

ORDINANCE NO. 2308-4

AN ORDINANCE OF THE CITY OF SAN BENITO, TEXAS AMENDING ORDINANCE NO. 2308-3 ENACTING AND REQUIRING PERMITS AND FEES; REQUIRING THE POSTING OF PERMITS; LEVYING AN OCCUPATIONAL TAX ON "COIN OPERATED MACHINES," DEFINING COIN OPERATED MACHINES FROM SUCH DEFINITION; REQUIRING THE DISPLAY OF THE OCCUPATION TAX RECEIPTS; PROHIBITING THE PLACEMENT OF COIN OPERATED MACHINES WITHIN 500 FEET OF ANY SCHOOL OR CHURCH BUILDING; REGULATING THE TIME AND MANNER OF OPERATING COIN OPERATED MACHINES; PROVIDING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE, SAVINGS AND SEPARABILITY CLAUSE, CONFLICTS AND AN EFFECTIVE DATE.

NOW, THEREFORE BE IT ORDAINED AND ENACTED BY THE CITY COMMISSION OF THE CITY OF SAN BENITO:

That the ordinance adopted on February 5, 2008 and amended by Ordinance No. 2308-3 is hereby revoked and the following ordinance regulating coin and/or slot operated machines in the City of San Benito is hereby adopted.

Section 1: Definitions.

The following words, terms and phrases as used in this ordinance are hereby defined as follows:

- (A) "Business Owner" or "Permit Holder" as used herein shall mean and include a person or sole individual, owning or having the care, control, management or possession of any "coin and/or slot operated machine" who exhibits, displays or permits to be exhibited or displayed, in his location of business or upon premises under his or its control, any "coin and/or slot operated machine" in this City.
- (B) "Manager" as used herein shall mean and include a person or sole individual having the care, control, management of any "coin and/or slot operated machine" in his/her location of business or upon premises under his/her control within this City.
- (C) "Property Owner" as used herein shall mean and include a person, individual, firm, company, association or corporation owning a building, property or facility on which a business will operate within the confines of all laws regulating the business in local, state or federal laws.
- (D) "Coin Operated or Slot Machine" as used herein shall mean and include every machine or device of any kind of character which is operated by or with coins, metal slugs, tokens, checks, debit or credit cards; including but not limited to "merchandise, music, skill, pleasure or service coin operated machines" as these terms are hereinafter defined
- (E) "Music Coin Operated or Slot Machine" as used herein shall mean and include every coin and slot operated machines of any kind or character, which dispenses or vends music and which is operated by or with coins or metal slugs, tokens or checks, debit or credit cards. The following are expressly included within said term; but enumeration shall not be considered to exclude any other machine subject to the effect and intent of this ordinance; phonographs, pianos, graph phones, and all other coin and slot operated machines which dispense or vend music.

Sect. 1 cont.

(F) "Skill or Pleasure Coin Operated or Slot Machines" as herein used shall mean and include every coin and slot operated machine of any kind or character whatsoever, when such machines dispense or are used or are capable of being used or operated for amusement or pleasure or when such machines are operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of "merchandise or music" or "service" exclusively as those terms are defined herein.

(G) "Service Coin Operated Machines" as herein used shall mean and include every pay toilet, pay telephone and all other machines or devices, which dispense services and merchandise.

(H) EXCLUDED MACHINES:

(1) Machines that award the user no-cash merchandise prizes, toys, or novelties solely and directly from the machine, including claw, crane, or similar machines;

(2) Machines from which the opportunity to receive non-cash merchandise prizes, toys, or novelties or a representation of value redeemable for those items varies depending upon the user's ability, including, but not limited to, "Marble Machines," "Marble Shooting Machines," "Marble Table Machines," "Miniature Race Track Machines," "Miniature Football Machines," "Miniature Golf Machines," and "Miniature Bowling Machines."

(I) Penal Code Definition For Gambling Device:

"Gambling device" means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. The term;

(A) includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and

(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with non cash merchandise prizes, toys, or novelties, or a presentation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.

