

**AN ORDINANCE TO AMEND THE CODE OF THE CITY OF CAVE SPRING, GEORGIA, AND PARTICULARLY TO ADD ARTICLE VII REGARDING COIN-OPERATING AMUSEMENT MACHINES TO CHAPTER 10; TO REPEAL SECTION 10-65 OF CHAPTER 10 REGARDING THE SAME; TO REPEAL OTHER CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Cave Spring, Georgia, has the authority to regulate Coin-Operated Amusement Machines to the extent allowed under Georgia law;

**WHEREAS**, the City of Cave Spring desires to adopt further and more effective regulatory provisions in regard to Amusement Game Rooms in the city;

**WHEREAS**, this ordinance is adopted to address the interests of public health, welfare, and safety of the citizens of the City of Cave Spring;

**WHEREAS**, the city currently provides such regulations in Section 10-65 of the Code of the City of Cave Spring; and

**WHEREAS**, the city desires to further regulate Coin-Operated Amusement Machines by repealing Section 10-65 and adopting Article VII to Chapter 10 of the Code as stated below.

**THEREFORE**, the Cave Spring City Council hereby amends Chapter 10 of the city code as follows.

**Article 1:**

Existing Chapter 10 of the Code of the City of Cave Spring is amended to add Article VII. – Coin-Operated Amusement Machines to read as follows:

**ARTICLE VII. – COIN-OPERATED AMUSEMENT MACHINES**

**Section 10-240. Gambling Devices Prohibited.**

Gambling Devices, as that term is defined in O.C.G.A. § 16-12-20(2), are prohibited in the City of Cave Spring, and the ownership, use, or transport thereof shall be a misdemeanor pursuant to state law, except as exempted pursuant to O.C.G.A. § 16-12-35(a) through (k).

**Section 10-241. Gambling Places Prohibited.**

Gambling Places, as that term is defined in O.C.G.A. § 16-12-20(3), are prohibited in the City of Cave Spring, and the operation thereof shall be a misdemeanor pursuant to state law.

**Section 10-242. Definitions.**

The following words, terms, or phrases, when used in this article, shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) **Amusement Game Room** means any location as provided in O.C.G.A. § 16-12-35(b), (c), or (d) where one or more Bona Fide Coin Operated Amusement Machines are operated that permit non-cash redemption as provided in O.C.G.A. § 16-12-35(d)(1)(B), (C), or a combination thereof.

(b) **Bona Fide Coin-Operated Amusement Machine** means the same as this term is defined in O.C.G.A. 50-27-70(b)(2)(A) and (B) and any applicable regulations of the State of Georgia. Examples of Bona Fide Coin Operated Amusement Machines include, but are expressly not limited to, the following:

- 1) Pinball machines;
- 2) Console machines;
- 3) Video games;
- 4) Crane machines;
- 5) Claw machines;
- 6) Pusher machines;
- 7) Bowling machines;
- 8) Novelty arcade games;
- 9) Foosball or table soccer machines;
- 10) Miniature racetrack, football or golf machines;
- 11) Target or shooting gallery machines;
- 12) Basketball machines;
- 13) Shuffleboard machines;
- 14) Kiddie ride games;
- 15) Skee-Ball® machines;
- 16) Air hockey machines;
- 17) Roll down machines;
- 18) Trivia machines;
- 19) Laser games;
- 20) Simulator games;
- 21) Virtual reality machines;
- 22) Maze games;
- 23) Racing games;
- 24) Coin operated pool table or coin operated billiard table as defined in paragraph (3) of O.C.G.A. § 43-8-1; and
- 25) Any other similar amusement machine which can be legally operated in Georgia.

The term “coin operated amusement machine” does not include the following:

- 1) Coin operated washing machines or dryers;
- 2) Vending machines which for payment of money dispense products or services;
- 3) Gas and electric meters;
- 4) Pay telephones;

- 5) Pay toilets;
- 6) Cigarette vending machines;
- 7) Coin operated vending machines;
- 8) Coin operated scales;
- 9) Coin operated gumball machines;
- 10) Coin operated parking meters;
- 11) Coin operated television sets which provide cable or network programming;
- 12) Coin operated massage beds; and
- 13) Machines which are not legally permitted to be operated in Georgia.

(c) **Location** means a business within the City of Cave Spring that has complied with the provisions of the ordinances of the City of Cave Spring relating to licenses and permits and the entire office or area of the business in any one location owned or leased by the same proprietor or proprietors where the lessor or lessors allow the space to be used for business purposes.

