

## ORDINANCE 2011-10

**AN ORDINANCE OF THE CITY OF LA FERIA AMENDING CHAPTER 4 (BUSINESS REGULATIONS) RELATING TO SEXUALLY ORIENTED BUSINESSES, AMENDING AND CODIFYING ORDINANCE 2008-21 BY AMENDING CHAPTER 4 (BUSINESS REGULATIONS) TO REGULATE GAME HALLS THEREUNDER; AMENDING CHAPTER 14, EXHIBIT A (ZONING ORDINANCE) AND AMENDING APPENDIX A OF THE CITY OF LA FERIA CODE OF ORDINANCES TO ESTABLISH THE BUSINESS LICENSE FEE FOR GAME HALLS AND SEXUALLY ORIENTED BUSINESSES, THE OCCUPATIONAL TAX APPLICABLE TO GAMING DEVICES, THE SPECIFIC USE PERMIT APPLICATION FEE FOR GAME HALLS AND SEXUALLY ORIENTED BUSINESSES, TO ESTABLISH PENALTIES AND AN EFFECTIVE DATE**

**WHEREAS**, the City of La Feria, a home-rule city, may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants; and

**WHEREAS**, the City of La Feria may license any lawful business or occupation which is subject to its police power, including, but not limited to Game Halls and Sexually Oriented Businesses; and

**WHEREAS**, Chapter 14, Exhibit A, Section 18 of the La Feria Code of Ordinances requires a Specific Use Permit be approved by the City Commission to operate a Game Hall or a Sexually Oriented Business; and

**WHEREAS**, Game Halls and Sexually Oriented Businesses can have a detrimental effect on the appraisal value of surrounding properties and the community as a whole; and

**WHEREAS**, Game Halls and Sexually Oriented Businesses require higher protective safeguards from secondary negative effects which require more fire and law enforcement monitoring than other businesses; and

**WHEREAS**, numerous Game Halls and Sexually Oriented Businesses in the County of Cameron, Texas have been raided for illegal activity involving gambling, money laundering, loan sharking, illicit sexual activity, theft, and bribery; and

**WHEREAS**, Game Halls and Sexually Oriented Businesses have a tendency to become public nuisances; and

**WHEREAS**, Game Halls and Sexually Oriented Businesses require greater monitoring and regulation by the fire marshal and law enforcement officers that take city officials away from other necessary activities resulting in higher administrative costs to the City of La Feria; and

**WHEREAS**, alternate sites are available outside the city limits of La Feria for such businesses; and,

**WHEREAS**, the City Commission believes that amendments to the Code of Ordinances are necessary to protect the health, safety, morals and general welfare of the citizens of the City of La Feria, to improve organization and readability of the Code of Ordinances and to increase the Specific Use Permit application fees and premises license fees for Game Halls and Sexually Oriented Businesses;

**THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LA FERIA, THAT:**

1. Chapter 4, Article 4.05 SEXUALY ORIENTED BUSINESSES – Sec. 4.05.004 Operation is amended by the addition of subsections (i), (j), (k) and (l) as follows:

- (i) The premises must contain a non-smoking area available to patrons.
- (j) The sale or consumption of alcoholic beverages is not permitted on the premises.
- (k) A sexually oriented business Specific Use Permit and Business License are non-transferable and are deemed automatically revoked without further action required by the City upon the transfer by any means, other than transfer upon death, of any interest in the operator of the sexually oriented business or owner of the premises upon which the sexually oriented business is located.
- (l) A permittee is obligated to report to the City any total or partial change in ownership or control of the business, premises, or gaming devices during the period of the Specific Use Permit and Business License, within ten (10) days of such change in ownership or control.

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2. Chapter 4, Article 4.05 SEXUALY ORIENTED BUSINESSES – Sec. 4.05.006 Permit Required is revoked in its entirety and the following substituted therefor:

**Sec. 4.05.006 Specific Use Permit and Business License Required**

- (a) A person proposing to operate a sexually oriented business must submit an application for a Specific Use Permit as provided in Chapter 14, Section 19 of this Code of Ordinances together with Business License application as provided in this Code of Ordinances. Such applications shall be in the form as required to comply with the provisions of this Code of Ordinances and other applicable law as determined by the City Manager and shall include a requirement that the applicant provide a Texas Department of Criminal Safety Criminal History Record dated within 30 days of the date of such application on all owners of the premises and all owners and operators of the proposed sexually oriented business.

