

FORT BEND COUNTY GAME ROOM REGULATIONS

Adopted by Commissioners Court:
Amended:

Section 1: Generally

WHEREAS, the Legislature of the State of Texas has amended Chapter 234 of the Texas Local Government Code, authorizing certain counties, including Fort Bend County, to regulate Game Rooms; and,

WHEREAS, Fort Bend County desires to reduce the adverse secondary effects of illicit Game Rooms in Fort Bend County; and

WHEREAS, illicit Game Rooms, as a category of commercial uses, are associated with a wide variety of adverse secondary effects, including but not limited to personal and property crimes, gambling offenses, weapon offenses, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, and litter; and

WHEREAS, Game Rooms should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other Game Rooms, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of Game Rooms in one area; and

WHEREAS, Game Rooms should have restricted hours of operation due to the increase of personal crimes such as assaults, robberies, and homicides between the hours of 10 p.m. and 8 a.m.; and

WHEREAS each of the foregoing negative secondary effects constitutes a harm to the residents of Fort Bend County which the County has a substantial governmental interest in preventing and abating;

This substantial government interest in preventing secondary effects, which is Fort Bend County's rationale for these Regulations, exists independent of any comparative analysis between legal Game Rooms and illicit Game Rooms. Fort Bend County's interests in regulating Game rooms extend to preventing future secondary effects of either current or future Game Rooms that may locate in Fort Bend County.

THEREFORE, FORT BEND COUNTY COMMISSIONERS COURT ADOPTS THE FOLLOWING REGULATIONS:

1.1 Authority to Regulate

- (a) These Regulations are promulgated pursuant to and in conformity with Chapter 234 of the Texas Local Government Code, as amended by SB 1210, 84th Legislature, Regular Session, which states that the commissioners court of a county with a population of 550,000 or more and is adjacent to a county that has a population of four million or more; by order may regulate the operation of Game Rooms to promote the public health, safety, and welfare, according to Section 231.133 of the Texas Local Government Code.

- (b) It is the purpose of the Fort Bend County Commissioners Court to exercise its police power, as established under Chapter 234 of the Texas Local Government Code to establish reasonable and uniform regulation of Game Rooms to promote the public health, safety, and welfare and to prohibit business activities which merely serve as a front for criminal activities, including but not limited to gambling and tax evasion.
- (c) These Regulations do not legalize anything prohibited under the Texas Penal Code or any other law or regulation.

1.2 Administration

- (a) The Fort Bend County Commissioners Court hereby designates and directs any law enforcement agency to investigate for violations of these Regulations. Any Peace Officer certified by the State of Texas may enforce these Regulations.
- (b) Under Section 234.138 of the Texas Local Government Code, as amended, a person commits an offense if the person intentionally or knowingly operates a Game Room in violation of a regulation adopted under Section 234.133. An offense under this Section is a Class A misdemeanor.
- (c) In accordance with Section 234.133 of the Texas Local Government Code, the State of Texas has granted the Fort Bend County Commissioners Court authority to promote public health, safety, and welfare.
- (d) Except as provided in Subsection 1.2(e), the Commissioners Court designates the Fort Bend County Sheriff as Game Room Permit Administrator for Fort Bend County. The Fort Bend County Sheriff shall supervise, control, and operate the Permit Office. The Fort Bend County Sheriff shall investigate, deny, issue, attach conditions to, administratively suspend, or revoke Game Room permits pursuant to these Regulations and any applicable state law.
- (e) The Commissioners Court allows incorporated cities or towns in Fort Bend County that have executed interlocal agreements with Fort Bend County to designate their own Game Room Permit Administrator. The Game Room Permit Administrator shall supervise, control, and operate the Permit Office. The Game Room Permit Administrator shall investigate, deny, issue, attach conditions to, administratively suspend, or revoke Game Room permits pursuant to these Regulations and any applicable state law.

1.3 Area Covered by Regulations

These Regulations apply to enterprises located in Fort Bend County, Texas.

1.4 Definitions

As used in these Regulations:

- (a) **“Game Room”** means a for-profit business located in a building or place that contains six (6) or more:
- (1) Amusement Redemption Machines; or,
 - (2) Mechanical Games of Chance
- (b)
- (1) **“Amusement Redemption Machine”** means any electronic, electromechanical, or mechanical contrivance designed, made, and adopted for bona fide amusement purposes that 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 amount is less.
 - (2) **“Mechanical Game of Chance”** means any electronic, electromechanical, or mechanical contrivances that, for consideration, afford a player the opportunity to obtain a prize or thing of value, the award of which is determined solely or partially by chance, *regardless* of whether the contrivance is designed, made, or adopted solely for bona fide amusement purposes.
- (c) **“Game Room Owner”** means a person who:
- (1) Has an Ownership interest in, or receives the profits from, a Game Room or an Amusement Redemption Machine located in a Game Room;
 - (2) Is a partner, director, or officer of a business, company, or corporation that has an Ownership interest in a Game Room or in an Amusement Redemption machine located in a Game Room;
 - (3) Is a shareholder that holds more than ten (10) percent of the outstanding shares of a business, company, or corporation that has an Ownership interest in a Game Room or in an Amusement Redemption Machine located in a Game Room;
 - (4) Has been issued by the county clerk an assumed name certificate for a business that owns a Game Room or an Amusement Redemption Machine located in a Game Room;
 - (5) Signs a lease for a Game Room;
 - (6) Opens an account for utilities for a Game Room;
 - (7) Receives a certificate of occupancy or certificate of compliance for a Game Room;
 - (8) Pays for advertising for a Game Room;
 - (9) Signs an alarm permit for a Game Room; or,
 - (10) Signs as Applicant requesting a Game Room permit inspection.
- (d) **“Interlocal Agreement”** means a cooperative agreement between Fort Bend County and an incorporated municipality as described in Chapter 234 of the Texas Local Government Code.

