ORDINANCE NO. 2057

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS AMENDING ORDINANCE NO. 1373 – CHAPTER 5, BUSINESS REGULATIONS, SECTION 9: DANCE AND GAME HALLS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS THAT:

SECTION I.

That Chapter 5, Business Regulations, Section 9: Dance and Game Halls shall be amended as follows:

Section 9. DANCE HALLS, GAME HALLS and POOL HALLS

1. DEFINITIONS

In this section:

(1) Dance Hall means any place or premises where dancing by patrons or customers is permitted or dance or similar live performance is presented to the public.

(2) Game Hall means any place or premises where facilities are provided for the playing of any coin-operated game or device of amusement or skill and/or any game of cards, dice, dominoes or other game requiring special equipment for the playing thereof.

(3) Pool Hall means any place or premises where one or more pool or billiard tables are located and used for the playing of pool, billiards, snooker, or similar games and for which a fee is charged, either directly or indirectly, either by means of a general admission fee, membership fee, dues or the like or by a vending fee placed on or about the table.

(4) Reserved.

(5) Premises means any premises requiring a permit under the terms of this section and shall include the grounds as well as all the buildings and vehicles as well as any adjacent premises either directly or indirectly under the control of the Permitee.

(6) Permit means a permit to operate a Dance Hall, Game Hall or Pool Hall.

(7) Permitee means a person in whose name a permit to operate a dance hall, game hall or pool hall has been issued, as well as the individual listed as an applicant on the application for a dance hall, game hall or pool hall license.

(8) Person means an individual, partnership, corporation, association or other legal entity.

(9) Private Club means an association of persons for the promotion of some common object which operates not for a profit a place for the accommodation of its members and guests only.

(10) School means a public or private elementary or secondary school.

A. PERMIT REQUIRED

(1) A person commits an offense if he operates a dance hall, game hall or pool hall without a permit.

(2) An application for a permit must be made on a form provided by the City Secretary. The applicant must be qualified according to the provisions of this section.

(3) A person who wishes to operate a dance hall, game hall or pool hall must sign the application for a permit as applicant. If a person who wishes to operate a dance hall, game hall or pool hall is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a permit as an applicant. Each applicant will be considered a permitee.

(4) It is a defense to prosecution under this section if the alleged activity is conducted at:

(1) a private residence from which the general public is excluded;

(2) a place owned by the federal, state or local government;

(3) a public or private elementary school, secondary school, college or university; or

(4) a place owned by a religious organization.

B. LOCATION OF DANCE HALLS, GAME HALLS AND POOL HALLS

A person commits an offense if he operates or causes to be operated a dance hall, game hall or pool hall within 1,000 feet of:

(1) a church;

(2) a public or private elementary or secondary school;

(3) the boundary of an area zoned as residential or historic according to the zoning map of the City of Terrell;

(4) a public park;

(5) a private club; or

(6) another dance hall, game hall or pool hall.

C. EXEMPTION FROM LOCATIONAL RESTRICTIONS FOR DANCE HALLS, GAME HALLS AND POOL HALLS

(1) If the City Secretary or Chief of Police denies the issuance of a dance hall, game hall or pool hall permit to an applicant because the proposed location is in violation of sub-section B. of this section, then the applicant may, not later than 10 calendar days after receiving notice of the denial, file with the City Secretary a written request for an exemption from the locational restrictions of sub-section B of this section.

(2) If a written request is filed within the 10-day limit, the City Secretary shall set a date for a hearing before the City Council within 60 days from the date the written request is received.

(3) After a hearing, the City Council may, in its discretion, grant an exemption from the locational restrictions of sub-section B of this section if it finds that:

(1) the location of the proposed dance hall, game hall or pool hall will not have a detrimental effect on the nearby property or be contrary to the public safety or welfare;

(2) the location of the proposed dance hall, game hall or pool hall will not downgrade the property value or quality of life in any adjacent

area or encourage the development of urban blight; and

(3) all other applicable provisions of this section will be observed.

(4) The City Council shall grant or deny the exemption by majority vote. Failure to reach a majority vote will result in denial of the exemption. Any dispute of fact must be decided on the basis of a preponderance of the evidence. The decision of the City Council is final.

(5) If the City Council grants the exemption, the exemption is valid for the one year period of the permit. Upon expiration of the permit, it will be necessary for the applicant to apply and receive another exemption for any subsequent permit.

(6) If the City Council denies the exemption, the applicant may not re-apply for a period of one-year after the date of denial.

(7) The grant of an exemption from the locational restrictions of sub-section B of this Section does not exempt the applicant from any other provision of this section.