- (b) The applications for a Specific Use Permit and Business License shall be accompanied by a non-refundable payment in the form of cashier check or money order in such amount as provided in Exhibit A – Fee Schedule to this Code of Ordinances as amended from time to time.
- (c) In addition to the site plan required by Chapter 14, Section 19 of the Code of Ordinances, an applicant must submit a floor plan which displays the physical layout of the proposed sexually oriented business. The floor plan must at least at 1/8" = 1' scale and must show:
- (1) all means of ingress and egress;
  - (2) the location of all walls and partitions;
  - (3) whether such walls or partitions extend from the floor to the ceiling or not, and if not the distance from the top of the wall or partition to the ceiling; and
  - (4) the location and intensity of all lighting fixtures.
- (d) An applicant shall, not later than the 10th day after filing of the required applications and payment of the required non-refundable fees, erect a sign on the property where the proposed Sexually Oriented Business is to be located. The sign shall:
- (1) Face and be visible from the public roadways adjacent to the premises;
  - (2) Measure four feet by eight feet in size; and
  - (3) In clear type of no less than six inches in size state, in both English and Spanish, the following:  
  
"A **SEXUALLY ORIENTED BUSINESS** is proposed for this location. The City Commission will hold a Public Hearing on \_\_\_\_\_ (date). For more information, contact La Feria City Hall at 797-2261."

Such sign shall be continuously maintained on the property for not less than 45 consecutive days prior to the date of such scheduled Public Hearing.

- (e) In addition to the matters set forth in Article 14, Section 19 of this Code of Ordinances relating generally to special use applications, the City Commission may disapprove a special use application for a sexually oriented business if it determines that the proposed sexually oriented business constitutes a detriment to health, life, and property or the preservation of good government, order, and

security of the municipality and its inhabitants, including but not limited to the following factors:

- (1) the proposed premises violate any City zoning, fire, health, safety, building, plumbing or electrical code;
  - (2) delinquency in the payment of any tax, fee or assessment, including utility charges, due to the City by the applicant or owner of the premises;
  - (3) delinquent payment of occupational taxes or other fees to the State of Texas, County of Cameron, or the City of La Feria by the applicant or owner of the premises;
  - (4) conviction for a felony or a crime involving moral turpitude by the applicant, any owner, part owner, shareholder, officer, director, manager or any person with any financial interest in the applicant, the premises, or any food or beverage concession;
  - (5) an excess number of requests for police or other emergency response at the premises or excessive need for emergency response;
  - (6) denial or termination of a similar license or permit by another governmental entity;
  - (7) admission to the premises being conditioned upon membership in a private club;
  - (8) the premises of the proposed sexually oriented business are licensed for either the sale or consumption of alcoholic beverages; or
  - (9) any failure to comply with any provision of this Article 4.05.
- (f) Applications for a sexually oriented business special use permit, including initial and renewal applications, must be completed by the applicant under oath, subjecting the applicant to the applicable laws of perjury.

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3. Chapter 4, Article 4.05 SEXUALLY ORIENTED BUSINESSES – Sec. 4.05.007 Renewal of Permit is revoked in its entirety and the following substituted therefor:

**Sec. 4.05.007 Renewal of Permit and Business License Required**

- (a) Before the renewal of any Specific Use Permit and Business License as provided in Sec. 4.05.006, an operator of a sexually oriented business holding a valid

Specific Use Permit and Business License shall, in a timely manner, submit applications for renewal and the applicable renewal fees.

- (b) The fees for renewal of such Specific Use Permit shall be the same as provided in Sec. 4.05.006(b) above. The renewal fees are nonrefundable.
- (c) Applications and fees shall be considered timely only if actually received by the City no later than 60 days prior to the expiration of the current Specific Use Permit and Business License.
- (d) The procedures for processing such renewal applications shall be the same as set forth in Sec. 4.05.006 above except that the requirements of Sec. 4.05.006(c) relating to signage shall not be applicable.
- (e) If renewed, the Specific Use Permit and Business License shall be valid for a term of not more than one (1) calendar year from the date of renewal or such lesser term as specified by the City Commission.
- (f) If any provision of this section is in conflict with any other ordinance of the City of La Feria, the section with the strictest standards controls to the extent of such conflict.