- (e) To “**Operate a Game Room**” means to be open for business, open to the public, having or inviting customers to use machines described in Subsection 1.4(a)-(b) located within the Game Room, or otherwise being used for the purposes of display and play of machines described in Subsection 1.4(a)-(b) located within the Game Room.
- (f) “**Operator**” means an individual who:
- (1) Operates a cash register, cash drawer, or other depository on the premises of a Game Room or of a business where the money earned or the records of credit card transactions or other credit transactions generated in any manner by the operation of a Game Room or activities conducted in a Game Room are kept;
 - (2) Displays, delivers, or provides to a customer of a Game Room; merchandise, goods, entertainment, or other services offered on the premises of a Game Room;
 - (3) Takes orders from a customer of a Game Room for merchandise, goods, entertainment, or other services offered on the premises of a Game Room;
 - (4) Acts as a door attendant to regulate entry of customers or other persons into a Game Room; or
 - (5) Supervises or manages other persons at a Game Room in the performance of an activity listed in this Subsection.
- (g) “**Applicant**” means a person, Owner, corporation, partnership, or other business entity required to, or who has submitted a Game Room application.
- (h) “**Sheriff**” means the Sheriff of Fort Bend County or the Sheriff’s designated agent.
- (i) “**Game Room Permit Administrator**” means the Sheriff of Fort Bend County; the Sheriff’s designated agent, or the designated official for a cooperating municipality.
- (j) “**Current Annual Fire Inspection Report**” means a fire inspection report issued by the Fort Bend County Fire Marshal or similar inspection by the department having competent jurisdiction within the incorporated area of the county within ninety (90) days immediately preceding the date of any application for operation of a Game Room or renewal of a Game Room permit.
- (k) “**Peace Officer**” means an individual as described in Article 2.12 of the Texas Code of Criminal Procedure.
- (l) “**Person**” means an individual, partnership, corporation, association or other legal entity.
- (m) “**Public Building**” means a building used by Federal, State, or local government that is open to the general public.
- (n) “**Regulation**” means Regulations of Fort Bend County, Texas, for the operation of Game Rooms.

- (o) **“School”** means a facility, including all attached playgrounds, dormitories, stadiums and other appurtenances that are part of the facility, used for the primary purpose of instruction or education, including primary and secondary schools, colleges and universities, both public and private.
- (p) **“Gambling Device”** means a device described in Article 47.01(4) (a) of the Texas Penal Code.
- (q) **“Fire Safety Official”** means the Fort Bend County Fire Marshal or the department official having competent jurisdiction within the incorporated area of the county to conduct a fire and life safety inspection and issue a certificate of compliance with all County fire codes.
- (r) **“Notice”** is deemed effective on the date written notice to an Applicant, permit holder or agent thereof is hand-delivered or posted on the front exterior door of the Game Room, or upon receipt by certified mail.
- (s) **“Minor”** means anyone who is less than 18 years old.

SECTION 2: PERMIT

2.1 Application

- (a) It shall be unlawful for an Owner or Operator of a Game Room to Operate a Game Room, use a Game Room, or maintain any Game Room in Fort Bend County that has not been issued a permit pursuant to these Regulations. A person who violates this Subsection shall be assessed a civil penalty not to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (b) A completed application shall be filed with the Game Room Permit Administrator. The application shall be filed on the form provided by the Game Room Permit Administrator or on an accurate and legible copy of that form. A copy of the application can be obtained from the Sheriff's Office website and other County websites _____ or from the website or other source as determined by the Game Room Permit Administrator of a cooperating municipality.
 - (1) The Applicant shall apply in person. The Applicant is required to be an Owner of the Game Room. The Game Room Permit Administrator will establish the hours when an application can be submitted.
 - (2) The Game Room Permit Administrator shall provide the fee schedule on any Permit Office website with the application form. This fee shall not exceed the annual permit fee limit of \$1,000 as established by the Commissioner's Court. The application fee shall be attached to the application form.

