

ORDINANCE 600

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PANHANDLE TEXAS, ENACTING ARTICLE 4.600 REGULATIONS FOR THE OPERATION OF COIN OPERATED MACHINES; PROVIDING DEFINITIONS; IDENTIFYING EXCLUDED AND EXEMPT MACHINES; PROVIDING FOR ISSUANCE AND RENEWALS OF LICENSES, PERMITS AND CITY OCCUPATION TAX PERMITS; SPECIFYING RESTRICTIONS AND REQUIRMENTS; PROVIDING FOR LOCATION RESTRICTIONS; PROVIDING FOR REPLACEMENT OF LICENSES OR PERMITS; PROVIDING FOR THE SEALING OF MACHINES; PROVIDING FOR INSPECTIONS; PROVIDING FOR PENALTIES FOR A VIOLATION OF THIS ORDINANCE; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Panhandle, Texas (“City”) is a Type A General Law City possessing the full power of local self-government pursuant to Article XI, Section 4 of the Texas Constitution, Section 51.012 of Texas Local Government Code and,

WHEREAS, the City Council has identified certain negative secondary effects arising out of and related to the operation of coin operated gaming machines and gaming establishments, including an increase in certain criminal activities; and,

WHEREAS, the City Council seeks to adopt regulations to reduce the likelihood of criminal activity, including operation of a gambling facilities; and,

WHEREAS, the City Council has determined that it is in the public’s best interest and in support of the health, safety, and general welfare of the citizens of the City that the operation of a coin operated gaming establishment requires a business license and machine permit process, and in addition, that regulation of the location of coin operated gaming establishments be regulated through appropriate zoning.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF PANHANDLE, TEXAS, THAT:**

SECTION 1
**REGULATIONS FOR THE OPERATION
OF COIN OPERATED MACHINES**

Article 4.600 regulating coin and/or slot operated machines in the City of Panhandle is hereby established to read as follows:

ARTICLE 4.600 OPERATION OF COIN OPERATED MACHINES

Sec. 4.601 Purpose

- (a) The City Council has identified certain negative secondary effects arising out of and related to the operation of coin operated gaming machines and gaming establishments; and,
- (b) The City Council seeks to adopt regulations to reduce the likelihood of criminal activity, including operating as a gambling facility; and,
- (c) The City Council has determined that it is in the public's best interest and in support of the health, safety, and general welfare of the citizens of the City that the operation of a coin operated gaming establishment requires a business license, machine, and occupation tax permits, and in addition, that the location of coin operated gaming establishments be regulated through appropriate zoning.

Sec. 4.602 Definitions

Whenever used in this Article, the following words, terms and phrases as well as their singulars, plurals, and possessives shall have the following definitions and meanings, unless the context of the sentence in which they are used indicates otherwise.

Business License as used herein shall mean the license granted by the City for the operation of Coin Operated or Slot Machines.

Business Owner or License Holder as used herein shall mean a person or sole individual, owning or having the care, control, management, or possession of any Coin Operated or Slot Machine who exhibits, displays, or permits to be exhibited

or displayed, in his/her location of business or upon premises under his/her control, any Coin Operated or Slot Machine in this City.

Coin Operated or Slot Machine as used herein shall mean and include every machine or device of any kind or character which is operated by or with coins, metal slugs, tokens, checks, debit, or credit cards.

Excluded Machines shall have the meaning as herein defined in Section 4.603.

Gambling Device means any electronic, electromechanical, or mechanical device as defined by Texas Penal Code, Chapter 47, Gambling, Section 47.01(4) as amended and not specifically excluded or exempted under Section 4.603.

Machine Permit as used herein shall mean and include the permit granted by the City to operate a Coin Operated or Slot Machine.

Manager as used herein shall mean and include a person or sole individual having the care, control, or management of any Coin Operated or Slot Machine in his/her location of business or upon premises under his/her control within this City.

City Occupation Tax as used herein shall mean the imposition of an occupation tax on a coin operated machine in this City as defined in Texas Occupations Code, Chapter 2153.451.

Person as used herein shall mean and include an individual, business, firm, company, association, or corporation.

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 a Coin Operated or Slot Machine.

Skill or Pleasure Coin Operated or Slot Machines as herein used shall mean and include every Coin Operated or Slot Machine of any kind or character whatsoever, when such machines 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, music, movies, or service.