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4. Chapter 4, Article 4.05 SEXUALLY ORIENTED BUSINESSES is amended by the addition of Sec. 4.05.011 Grounds for Revocation of Specific Use Permit and Sec. 4.05.012 Revocation Procedures as follows:

**Sec. 4.05.011 Grounds for Revocation of Specific Use Permit**

Any of the following circumstances shall serve as grounds for the City to revoke or cancel a specific use permit for a sexually oriented business:

- (a) any violation of City zoning, fire, health, safety, building, plumbing or electrical codes;
- (b) any violation of the terms and conditions of the existing special use permit;
- (c) delinquency in the payment of any tax, fee or assessment, including utility charges, due to the City by the business licensee or owner of the premises;
- (d) delinquent payment of occupational taxes or other fees to the State of Texas, County of Cameron, or the City of La Feria;

- (e) conviction for a felony or a crime involving moral turpitude by the permittee, any owner, part owner, shareholder, officer, director, manager or any person with any financial interest in the sexually oriented business, the premises, or any food concession;
- (f) an excess number of requests for police or other emergency response at the premises or excessive need for emergency response;
- (g) denial or termination of a similar license or permit by another governmental entity;
- (h) admission to the premises being conditioned upon membership in a private club;
- (i) any occasion where the doors to the premises are locked during business hours; or
- (j) any violation of any provision of this Article 4.05.

**Sec. 4.05.012 Revocation Procedures**

- (a) In the event any of the circumstances enumerated in Section 4.05.011 exist, the City Manager may immediately cancel and revoke such special use permit and instruct the permittee to cease all activity at the premises for which the special use permit was issued.
- (b) Such notice of cancellation and revocation shall be written and personally delivered to any person employed at the premises, posted on the front door of the premises, or mailed by certified mail, return receipt requested, to the permittee at the address shown on the most recent special use permit application.
- (c) Any person whose special use permit is revoked by the City Manager may appeal to the City Commission by filing a written notice of appeal with the City Manager within five (5) days of receipt of the cancellation notice. The written notice of appeal shall set forth with specificity all facts and reasons which the permittee asserts as grounds for withdrawing such cancellation.
- (d) If a written notice of appeal is not timely filed, the action of the City Manager shall be final on the sixth calendar day following delivery of such notice.
- (e) If a timely written notice of appeal is filed, it shall be heard by the City Commission at a public hearing during a regularly scheduled City Commission not less than ten (10) nor more than thirty (30) calendar days from the date the notice of appeal is received by the City Manager, unless the time for hearing is extended for good cause shown by either party or by mutual consent of the parties. In any event, written notice of the time, date, and place of the hearing

shall be provided to the permittee at least seven (7) days prior to the scheduled date of such hearing.

- (f) After written notice of the appeal is filed, the cancellation of the special use permit shall be stayed pending the decision on the appeal by the City Commission unless the City Manager files with the Mayor an affidavit to the effect that the continued operation of the sexually oriented business constitutes an immediate threat to the health, safety or morals of the public and specifying the grounds of such opinion. Should the Mayor, on the basis of such affidavit, determine that probable cause exists for such opinion; the Mayor shall order the special use permit suspended pending the hearing before the City Commission. If the special use permit is so suspended, all operations of the sexually oriented business during such suspension shall immediately cease until such time as reinstated by the City Commission.
- (g) At least three (3) days prior to the scheduled date of the hearing, the City Manager shall provide to permittee, and the permittee to the City Manager, a list of witnesses to be called by each party, and a written memorandum of the expected testimony of each witness.
- (h) At any hearing on an appeal held by the City Commission objecting to the cancellation of a special use permit the permittee shall be afforded the right to be present and to confront and cross-examine any witnesses adverse to the permittee. The permittee shall be permitted to offer witnesses on the permittee's behalf. The permittee shall be entitled to be represented by legal counsel employed by the permittee and may provide for a record to be made of the testimony at any such hearing at the permittee's expense. All testimony given shall be under oath. The city staff shall be afforded like privileges as the permittee. The City Commission shall be the judge of the credibility of the witnesses and the weight to be given their testimony. The Mayor shall be the presiding officer at such hearing.
- (i) At the completion of the hearing, the City Commission shall vote whether the action of the City Manager should be sustained and the special use permit cancelled and revoked, the action of the City Manager overruled and the special use permit continue in full force and effect as originally issued, or the action of the City Manager modified and the special use permit suspended for a specific period of time with such other conditions as set by the Commission.
- (j) The provisions hereof providing for the appeal of a cancellation of a special use permit by action of the City Manager do not apply to the denial of an original or renewal application by the City Commission.

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5. Ordinance 2008-21, adopted by the City Commission of the City on July 8, 2008, but never codified as part of the Code of Ordinances, is hereby amended as set forth below as Chapter 4, Article 4.13 of the Code of Ordinances as follows.