E. <u>ISSUANCE OF PERMIT</u>

The city secretary shall approve issuance of a permit to an applicant within 30 days after receipt of an application unless the chief of police finds one or more of the following to be true:

(1) An applicant or an employee is under 21 years of age;

(2) An applicant or an applicant's spouse is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon real and/or personal property;

(3) An applicant or an employee is physically or mentally incapacitated to an extent that the applicant cannot operate a dance hall, game hall or pool hall;

(4) An applicant, an applicant's spouse or an employee has been convicted of a violation of a provision of this section within a period of two years preceding the application;

(5) Any fee required by this section has not been paid;

(6) An applicant, an applicant's spouse or an employee has been convicted of

a felony as defined in section 1.07 of the Texas Penal Code within a period of five years preceding the application;

(7) An applicant, an applicant's spouse or an employee has been convicted any of the following offenses as described in Chapter 43 of the Texas Penal Code within a period of five years preceding the application:

(1) prostitution;

(2) promotion of prostitution;

(3) aggravated promotion of prostitution;

(4) compelling prostitution;

(5) obscenity;

(6) sale distribution or display of harmful material to minor;

(7) sexual performance by a child; or

(8) possession of child pornography.

(9) An applicant, an applicant's spouse or an employee has been convicted any of the following offenses as described in Chapter 21 of the Texas Penal Code within a period of five years preceding the application:

(1) public lewdness;

(2) indecent exposure; or

(3) indecency with a child.

(10) An applicant or an employee has been employed in a dance hall, game hall or pool hall in a managerial capacity within the proceeding 12 months and has demonstrated an inability to operate or manage a dance hall, game hall or pool hall premises in a peaceful and law abiding manner, thus necessitating action by law enforcement officers.

(11) An applicant or an employee has, by policy or conduct, discouraged or denied use or access to a dance hall, game hall or pool hall to any individual on the basis of race, sex, or national origin.

(12) The fact that a conviction is being appealed has no effect on the

disqualification of the applicant, the applicant's spouse or an employee under sub-sections E(2) through E(9) of this section.

(13) The city secretary, upon approving issuance of a dance, game or pool hall permit shall sent the applicant, by certified mail, return receipt requested, written notice of that action and state where the applicant must pay the permit fee and obtain the permit. The city secretary's approval of the issuance of a permit does not authorize the applicant to operate a dance hall, game hall or pool hall until the applicant has paid all fees required by this section and obtained possession of the permit.

F. <u>FEES</u>

(1) The following nonrefundable fees will be charged for each permit issued under the terms of this chapter:

(1) For a dance hall, the initial permit fee is $400.00
The annual permit renewal fee is $200.00

(2) For a game hall, the initial permit fee is $400.00
The annual permit renewal fee is $200.00

(3) For a pool hall, the initial permit fee is $400.00
The annual permit renewal fee is $200.00

(2) In addition to the fees required by sub-section F (1), an applicant shall, at the time of making application, pay a nonrefundable application fee of $200.00 for the city to conduct an inspection of the proposed premises together with the surrounding area to insure compliance with all applicable health and safety codes and ordinances and to insure compliance with the locational restrictions set forth in sub-section C of this of this section.

G. <u>HOURS OF OPERATION</u>

(1) All premises permitted under this section including, but not limited to, all premises licensed by the Texas Alcohol Beverage Commission shall be limited to the hours of operation set out in the Texas Alcohol Beverage Code. Currently these hours are:

(1) Sundays - the premises shall be closed promptly at 1:15 A.M. and vacated by all persons promptly at 1:30 A.M. The premises shall remain closed until 12:00 Noon.

(2) All other days - the premises shall be closed promptly at 12:15 A.M. and vacated by all persons promptly at 12:30 A.M. The premises shall remain closed until 10:00 A.M.

(2) All premises permitted under this section that have been granted a late hours permit by the Texas Alcohol Beverage Commission shall have the following closing hours as currently set out in the Texas Alcoholic Beverage Code:

The premises shall be closed promptly at 2:15 A.M. and be vacated by all persons promptly at 2:30 A.M. on any day.

H. <u>INSPECTION</u>

(1) Representatives of the police, fire and municipal development departments may inspect the premises of a dance hall, game hall or pool hall, for the purpose of insuring compliance with the law, at any time it is open for business or occupied.

(2) A person who operates a dance hall, game hall or pool hall or a person designated as the dance hall, game hall or pool hall supervisor commits an offense if he refuses to permit a lawful inspection of the premises of a dance hall, game hall or pool hall by a representative of the police department, the fire department, or the municipal development department at any time it is open for business or occupied.

1. <u>DANCE HALL, GAME HALL OR POOL HALL SUPERVISOR</u>

(1) Upon the approval of a permit by the city secretary, a person who operates a dance hall, game hall or pool hall must designate a person as dance hall, game hall or pool hall supervisor. The designation must include the individual's full name, address, telephone number, drivers license number, and a photo ID.

(2) If, at any time during the period of the permit, a person who operates a dance hall, game hall or pool hall wishes to designate a different individual as dance hall, game hall or pool hall supervisor, it will be necessary for the designation procedure described in sub-section (10) to be followed.

(3) A person designated as dance hall, game hall or pool hall supervisor must remain on the premises of the dance hall, game hall or pool hall at all

times during operating hours to insure that all activities are conducted in a safe and orderly manner.

10. PERSONS UNDER 18 PROHIBITED; SIGN TO BE DISPLAYED

(1) No person under the age of 18 years shall be permitted on the premises of any dance hall or pool hall unless accompanied by a parent or adult guardian.

