

CHAPTER 92



Memo

To: Eileen Cabanel
Town Council

From: Kristin Wardner

Date: November 16, 2017

Re: Chapter 92 – Amusement Devices Recommended Changes

Several months ago I had Keriann Roman from Drummond Woodsum review Chapter 92 – Amusement Devices. She found one section, 92-9 Location Restrictions, which she felt is likely unconstitutional in how it is worded and suggested alternate language.

Chapter 92, AMUSEMENT DEVICES

§ 92-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AMUSEMENT DEVICE -- Any machine which, upon the insertion of a coin, slug, token or similar object, may be operated by the public generally for use as a game, entertainment or amusement, whether or not registering a score. It shall include such devices as electronic games, pinball machines, skill ball, mechanical grab machines and all games, operations or transactions similar thereto under whatever name they may be designated. The term does not include vending machines in which are not incorporated gaming or amusement features, nor does the term include any coin-operated musical devices or rides.

PERSON, FIRM, CORPORATION or ASSOCIATION -- Includes any of those entities or combinations thereof owning an amusement device or maintaining an establishment where one or more amusement devices are available for use by the public or having control over such establishment.

§ 92-2. Number of devices restricted.

No person, firm, corporation or association shall display for public patronage or keep for public operation any amusement devices without first obtaining a license from the Town. Any firm, person, corporation or association may request permission to keep for public operation amusement devices by submitting an application to the Town Manager; however, the total number may not exceed 25 amusement devices. In accordance with RSA 31:41-d, the Town Manager shall have the authority to establish reasonable conditions for the issuance of a license as may be deemed appropriate.

§ 92-3. Gambling devices prohibited.

Nothing in this chapter shall in any way be construed to authorize, license or permit any gambling or gambling devices not permitted by state law.

§ 92-4. License denial.

The Town Manager may deny the application for a license herein for good cause shown or on the basis of previous violations by the applicant or their agents of the terms of this chapter. If the application is denied by the Town Manager, the applicant may file, within seven business days of the receipt of the Town Manager's decision, a written appeal to the Town Council for review of the application. The Town Council shall consider the appeal at the next available regular Town Council meeting.

§ 92-5. License term.

Any license issued pursuant to this chapter shall expire on the first day of July of each year and may be renewed only after compliance with the provisions of this chapter.

§ 92-6. License required.

The application for an amusement device license shall, in addition to such information as may be required by the Town Council or its designee, contain no less than the following:

- A. The name and address of the applicant and, if a firm, corporation, partnership or association, the principal officers thereof and their addresses.
- B. A full description of the premises, including the character of the business as carried on at such place.
- C. A general description of the type of device or devices to be licensed, including the number of proposed amusement devices and their location on said premises.

§ 92-7. Amusement device management plan.

Any application for an amusement device license shall contain a management plan containing at least the following:

- A. The actual hours of operation.
- B. The number of qualified employees to be present at all times.
- C. A plan to control loitering and bicycle/motor vehicle parking in the vicinity of the premises.
- D. A description of proposed operations to show proper control of noise, glare and overcrowding.
- E. Provision for a designated area within the establishment where all amusement devices shall be located.

§ 92-8. License fee.

The applicant, before being granted a license, shall pay a license fee of \$50 per year or any part thereof for each device used or played or exhibited for use or play. All license fees shall be payable in advance. In no case shall any portion of the license fee be repaid to the licensee.

§ 92-9. Location restrictions.

~~No license shall be issued for operation of an amusement device within 500 feet of any school, church or youth activity center.~~ All amusement devices shall be kept and placed in plain view of any person or persons who may frequent or be in any place of business where such devices are kept or used.

[§ 92-10. Operation by minors prohibited; exception]

No person shall permit a person under 16 years of age to play or operate any amusement game of chance as defined in this article; provided, however, that, the provisions of this section shall not apply to any person under 16 years of age accompanied by his or her parent, guardian or other suitable adult person having care and custody of such minor.]

§ 92-[11]10. Transfer of license.

A license shall not be transferable from person to person, nor place to place, and shall be usable only at the place and by the person designated on the license.

§ 92-[11.1]10.1. Prohibited practices.

- A. No person shall be awarded or receive any monetary prizes in connection with the use of an amusement device.
- B. Consumption of alcoholic beverages in the designated amusement device area is prohibited.

§ 92-[11.2]10.2. Inspections.

The ~~Chief of Police~~ **[Chief]** or his designee shall inspect or cause the inspection of any establishment, place or building in which any amusement device or devices are operated or set up for operation and to inspect, investigate and test such devices as often as reasonably necessary, but no less than once a year, to secure compliance with any chapter provision or to detect violations thereof. It shall be the duty of the licensee or the person in charge of the premises to be inspected to admit the ~~Chief of Police~~ **[Chief]** or his designee for the purpose of making the inspection at any reasonable time that admission is requested.

§ 92-[12]11. Violations and penalties.

Any person, firm, corporation or association found to have violated this chapter shall be guilty of a violation and, upon conviction thereof, shall be subject to a penalty not to exceed \$1,000.

§ 92-[13]12. Revocation or suspension of license.

A license issued under the provisions of this chapter may be revoked or suspended upon determination that a violation of this chapter has been committed by the license holder, his agent or employee. Such revocation or suspension shall be carried out by the Town Manager only after due notice and hearing.

§ 92-[14]13. Waiver of License

The Town Manager may, at his/her sole discretion, waive some or all of the provisions this ordinance.

§ 92-[15]14. Severability.

Each separate provision of this chapter shall be deemed independent of all other provisions herein, and it is further ordained that if any of the provisions of this chapter are found to be invalid by a court of competent jurisdiction, all other provisions thereof shall remain valid and enforceable.

§ 92-[16]15. Effective date and duration.

(This chapter originally became effective 7/1/1993; Amended by the Merrimack Town Council 12/3/2009; 5/24/2012)

Authenticated:

Nancy M. Harrington, Town Council Chair

Date

Diane Trippett, Town Clerk / Tax Collector

Date