## **ARTICLE 4.13 GAME HALLS**

### **Sec. 4.13.001 Purpose**

- (a) This ordinance shall govern all premises in which one (1) or more Level 1 gaming devices, as hereinafter defined, and/or six (6) or more Level 2 gaming devices, as hereinafter defined, are operated, displayed, or exhibited. In the event of a conflict between this ordinance and any other City ordinance, the stricter requirements shall prevail.
- (b) No person, partnership, corporation, estate, trust or any other form of legal or business entity shall display or exhibit, or permit to be displayed or exhibited, operate or permit to be operated, one (1) or more Level 1 gaming devices, as hereinafter defined, and/or six (6) or more Level 2 game devices, as hereinafter defined on any premises located within the corporate limits of the City of La Feria without having first obtained from the City of La Feria a Game Hall Business License and Specific Use Permit (SUP) as required in this Code of Ordinances. In addition, no person, partnership, corporation, estate, trust or any other form of legal or business entity shall display or exhibit, or permit to be displayed or exhibited, operate or permit to be operated any gaming devices, as hereinafter defined and whether Level 1 or Level 2, without first paying any applicable occupational tax as required in this Code of Ordinances.
- (c) A “gambling device” is strictly prohibited within the City of La Feria.

### **Sec. 4.13.002 Definitions**

- (a) "Gambling device", as currently defined under Texas Penal Code Chapter 47, means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (2) 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:
  - (1) 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



- (2) 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 noncash merchandise prizes, toys, or novelties, or a representation 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.
- (b) “Level 1 gaming device” means an electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes which rewards the player, either by chance or a combination of skill and chance, exclusively with noncash merchandise prizes, toys, or novelties, or a representation 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 ten times the amount charged to play the game or device once or Five Dollars (\$5.00), whichever is less. A “Level 1 gaming device” includes, but is not limited to, gaming device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar 8-liner machines.
- (c) “Level 2 gaming device” means the following:
  - (1) machines that awards the user non-cash prizes, toys or novelties directly from the machine, including claw, crane and similar machines, and
  - (2) machines or contrivances 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 to throw, roll, flip, toss, hit or drop a ball or other physical object into the machine or contrivance or a part thereof, including, but not limited to, baseball, basketball, bowling, football, golf, pinball, pusher, ring toss, skeeball or other similar machines or contrivances
- (d) “Game Hall” means any premises within city limits, in which one (1) or more Level 1 gaming devices or six (6) or more Level 2 gaming devices are operated or available for operation, or exhibited or displayed to retail patrons or potential retail patrons.
- (e) “Operator” means any person who exhibits, displays, or permits to be exhibited, displayed, or operated, in a premises owned by him or her or under his or her control, one (1) or more Level 1 gaming devices or six (6) or more Level 2 gaming devices, in the City of La Feria.
- (f) “Permitee” means any person, employee, assignee, firm, company, partnership, association, or corporation that holds a Game Hall SUP.

- (g) “Person” means an individual, proprietorship, partnership, corporation, association or other legal entity.
- (h) All references to the “City Manager” in this ordinance shall be understood to include any administrative official designated by the City Manager to act in his or her behalf.

**Sec. 4.13.003 Specific Use Permit and Business License**

- (a) All Game Halls are required to obtain a Game Hall Specific Use Permit (SUP) and a Game Hall business license before commencing operations.
- (b) Traveling Carnivals are not required to obtain a Game Hall SUP or a Game Hall business license provided the Traveling Carnival obtains a Carnival SUP, its stay in the City of La Feria does not exceed fourteen (14) days and it does not operate any Level 1 gaming devices. Carnivals are subject to the Fifteen (\$15.00) per gaming device occupational tax. If a Carnival operates any Level 1 gaming devices, it must obtain an SUP and Business License as provided in this Article 4.13 prior to opening for business. Any Carnival Level 2 gaming devices that remain within the City of La Feria longer than fourteen (14) days will no longer be considered Carnival Level 2 Gaming Devices and are subject to all other provisions of the Code of Ordinances, including, but not limited to, this Article 4.13.
- (c) A person proposing to operate a Game Hall must submit an application for a Specific Use Permit as provided in Chapter 14, Section 19 of this Code of Ordinances together with Business License application as provided in this Code of Ordinances. Such applications shall be in the form and content as required to comply with the provisions of this Code of Ordinances and other applicable law as determined by the City Manager and shall include a requirement that the applicant provide a Texas Department of Criminal Safety Criminal History Record dated within 30 days of the date of such application on all owners of the premises, owners and operators of the proposed Game Hall, and all owners of the proposed gaming devices.
- (d) The applications for a Specific Use Permit and Business License shall be accompanied by a non-refundable payment in the form of cashier check or money order in such amount as provided in Exhibit A – Fee Schedule to this Code of Ordinances as amended from time to time.
- (e) In addition to the site plan required by Chapter 14, Section 19 of the Code of Ordinances, an applicant must submit a floor plan which displays the physical layout of the proposed Game Hall. The floor plan must at least at 1/8” = 1’ scale and must show:
  - (1) all means of ingress and egress;