- (3) Incomplete applications will not be accepted. Once a complete application has been submitted, the application process will begin.
 - (4) A receipt shall be hand delivered or sent by certified mail to the Applicant within fourteen (14) days of submission of a complete application and payment of the application fee to the Game Room Permit Administrator. A receipt showing payment of the application fee is NOT a permit to operate a Game Room.
 - (5) Once a complete application has been received, the Game Room Permit Administrator will conduct up to three (3) inspections of the Applicant's proposed Game Room to ensure compliance with these Regulations. The Applicant must be present in person during these inspections.
 - a. After the initial inspection, the Applicant will be informed of what corrections must be made to the proposed Game Room to comply with these Regulations.
 - b. A re-inspection will be performed and the Applicant will again be informed of what corrections must be made to the proposed Game Room to comply with these Regulations.
 - c. If after the third and final inspection the Applicant's proposed Game Room fails to comply with these Regulations, the Game Room Permit Administrator shall deny the application.
 - d. If the proposed Game Room passes any of these three inspections, the Game Room Permit Administrator will approve the application.
 - (6) The Applicant has sixty (60) days from the initial inspection to complete the inspection process. Failure to complete the inspection process within these sixty (60) days will result in denial of the application.
 - (7) Failure to provide any information required by this Section or a determination by the Game Room Permit Administrator that inaccurate, erroneous, or incomplete information has been submitted will be grounds for denial or revocation of the application.
- (c) In municipalities which have elected to adopt the Fort Bend County Game Room Regulations, and where the Fort Bend County Commissioner's Court has approved an inter-local agreement between the municipality and the county, the municipality shall designate an entity to receive and process Game Room applications. The municipality shall adopt a common operating procedure with requirements and processes reasonably similar to those set out by these

Regulations. The municipality shall provide the application along with a description of the application and inspection process on their municipality's website.

- (d) Each complete application shall be accompanied by:
- (1) A current annual inspection report from the Fire Marshal's Office showing full compliance with all Fire Safety Codes;
 - (2) A copy of the certification of compliance with all life and safety codes issued by the Fire Marshal as appropriate for the proposed Game Room;
 - (3) A diagram or floor plan to include designed occupancy load, prepared by a licensed architect or engineer and approved by the entity with competent jurisdiction;
 - (4) A true and correct copy of the assumed name certificate filed in the office of the Fort Bend County Clerk, bearing the file mark or stamp that evidences its filing, if the Game Room will be operating under an assumed name;
 - (5) A copy of the formative legal documents for the applicable legal entity, e.g., the Articles of Incorporation;
 - (6) A non-refundable application fee of \$1,000, the amount established by the Fort Bend County Commissioners Court;
 - (7) A copy of the Applicant's government-issued photo identification;
 - (8) Proof as described in Subsection 3.13 that the proposed enterprise is exempt from the requirement to have a sign stating "Game Room" as set forth by Subsection 3.2 of these Regulations;
 - (9) Proof as described in Subsection 3.13 that the proposed enterprise is exempt from the requirement to have transparent, uncovered windows and doors set forth by Subsection 3.4 of these Regulations;
 - (10) Proof as described in Subsection 3.13 that the proposed enterprise is exempt from the Hours of Operation restrictions as set forth by Subsection 3.5 of these Regulations;
 - (11) Proof as required in Subsection 3.9(e) that the proposed enterprise is exempt from or will be located in compliance with the distance requirements set forth by Subsection 3.9 of these Regulations;

- (12) A current lease agreement for the Game Room premises with the Applicant listed as the Game Room Owner and premises lessee or proof of property Ownership;
 - (13) A list of Owner(s) of the business with their government-issued identification numbers and incorporation papers as applicable;
 - (14) *(reserved for future use)*
 - (15) The Game Room permit Applicant's Federal Employer Identification Number (EIN);
 - (16) A certification that neither the Applicant nor the Owners of the Game Room have been convicted of any level of any of the offenses listed in Subsection 2.2(b) (1); and,
 - (17) A certification that all of the contents of the application and the above presented materials are true under the penalty of perjury and penalty of Section 37.10 of the Texas Penal Code.
- (e) A Game Room application will be rejected upon failure to produce all documents required in Subsection 2.1(d), except for the exemptions listed in Subsection 2.1(d) (8)-(11). Failure to provide the proof required by Subsection 2.1(d) (8)-(11) will result in denial of the specific exemption described in that particular Subsection.
- (f) Upon proof that the Applicant continuously Owned and Operated the Game Room at the same location and under the same name prior to September 8, 2015, an existing Game Room may continue to operate during the pendency of an application provided a completed permit application was turned in by October 31, 2015. ALL OTHER GAMES ROOMS NOT IN OPERATION BEFORE SEPTEMBER 8, 2015, SHALL NOT OPERATE DURING THE PENDENCY OF THE APPLICATION AND UNTIL THE GAME ROOM APPLICATION IS APPROVED AND THE PERMIT ISSUED.
- (g) A Game Room permit, in accordance with these Regulations, is not transferable, assignable or divisible and it is a violation of these Regulations for any person to attempt to do so. If Ownership of a Game Room changes the Game Room shall be deemed unpermitted and the new Owners must reapply and must do so before operating.
- (h) An Applicant who submits an application under these Regulations must swear and affirm the truth of the contents therein under the penalty of Perjury as defined under Section 37.03 of the Texas Penal Code. In addition, any misrepresentation on this application is a third degree felony offense as defined under Section 37.10 of the Texas Penal Code Section.

2.2 Grounds for Denial, Revocation, or Suspension

- (a) Any violation of any Section or Subsection of these Regulations or failure to meet all requirements of any Section or Subsection of these Regulations, where applicable, will be

grounds for denial, revocation, or suspension of a permit to Operate a Game Room. If a Game Room's permit has been revoked, denied, or suspended, the Game Room shall not operate during the pendency of any appeal from the revocation, denial, or suspension.