Section 2: Limit of Permits Allowed

To regulate the amount of locations of eight-liner businesses within the incorporated City of San Benito, no more than ten (10) businesses may operate under the eight-liner machine business allowing for one (1) permit per person, to be no more than ten (10) total within the corporate City of San Benito.

Section 3: Requirements, Local Permit Fees, Expirations and Renewals, Restrictions and Exemptions for Coin Operated Machine Premises Permit

(A) Requirements: All persons, owning, possessing, maintaining, or operating more than three (3) eight-liner machine(s) for use by the general public, private clubs, associations,

fraternities or orders shall apply for a license and registration from the city. The license application must contain a complete statement about the identity of the owner of the eight-liner business: to include name, date of birth, social security number, business name, D.B.A. information, comptroller tax I.D. number, mailing address of owner, address of residence; address of business; the location where the eight-liner business will operate; the number of eight-liner machines at the location; a list of serial numbers, one assigned to each machine; the nature of any business being operated at the location; the date when each eight-liner machine was placed at the location; the owner of the location where the eight-liner machines will operate; and any other pertinent information that may be required by the city in the licensing and registration of eight-liner machines. Information provided for records will be updated on a monthly basis. If there is a change in any type of information that is observed and/or completed by the permit holder, property owner and/or manager the information will be immediately advised and/or relayed to the Permits division of the Code Enforcement Department.

A license issued for eight-liners under this ordinance:

1. Is required for each location and is personal to the applicant and may not be sold, bargained, conveyed, transferred or assigned to any other individual; with the exemptions as noted in Section 3 subsection C -5 & E of this Ordinance.
2. May only be issued to a single individual, to be referred to herein as “business owner;”
3. Does not vest any property or right in the licensee, except for the right to conduct the licensed business;
4. No firms, clubs, corporations, or other legal entities including private clubs or associations shall be allowed to obtain a license to operate a coin operated eight liner business.

(B) Fees: A business owner, manager or lessee of premises on which a coin operated and/or slot machine is made available to others shall be required to secure a permit by paying to the City 1) an initial new 8-liner business permit fee of \$2000.00; 2) All state regulated tax permit fees; 3) And all other fees in accordance with ordinance 2308-4. Thereafter a per annual renewal inspection and coin operated machine premises permit fee will be as follows; 1) A business renewal permit fee in accordance with ordinance 2308-4. 2) All other fees as required by state regulated tax permit fees. If a permit holder, business owner, manager or lessee is found to be operating more machines than previously reported, a \$1000 fee per machine, over the original reported machines, shall be levied against the permit holder, business owner, manager or lessee.

- (1) Fee: An owner, operator or lessee of premises on which a coin operated and/or slot machine is made available to others shall be required to secure a permit by paying to the City an annual inspection and coin operated machine premises permit fee as follows:

Number of Machines Located on Premises	Amusement Redemption Machine Premises Permit Fee
1-3	\$ 500.00
4-10	7,500.00
4-10 (IRS 501 (c) (3))	3,700.00
11-20	10,500.00
21-30	15,750.00
31-40	21,000.00
41-50	26,250.00
51-60	31,500.00
61-70	36,750.00
71-80	42,000.00
Each additional 1 -10 machines	Add 5,250.00

(C) Expiration and Renewal: Permits issued at any point of the calendar year shall automatically expire upon the following:

- 1) On December 31 of each calendar year; or
- 2) On the change of ownership of the building where the eight-liner machines are located; or
- 3) Upon revocation of license by the City of San Benito or its designees; or
- 4) Upon surrender of license by registered business owner; or
- 5) Upon the death of the applicant.

All permits shall be up for renewal by December 31 of each calendar year. All businesses in operation in accordance with this ordinance are required to have the renewal permit paid in full prior to December 31 of each year. The City of San Benito shall not refund any portion of a coin operated machine premises permit fee after the permit has been issued, nor shall it prorate or reduce in the amount any fee due to the City. If in the event, fees are not paid in full by December 31 of each calendar year, the permit holder, business owner, manager or lessee shall be allowed 10 business days, not including official holidays, to pay in full at a rate of 1 1/2 times the original amount. If fees are not paid within time allotted, permit shall be revoked.