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

Sec. 4.603 Excluded and Exempt Machines

Machines that are excluded from the provisions of this Article are:

- (a) Machines that award the user non-cash merchandise prizes, toys, or novelties solely and directly from the machine, including claw, crane, children's arcade games, pinball machines, pool tables, shuffle board or similar machines; and,
- (b) 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: miniature race track machines, miniature football machines, miniature golf machines, skee-ball machines and miniature bowling machines.

Sec. 4.604 Business Licenses, Machine Permits, and City Occupation Tax

Division 1. Business Licenses

- (a) The following Section shall apply to all Skill or Pleasure Coin Operated or Slot machines and locations that are not specifically excluded in Section 4.603.
- (b) Business License Requirements: Every person owning, possessing, maintaining, or operating Skill or Pleasure Coin Operated or Slot Machine(s) for use by the general public or by private clubs, associations, fraternities, or orders shall obtain and maintain a Business License from the City, as follows:
 - (1) A Business License application must be filled out and must contain a complete statement about the identity of the owner of the business seeking to install Skill or Pleasure Coin Operated or Slot Machine(s): 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 where the business will operate; the number of machines at the location; a list of serial numbers (one assigned to each machine); the nature of any current business being operated at the location; the date when each Skill or Pleasure Coin

Operated or Slot Machine was placed at the location; the owner of the location where the Skill or Pleasure Coin Operated or Slot Machine(s) will operate; and any other pertinent information that may be required by the City in the licensing and permitting of Skill or Pleasure Coin Operated or Slot Machine(s).

- (2) If there is a change in any type of information provided to the City or if additional machines are added to the location, the change must be relayed to the City within seven (7) days of the change or addition.
- (3) Payment of the appropriate Business License fees must be paid to the City, in accordance with this Section.

(c) A Business License issued for Skill or Pleasure Coin Operated or Slot Machine under this Article:

- (1) may only be issued to a single individual, to be referred to herein as "Business Owner;"
- (2) is required for each location, is personal to the applicant and may not be sold, bargained, conveyed, transferred or assigned, save for the exemptions noted in Section 4.604(m) herein; and,
- (3) does not vest any property or rights in the business licensee, except for the right to conduct the licensed business.

(d) Firms, clubs, corporations, non-profit or other legal entities including private clubs or associations may obtain a Business License for Skill or Pleasure Coin Operated or Slot Machines if an application is filled out for a single individual or Business Owner that represents and is the responsible party for the firm, club, corporation, non-profit or other legal entity, and the other provisions of this Section are met.

(e) Business License Fees: Business License fees must be paid as follows:

- (1) A new license fee of Five Thousand dollars (\$5,000.00) per location for each new Business License issued; and,
- (2) an annual Business License renewal fee in the amount of Five Thousand dollars (\$5,000.00) per location.

Division 2. Machine Permits

- (f) Machine Permit Requirements: Every Skill or Pleasure Coin Operated or Slot Machine shall be registered with the City of Panhandle by make, type, and serial number, as follows:
- (1) Every Skill or Pleasure Coin Operated or Slot Machine shall have a serial number, which is clearly visible on the outside surface of the machine. If a Skill or Pleasure Coin Operated or Slot Machine is not manufactured with a serial number, the owner shall assign a serial number to the machine and either stamp or engrave the assigned number permanently on the machine.
 - (2) Every Skill or Pleasure Coin Operated or Slot Machine shall have a non-transferrable permit issued by the State and affixed to each machine, before it can be registered by the City.
 - (3) Upon payment of the Machine Permit fee as described herein and presentation of the required serial number and State-issued permit information for each Skill or Pleasure Coin Operated or Slot Machine, a Machine Permit will be issued by the City, which is synonymous with the City's registration of the State-issued permit for each machine.
- (g) Machine Permit Fees: Machine Permit fees must be paid for each Skill or Pleasure Coin Operated or Slot Machine, as follows:
- (1) A Machine Permit fee of Five Hundred dollars (\$500.00) at the time of application for each machine; and,
 - (2) proof of payment of all state regulated tax permit fees; and,
 - (3) any other fees required by city ordinance, State or Federal requirements.
- (h) Every Skill or Pleasure Coin Operated or Slot Machine, capable of independent operation with separate activating coin mechanisms, whether placed separately or in series, and regardless of any electrical, mechanical or manual component, shall be considered a separate machine in regard to permitting.

- (i) If a License Holder, Business Owner, or Manager is found to be operating unregistered machines, a fee in the amount of Five Hundred dollars (\$500.00) per unregistered machine will be assessed against the License Holder, Business Owner or Manager, in addition to the Five Hundred-dollar (\$500.00) machine permit fee.