- (2) the location of all walls and partitions;
  - (3) whether such walls or partitions extend from the floor to the ceiling or not, and if not the distance from the top of the wall or partition to the ceiling; and
  - (4) the location and intensity of all lighting fixtures.
- (f) An applicant shall, not later than the 10<sup>th</sup> day after filing of the required applications and payment of the required non-refundable fees, shall erect a sign on the property where the proposed Game Hall is to be located. The sign shall:
- (1) Face and be visible from the public roadways adjacent to the premises;
  - (2) Measure four feet by eight feet in size; and
  - (3) In clear type of no less than six inches in size state, in both English and Spanish, the following:

“A **GAME HALL** is proposed for this location. The City Commission will hold a Public Hearing on \_\_\_\_\_ (date). For more information, contact La Feria City Hall at 797-2261.”

Such sign shall be continuously maintained on the property for not less than 45 consecutive days prior to the date of such scheduled Public Hearing.

- (g) Applications for a Game Hall SUP, including initial and renewal applications, must be completed by the applicant under oath, subjecting the applicant to the applicable laws of perjury.

**Sec. 4.13.004 Location**

- (a) No Game Hall may be established or operate:
  - (1) In any zoning district other than as authorized by the applicable zoning regulations under this Code of Ordinances.
  - (2) Within six hundred sixty feet (660') of:
    - (A) A church, synagogue, mosque, temple or building used primarily for religious worship and related religious activities;
    - (B) A public or private educational facility or the grounds of such facility, including but not limited to a child day care facility of any type, nursery school, preschool, kindergarten, elementary school,

private school, intermediate school, junior high school, middle school, high school, vocational school, secondary school, continuation school, special education school, junior college, or university;

- (C) A boundary of any residential district as defined by Chapter 14 of this Code of Ordinances;
  - (D) A park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trail, swimming pool, reservoir, athletic field, basketball or tennis court, pedestrian or bicycle path, wilderness area, or other area;
  - (E) The property line of a lot devoted to residential use, whether classified by Chapter 14 of this Code of Ordinances as residential property or not; or
  - (F) An entertainment business or area, whether for profit or not, oriented primarily toward children or family entertainment;
- (3) Within five hundred feet (500') of any other Game Hall; or
  - (4) In the same building, structure, or portion thereof as any other Game Hall.
- (b) For the purpose of subsection (a) (2), measurement shall be made in a straight line, without regard to intervening structures or objects, from the closest point on the nearest exterior wall of the structure used as a part of the premises on which a Game Hall is conducted, to the closest point on the nearest property line of any of the premises described in subsection (a) (2).
  - (c) For the purposes of subsection (a)(3) of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the closest points on the nearest exterior walls of each structure in which each Game Hall is located.
  - (d) The presence of a city, county or other political subdivision boundary shall be irrelevant for the purposes of calculating and applying the distance requirements of this section.

#### **Sec. 4.13.004 Approval or Disapproval of the SUP Application**

- (a) In addition to the matters set forth in Article 14, Section 19 of this Code of Ordinances relating generally to special use applications, the City Commission may disapprove an SUP application for a Game Hall if it determines that the Game Hall constitutes a detriment to health, life, and property or the preservation

of good government, order, and security of the municipality and its inhabitants, including but not limited to the following factors:

- (1) failure to provide separate on premises handicap accessible sanitary facilities for men and women;
  - (2) delinquency in the payment of any tax, fee or assessment, including utility charges, by the business licensee or premises owner;
  - (3) delinquency in the payment of gaming device occupational taxes, amusement taxes, or other fees to the State of Texas, County of Cameron, or the City of La Feria by the business licensee, premises owner or owner of the gaming devices;
  - (4) conviction for a felony or a misdemeanor involving moral turpitude by the applicant, any owner, part owner, shareholder, officer, director, manager or any person with any financial interest in the game hall, the gaming devices, the premises, or any food concession;
  - (5) denial or termination of a similar license or permit by another governmental entity;
  - (6) admission to the premises being conditioned upon membership in a private club;
  - (7) the premises of a proposed Game Hall containing Level 1 Gaming Devices are licensed for either the sale or consumption of alcoholic beverages; or
  - (8) any failure to comply with any provision of this Article 4.13.
- (b) The City Commission reserves the right to include in each Game Hall SUP those terms and conditions that it believes are necessary or desirable to protect the public health, safety or welfare, including limitations on the hours of operation, number of gaming devices, licensee requirements, site requirements, and anything else the Commission deems to be in the best interest of the citizens of La Feria.