(b) **Denial of a Permit.** The Game Room permit shall be denied upon the finding by the Game Room Permit Administrator of any of the following facts:

- (1) The Applicant, Owner, or Operator was convicted of any level of offense of the following crimes:
 - a. Gambling, gambling promotion, keeping a gambling place, communicating gambling information, possession of gambling devices or equipment, or possession of gambling paraphernalia as described in Chapter 47 of the Texas Penal Code;
 - b. Forgery, credit card abuse or commercial bribery as described in Chapter 32 of the Texas Penal Code;
 - c. A criminal offense as described in Chapter 34 of the Texas Penal Code;
 - d. Criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses; or any other offense to the laws of another state or of the United States that, if committed in this state, would have been punishable as one or more of the aforementioned offenses; or,
 - e. A criminal offense as described in Chapter 352, Subchapter B of the Texas Local Government Code; and
 - i. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date if the conviction is of a misdemeanor offense; or,
 - ii. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense.
- (2) The Applicant makes a misleading statement in the application for the Game Room permit;
- (3) The Applicant is under eighteen (18) years of age;
- (4) The Applicant, Owner, or Operator has had a Game Room permit revoked within the one hundred eighty (180) day period immediately preceding the date the application was filed;

- (5) An Applicant is delinquent in the payment to the county of taxes, fees, fines or penalties assessed or imposed regarding the operation of a Game Room;
 - (6) The application or renewal fee required by these Regulations has not been paid;
 - (7) The Applicant fails to complete the inspection process within the 60 day period described in Section 2.1;
 - (8) The Game Room or any Game Room owned by the same person or entity or a Game Room at the same location has been involved in an investigation and a search warrant executed for illegal gambling within one year before the application; or,
 - (9) Any violation of Sections 2 or 3 of these Regulations.
- (c) If the Game Room Permit Administrator denies a Game Room permit, he will send by certified mail or hand delivery to the Applicant or post on the front, exterior door of the Game Room premises a written notice of the basis for denial within fourteen (14) days of the denial.
- (d) The Game Room Permit Administrator will wait to issue a Game Room permit until final disposition of any charge of any of the crimes listed in Subsection 2.2(b) (1) that is pending or arises during the investigation period.
- (e) **Revocation or Suspension of a Permit.** The Game Room Permit Administrator shall have the authority and power to initiate a proceeding to revoke or suspend a Game Room permit if one or more of the following events or conditions have occurred:
- (1) Any violation of any of the offenses contained in Subsection 2.2(b) (1) of these Regulations has occurred on the premises;
 - (2) The Applicant provided false, fraudulent, or untruthful information on the original or renewal application form;
 - (3) The Game Room permit should not have been issued pursuant to these Regulations;
 - (4) The Owner or Operator has failed to make corrections ordered by a Fire Safety Official;
 - (5) The Owner has been convicted of a criminal offense contained in Subsection 2.2(b) (1) of these Regulations; or
 - (6) Any violation of Sections 2 or 3 of these Regulations.
- (f) If any of the stated events or conditions providing a basis for revocation or suspension of a Game Room permit under Subsection 2.2(e) has occurred, the Game Room Permit Administrator shall document the violation and provide Notice to Applicant or Permit Holder of revocation or suspension within fourteen (14) days of the date in which the violation was documented. The notice shall set out the reasons for the action. The revocation shall become final on the seventh (7th) day after delivery of Notice.

- (g) Revocation shall take immediate effect upon Notice by the Game Room Permit Administrator if:
 - (1) There is a necessity for immediate action to protect the public from injury or imminent danger; or
 - (2) A Game Room permit was issued based on a misrepresentation in the application and but for the misrepresentation, the Game Room permit would not have been issued.

2.3 Appeals Hearings

- (a) If the Game Room Permit Administrator denies, suspends, or revokes a permit or permit application for a Game Room, the Applicant or permit holder shall have the opportunity to make a written request for a hearing before a hearing examiner appointed by the Commissioners Court. The hearing examiner shall not have participated in any investigation of the alleged grounds for the denial, suspension, or revocation.
- (b) All requests for hearings must be in writing and delivered to the Fort Bend County Game Room Permit Administrator within fourteen (14) days of the Notice to Applicant or Permit Holder. The Applicant waives the right to hearing if the request is not timely received by the administrator.
- (c) The hearing shall be held within twenty-one (21) days of the receipt of request for a hearing and the Applicant or permit holder and the Game Room Permit Administrator shall be provided an opportunity to present evidence, cross-examine witnesses and be represented by legal counsel. The formal rules of evidence do not apply.
- (d) It shall be the responsibility of the party requesting the hearing to provide a court reporter for the hearing before the hearing examiner.
- (e) The hearing examiner has the power to uphold or reverse the denial, suspension, or revocation. The hearing examiner shall issue a written order based on this determination within twenty-one (21) days of the hearing, and immediately provide Notice to Applicant or Permit Holder.
- (f) If the hearing examiner determines, based upon the nature of the violations, that a suspension in lieu of revocation is appropriate, operation of the Game Room permit may be suspended for a period not to exceed six (6) months. The hearing examiner shall issue a written order suspending the Game Room permit and attaching conditions, if applicable, effective upon notice to the Owner.
- (g) Upon the finding that SubSection 2.2(e) (3), 2.2(e) (4), or 2.2(e) (5) of these Regulations has been violated, revocation of the Game Room permit shall be mandatory.
- (h) The decision of the hearing examiner shall be final. On final decision of the hearing examiner, the losing party may appeal the decision by filing a petition in a district court in the county within 30 days after the date of the decision.