(d) **Location Owner or Location Operator** means an owner or operator of a business where one or more Bona Fide Coin Operated Amusement Machines are available for commercial use and play by the public or shall have the same definition as found in O.C.G.A. § 50-27-70, should that definition differ.

#### **Section 10-243. License Required.**

No person, firm or corporation shall engage in the business of an owner or proprietor of an Amusement Game Room, as the term is herein defined, without first having obtained an Amusement Game Room license. A separate Amusement Game Room license must be obtained for each location in the jurisdiction where Bona Fide Coin Operated Amusement Machines are operated.

#### **Section 10-244. Issuance of License.**

Application for a license for operating an Amusement Game Room within the corporate limits of the City of Cave Spring shall be made to the City Clerk upon a form to be supplied by the City Clerk's office for this purpose. The application must be signed and sworn to by the applicant in the case of a sole proprietorship. In case the applicant is a partnership, all partners must sign and verify the application. In case the applicant is a corporation, any authorized officer and the secretary must sign and verify the application and indicate their official position. The license application shall include the following information:

- (a) Name, address, and age of the applicant and the date of the application;
- (b) Address or place where the Bona Fide Coin Operated Amusement Machines are to be offered to the public for play and the other business or businesses operated at that place or places;

- (c) Name and address of the owner of the machine or machines and a copy of the owner's master license;
- (d) Name and address of any other business owned or operated by the applicant in the corporate limits of the City of Cave Spring;
- (e) List of any other licenses or permits from the City of Cave Spring held by applicant; and
- (f) List of the permit sticker numbers issued by Georgia Lottery Corporation to the Master License Holder identifying and placed on each coin operated amusement machine located on the premises of any Location Owner or Location Operator.

Upon issuing a license for an Amusement Game Room, a City of Cave Spring official or employee shall provide the licensee with a copy of this article and of Section 4-93 of the Cave Spring Code of Ordinances. The city may require an annual fee of up to \$500.00 for an Amusement Game Room license or registration. The license fee shall be set forth in the city's fee schedule and any amendments thereto. The license fee is intended to cover the actual costs of the issuance and administration of licenses granted under this article. A license issued in accordance with this article shall be valid until December 31st of the year in which the license was issued. A licensee who desires to continue the license for the next consecutive year must make a new application for the next consecutive calendar year on or before November 15 of each year on forms provided by the City Clerk's office.

**Section 10-245. Minimum Distance Requirements.**

Every Amusement Game Room in the city shall comply with the proximity provisions for businesses licensed to sell alcohol set out in Section 4-93 of the Cave Spring Code of Ordinances.

**Section 10-246. Number of Bona Fide Coin Operated Amusement Machines at a Location.**

No Amusement Game Room in the City of Cave Spring shall offer to the public more than six Class B Bona Fide Coin Operated Amusement Machines offering non-cash redemption in accordance with O.C.G.A. § 16-12-35(c) and (d)(1)(2), or both at the same Location.

**Section 10-247. Gross Receipts from Bona Fide Coin Operated Amusement Machines and from Business.**

- (a) Every Amusement Game Room shall keep records available for inspection by city officials that set out separately annual gross receipts for the Class B amusement games and the other products and services sold at the Location.
- (b) Any Location Owner or Location Operator subject to O.C.G.A. § 50-27-84(b)(1) is hereby required to provide a quarterly report, including any reports received from the Lottery Corporation, to the City Clerk. This report shall indicate the quarterly gross retail receipts for each business location located within the City of Cave Spring and shall be due by the 20<sup>th</sup> day of each January, April, July, and

October, for the previous calendar quarter in which the sales have taken place. In addition, each Location Owner or Location Operator must allow the City of Cave Spring an annual audit of the reports from the Location Owner or Location Operator to the Lottery Corporation.

- (c) No Location Owner or Location Operator may derive more than 50% of such Location Owner's or Location Operator's quarterly gross retail receipts for this business location in which the Class B machines are situated from such Class B machines and any Location Owner or Location Operator found in violation of such provision may be fined and may have any City of Cave Spring issued license suspended or revoked as allowed under this article. Compliance with this section requires both the availability of records for inspection and compliance with the 50 % of gross retail receipts requirement. Any violation of this provision shall be reported to the Georgia Lottery Corporation.
- (d) Pursuant to O.C.G.A. § 50-27-84, this section on gross retail receipts shall not apply to historical fraternal benefit associations or veterans organizations which are exempt from taxes and are described in O.C.G.A. § 48-5-41 and O.C.G.A. § 48-5-478.4.