(2) Any person holding a game hall permit shall prominently display on the premises a sign reading as follows:

"PLAY BY MINORS UNDER EIGHTEEN YEARS OF AGE NOT ALLOWED BETWEEN THE HOURS OF 11:00 P.M. AND 11:00 A.M. UNLESS ACCOMPANIED BY PARENT OR ADULT GUARDIAN".

(3) A person who operates a dance hall or pool hall or a person designated as a dance hall or pool hall supervisor commits an offense if he knowingly permits a person under 18 years of age to enter or remain on the premises unless accompanied by a parent or adult guardian.

(4) A person who operates a game hall or a person designated as a game hall supervisor commits an offense if he knowingly permits a person under 18 years of age to enter and remain on the premises between the hours of 11:00 P.M. and 11:00 A.M. unless accompanied by a parent or adult guardian.

11. EXPIRATION OF PERMIT

(1) A permit for a dance hall, game hall or pool hall expires one year from the date of issuance. A permit may be renewed only by making application as provided in sub-section A and B. Application for renewal should be made at least 30 days before the expiration date. When made less than 30 days before the expiration date, the expiration of the permit will not be affected by the pendency of the application.

(2) When the city secretary denies renewal of a permit, the applicant may not be issued any dance hall, game hall or pool hall permit for one year from the date the denial becomes final. If, subsequent to denial, the city secretary finds that the basis for denial of the renewal permit has been corrected or abated, the applicant may be granted a permit if at least 90 days have elapsed since the denial became final.

12. SUSPENSION

The city secretary and/or the chief of police shall, subject to the provisions of sub-section N, suspend a dance hall, game hall or pool hall permit for a period of time not exceeding 30 days if the city secretary and/or the chief of police determines that a permitee or an employee of a permitee has:

(1) violated sub-section E of this section;

(2) engaged in excessive use of alcoholic beverages on the premises;

(3) refused to allow an inspection of the premises as authorized in this section;

(4) knowingly permitted gambling by any person on the premises;

(5) knowingly permitted an intoxicated person to remain on the premises;

(6) demonstrated an inability to operate or manage a dance hall, game hall or pool hall in a peaceful and law abiding manner, thus necessitating action by law enforcement officers.

13. REVOCATION

(1) The city secretary and/or the chief of police shall, subject to the provisions of sub-section N, revoke a permit if a cause of suspension as specified in sub-section L occurs and the permit has been suspended within the preceding 12 months.

(2) The city secretary and or the chief of police shall, subject to the provisions of sub-section N, revoke a permit if the city secretary and/or the chief of police determines that one or more of the following is true:

(1) A permitee has given false or misleading information in the material submitted to the chief of police and/or city secretary during the application process;

(2) A permitee or employee is unable to lawfully operate the dance, game or pool hall because of physical or mental impairment;

(3) A permitee or employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(4) a permitee or employee has knowingly allowed prostitution on the

premises;

(5) a permitee is convicted of or is under indictment for any felony offense or any misdemeanor offense listed in sub-section D of this section.

(3) The fact that a conviction is being appealed shall have no effect on the revocation of the permit.

(4) When the city secretary and/or the chief of police revokes a permit, the revocation will continue for one year after the revocation becomes final. If, subsequent to revocation, the chief of police finds that the basis for the revocation action has been corrected or abated, the applicant may be granted a permit if at least 90 days have elapsed since the revocation became final.

14. APPEALS

If the city secretary denies the issuance or renewal of a permit or suspends or revokes a permit, the city secretary shall send to the applicant or permitee, by certified mail, return receipt requested, written notice of the action and the right to an appeal. The aggrieved party may appeal the decision of the city secretary and/or the chief of police to the City Council. The filing of an appeal and the posting of a cash bond in the amount of $500 shall stay the action of the city secretary and/or the chief of police in suspending or revoking a permit until the City Council makes a final decision. The City Council shall hear the appeal within 60 days of filing. If, after a hearing, the City Council denies the appeal or in the event the aggrieved party fails to fully prosecute the requested appeal to a conclusion, the $500 cash bond previously posted shall be forfeited as costs and remainder of any suspension or revocation shall be fully implemented. The decision of the City Council shall be final.

O. TRANSFER OR ASSIGNMENT OF PERMIT

A permitee shall not transfer or assign a permit to another nor shall a permitee operate a dance hall, game hall or pool hall under the authority of a permit at any place other than the address designated in the application.

15. PENALTY

Any person who violates any provision of this section, upon conviction, is punishable by a fine not to exceed $500.00 per day for each occurrence.

SECTION II.

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

SECTION III.

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

SECTION IV.

This Ordinance will take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

PASSED AND APPROVED ON THIS 6TH DAY OF MARCH, 2001
PASSED AND ADOPTED ON THIS 20TH DAY OF MARCH, 2001

APPROVED:

_____
HENRY C. MADGWICK, SR., MAYOR

ATTEST:

_____
JOHN ROUNSAVALL, CITY SECRETARY

APPROVED AS TO FORM:

_____
MARY GAYLE RAMSEY, CITY ATTORNEY