#### **Sec. 4.13.005 Operations**

(a) Occupational Tax

- (1) Each gaming device, whether Level 1 or Level 2, located within the City and operated by or available for operation by a retail patron is subject to annual occupational tax of \$15.00. Occupational taxes shall be paid prior to any gaming device being made available for operation by a retail patron and shall be pro-rated when applicable, based on the calendar year.

- (2) Any gaming device, whether Level 1 or Level 2, which is located in an area open to the public shall be presumed to be operated by, or available for operation by, a retail patron and subject to the City's annual \$15.00 occupational tax.
  - (3) The occupational tax is specific to each gaming device. Identification of the gaming device by serial number or other method approved by the City Manager and payment of the occupational tax is required when any new gaming device or devices are brought into the City.
- (b) Physical Facilities. In addition to complying with all other applicable laws and ordinances, each Game Hall must adhere to the following:
- (1) minimum general illumination of 20 foot-candles/200 lux and gaming device illumination of 60 foot-candles/600 lux;
  - (2) a non-smoking area available to patrons;
  - (3) seven foot (7') wide halls or pathways between gaming devices facing each other;
  - (4) three foot (3') distance between each gaming device;
  - (5) all doors and gates to the building and parking lot shall remain unlocked while the licensed premises are occupied by patrons or guests; and in the event the gate to the parking lot is locked after hours, a key or lock combination will be provided to the City's fire and police department;
  - (6) every Game Room shall have transparent unobstructed windows or open space on at least one (1) side so that the area is open to view by the general public passing by on a public street or using a corridor, lobby or other room to which the public has access and is admitted without charge; and no such view shall be obstructed by the use of drawn blinds, shades, partitions, tinting or other structures, equipment or obstructions; and
  - (7) no more than one hundred (100) Level 1 Gaming Devices may be operated in a Game Hall.
- (c) No person under the age of 18 years old is permitted to enter or remain on the premises of a Game Hall which contains a Level 1 gaming device.
- (d) No person in an intoxicated condition is permitted to enter or remain on the licensed premises of a Game Hall.

- (e) No loud or boisterous behavior either inside or outside the premises of a Game Hall by patrons or potential patrons shall be permitted.
- (f) Obscene material, as defined in Chapter 43, Section 43.24 of the Texas Penal Code, is prohibited and shall not be permitted to be sold, viewed, or be available for viewing or sale on the licensed premises of a Game Hall.
- (g) No Game Hall shall operate before 10:00 a.m. on any day or after 10:00 p.m. on Sunday through Thursday nights or after 11:59 p.m. on Friday and Saturday nights

**Sec. 4.13.006 Change in Ownership or Control**

- (a) A Game Hall SUP and Business License are non-transferable and are deemed automatically revoked without further action required by the City upon the transfer by any means, other than transfer upon death, of any interest in the operator of the Game Hall, owner of the gaming devices or owner of the premises upon which the Game Hall is located.
- (b) A permittee is obligated to report to the City any total or partial change in ownership or control of the business, premises, or gaming devices during the period of the SUP and Business License, within ten (10) days of such change in ownership or control.

**Sec. 4.13.007 SUP and Business License Renewal**

- (a) Game Hall SUPs and Game Hall Business Licenses expire not more than one (1) year, or such earlier time as specifically provided in the SUP order, from the effective date of the SUP order. The permittee is responsible for applying to renew the SUP and Business License no less than sixty (60) days prior to expiration of SUP and license.
- (b) Renewal procedures are identical to the original application process, including but not limited to the payment of all required fees; provided however, the requirements of Section 4.013.003(e) relating to signage shall not apply.

**Sec. 4.13.008 Grounds for Revocation of the SUP**

Any of the following circumstances shall serve as grounds for the City to revoke or cancel a Game Hall SUP:

- (a) any violation of City zoning, fire, health, safety, building, plumbing or electrical codes;
- (b) any violation of the terms and conditions of the SUP;

- (c) delinquency in the payment of any tax, fee or assessment, including utility charges, due to the City by the business licensee or owner of the premises;
- (d) delinquent payment of gaming device occupational taxes, amusement taxes, or other fees to the State of Texas, County of Cameron, or the City of La Feria;
- (e) conviction for a felony or a crime involving moral turpitude by the permittee, any owner, part owner, shareholder, officer, director, manager or any person with any financial interest in the game hall, the gaming devices, the premises, or any food concession;
- (f) an excess number of requests for police or other emergency response at the premises or excessive need for emergency response;
- (g) denial or termination of a similar license or permit by another governmental entity;
- (h) the consumption or sale of alcoholic beverages in the business or premises;
- (i) admission to the premises being conditioned upon membership in a private club;
- (j) any occasion where the doors to the premises are locked during business hours; or
- (k) any violation of any provision of this Article 4.13.