#### **Section 10-248. Notice Requirements.**

- (a) Every Amusement Game Room shall post a conspicuous sign with the following or substantially similar language:

**“Georgia law prohibits giving or receipt of any money for winning a game or games on an amusement machine; giving or receipt of any money for free replays won on an amusement machine; giving or receipt of money for any merchandise, prize, toy, gift certificate, or novelty won on an amusement machine; or awarding any merchandise, prize, toy, gift certificate, or novelty of a value exceeding \$5.00 for a single play of an amusement machine.”**
- (b) The notice provided for in Section 2-12-100(a) shall be at least 11.5 inches by 17.5 inches in size. Words and letters shall be in bold print and shall be at least one centimeter in size.
- (c) Every Amusement Game Room shall post the license issued by the City of Cave Spring conspicuously and permanently.
- (d) The owner or proprietor of each Amusement Game Room shall inform every employee of the acts and omissions prohibited by O.C.G.A. § 16-12-35 and by this article, and of the penalties for violation of O.C.G.A. § 16-12-35 and this article.

#### **Section 10-249. Compliance with O.C.G.A. Provision Relating to Master Licenses, Location Licenses, and Stickers for Individual Machines.**

Bona Fide Coin Operated Amusement Machines may be used in an Amusement Game Room within the City of Cave Spring only if the machines are owned by a

person who holds a valid master license in accordance with O.C.G.A. § 50-27-71, and each machine offered to the public for play has a valid permit sticker in accordance with O.C.G.A. § 50-27-78. In addition, the business owner where the machines are available for play by the public must pay a location license fee to obtain a valid location license in accordance with O.C.G.A. § 50-27-71 (a.1) and (b). The City of Cave Spring official in charge of issuing Amusement Game Room licenses shall notify the State Counciler of Revenue of any observed violation of O.C.G.A. § 50-27-71 or § 50-21-78.

**Section 10-250. License Suspension and Revocation.**

- (a) The City of Cave Spring may suspend, refuse to renew, place on probation, or revoke the City of Cave Spring issued license of any Location Owner or Location Operator to manufacture, distribute, or sell alcoholic beverages as a penalty for the conviction of the business owner or business operator of a violation of O.C.G.A. § 16-12-35, subsection (e), (f), or (g).
- (b) The City of Cave Spring may suspend, refuse to renew, place on probation, or revoke the license of any Location Owner or Location Operator of any other license granted by the city as a penalty for the conviction of the business owner or business operator of a violation of O.C.G.A. § 16-12-35, subsection (e), (f), or (g).
- (c) The City of Cave Spring Council may suspend, refuse to renew, place on probation, or revoke a license of any Location Owner or Location Operator, and impose a monetary sanction not to exceed \$1,000.00, under the conditions set forth in this section. The council shall hold a hearing before taking any such action, except suspending a license for failure to pay an imposed monetary sanction when due. At least five days' notice of the hearing must be given to the affected licensee. The suspension, non-renewal, or revocation of licenses under this section, or other penalties imposed, shall be in accordance with the following guidelines of due process:
  - (1) No license shall be suspended or revoked pursuant to this section except for due cause and after hearing and upon prior five-day written notice to the holder of the license of the time, place, and purpose of the hearing and a statement of the charges upon which the hearing shall be held, unless such hearing has been waived pursuant to stipulation as provided under subpart (10) of this subsection. Such notice shall provide the reasons for the suspension or revocation sought and shall be mailed or delivered to the holder of the license.
  - (2) The term "due cause" for the purposes of this section shall include, but not be limited to:
    - a. Violation by the Location Owner or Location Operator of any provision of this article; and
    - b. Conviction of the Location Owner or Location Operator of a violation of subsection (e), (f), or (g) of O.C.G.A. § 16-12-35.