(D) Restrictions:

1. Persons Under 21 Prohibited: The presence of persons under 21 years of age on premises subject to coin operated machine premises permits, is prohibited. It is an affirmative defense to prosecution under this ordinance that the person 21 years of age or 18 years of age or older was a bona fide employee of the establishment subject to a coin operated machine premises permit. A sign notice, informing the public of said violation, shall be placed at the entrance of the location.
2. Alcoholic Beverages Prohibited: The presence of any alcoholic beverages on premise of a coin operated machine businesses is prohibited. No individual, person, owner or manager shall allow or be allowed to consume any alcoholic beverage on premise of a coin operated machine business location. No individual, person, owner or manager shall give, sell, bring to or allow the bringing of any alcoholic beverage on said premises of a coin operated machine business.
3. Posting of Permit: The permit shall be posted conspicuously, noticeable to common view.

4. Permit limitations: Solely one permit shall be issued to any one person or sole individual. Multiple permits shall not be issued to any one individual. A transfer of permit title shall not be allowed except as allowed in Sec.3 Sub-Sec. E. A new permit may only be issued to replace a permit that has been voluntarily relinquished or revoked. A new permit to replace an existing permit that has been relinquished or revoked shall only be issued to a registrant on the single waiting list. New permits may only be issued to qualified registrants on the city's waiting list, in the order of their registration.
5. Window Visibility: Windows shall be unobstructed and/or unpainted, as to allow for visibility. All windows sun screened or tinted must allow light transmission of 20% or more. No luminous reflectance, mirror, or reflective type material shall be allowed to be placed on same windows.
6. Sign Requirements: All signs for advertisement, shall comply with City of San Benito Zoning Ordinance #2252 Section 10 Sign Regulations. No unauthorized signs shall be placed or allowed to be placed on the permitted business property without prior approval from the building inspector of the Code Enforcement Department as per zoning ordinance #2252. Any signs deemed to be out of compliance with zoning ordinance shall be grounds for revocation of business permit.
7. Alarm Monitoring: All holders of an eight-liner business permit shall have in operation an alarm monitoring system that is serviced by an alarm company that notifies emergency personnel. This system will provide the ability of the owner, manager or other designees to notify emergency personnel by phone, computer, wire or wireless communication or by a simple one touch notification i.e... "panic button."

(E)Exemptions:

1. Section 3 subsection C(5): The immediate next of kin may continue operations of the specific eight liner business and have the permit transferred over to the immediate next of kin's name. The immediate next of kin shall be defined for the purpose of this ordinance as; husband, wife, son, daughter, mother or father. All requirements still apply and continued operation must conform with this and other City of San Benito ordinances that apply to business operations.

Section 4: Waiting List and Maintaining of List

Current lists, resident and non-resident, upon enacting this ordinance shall be merged into one single waiting list. In doing so, the list will be on a first come, first serve basis, based on the initial application dates that are filed. After resetting the list, it will be a continuous working list to not allow for any modifications or advantages to solely benefit any one person. This, as to allow for all persons a fair, balanced and reasonable opportunity to receive a permit.

(A) All persons, or sole individuals, who are not eligible for an initial permit under Section 3 on the effective date of this Ordinance, but who desire to obtain a permit when the opportunity to do so becomes available, shall register with the City of San Benito code enforcement department and be placed on a single waiting list by preparing the appropriate forms required by the city's code enforcement department.

(B) The city shall create and maintain one (1) waiting list. This waiting list shall be for resident applicants and for non-resident applicants. A place on this waiting list for permits is on a first-come, first served basis.

(C) The total number of permits issued to residents and non-residents under Section 3 of this Ordinance in total shall not be more than ten (10), except that after the three (3) additional initial resident and non-resident permits have been issued, following enactment of this Ordinance, either the first resident or non-resident initial permit that is revoked by the city or voluntarily relinquished by the permittee, shall not be replaced with a new permit, and the total number of permits issued to residents and non-residents shall, thereafter, be not more than ten (10) total for the City of San Benito.