**Sec. 4.13.009 Revocation Procedures**

- (a) In the event any of the circumstances enumerated in Section 4.13.008 exist, the City Manager may immediately cancel and revoke such SUP and instruct the permittee to cease all activity at the premises for which the SUP was issued.
- (b) Such notice of cancellation and revocation shall be written and personally delivered to any person employed at the premises, posted on the front door of the premises, or mailed by certified mail, return receipt requested, to the permittee at the address shown on the most recent SUP application.
- (c) Any person whose SUP is revoked by the City Manager may appeal to the City Commission by filing a written notice of appeal with the City Manager within five (5) days of receipt of the cancellation notice. The written notice of appeal shall set forth with specificity all facts and reasons which the permittee asserts as grounds for withdrawing such cancellation.



- (d) If a written notice of appeal is not timely filed, the action of the City Manager shall be final on the sixth calendar day following delivery of such notice.
- (e) If a timely written notice of appeal is filed, it shall be heard by the City Commission at a public hearing during a regularly scheduled City Commission not less than ten (10) nor more than thirty (30) calendar days from the date the notice of appeal is received by the City Manager, unless the time for hearing is extended for good cause shown by either party or by mutual consent of the parties. In any event, written notice of the time, date, and place of the hearing shall be provided to the permittee at least seven (7) days prior to the scheduled date of such hearing.
- (f) After written notice of the appeal is filed, the cancellation of the SUP shall be stayed pending the decision on the appeal by the City Commission unless the City Manager files with the Mayor an affidavit to the effect that the continued operation of the game hall constitutes an immediate threat to the health, safety or morals of the public and specifying the grounds of such opinion. Should the Mayor, on the basis of such affidavit, determine that probable cause exists for such opinion; the Mayor shall order the SUP suspended pending the hearing before the City Commission. If the SUP is so suspended, all operations of the Game Hall during such suspension shall immediately cease until such time as reinstated by the City Commission.
- (g) At least three (3) days prior to the scheduled date of the hearing, the City Manager shall provide to permittee, and the permittee to the City Manager, a list of witnesses to be called by each party, and a written memorandum of the expected testimony of each witness.
- (h) At any hearing on an appeal held by the City Commission objecting to the cancellation of a SUP, the permittee shall be afforded the right to be present and to confront and cross-examine any witnesses adverse to the permittee. The permittee shall be permitted to offer witnesses in his or her own behalf. The permittee shall be entitled to be represented by legal counsel employed by him or her and may provide for a record to be made of the testimony at any such hearing at his or her own expense. All testimony given shall be under oath. The city staff shall be afforded like privileges as the permittee. The City Commission shall be the judge of the credibility of the witnesses and the weight to be given their testimony. The Mayor shall be the presiding officer at such hearing.
- (i) At the completion of the hearing, the City Commission shall vote whether the action of the City Manager should be sustained and the SUP cancelled, the action of the City Manager overruled and the SUP continue in full force and effect, or the action of the City Manager modified and the SUP suspended for a specific period of time and/or such other conditions as set by the Commission.

- (j) The provisions hereof providing for the appeal of a cancellation of a SUP by action of the City Manager do not apply to the denial of a renewal application by the City Commission.

**Sec. 4.13.010 Penalties**

- (a) The operation of a Game Hall without an SUP constitutes a violation of the City's Zoning Ordinance and the penalties as provided therein are applicable in addition to any additional penalties as provided herein.
- (b) The operation of a gaming device without all appropriate permits and licenses required herein shall constitute a Class C Misdemeanor, subject to a fine of up to Two Hundred Dollars (\$200.00). Each day such violation continues shall be a separate offense subject to separate penalty.
- (c) Any gaming device located at a premises that has not obtained a Game Hall SUP or for which the required Occupational Tax has not been paid and which is made available to any member of the public for operation for a fee shall be seized and the gaming device and all monies within the gaming device forfeited to the City of La Feria.
- (d) The presence at any Game Hall of a Gaming Device for which the annual occupational tax has not been paid or at a Game Hall for which a Game Hall SUP does not currently exist shall constitute a Class C Misdemeanor subject to a fine of up to Two Hundred Dollars (\$200.00) per Gaming Device. Each day such violation continues shall be a separate offense subject to a separate penalty. Such gaming devices shall be seized and the gaming device and all monies within the gaming device forfeited to the City of La Feria.
- (e) Any violation of this ordinance by an owner, operator, permittee, or licensee shall constitute grounds for revocation of the SUP. Further, a violation of any condition hereby imposed shall render any Gaming Device covered by this ordinance a public nuisance and subject to abatement by the city in the manner for abatement of public nuisances otherwise allowed by law.
- (f) The penalties provided herein shall be cumulative of other remedies provided by state law and the power of injunction as provided in Texas Local Government Code, Section 211.012 and as may be amended, may be exercised in enforcing this ordinance whether or not there has been a criminal complaint filed.