- (3) Written notice of suspension or revocation proceedings shall be served on the person named as licensee in the application. The notice may be served personally or by first class mail. If by mail, the notice shall be addressed to the licensee at its address as provided by the licensee to the City of Cave Spring. The burden shall be on the licensee to provide notice, in writing, of any change of address for service of notices and process. In the case of service by mail of any notice required by this chapter, the service is complete at the time of deposit in the United States Postal Service.
- (4) The hearing shall be conducted by the City of Cave Spring Council. The council's chair shall conduct the hearing. The city shall appoint an attorney to represent the city at the hearing.
- (5) Hearings shall be only as formal as necessary to preserve order and shall be compatible with the principles of justice. The City of Cave Spring shall bear the burden of proving by a preponderance of the evidence that due cause exists to suspend or revoke the license. At the hearing the licensee shall have the right to represent itself or be represented by counsel, may cross examine all witnesses offered by the city, and may call witnesses and present evidence in its own behalf. Formal rules of evidence shall not apply to hearings under this section, although the City of Cave Spring Council shall have the right to exclude evidence which carries no indicia of reliability. All testimony shall be offered under oath or affirmation.
- (6) After all the evidence has been submitted, the City of Cave Spring Council shall confer and consider the evidence. The council shall make known their decision in public by majority vote, which shall be reduced to writing. The licensee shall be given a copy of such decision.
- (7) With the assistance of an attorney, the decision shall be placed in writing and contain the City of Cave Spring Council's findings of fact, conclusions of law, and decision as to sanction, if any. The assisting attorney must be different from the attorney that represents the city at the hearing. Depending on the severity of the violation, a sanction may include one or more of the following: revocation of the license, suspension of the license for no more than 12 months, imposition of a probationary period not to exceed 12 months, and a civil monetary penalty as provided in the general penalty section of the City of Cave Spring Code of Ordinances. Where the remaining term of the license is less than 12 months, imposition of suspension or probation for a period longer than the term of the existing license shall be applied to any renewal license. A subsequent violation within a probationary period shall be cause for revocation and denial of license renewal. A total of three separate and unrelated violations within 24 months, whether or not within a probationary period, shall be grounds for permanent revocation.
- (8) If the decision of the City of Cave Spring Council is to revoke the license, the city police department shall immediately take possession of the license and

the licensee shall no longer be permitted to carry on the business for which the license was issued. If the license is suspended or the licensee is placed on probation, the terms and conditions of the suspension or probation shall be specifically set forth in writing by the City of Cave Spring Council and the licensee shall comply with such conditions. The city police department shall make frequent inspections of the licensee to determine that the conditions of suspension or probation are being complied with.

- (9) The decision shall be personally served or mailed by certified mail, return receipt requested to the licensee and his or her attorney, with a copy to the City Attorney, within ten business days of the close of the hearing. The decision shall constitute a final action by the City of Cave Spring, subject to review by the applicable court, as provided by law.
- (10) Upon receipt of notice of adverse action against the licensee under this section, the licensee may waive its right to a hearing and stipulate to a sanction, as recommended by the City Clerk, in consultation with the chief of police. Any stipulation entered under this subsection shall be in writing, signed by the licensee, and non-appealable.

#### **Section 10-251. Penalties for Violations by Owners or Operators of Amusement Game Rooms.**

In addition to penalties set out by Georgia Law for failure to comply with the provisions of O.C.G.A. § 16-12-35 (a) through (j), the owner or operator of an amusement game room, upon violation of any requirement of this article or any law, which violation is directly attributable to the operation of an Amusement Game Room or Bona Fide Coin Operated Amusement Machines, may be subject to the general penalty section of the City of Cave Spring Code of Ordinances for each such violation and further may be subject to the following penalties:

- (a) Penalties for violation of the provisions of this Ordinance by the owner or operator of an Amusement Game Room, after conviction in a court of competent jurisdiction are as follows:
  - (1) First Offense: Fine not to exceed \$500.00 for each violation.
  - (2) Second Offense: Fine not to exceed \$750.00 for each violation, suspension of the owner or operator's license for offering any amusement game at the Location for not more than three months, or both.
  - (3) Third Offense: Fine not to exceed \$1,000.00 for each violation, suspension, or permanent revocation of the owner or operator's license for offering any amusement game at the Location, or suspension of other permits and licenses granted by the City of Cave Spring for not more than six months, or any combination of these penalties.
- (b) The fines listed in the penalties for violation of this Ordinance may be imposed by the judge of any court of competent jurisdiction. Suspension or revocation of the owner or operator's license for offering any amusement game at the Location



where the violation occurred, and suspension of other permits and licenses granted by the City of Cave Spring may be imposed by the City of Cave Spring Council after a public hearing as described in Section 10-250 of this article.

- (c) Offering one or more Bona Fide Coin Operated Amusement Machine games in violation of an order suspending or revoking the license for the offering of any amusement game at the Location is punishable, after conviction in any court of competent jurisdiction, by a fine not to exceed \$1,000.00, and if failure to pay the fine, then civil contempt may be imposed, not to exceed 30 days.