Division 3. City Occupation Tax

- (j) City Occupation Tax Requirements: A City Occupation Tax is hereby imposed on each Skill or Pleasure Coin Operated or Slot Machine. An Occupation Tax Permit for each machine will be issued if all of the following requirements are met:
 - (1) Applicant holds a valid Business License issued by the City; and,
 - (2) proof of a valid Machine Permit for each Skill or Pleasure Coin Operated or Slot Machine; and,
 - (3) proof of payment of all state mandated tax permit fees required by Texas Occupation Code §2153.401 (as amended); and,
 - (4) proof of payment of any other fees required by city ordinance, State or Federal requirements; and,
 - (5) payment of a fee in the current amount set in Texas Occupation Code §2153.451, (as amended) for each Skill or Pleasure Coin Operated or Slot Machine for which an Occupation Tax Permit is sought.

Division 4. Expirations, Renewals, and Exemptions

- (k) Expirations: Business Licenses, Machine, and Occupation Tax Permits issued at any time during a calendar year shall automatically expire upon the following:
 - (1) Business License Expiration:
 - a. on December 31 of each calendar year; or,
 - b. upon revocation of the Business License by the City of Panhandle or its designees; or,

- c. upon surrender of a Business License by a Business Owner; or,
- d. upon the death of the Business Owner or License Holder.

(2) Machine Permit Expiration:

- a. Upon removal of a Skill or Pleasure Coin Operated or Slot Machine from the original business location; or,
- b. sealing of a Skill or Pleasure Coin Operated or Slot Machine; or,
- c. upon revocation of the Business License by the City of Panhandle or its designees; or,
- d. upon surrender of a Business License by a Business Owner; or,
- e. upon the death of the Business Owner or License Holder.

(3) Occupation Tax Permit: on December 31 of each calendar year.

- (l) Renewal: all Business Licenses and Occupation Tax 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 Business License fees and annual Occupation Tax Permit fees for each machine paid in full prior to December 31 of the renewal year. The City of Panhandle shall not refund any portion of a Coin Operated or Slot Machine Business License, Machine Permit or Occupation Tax Permit fees after the License or Permits have been issued, nor shall it prorate or reduce the amount of any fee due to the City. If fees are not paid within the time allotted, the Business License and all associated Machine Permits shall be revoked.

(m) Exemptions:

- (1) Exemptions arising under Section 4.604(k)(1)(d) and (k)(2)(e): Upon the death of the holder of a Skill or Pleasure Coin Operated or Slot Machine Business License, the executor/administrator of the estate, business successor, or immediate next of kin may continue operations of the Skill or Pleasure Coin Operated or Slot Machine business and have the Business License, Machine, and Occupation Tax Permits

transferred over to another license holder that meets the requirements of this Section. All other requirements still apply, and continued operation must conform with this and other City of Panhandle ordinances that apply to business operations.

- (2) Any Person operating a business with a Skill or Pleasure Coin Operated or Slot Machine(s) at the time of the passage of this Ordinance shall not be required to comply with the requirements of this Ordinance until one of the following events occurs:
 - a. Found to be operating a Skill or Pleasure Coin Operated or Slot Machine business in violation of any local, State, or Federal law.
 - b. Addition of any Skill or Pleasure Coin Operated Machine after the date of the passage of this Ordinance.
 - c. Found to be operating any Skill or Pleasure Coin Operated Machine without required occupation tax certificates issued by the Texas Comptroller's Office.
 - d. Sealing of any one or more Skill or Pleasure Coin Operated Machines by any agency of competent jurisdiction.
 - e. Revocation or suspension of a Certificate of Occupancy issued by the Planning and Development Services Department.
 - f. Found to be operating without an official Certificate of Occupancy issued by the Planning and Development Services Department.
 - g. Death of the business owner.

At such time of the occurrence of any of these conditions, the business shall immediately lose its exempt status and become subject to all requirements of this Ordinance.

Sec. 4.605 Restrictions and Requirements

- (a) Age prohibition: The presence of persons under eighteen (18) years of age on premises subject to this Article, is prohibited. It is an affirmative defense to prosecution under this Article that the person under eighteen (18) years of age

was a bona fide employee of the business. Notice in the form of an easily readable sign, informing the public of said restriction, shall be placed at the entrance of the location.