2.4 Game Room Operation During Pendency of Appeals

- (a) If the Game Room Applicant's appeal to the hearing examiner for revocation or suspension is unsuccessful, the Game Room shall not operate during the pendency of the appeal to the district court.
- (b) If the Game Room Applicant or permit holder's appeal to the hearing examiner for revocation or suspension is successful, the Game Room may resume operation, and may operate during the pendency of an appeal to the District Court.
- (c) No Game Room may operate without a permit pending an appeal for denial of a Game Room Permit.

2.5 Reapplication

- (a) After a hearing examiner's final ruling of permit denial, suspension, or revocation, the Applicant may re-apply for a Game Room permit if changes are made to bring the proposed Game Room into compliance with these Regulations.
- (b) This application will be considered a new application in regards to the application timelines and fee established in Subsection 2.1.

2.6 Permit Renewal; Permit Fee—Levied; Amount; Payment

- (a) A permit may be renewed for the following year starting sixty (60) days before expiration of the current permit by filing a completed application for the permit with the Game Room Permit Administrator and paying the applicable fee set forth these Regulations. A renewal application shall be subject to the same requirement in these Regulations as are required for a permit application. As long as the completed renewal application was submitted within this sixty (60) day period, the previous permit will remain in effect until the Game Room Permit Administrator makes a determination in accordance with these Regulations as to whether the permit will be renewed.
- (b) The Game Room Owner/Applicant shall pay a non-refundable permit fee of \$1,000 as established by Commissioners Court. The permit fees shall be paid in person to the Game Room Permit Administrator upon application renewal. A receipt of payment and of renewal application submission will be hand delivered or sent by certified mail to the Game Room Owner within fourteen (14) days of the receipt of the non-refundable fee.

2.7 Contents of Permit

When the application process is complete, the Game Room Permit Administrator shall give the Applicant a signed certificate. The certificate constitutes a permit to operate the Game Room for one year from the date the permit is issued. The permit shall list the identity of the issuing Game Room Permit Administrator. The permit shall list the date of issue and the date of expiration. The permit shall list the name of the permit holder, name of the Game Room, name of the Game Room Owner, and the physical

address of the Game Room. If the Game Room Owner or permit holder is a corporation, or legal entity, then the permit shall also list the person asserting control over the legal entity. The permit shall list any applicable exemptions to the requirements of Section 3 for which the Game Room permit holder qualified. The Game Room Permit Administrator shall keep an original signed copy of the permit for the Administrator's own records.

2.8 Penalty for Operating Without a Permit

- (a) Any Owner or Operator operating a Game Room without first paying the fee and securing Game Room permit, or who operates a Game Room after the permit therefor has been revoked or suspended, shall be assessed a civil penalty not to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (b) An Owner or Operator commits a Class A misdemeanor offense if the Owner or Operator intentionally or knowingly operates a Game Room in violation of this Subsection.
- (c) Violation of this Subsection is grounds for denial, suspension, or revocation of a Game Room permit.

2.9 Effect

Each permit holder under these Regulations must meet and comply with all requirements of all applicable law and the issuance of a permit under this article shall not excuse the permit holder, his agents or employees or any patrons of such premises from compliance with such laws.

SECTION 3: GAME ROOMS AND AMUSEMENT REDEMPTION MACHINES

3.1 Inspection by Law Enforcement Officer

- (a) **Inspection.** A peace officer is authorized to inspect any business in Fort Bend County for violations of these Game Room Regulations. This regulation does not authorize a right of entry prohibited by law. Peace officers may enter a business with consent, with a warrant, or under exigent circumstances. A Game Room permit granted under these Regulations gives peace officers implied consent to enter to inspect.
- (b) **Unpermitted Game Rooms.** An unpermitted business that holds itself out as a "Game Room," by sign, advertisement, word-of-mouth, by offering memberships, by offering for play or displaying six (6) or more machines described in Subsection 1.4(a)-(b) of these Regulations – or by any other means – is subject to inspection by any peace officer and will be considered a Game Room under These Regulations.
 - (1) Refusal to allow law enforcement entry to inspect such unpermitted Game Room may be considered in establishing probable cause for the issuance of a search warrant to inspect for violations of these Game Room Regulations.

- (2) An unpermitted Game Room is subject to these Regulations and may be held liable for all civil and criminal penalties listed herein.
- (c) **Compliance Inspection.** A Peace Officer or county employee designated by the Game Room Permit Administrator may inspect a permitted Game Room located within the Peace Officer's or employee's agency's jurisdiction at any time to determine whether the Game Room is in compliance with the Regulations.
- (d) **Consent to Enter Game Room.** Any Owner or Operator of a Game Room or other person who does not allow a law enforcement officer to inspect a Game Room, an amusement redemption machine, or records mandated to be kept under Subsection 3.7 of these Regulations as required under the Texas Local Government Code Section 234.136 commits an offense. If a person violates this Subsection, then that person shall be assessed a civil penalty not to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (e) An Owner or Operator commits a Class A misdemeanor offense if the Owner or Operator intentionally or knowingly operates a Game Room in violation of this Subsection.
- (f) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room permit.