**Sec. 4.13.011 Transition Rules**

All specific use permit applications currently pending with the City relating to Game Halls shall be determined in accordance with the provisions of the La Feria Code of Ordinances and all related ordinances and regulations of the City as amended by this Ordinance 2011-10, including but not limited to the required fees; provided however, the

requirements relating to posting of signs shall be in compliance with the Code of Ordinances in effect as of the date of filing such application. Within ten (10) days of the effective date hereof, the city manager or his or her designated administrative official shall notify all pending applicants in writing of the amendments set forth herein by both certified mail, return receipt requested and first class mail. Such notification shall advise such applicant that the pending application will be deemed automatically withdrawn and all deposits related to such pending application returned to the applicant unless within ten (10) days of the date of such notification that such applicant files a written confirmation with the City indicating that such applicant desires to proceed on such specific use permit application under the provisions of the Code of Ordinances as amended by this Ordinance 2011-10 and submits all additional required deposits as provided herein.

**Sec. 4.14.011 Severability**

Should any part of this ordinance be finally determined to be invalid, such provision is hereby declared and found to be severable from the valid portions hereof and such valid provisions shall remain in full force and effect, notwithstanding the invalidity of any particular part or section hereof.

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6. The La FERIA Code of Ordinances, Chapter 14, Exhibit A, Section 22C is hereby amended in part as follows:
  - (19) Unclassified use: Where the proposed land use cannot be classified within the uses herein specified, the City Manager shall determine the specified use most closely related to the proposed use and the minimum requirements for the specified use so determined shall apply to the proposed use.
  - (20) Exceptions: Groups of uses requiring vehicle parking space may join in establishing group parking areas with capacity aggregating that required for each particular use. Where it can be established to the satisfaction of the City Manager that parking for two (2) specific uses occurs at alternating periods, the parking space requirements of the use requiring the greater number of spaces may be applied to both uses in a combined parking area. Such parking shall be within three hundred (300) feet of all uses to be served by such parking. Example: Church and professional office building.
  - (21) Game Halls: one (1) parking space for every two gaming devices or 200 square feet of gross floor area of the Game Hall, whichever is more.
  - (22) Sexually Oriented Businesses: one (1) parking space for every 200 square feet of gross floor area of the Sexually Oriented Business.
7. The La FERIA Code of Ordinances, Appendix A, Fee Schedule, is hereby amended in part as follows:

**Sec. A4.01.001 Occupational Licenses**

- (a) Licensing fees; trades and professions; new business: \$10.00 (one-time fee)

Business License (other than Sexually Oriented Business or Game Hall with Level 1 Gaming Device): \$10.00 (one-time fee)

Business License (Sexually Oriented Business or Game Hall with Level 1 Gaming Device): \$6,000.00 (annually)

Gaming Device Occupational Tax: \$15.00 per device (annually)

**Sec. A14.01.001 Zoning fees and charges**

- (a) Schedule of Fees:

Zoning change request: \$150.00

Specific Use Permit Application (other than Sexually Oriented Business or Game Hall with Level 1 Gaming Device): \$150.00

Specific Use Permit Application - Sexually Oriented Business or Game Hall with Level 1 Gaming Device: \$3,000.00

Zoning Board of Adjustment appeal: \$150.00

8. This Ordinance is effective immediately upon passage and approval by the City Commission.

**PASSED AND APPROVED THIS 12<sup>th</sup> DAY OF JULY 2011.**

**APPROVED:**



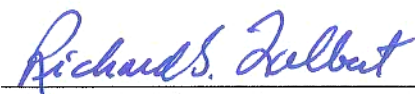
**STEVE BREWER, Mayor**

**ATTEST:**

**APPROVED AS TO FORM:**



**Olga Oberwetter  
City Secretary**



**Richard S. Talbert  
City Attorney**