(b) Alcoholic beverages prohibited: The presence of any alcoholic beverages on the premises of a Coin Operated or Slot Machine business is prohibited, unless such establishment has a valid license or permit to serve alcohol by the Texas Alcoholic Beverage Commission (TABC) and the City. No individual, person, owner, or manager shall allow, or be allowed, to consume any alcoholic beverage on the premises of a Coin Operated or Slot Machine business location without a valid license or permit to serve alcohol by the Texas Alcoholic Beverage Commission (TABC) and the City. 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 or Slot Machine business without a valid license or permit to serve alcohol by the Texas Alcoholic Beverage Commission (TABC) and this City.

(c) Posting of Business License, Machine Permits, and Establishment Address: The Business License shall be posted conspicuously, noticeable to common view at the entrances of the establishment. Machine Permits for each machine shall be affixed to each machine within easy view of the public and inspectors. The establishment address will be posted conspicuously at or as near as possible to the outside front entrance of the location.

(d) Business License and Machine Permit limitations: Solely one Business License to operate a location with Skill or Pleasure Coin Operated or Slot Machines shall be issued to any one Person. A transfer of Business License or Machine Permits shall not be allowed except as allowed in Section 4.604 (m)(1) and Section 4.606(e) of this Article. If a Business License or a Machine Permit has been voluntarily relinquished or has been revoked, then a new Business License or Machine Permit may be issued to a qualified applicant, in accordance with Section 4.604.

(e) Window visibility: Windows of the building where Skill or Pleasure Coin Operated or Slot Machines are located shall be unobstructed and/or unpainted, as to allow for visibility. All windows sun screened or tinted must allow light transmission of twenty (20) percent or more. No luminous reflectance, mirror, or reflective type material shall be allowed to be placed on same windows.

(f) Sign requirements: The business name is required to be prominently posted and displayed on the outside of the building; if the business is nameless,

the License Holder's first and last name shall be posted prominently and displayed on the outside of the building in place of the business name. All signs for advertisement shall comply with City of Panhandle zoning ordinances. No unauthorized signs shall be placed or allowed to be placed on the licensed business property without prior approval from the City. Any signs deemed to be out of compliance with the zoning ordinance shall be grounds for revocation of Skill or Pleasure Coin Operated or Slot Machine Business License.

(g) Hours of Operation: The business operation hours will be Monday through Sunday, opening no earlier than 8:30 a.m. and closing no later than Midnight. Doors must remain unlocked and the business accessible to the general public during hours of operation.

Sec. 4.606 Business Location Restrictions and Relocation Requirements

(a) In addition to a Business License, every business that owns, controls, possesses, exhibits, or displays any Skill or Pleasure Coin Operated or Slot Machine, shall be required to obtain a special use permit issued by the City of Panhandle, in accordance with Chapter 14, Article 14.200, Section 14.210 Special Use Permits.

(b) In accordance with Article 14, Zoning, the City may issue a Skill or Pleasure Coin Operated or Slot Machine special use permit only in Zone D, Commercial.

(c) The City may not issue a Skill or Pleasure Coin Operated or Slot Machine specific use permit for use within 300 hundred feet (300') from door entry of the Skill or Pleasure Coin Operated or Slot Machine business to any property line of the following:

- (1) any place 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.
- (2) any hospital or place where medical attention is received, or pharmaceuticals are dispensed to include pharmacies, clinics, night clinics, nursing home, adult day care, veteran hospitals, hospitals, major trauma units, or where ambulatory services are stationed.

- (3) any place of religious worship to include any established building of gathering for worship including, 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.
- (4) any school or college district property on which attendance of the student population occurs.
- (5) any location where children congregate to include, but not limited to, playgrounds, and/or parks.

(d) Relocation of Premises: Active Business License Holders who wish to relocate the licensed business for which they have a specific use permit to another location must notify the City Manager immediately, and must obtain a new special use permit prior to relocating. The City reserves the right to deny a new special use permit for the relocation in the event that it finds significant negative impact for the surrounding properties or the relocation would be in violation of this Code.

(e) Exemptions: Locations which, at the time of passage of this Ordinance, do not meet the distance requirements as set forth in Section 4.606(c) shall not be required to comply with the location restrictions set forth in 4.606 until one of the events as outlined in Section 4.604 (k)(2)(a-e) occurs or additional machines are installed at a subject location. At such time, the subject location shall immediately lose its exempt status and become subject to all other provisions of this Ordinance, as though it were a new application. During the term of this zoning permit exemption, each of the locations subject to this section must comply with all other terms of this Ordinance, including but not limited to: occupation tax permit fees, sale of alcoholic beverages, age limits, and other restrictions.