3.2 Game Room Sign Required

- (a) It shall be the duty of any Owner or Operator of a Game Room to mark each outside door to a Game Room with a sign that:
 - (1) Reads "GAME ROOM" in four inch or larger block lettering; and,
 - (2) Is legible and visible at all times from a distance of 25 feet from the outside door.
- (b) If an Owner or Operator violates this Subsection, then that person shall be assessed a civil penalty not to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (c) An Owner or Operator commits a Class A misdemeanor offense if the Owner or Operator intentionally or knowingly operates a Game Room in violation of this Subsection.
- (d) Game Rooms that have been issued an exemption pursuant to Subsection 3.13 of these Regulations are exempt from the Game Room sign requirements.
- (e) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room permit.

3.3 Fire and Life Safety

- (a) It shall be the duty of any Owner or Operator of a Game Room to provide doors that are readily accessible without the use of a key, special knowledge, or effort during business hours or any other hours of operation.
- (b) It shall be the duty of the Owner or Operator of a Game Room, or commercial establishment, to comply with all construction or fire codes, and to pay any court-approved fee associated with a fire and life safety inspection, plan review, occupancy load calculation, or complaint.
- (c) All construction and fire code Regulations will be strictly enforced and the Game Room Owner or permit holder shall provide any representative of a fire safety official with immediate access to the premises and Game Room at all times.
- (d) No Game Room shall use electronic locks to prevent entry during business hours.
- (e) If an Owner or Operator violates this Subsection, he or she shall be assessed a civil penalty not to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (f) An Owner or Operator commits a Class A misdemeanor offense if the Owner or Operator intentionally or knowingly operates a Game Room in violation of this Subsection.
- (g) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room permit.

3.4 Transparent, Uncovered Windows and Doors Required

- (a) Any permitted or unpermitted Game Room must have at least one window in the front of the building and one other side meeting the criteria set forth in Subsection (b), allowing a clear and unobstructed view of all machines described in Subsection 1.4(a)-(b) in the permitted or unpermitted Game Room.
- (b) It shall be unlawful for any Owner or Operator to exhibit or display, or to permit to be exhibited or displayed, for commercial use any amusement redemption machine in a Game Room unless the required transparent walls or windows of the Game Room:
 - (1) Are located on at least two sides of the Game Room, and each amusement redemption machine located therein is visible through such walls or windows;
 - (2) At the lowest point are not more than four feet above the adjacent sidewalk or ground level;
 - (3) At the highest point are at least eight feet higher than the adjacent sidewalk or ground level; and,

- (4) Are at least four feet wide.
- (c) It shall be the duty of any Owner or Operator of a Game Room to provide transparent uncovered glass in each exterior Game Room window or door.
- (d) It shall be unlawful for any Owner or Operator or any other person with permission of or at the direction of an Owner or Operator to cover or tint a Game Room window or door, or otherwise block it so as not to obscure the view of any amusement redemption machine and the interior of the location from a sidewalk through a Game Room window or door.
- (e) If an Owner or Operator violates this Subsection then that person shall be assessed a civil penalty not to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (f) An Owner or Operator commits a Class A misdemeanor offense if the Owner or Operator intentionally or knowingly operates a Game Room in violation of this Subsection.
- (g) Game Rooms that have been issued an exemption pursuant to Subsection 3.13 of these Regulations are exempt from the Game Room windows requirements.
- (h) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room permit.

3.5 Hours of Operation

- (a) A Game Room may operate between the hours of 8 a.m. and 10 p.m.
- (b) The Owner or Operator of a Game Room shall be assessed a civil penalty not to exceed \$10,000 for each hour of a day a Game Room is open during non-operating hours in violation of this regulation.
- (c) An Owner or Operator commits a Class A misdemeanor offense if the Owner or Operator intentionally or knowingly operates a Game Room in violation of this Subsection.
- (d) Game Rooms that have been issued an exemption pursuant to Subsection 3.13 of these Regulations are exempt from the Game Room hours of operation requirements.
- (e) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room permit.

3.6 Display of Game Room Permits

- (a) It shall be the duty of any Owner or Operator of a Game Room to post or display a current Game Room permit in plain sight in a common area accessible to the public without having to enter into a controlled area of the business.

- (b) Failure to post or display the original, current Game Room permit will result in the Owner or Operator of the Game Room being assessed a civil penalty not to exceed \$10,000 per violation. Each day is considered a separate violation.
- (c) An Owner or Operator commits a Class A misdemeanor offense if the Owner or Operator intentionally or knowingly operates a Game Room in violation of this Subsection.
- (d) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room permit.