(D) The waiting list shall be comprised of the person or sole individual that will hold the single permit, and shall not differ from that sole person.

Section 5: Business Location Restrictions and Relocation requirements

(A) The City may not issue a coin operated machine premises permit for use within two (2) city blocks from door entry of business to door entry of the following:

a. All places of education or higher learning. To include pre-school facilities, child day care, elementary, middle or intermediate schools, high schools, places of higher learning colleges, technical schools or universities, or

b. Hospitals or places where medical attention is received or pharmaceuticals are dispensed. To include pharmacies, clinics, night clinics, adult day care, veteran hospitals, hospitals, major trauma units, or where ambulatory services are stationed, or

c. Any place of religious worship. To include any established building of gathering for worship, to include but not limited to a building of a denomination or other location where a group of people (a congregation) comes to perform acts of religious praise, honor, or devotion, or

d. Any location where children congregate to include, but not limited to, playgrounds, parks, city maintained swimming pools, restaurants or eateries that facilitate a playground area or day care centers; And

(B) In accordance with San Benito Zoning Ordinance #2252, the City may only issue a coin operated machine permit in zoned areas as follows; a Commercial, General Retail Business (C-2), Light Industry (LI) and Heavy (HI).

(C) Relocation of Premises: Active business permit holders who wish to relocate the establishment for which they are permitted to another location must notify the City of San Benito's Code Enforcement Department immediately and receive an amended permit prior to relocating. Upon immediate notice to the City

of San Benito's Code Enforcement Department, the business owner shall be allowed forty-five (45) days to move all operations to new location. The forty-five (45) days shall commence at 12:00 midnight on the same day after notice was received, and shall continue to 12:00 midnight on the forty-fifth day. The City reserves the right to deny the relocation in the event that it finds significant negative impact for the surrounding properties or is a violation of this Section 5 subsection A or B of this Ordinance.

Section 6: Amount of Tax

The following section shall apply specifically to all eight-liner coin operated businesses in accordance with this ordinance as well as state and federal laws. Those coin operated machines herein not specifically mentioned are not exempt from state and federal laws as applied to tax fees.

- (A) Every owner hereinabove, who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in the City of San Benito any coin operated and/or slot machine as that term is defined herein, shall pay and there is hereby levied on every coin operated and/or slot machine as defined in this ordinance, except such as are exempted herein, an annual occupation tax of \$15.00.
- (B) All permits for coin operated and/or slot machines business are payable annually in advance. Prior to the placement by an owner of a coin operated and/or slot machine in operation at a location, there shall be attached or affixed thereto a valid permit for the machine. Each coin operated and slot machine is subject to the occupation tax when placed in operation on location.
- (C) Machines defined in this article as coin or slot operated for music, skill or pleasure, capable of independent operation with separate activating coin mechanisms whether displace separately or in series and regardless of any electrical mechanical or manual component, shall be considered separate machines in regard to occupation tax requirements.
- (D) Nothing herein shall relieve the owner from responsibilities for the payment of such tax and further, the payment of such tax by such operator or other personnel shall not relieve the owner from the responsibility with all the provisions of this ordinance.

Section 7: Replacement of Lost, Stolen and Destroyed Valid Occupation Tax Permits

The City of San Benito shall not make a cash refund of the occupation tax paid on any coin operated and/or slot machine. The City shall provide a duplicate permit if a valid permit has been lost, stolen, or destroyed. The fee for each duplicate permit is \$10.00. An original permit for which a duplicate permit has been issued is void.

Section 8: Registration - Tax Permits

Each coin operated and slot machine shall be registered with the City of San Benito by make, type and serial number. A tax permit issued by the City or State shall be affixed to each such registered machine. Each coin operated and slot machine shall have a serial number, which is clearly visible on the outside surface of the machine. If a coin operated or slot machine is not manufactured with a serial number, an owner shall assign a serial number to the machine and either stamp or engrave the assigned number on the machine.

