

ORDINANCE NO. 2007 - __26__

AMENDING KENT'S CODE OF ORDINANCES TO ADD CHAPTER 770 – AMUSEMENT ARCADES AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent Police Department, the Director of Law, the Building and Zoning Department, and other offices have received complaints regarding the potential operation of certain amusement arcade businesses within the City; and

WHEREAS, the amusement arcade businesses referred to above involve the exchange of cash for an opportunity to play a game and the potential to receive cash payment for the value of winnings, credits, rewards or prepayments; and

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

WHEREAS, electronic and other 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, this State has recognized the secondary effects of gambling activities on its citizens and many current video arcade operations are extremely similar to gambling arcades in states where legalized. This 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 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. Gambling, and consequently activities similar to gambling such as adult video arcades played for items of value, have the reputation of being associated with racketeering and organized crime. 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.
- f. This type of operation induces similar or like businesses to establish in the community; and
- g. The City has investigated and/or prosecuted weapons violation, petty thefts, child endangering, and grand theft auto out of these establishments.

WHEREAS, a skill-based amusement machine, when played in exchange for something of value and which may pay a cash prize in payment for the value of winnings, credits, rewards, or prepayments, 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 our citizens by regulating amusement arcades.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto:

SECTION 1. That Kent Code of Ordinances is hereby amended by adding Chapter 770 – Amusement Arcades as set forth in Exhibit “A” attached hereto and fully incorporated herein.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the residents of this City, for which reason and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: 03/21/07
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2007- 26 was duly enacted this 21 day of March, 2007 by the Council of the City of Kent, Ohio.

Linda M. Copley, Clerk of Council

EXHIBIT “A”

**CHAPTER 770
Amusement Arcades**

770.01 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. Based upon experience within the State of Ohio, 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.

These businesses may be located throughout the City in general business districts, in areas which attract adults and children. 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.

770.02 DEFINITIONS.

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

- (a) “Amusement arcade” means any place of business where one (1) or more skill based amusement machines are located for the use or entertainment of persons patronizing the place of business.
- (b) “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 percent (51%).
 - (iii) The outcome of play during a game is not controlled by a person not actively participating in the game.
 - (iv) The machine charges a price to play a task, game, play, contest, competition, or tournament.
- (a) All of the following apply to any machine that is operated as described in (b) of this section:
 - 1. 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 of cash payments or for the value of winnings, credits, rewards or prepayments 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.

2. 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.
3. 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.

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

“Amusement device” does not include vending machines, pinball machines, or other arcade games that do not pay out cash or similar credits for the value of winnings, credits, rewards or prepayments.

- (c) “Game machine” means any skill based amusement device.
- (d) “Good moral character” means not having been convicted of a crime involving moral turpitude within five (5) years next preceding the date of this 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.

770.03 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, issued by the City of Kent.
- (b) No individual, corporation or other entity shall permit or cause to be permitted any skill based 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 issued by the City of Kent for that machine displayed thereon.
- (c) No individual, corporation, or other entity shall play any amusement device unless it is validly licensed by the City.

770.04 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.

770.05 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.

770.06 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.

770.07 LICENSE ISSUANCE; EFFECTIVE PERIOD; FEE.

The Director of Public Safety is hereby authorized to issue amusement arcade licenses and amusement and/or game machine licenses for machines that pay cash prizes or produce a ticket or card that may be exchanged for cash, or cash equivalents, 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 (\$1,000.00) per arcade location per year has been paid;
- (c) A fee of One Hundred Dollars (\$100.00) 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 (5) 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 770.09;
- (g) License fees are non-refundable except upon approval by this Council.

770.08 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 hereby 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 770.15.
- (d) A license shall be issued within forty-five (45) 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.

770.09 SUBMISSION OF SOURCE CODE FOR APPROVAL.

- (a) Each applicant, within forty-five (45) days of 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 (2) laboratories deemed satisfactory.

770.10 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.

770.11 OPERATION OF ARCADE.

- (a) No person under the age of eighteen (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.

- (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 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.**
- (g) **Windows shall be clear and free of tint. No obstructions shall prevent observing at least fifty percent (50%) of the arcade games from outside the front door.**
- (h) **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 (2) 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.**
- (i) **No arcade shall operate during the hours of 1:00 a.m. to 7:00 a.m.**
- (j) **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 Two Hundred Dollars (\$200.00). This record shall be filed with the Director of Finance for the City of Kent 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 (2) years.**
- (k) **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.**
- (l) **Each operator, employee, and agent thereof shall wear a full name identification nameplate during working hours.**
- (m) **All on premises food service shall comply with state and local health regulations.**
- (n) **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.**
- (o) **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.**
- (p) **No weapons, firearms, or dangerous ordnances are permitted on the premises.**

770.12 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 (25%) 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 City of Kent 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.

770.13 REVOCATION 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 (90) days have elapsed since the date the revocation became effective.

770.14 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.

770.15 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 (10) days of notice of non-issuance, non-renewal or revocation, in writing, to the Licensing Appeal Board, c/o Director of Public Safety, 319 South Water Street, Kent, Ohio 44240 stating the reason for the appeal.
- (b) The Licensing Appeal Board shall consist of five (5) residents of the city, appointed by the City Council, for terms of four (4) years. Appeals shall be heard within five (5) days of filing. Such Board shall determine whether the denial of any license under this chapter was arbitrary, capricious, or unreasonable.
- (c) 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.
- (d) Terms for the first people appointed to the Board shall be staggered. One member shall serve for one (1) year, one member shall serve for two (2) years, one member shall serve for three (3) years, and two (2) members shall serve for four (4) years. Thereafter all terms shall be for four (4) years. No member shall serve more than eight (8) consecutive years.

770.16 INSPECTION.

- (a) The Police Department shall, from time to time, 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 City Health Department to inspect that portion of each arcade business open to the public and licensed hereunder, in order to assess compliance with the provisions of this Chapter and relevant Health Department regulations.
- (c) That the Fire Marshall and Building Official shall, from time to time, 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.

770.17 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 Kent.

770.18 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.

770.19 FEES COLLECTED.

All license fees collected shall be deposited into a Law Enforcement Gaming Fund. Such monies shall be used for criminal investigations, police weapons, training and equipment, electronic and gaming experts, consultants, and other costs related to gaming activities. Up to twenty-five percent (25%) of such funds shall be allocated to the Fire Department for training.

770.99 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. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs.