owner of its intention to allow the operation of amusement machines within its business. Prior to the issuance of the business tax receipt, the machine operator shall provide the city a copy of the business owner's written notice to the property owner. All business tax receipts must be displaced within public view and access in an area within five feet from the physical site of the machine. Business tax receipts for amusement machines are not transferable from one machine operator to another. However, if a machine operator wishes to relocate an amusement machine covered under a current business tax receipt from location to another, then the machine operator may submit a new application together with the corresponding transfer fee to change locations. A new business tax receipt will be issued identifying the new location of that machine and a corrected business tax receipt shall be issued reflecting the removal of the machine at the previous location. The name, address and telephone number of the machine operator must be attached to the front of the machine in a location easily read by machine users with the size of lettering equal to or greater than 12-point type. Prior to issuing a city business tax receipt, the machine operator must present a state amusement machine certificate from the department of revenue and an applicable county business tax receipt for each machine in operation at every location. In addition to the city tax receipt, a two decals will be issued for each

machine. The first decal issued by the city will identify the business tax receipt number. The second decal issued by the city shall provide a statement that this machine cannot be used for gambling and violators are subject to criminal prosecution. The decals must be permanently attached to each machine in a conspicuous place easily noticeable to anyone on first sight of the machine. The decals must be affixed to the machine at all times. For purposes of this subsection, each individual screen shall constitute one machine regardless of whether the screen is encased in a console, cabinet, or other fixture with other screens which receive electric power through one source or cord, and/or are set into motion or permitted to function through the use of one bill acceptor, where the player may select a game at any one screen such that at any one time you may have more than one person playing or operating games at different screens independently from another. No artifice or scheme shall be used to circumvent the intent of this subsection.

* * *

Sec. 18-70. Seizure of machines.

(a) If any fee or business tax receipt required by this article is not paid by any operator or if unauthorized machines are placed within the city, authority is given and granted to the licensing administrator to seize any of the operator's machines for such payment. After diligent search, the licensing administrator shall notify the owner, bona fide lien-holder and person in possession of the machine or machines at the time of seizure. Notice provided by certified mail must be mailed within 14 days after the seizure and must identify the procedure necessary to release the seized machine or machines. No machines so seized shall be released until the fee or business tax receipt and all storage and hauling and all other expenses have been paid in full. The hauling fee shall be ~~\$125.00~~ \$250.00 for each machine and the storage fee shall be ~~\$10.00~~ \$50.00 for each day for each machine in storage.

(b) When a type I or type II amusement machine seized pursuant to subsection (a) of this section has not been claimed by the owner thereof within 90 days from the date of such seizure, title to the unclaimed machine shall vest in the city. The city may elect to donate the machine to a charitable organization, sell or otherwise dispose of the machine. If the licensing administrator elects to sell any such machine at public sale, the city shall provide at least ten days' notice of the proposed sale date in writing to the owner, if the

owner can be found, and advertise once in a newspaper of general circulation in the city. All proceeds of the sale shall be credited to the general fund of the city and shall offset the fees, costs, and storage owed by the owner of the machines.

* * *

Sec. 18-72. Payment of certificate of authorization and per machine fee for type II machines; payment and performance bond; criminal background check and proof of corporate good standing for machine operator hereunder of type II amusement machines.

A machine operator of a type II amusement machine shall obtain:

(i) a certificate of authorization from the city as a non-exclusive franchise for one year by submitting a payment of a nonrefundable fee of \$2,500.00;

(ii) a payment and performance bond, letter of credit, cash or other security acceptable to the city in the amount of \$10,000.00 with the city as the obligee; and

(iii) shall pay a fee of nonrefundable \$600.00 for each of the first four type II amusement machines at each location.

* * *

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as

abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Inclusion in Code.

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered, as appropriate, to conform to the uniform numbering system of the Code.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

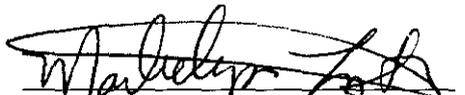
PASSED AND ADOPTED this 10 day of September, 2013.



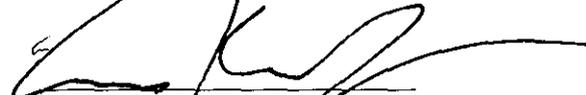
Isis Garcia-Martinez
Council President

Attest:

Approved on this 13 day of September 2013.

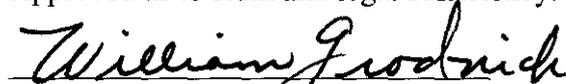


Marbelys Fatjo, Acting City Clerk



Mayor Carlos Hernandez

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

Ordinance was adopted by a 6-0-1 vote with Council Members. Caragol, Cue-Fuente, Garcia-Martinez, Hernandez and Lozano voting "Yes", Council Members Casals-Munoz voting "no".

~~Strikethrough indicates deletion.~~ Underline indicates addition.