Section 9: Attachment of Tax Permits to Coin Operated Machines

A coin operated machine tax permit shall be securely affixed to any permanent surface of a machine in such a manner that the tax permit may be clearly seen by the public and that will require continued application of steam to remove the tax permit. A tax permit issued for a certain coin operated machine shall not be transferred to another machine.

Section 10: Sealing of Machines

- (A) The City of San Benito may seal any coin operated and/or slot machine on which the tax has not been paid. The City shall charge a fee of \$25.00 for the release of any machine sealed as provided herein for nonpayment of tax. It shall be unlawful for any person to break the seal affixed in the name of the City or exhibit, display or remove from location any machine on which the seal has been broken.
- (B) Every coin operated and slot machine subject to the payment of the fees levied in this article, and upon which the tax has not been paid as provided herein, is hereby declared to be a public nuisance, and the business displaying said machines may be denied operation by the City of San Benito, as well as denying the continued operation of said business. All permits allowing said business, as referred to in this ordinance, to operate may be denied and/or discontinued said operation of business of common nuisances.
- (C) The City shall have the authority to seal coin operated and/or slot machines for non-payment of said coin operated machine premises permit fee at a located establishment for which a coin operated machine premises permit fee has not been paid.
- (D) Upon proof that all fees have been paid in full and an inspection of the location of business has been completed any and/or all sealed machines may be unsealed by the Code Enforcement Department, Police Department or their designees.

Section 11: Existing Laws & Inspections

- (A) Nothing herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table or coin operated or slot machine, the keeping, exhibition, operation, display or maintenance of which is now illegal or in violation of any Article of the Penal Code of this State of Texas and of any federal laws of the United States of America.
- (B) "Gambling Devices" as defined by Texas Penal Code, Chapter 47, and as interpreted by judicial decision (Hardy v. State, No 01-0779, Tex. 2003 and One Super Cherry Master Video 8-Liner Machine v. State, No. 01-0673, Tex. 2003) are prohibited from use as coin operated or slot machines or any machine for which a permit may be lawfully issued.
- (C) In addition to any other penalty or punishment imposed by law, violation of this ordinance shall be cause for revocation of a coin operated machine premises permit issued pursuant to this ordinance. The City reserves the right to inspect the premises of any coin operated machine business establishment in order to investigate compliance with this ordinance. The Owner of a coin operated machine business or their employees shall not prohibit City of San Benito inspectors, police or fire personnel, at any time, to enter the premise of operation of the permit to ensure there are no violations of city, state or federal laws to include correct machine count issued to the permit, correct licenses or permits

per machine, fire code violations or penal code violations. The entries and exits shall be maintained as to allow unobstructed, unregulated, free entry into said location by inspectors, police or fire personnel without any delay of entry.

Any violations of this section shall be considered a violation of this ordinance and will be considered grounds for revocation.

Section 12: Violations

Violations: Any person, business owner, manager violating any provision of this ordinance shall, upon conviction of such violation, be deemed guilty of a misdemeanor and shall be fined in any sum not to exceed \$500.00 per machine, per violation for each day that the violation occurs. The unlawful operation of any single coin operated machine shall constitute a distinct and separate offense for each day that the same is operated, or exhibited and is punishable by a fine not to exceed \$500.00. In addition to any other penalty or punishment imposed by law, violation of this section shall be cause for revocation of a coin operated machine premises permit issued pursuant to this section.

Revocation of Permit: The City Commission, or its designees, may revoke any permit to maintain and operate a coin operated business of this ordinance.

Section 13: Conflicts

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

Section 14: Savings and Severability

If for any reason any section, paragraph, subdivision, clause phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

Section 15: Effective Date.

This ordinance shall take effect after the date of its passage and publication.

First Reading: October 5, 2010

Second Reading: October 19, 2010

CITY OF SAN BENITO

ATTEST:

JACK GARCIA, MAYOR

LUPITA PASSEMENT, CITY SECRETARY