**Section 10-252. Penalties for Violations by Those Who Play Bona Fide Coin Operated Machines in Violation of Law or Ordinance.**

Any court of competent jurisdiction is authorized to impose the following penalties on any person convicted of receiving money as a reward for the successful play or winning of any Bona Fide Coin Operated Amusement Machine from any person owning, possessing, controlling or overseeing such Bona Fide Coin Operated Amusement Machine or any person employed by or acting on behalf of a person owning, possessing, controlling or overseeing a Bona Fide Coin Operated Amusement Machine:

- (a) First Offense: Fine not to exceed \$250.00 for each violation.
- (b) Second and Subsequent Offenses: Fine not to exceed \$500.00 for each violation.

**Section 10-253. Operating Regulations.**

All businesses operating as an Amusement Game Room hereunder shall be subject to the following regulations:

- (a) **Machines to Be Kept in Plain View; Gambling Devices Prohibited.** All Bona Fide Coin Operated Amusement Machines shall always be kept and placed in plain view of and open and accessible to any person who may frequent or be in any place of business where such machines are kept or used. Nothing in this section shall be construed to authorize, permit, or license any gambling device of any nature whatsoever.
- (b) **Inspection.** The chief of police may inspect or cause the inspection of any location in which any such Bona Fide Coin Operated Amusement Machines is operated or set up for operating, and may inspect, investigate, and test such machines as needed.
- (c) **Attendant Required.** It shall be unlawful for any Location Owner or Location Operator to open the Location to the public unless an attendant is present. Said attendant shall be of sufficient mental and physical capacity to be able to provide aid to patrons if needed or desired. Said attendant shall not be less than 18 years of age.
- (d) **Loitering.** As used in this section, “loitering” shall mean remaining idle in essentially one location and shall include the concepts of spending time idly,

loafing or walking about aimlessly, and shall be unlawful for any person, firm or corporation licensed to operate an Amusement Game Room to permit loitering on or in the immediate vicinity of any machine or business premises regulated hereunder in such a manner as to:

- (1) Create or cause to be created a danger of a breach of the peace;
  - (2) Create or cause to be created any disturbance of the peace, as defined by law;
  - (3) Obstruct the free passage of pedestrians or vehicles; and
  - (4) Obstruct, molest, or interfere with any person lawfully in a public place.
- (e) **Shirt and Shoes Required.** All Location Owners or Location Operators shall require shirts and shoes to be always worn by any person frequenting their location.
- (f) **Sunset Provisions.** This article shall apply to all current and past Locations, Location Owners and Location Operators, and Master License Holders, and each shall certify to the City Clerk that they are in compliance with the location, minimum distance, plain view, and limit of six machines regulations within one year from the adoption of this article. All other provisions are immediately enforceable for all Locations, Location Owners and Location Operators, and Master License Holders.

#### **Section 10-254. Licenses and Permits Nontransferable.**

- (a) Licenses required in this article are nontransferable. All businesses that have Bona Fide Coin Operated Amusement Machines on the premises shall display, in plain view, the current Amusement Game Room license.
- (b) The issued license shall not be transferred to another owner at the same site within the City of Cave Spring. A new owner or proprietor must first obtain a new license if they are going to operate in the same or different location in the city.

#### **Section 10-255. Enforcing Officer.**

The chief of police or his or her designee is hereby designated as the enforcement officer and shall execute all requirements of this article.

#### **Article 2:**

Section 10-65 of the Code of Cave Spring is specifically repealed.

#### **Article 3:**

All laws and parts of laws in conflict herewith are specifically repealed.

#### **Article 4:**

This ordinance shall become effective once it is properly approved.

#### **Article 5:**

It is hereby declared to be the intention of the Cave Spring City Council that the sections, paragraphs, sentences, clauses, and phrases of this enactment are severable, and if any phrase, clause, sentence, paragraph or section hereof shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this enactment, since the same would have been enacted by the Cave Spring City Council without the incorporation herein of any such unconstitutional phrase, clause, sentence, paragraph, or section.

**Article 6:**

The City Clerk, in consultation with the City Attorney, shall have the power to correct any scrivener's errors within this Ordinance.

This ordinance shall be effective on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

First Reading the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF CAVE SPRING, GEORGIA

\_\_\_\_\_  
Charles Jackson, Chair of City Council

ATTEST:

\_\_\_\_\_  
Judy Dickinson, Clerk