

Ordinance No. 1-08.23

Passed OCTOBER 21

2008

YE-1

ORDINANCE NO. 1-08.23 amending the Village of Hartville Zoning Ordinances by adding an article for the regulation of amusement arcades within the Village.

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF HARTVILLE, STARK COUNTY, OHIO:

Section 1: Findings and Determinations. This Council finds and determines the following matters:

- (a) The Village desires to amend its zoning ordinances to include an article regulating amusement arcades in a reasonable and uniform manner in an effort to promote the health, safety, and welfare of citizens of the Village without restricting or denying access to recreational and skilled-based amusement machines.
- (b) A public hearing regarding the amendment was properly advertised and held on July 15, 2008.
- (c) All formal actions of this Council relating to the enactment of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law, including Section 121.22, Ohio Revised Code.

Section 2: Amendment of Zoning Ordinances. The Village's zoning ordinances are amended to include an article regulating amusement arcades. That article is attached as Exhibit A.

Section 3. Effective Date. This Ordinance will take effect and be in full force at the earliest period allowed by law.

Dated: October 21, 2008

Charles R. Tucker
MAYOR

ATTEST: *[Signature]*
FISCAL OFFICER

Article 21 - Amusement Arcades

PURPOSE AND FINDINGS

Purpose. *That the purpose of this Article is to establish reasonable and uniform regulations to minimize and control the negative effects of amusement arcades within the Village in order to promote the health, safety and welfare of the citizens of the Village. It is not the purpose or intent of this Article to restrict or deny access to recreational and skilled-based amusement machines.*

Findings. *The State of Ohio currently allows certain games of skill while games of chance are deemed illegal. Based upon experience within the State, 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 could be located throughout the Village 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 Village 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.

DEFINITIONS.

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

"Amusement arcade" *means any place of business where three or more amusement devices are located for the use or entertainment of persons patronizing the place of business.*

"Amusement device" *means any machine, device, or instrument which either may be activated for play by a third party, person or device, or upon the insertion of paper money, a coin, token, slug, or card, operates or may be operated as a game, contest, or test of skill, or other amusement of any kind. "Amusement device" does not include vending machines.*

"Game machine" *means any amusement device.*

"Good moral character" *means not having been convicted of a crime*

Involving moral turpitude within five years next preceding the date of the application.

"Malfunction" means failure to operate in accordance with design.

"Moral turpitude" means a conviction for a theft offense, fraud, falsification, drug offense, sex offense, an offense involving gambling, or a felony.

"Operator" means any individual, corporation, or other entity conducting the business of an amusement arcade.

"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.

"Playing area" means that portion of the premises where the primary use is for customer play on amusement devices.

"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:

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.

The outcome of an individual's play and participation is not determined largely or wholly by chance. For purposes of this Article, "largely or wholly" means at least by 51%.

The outcome of play during a game is not controlled by a person not actively participating in the game.

The machine only charges one price to play a task, game, play, contest, competition, or tournament.

All of the following apply to any machine that is operated as described in 21.2.10 of this section:

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 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.

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.

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.

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

OPERATION; LICENSE REQUIRED.

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.

No individual, corporation or other entity shall permit or cause to be permitted any 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 for that machine displayed thereon.

No individual, corporation, or other entity shall play any amusement device unless it is validly licensed by the Village.

Amusement Arcades are permitted in B-2 Business districts within the Village of Hartville. They may not be located within 1000 feet (one thousand feet) of a church, school, daycare, or entertainment center geared to teen age or younger customers.

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 Mayor 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 Mayor reasonably requires. The application shall be signed by the operator in whose name the Village licenses are to be issued as well as the owner of the real property.

CORPORATIONS, TRUSTS, AND PARTNERSHIPS.

If the operator filing the application for a license under this Article 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.

If the operator filing the application for a license is a partnership, the application shall list the names and addresses of all partners.

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.

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.

AFFIDAVIT REQUIRED.

The application for a license under this Article shall be submitted on forms provided by the Mayor 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.

LICENSE ISSUANCE; EFFECTIVE PERIOD; FEE.

The Mayor is hereby authorized to issue amusement arcade licenses and amusement and/or game machine licenses, 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:

The operator of the amusement arcade has properly filed the application required by this Article. The owner of the game machines and the real property owner shall sign the application.

A fee of two thousand dollars (\$2,000.00) per arcade location per year has been paid.

A fee of two hundred and fifty dollars (\$250.00) per machine per month has been paid in advance annually.

The operator or any employee of the operator has undergone a criminal background investigation and has not been convicted of a crime of moral turpitude within the past five years.

The Mayor has determined that no other reasonable cause exists to deny the issuance of such license.

Compliance with Section 21.9.

After operation begins, license fees are non-refundable.

LICENSE ADMINISTRATION.

It shall be the duty of the Mayor or his or her designee to administer the licensing regulations of this Article.

The Mayor 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 Article.

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 Article. Absent such substantiation, the decision of the Mayor shall be final subject to Section 21.15.