3.7 Recordkeeping

- (a) It shall be the duty of any Owner or Operator of a Game Room to maintain onsite, and to produce to law enforcement for inspection:
 - (1) A record for each employee that contains the name, address, date of birth, state identification number or social security number, job function, W-2 or W-4 form, a copy of application for work with the Game Room, a copy of the I-9 filed as part of Employment Eligibility Verification for DHS, and a photograph of the employee;
 - (2) A daily register that contains the name, date of birth, state identification number or social security number, and job function of each employee present at the establishment that day; and
 - (3) *(reserved for future use)*
- (b) An Owner or Operator who violates Subsection (a), above, shall be assessed a civil penalty of no greater than \$10,000 for each record required under these Subsection that is missing. Each day a violation occurs or continues to occur is considered a separate violation.
- (c) The Game Room shall preserve the daily register required by Subsection (a) (2) above for ninety (90) days after the date the register was made. The register must be maintained at the Game Room, it must be accessible by the employees on duty, and must be made available to law enforcement upon request. An Owner or Operator who violates this regulation may be assessed an administrative penalty in the amount of \$500 for each register required to be preserved that is missing. Each day a violation occurs or continues to occur is considered a separate violation.
- (d) An Owner or Operator commits a Class A misdemeanor offense if the Owner or Operator intentionally or knowingly operates a Game Room in violation of this Subsection.
- (e) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room permit.

3.8 Prohibited Employment

- (a) It shall be unlawful for any person owning or operating a Game Room to knowingly employ any person who has been previously convicted of, entered a plea of nolo contendere or guilty, or received deferred adjudication for an offense involving any gambling violations set forth in Chapter 47 of the Texas Penal Code.
- (b) It is the responsibility of the Owner or Operator to conduct a criminal background check on each potential employee.
- (c) Failure to comply with any of the requirements of this Section shall result in a violation and be punishable by a civil penalty assessed against an Owner or Operator not to exceed \$10,000 per prohibited employee working at the Game Room and/or per employee working at the Game Room without being subjected to a criminal background check.
- (d) Each day a violation occurs or continues to occur is considered a separate violation for purposes of imposing a penalty.
- (e) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room Permit.

3.9 Distancing Restrictions

- (a) A Game Room in operating shall not be located:
 - (1) Within one thousand five hundred (1,500) feet from any existing or planned school, regular place of religious worship, or residential neighborhood. "Planned" means that steps have been taken toward the facility's or structure's development including but not limited to a permit received, a plat approved, design work started, a bond received, or an order approved by a governmental entity's governing body; or,
 - (2) Within a distance of two thousand (2,000) feet from where two (2) or more other Game Rooms are located.
- (b) For the purposes of this Subsection, measurements shall be made in a straight line from the nearest portion of the building or appurtenances used by the Game Room to the nearest portion of the building or appurtenances that are used for the purposes identified in Subsection (a) above.
- (c) Game rooms are exempt from these distancing restrictions upon proof that the Applicant continuously owned and operated the Game Room at the same location and under the same name prior to September 8, 2015. If the Game Room changes its name or Owner after this date, or if its permit was suspended or revoked, or its permit was denied renewal, or if the permit is allowed to lapse, then the Game Room will be considered a new Game Room and not exempt

from the distancing requirements. All applications claiming a distance exemption under this Subsection must be submitted on or before October 31, 2015.

- (d) If an Owner or Operator violates this Subsection then that person shall be assessed a civil penalty not to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (e) The following Game Rooms are exempt from the distancing requirements set forth in this Subsection:
 - (1) Game Rooms that meet the requirements of Subsection 3.13(c) below; and,
 - (2) Game Rooms which meet the requirements of Subsection 3.9(c) above.
- (f) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room permit.

3.10 Game Room Memberships

- (a) A Game Room Owner or Operator shall not restrict entry to a Game Room or prohibit the participation in any activity inside a Game Room by a patron through the requirement of a Game Room membership.
- (b) Game Room memberships are prohibited for any purpose.
- (c) If an Owner or Operator violates this Subsection then that person shall be assessed a civil penalty not to exceed \$10,000 per violation. Each person denied entry is considered a separate violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (d) An Owner or Operator commits a Class A misdemeanor offense if the Owner or Operator intentionally or knowingly operates a Game Room in violation of this Subsection.
- (e) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room permit.
- (f) If a Peace Officer or designated County Employee is not allowed entrance during business hours, a civil penalty not to exceed \$10,000 for each date of denial will be assessed upon an Owner or Operator.

3.11 *(reserved for future use)*

3.12 Illegal Machines

- (a) It shall be unlawful to keep, exhibit, operate, display, or maintain any gambling device that is prohibited by the constitution of this state or Chapter 47 of the Texas Penal Code, GAMBLING.
- (b) Additionally, a civil penalty not to exceed \$10,000 shall be placed on the Owner or Operator of a Game Room for any machines used for illegal gambling.
- (c) If a law enforcement agency determines through investigation that a Game Room was in operation violating the Texas Penal Code Chapter 47, GAMBLING, then every machine or gambling device in the Game Room will be considered in violation. A civil penalty not to exceed \$10,000 per machine may be assessed upon an Owner or Operator of the Game Room. Each day a violation occurs or continues to occur is considered a separate violation.
- (d) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room permit.
- (e) An Applicant, Owner, or Operator's compliance with these Regulations, including operating a Game Room under a permit issued under these Regulations, is not a defense to prosecution for an offense under Chapter 47, Texas Penal Code.