Sec. 4.607 Replacement of a valid lost, stolen or destroyed Business License or Machine Permit

The City of Panhandle shall not make a refund of the Business License or Machine Permit fees paid on any Skill or Pleasure Coin Operated or Slot Machine business location or machine. The City shall provide a duplicate license or permit if a valid license or permit has been lost, stolen, or destroyed. The fee for each

duplicate license or permit is ten dollars (\$10). An original license or permit for which a duplicate license or permit has been issued is void upon issuance of a duplicate.

Sec. 4.608 Sealing of Machines

(a) The City of Panhandle may seal any Skill or Pleasure Coin Operated or Slot Machine on which the initial Business License fee or the yearly renewal Business License fee has not been paid. The City shall charge an administrative fee of five dollars (\$5.00) for the release of any machine sealed as provided herein. It shall be unlawful for any person to break the seal affixed in the name of the City or to exhibit, display, or remove from the location any machine on which the seal has been broken.

(b) Every Skill or Pleasure Coin Operated or Slot Machine subject to the payment of the fees levied in this Article, and upon which any fee 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 Panhandle, as well as denying the continued operation of said business. All Licenses and permits allowing said business, as referred to in this Article, to operate may be denied, discontinued, and/or revoked.

(c) Upon proof that all fees have been paid in full and an inspection of the location of the business has been completed verifying that all requirements of this Article have been met, any and/or all sealed machines may be unsealed by the Police Department or their authorized designees.

Sec. 4.609 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 or the Constitution of this State and/or any federal laws of the United States of America.

(b) No Business License or Machine Permit may be issued for any "Gambling Device" as defined by Texas Penal Code, Chapter 47, Gambling, Section 47.01(4) and as interpreted by judicial decision (Hardy v. State, 102 S.W.3d 123, Tex.

2003 and State v. One Super Cherry Master Video 8-Liner Machine 102 S.W.3d 132, Tex. 2003), and “Gambling Devices” are prohibited from use in the City of Panhandle.

(c) In addition to any other penalty or punishment imposed by law, violation of any section or provision of this Article shall be cause for revocation of a Skill or Pleasure Coin Operated or Slot Machine Business License issued pursuant to this Article. The City reserves the right to inspect the premises of any Skill or Pleasure Coin Operated or Slot Machine business in order to investigate compliance with this Article. The Business Owner or Manager of a Skill or Pleasure Coin Operated or Slot Machine business or their employees shall not prohibit City of Panhandle Officials, or police, fire, or fire marshal entry into the premises at any time to ensure there are no violations of city, state or federal laws, to include correct and accurate machine count, correct Machine Permits, fire, or penal code violations. The building entries and exits shall be maintained so as to allow unobstructed, unregulated, free entry into said location by inspectors, police, fire, or fire marshal personnel without any delay of entry. Any violations of this Section shall be considered a violation of this Article and will be considered grounds for revocation of Business Licenses and/or Machine Permits.

Sec. 4.610 Violations

A violation of any provision of this Article shall be a misdemeanor, and any person, firm or corporation convicted hereunder, shall be punished as specified in Section 1.109 of this Code of Ordinances.

SECTION 4 SEVERABILITY

If any provision, section, subsection, sentence, clause or the application of the same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this Ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Panhandle, Texas in adopting this Ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

**SECTION 5
REPEALER**

This Ordinance shall be cumulative of all other ordinances and shall not repeal any of the provisions of said ordinances except those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided, however, that any complaint, action, claim or lawsuit that has been initiated or has arisen under or pursuant to any of the ordinances or sections thereof that have been specifically repealed on the date of adoption of this Ordinance shall continue to be governed by the provisions of such ordinance or section thereof and for that purpose the ordinance or section thereof shall remain in full force and effect.

**SECTION 6
SAVINGS CLAUSE**

All rights and remedies of the City of Panhandle are expressly saved as to any and all violations of the provisions of any ordinances affecting and which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

**SECTION 7
EFFECTIVE DATE**

A descriptive caption shall be published once a week for two consecutive weeks in a newspaper of general circulation published in the City of Panhandle and such ordinance shall become effective (10) days after the date of its last publication, or upon its date of final approval, whichever is later.

INTRODUCED, on this the 12th day of February 2019, at a regular meeting of the City Council of the City of Panhandle, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

PASSED, APPROVED, AND ADOPTED, on this the 28th day of February 2019, at a regular meeting of the City Council of the City of Panhandle, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

Doyle Robinson, Mayor

ATTEST:

Veronica Wilburn, City Secretary