A license shall be issued within forty-five days of receipt of complete application and compliance with this Article.

No arcade license shall be issued until all individual amusement devices are licensed.

SUBMISSION OF MACHINE LIST FOR APPROVAL.

Each applicant, within forty-five days of submitting an application for an amusement arcade license, shall submit to the Mayor:

A written report listing each individual machine proposed for placement in the arcade.

All Machines will be examined by the State of Ohio Attorney General's office prior to the machine's placement for play. The computer boards will be secured and access to the computer boards

restricted. Machines that have been approved as legal games of skill pursuant to the Attorney General's Consent Order will be readily visible to law enforcement. An approved game will bear a seal on its side stating that it has been secured by the Attorney General. Access to the compartment containing the computer board will be sealed with evidence tape bearing the identifier "Sealed by Ohio Attorney General." If this tape is tampered with it will be obvious to law enforcement.

Games that do not bear the Ohio Attorney General's seal and do not have a sealed compartment have not been examined and determined to be games of skill pursuant to Ohio law and will not be permitted to be installed or used.

Any revisions to the State of Ohio Attorney General's Law Enforcement Advisory order dated May 22, 2007 or revisions thereof, on certain games of skill in Ohio are incorporated in this article by reference.

LICENSE VALIDITY AND DISPLAY.

Each license under this Article 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 Village 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.

OPERATION OF ARCADE.

No person under the age of 18 years shall be permitted on the premises.

No doors shall be locked preventing ingress or egress by members of the public while patrons are on the premises.

The operator shall adopt and enforce a no loitering policy on the premises.

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.

Each arcade shall be maintained so that it is handicap accessible throughout.

Each arcade opened after the adoption of this Article shall be smoke

free.

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.

Windows shall be clear and free of tint. No obstructions shall prevent observing at least 50% of the arcade games from outside the front door.

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 2 years from date of removal. Further, the record shall be available for inspection to the Mayor, his agents, and designees during regular business hours.

No arcade shall operate during the hours of 1:00 a.m. to 7:00 a.m.

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 \$200. This record shall be filed with the Clerk Treasurer for the Village of Hartsville at least quarterly. Further, such record shall be available for inspection to the Mayor, his agents, and designees during regular business hours for a period of two years.

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.

Each operator, employee, and agent thereof shall wear a full name identification nameplate during working hours.

All on premises food service shall comply with state and local health regulations.

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.

Each operator shall make available and have on display forms as prescribed by the Mayor for the recovery of losses pursuant to R.C. 3763.

No weapons, firearms, or dangerous ordnances are permitted on the premises.

LICENSE REVOCATION.

It shall be cause for revocation of any license required under this Article, 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 percent of the shareholders of an operator, or any other person to:

Operate an amusement arcade without a valid license.

Operate or permit to be operated an amusement device or game machine without a valid license for that machine or device.

Fall to display any license required by this Article.

Provide any false or misleading information in the material submitted during the application process.

Knowingly allow gambling on the premises;

Transfer or alter any license issued under this Article;

Fallure to comply with any provision of this Article;

Be convicted of a crime involving moral turptude, dishonesty, or any felony.

Permit any violation of (1) an ordinance or regulation of the Village; (2) regulation of the County, including but not limited to rules of the Stark County 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.

REVOCATION PROCESS.

The Mayor 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 personal service.

If the Village finds, subsequent to revocation, that the basis for the revocation has been corrected or abated, the applicant may

**apply for a new license if at least ninety days have elapsed since the date the revocation became effective. If a new license is granted fees previously paid before revocation will not be credited. Fees are non-refundable under any condition.
(21.7.1.3)**

TRANSFER OF LICENSE.

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.

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.

APPEAL.

Any licensee may appeal the decision of the Mayor 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 business days of notice of non-issuance, non-renewal or revocation, in writing, to the Licensing Appeal Board, c/o Mayor, 202 West Maple, PO Box 760, Hartsville, Ohio 44632 stating the reason for the appeal.

The Licensing Appeal Board shall consist of three residents of the Village, appointed by the Mayor, for terms of three years with staggered terms. Appeals shall be heard within ten business days of filing. Such Board shall determine whether the denial of any license under this Article was arbitrary, capricious, or unreasonable.

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.

INSPECTION. (Designated by the Mayor)

The Police Department shall, from time to time and at least four times a year, inspect that portion of the arcade business open to the public licensed hereunder in order to assess compliance with the provisions of this Article.

The Mayor shall, from time to time, request the Stark County 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 Article and relevant Health Department regulations.

That the Fire Marshall and Building Official shall, from time to time, and at least four times a year, 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.

NUISANCE.

A violation of this Article 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 Village of Hartville.

EFFECT OF PARTIAL INVALIDITY.

If any section, subsection, or clause of this Article shall be deemed to be unconstitutional or otherwise invalid, the validity and enforcement of the remaining sections, subsections, and clauses shall not be affected.

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 25% of such funds may be allocated to the Fire Department.