3.13 Requirements to Qualify for Food and Beverage Sales or Charitable Bingo Exemptions

A Game Room Permit Applicant or Holder may apply for multiple exemptions:

- (a) Any exemption granted must be clearly stated on the Game Room Permit.
- (b) **Charitable Bingo Exemption.** An Applicant is qualified for a charitable bingo exemption if the Applicant or Holder can show a valid and current Texas Lottery Commission Charitable Bingo License as described in Texas Occupations Code Chapter 2001. An original certificate or copy of this license presented with the complete Game Room permit application at the time of application or permit renewal is sufficient to make this showing.
- (c) **Food and Beverage Sales Exemption.** An Applicant is qualified for a Food and Beverage Sales exemption if the Applicant or Holder meets all requirements of Subsections (1-7) below:
 - (1) The following words and terms, when used in this Subsection, shall have the following meaning unless the context clearly indicates otherwise:
 - a. **"Food service"** means cooking or assembling food on premises, primarily for on premises consumption. Commercially pre-packaged items which require no heating, cooking, or assembly and which may be purchased off-premises do not constitute food or beverage service under this section;
 - b. **"Entrée"** means main dish of a meal;

- c. **“Multiple entrees”** means no fewer than eight different entrees per meal period must be available to customers; and,
 - d. **“Food service facilities”** means a portion of the licensed premises where food is stored and prepared primarily for on premises consumption.
- (2) An Applicant is qualified for a Food and Beverage Sales exemption if the following conditions are satisfied:
- a. With respect to the operation of a Game Room, the Applicant's primary business on the premises is Food or Beverage Service;
 - b. Multiple entrees are available to customers;
 - c. Food service facilities are maintained on the premises;
 - d. The hours of operation for sale and service of food or beverages are the same as the hours of operation of the Game Room; and
 - e. 51% or more of the Game Room’s total net income is derived from the sale of food or beverages.
- (3) An Applicant for a Food and Beverage Sale Exemption shall submit a sworn statement attesting that Food or Beverage Service is maintained on the premises and is the primary business on the premises. The Applicant shall furnish the following:
- a. The menu or, if no menu is available, a listing of the food and beverage items;
 - b. Hours of operation of Food or Beverage Service;
 - c. Sales data or, if not available, projection of sales. The projection or data should include sufficient breakdown of revenues of food, alcoholic beverages, and Game Room operation proceeds;
 - d. Listing of equipment used in preparation and service of food and beverages versus the equipment used in operation of a Game Room;
 - e. Copies of floor plans of the licensed premises indicating areas devoted primarily to the preparation and Food and Beverage Service and those devoted primarily to operation of a Game Room; and
 - f. If alcoholic beverages are served, the TABC license or permit as applicable with the TABC Food and Beverage Certificate as applicable; and
 - g. The Food Service permit from the appropriate entity.

- (4) Applicants for renewal of Food and Beverage sales exemptions shall resubmit the information required in Subsection 3.13(c)(3)(a-g) above.
- (5) Failure to meet all requirements of this Subsection or accurately maintain required records is grounds for denial or revocation of a Food and Beverage sales exemption.
- (6) In verifying that the exemption holder is maintaining Food or Beverage Service as the primary business on the premises, the Game Room Permit Administrator may examine all books, papers, records, documents, supplies and equipment of the exemption holder.
- (7) Recordkeeping requirements for holders of food and beverage sales exemptions:
 - a. Each holder of a food and beverage sales exemption shall maintain records to reflect separate totals for beverage sales, food sales, and other major sales categories at the location, including Amusement Redemption Machine proceeds. Purchase invoices must be maintained to reflect the total purchases of beverages, food, and other major purchase categories;
 - b. Complimentary food and beverages (including alcoholic beverages) shall not be calculated in determining whether the premises meet the 51% or more food or beverage sales threshold;
 - c. All records are required to be maintained for four (4) years and made available to authorized representatives of the Game Room Permit Administrator upon reasonable request; and
 - d. In examining the food or beverage sales, the Game Room Permit Administrator may compute and determine the percentage of food and beverage sales upon the basis of information filed with the Game Room Permit Administrator or held by the permit holder, but if such information is insufficient, the computation and determination of the percentage of sales may be based upon any records or information which is available.

3.14 Owners of an Illegal Gambling Facility

It is not a defense to prosecution under this Section if an Owner does not have the DBAs in his/her name, and/or the leases or property in their names, but solely that each party has an Ownership interest in the business.

3.15 Injunction and Civil Penalty

The County Attorney is authorized to sue in district court for an injunction to prohibit the violation or threatened violation of these Game Room Regulations adopted under Section 234.133 of the Texas

Local Government Code. The County is entitled to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including reasonable attorney's fees, court costs, mediation fees and investigatory costs. This civil remedy is cumulative of all other remedies available to Fort Bend County.

SECTION 4: CUMULATIVE EFFECT OF REGULATIONS; SEVERABILITY

4.1 Cumulative Effect

Authority under these Regulations is cumulative of other authority that Fort Bend County and its incorporated municipalities have to regulate Game Rooms and does not limit that authority.

4.2 Severability Clause

If a Section or Subsection of these Regulations, or certain applications of a Section or Subsection, is found unconstitutional, the remaining Sections or Subsections, or applications of those Sections or Subsections, will continue in force as law.

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