

**AN ORDINANCE ADOPTING AND ESTABLISHING GAME ROOM
REGULATIONS FOR KARNES COUNTY IN ACCORD WITH THE
PROVISIONS OF ARTICLE III, SECTION 47 OF THE TEXAS CONSTITUTION
AND CHAPTER 234 OF THE TEXAS LOCAL GOVERNMENT CODE,
PROVIDING FOR CIVIL AND CRIMINAL PENALTIES FOR VIOLATIONS OF
THESE REGULATIONS, AND PROVIDING FOR OTHER MATTERS.**

STATE OF TEXAS

COUNTY OF KARNES

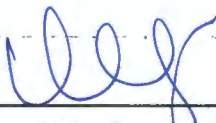
On this 11 day of JUNE 2024 the Commissioners Court of Karnes County, Texas, sitting as the governing body of Karnes County, upon motion of Commissioner DUPNIK, seconded by Commissioner GISLER enters the following orders and ordinance.

WHEREAS, the Commissioners Court desires to restrict the incidence in Karnes County of lottery devices known as eight-liners, found in game rooms, both terms defined below; and

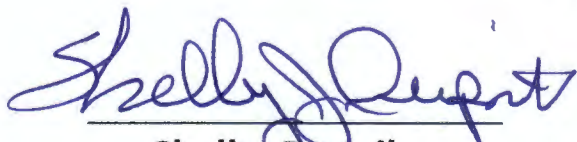
WHEREAS, as shown below, the Texas Penal Code allows the Commissioners Court to regulate the operation of game rooms; and

WHEREAS, in accord with its power under the Texas Local Code, the Commissioners Court Orders and Decrees that game rooms are restricted so as not to be permitted in any areas of Karnes County except Karnes City and Kenedy, which are free to adopt their own game room regulations.

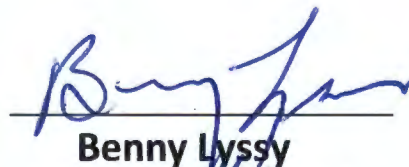
Therefore, it is ORDERED, ADJUDGED, AND DECREED by the Commissioners Court of Karnes County that the following regulations should be and are hereby are amended, adopted, and made effective in accord with Section 14 of this Ordinance on JUNE 11, 2024.



Wade J. Hedtke
County Judge



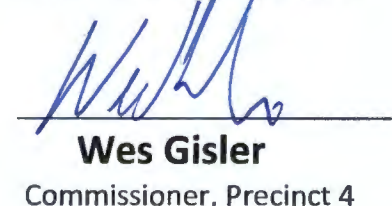
Shelby Dupnik
Commissioner, Precinct 1



Benny Lyssy
Commissioner, Precinct 2



James Rosales
Commissioner, Precinct 3



Wes Gisler
Commissioner, Precinct 4

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THESE REGULATIONS, AND PROVIDING FOR OTHER MATTERS.

SECTION 1. AUTHORITY

These regulations are adopted by the Commissioners Court of Karnes County, Texas pursuant to the authority granted by the Texas Constitution and the Texas Legislature and pursuant to the police power granted to the Court.

SECTION 2. DEFINITIONS

As used in these regulations, the words and phrases listed below have the following meanings:

- A. "Person" means any individual, corporation, limited partnership, limited liability company, joint venture or similar entity.
- B. "Court" means the Commissioners Court of Karnes County unless otherwise stated.
- C. "Amusement Redemption Machine" means any electronic, electromechanical, or mechanical contrivance designed, made, and which is or purports to be adapted for bona fide amusement purposes to reward the player exclusively with noncash merchandise, prizes, toys, or novelties, or a representation of value redeemable for those items, with a wholesale value available from a single play of the game or device in an amount not more than 10 times the amount charged to play the game once, or \$5, whichever amount is less.
- D. "Eight-liner" means any eight-liner video slot machine which game room owners, operators, security guards, and employees, hold out to be an Amusement Redemption Machine but is not. It is instead a lottery device or slot machine that violates Article III, Section 47 of the Texas Constitution because it involves the payment of 'consideration' for a 'chance' to win a 'prize,' with the emphasis on chance rather than skill as the reward for the prize.
- E. "Lottery" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, eight-liner, or some other name.

- F. "Game room" means a for-profit business located in a building, place, or structure, permanent or temporary, that contains eight-liners.
- G. "Game room owner" means a person who:
- (1) has an ownership interest in, or receives the profits from, a game room or an eight-liner located in a game room;
 - (2) is a partner, director, or officer of a business, including a company or corporation or other form of business entity as set out in paragraph A above;
 - (3) a shareholder holding more than 10 percent of the outstanding shares of a business, including a company or corporation or other form of business entity set out in paragraph A above, that has an ownership interest in a game room or in an eight-liner located in a game room;
 - (4) has been issued by the Secretary of State or the County Clerk an assumed name certificate for a business that owns a game room an eight-liner located in a game room;
 - (5) signs a lease for a game room;
 - (6) opens an account 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 or otherwise advertises a game room; or
 - (9) signs an alarm permit for a game room.
- H. "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 subdivision.
-
- I. "Security Guard" means a person employed by a game room owner or operator, including a person who displays, brandishes, or uses a deadly weapon as a part of that employment to protect the financial assets and other property, real and personal, of the game room owner or operator.
 - J. "Employee" means an employee of a game room owner or operator where eight-liners are used for the unconstitutional entertainment of customers.
 - K. "Lessor" means a person who owns real property, including a building, permanent or temporary, who leases out that property for the use of game rooms and the operation of eight-liners.
 - L. "Sheriff" means the Karnes County Sheriff;
 - M. "Deputy Sheriff" means any person deputized by the Sheriff.
 - N. "Peace Officer" has the meaning used in Article 2.12 of the Texas Code of Criminal Procedure.
 - O. "Customer" means any individual who does not fit within any of the definitions above and enters a game room for the purpose of playing an eight-liner.
 - P. "Prize" means any amount or thing of monetary value that is the result of the successful use of an eight-liner by a customer.
 - Q. "Constitution" means the Texas Constitution unless otherwise specified.
 - R. "Sec. 17" means Art. III, Section 17 of the Constitution, which prohibits lotteries.

- S. "Rule 202" means Rule 202 of the Texas Rules of Civil Procedure.
- T. "Rylie" means the opinion in City of Fort Worth v. Rylie, 649 S.W.3d 246 (Tex. App.— Fort Worth 2022, pet. denied, reh'g. filed).
- U. The masculine includes the feminine and vice versa.

SECTION 3. GENERAL PROVISIONS

- A. All game rooms which use or allow customers to use eight-liners are prohibited in Karnes County, except in the cities of Karnes City and Kenedy, which may govern those game rooms and eight-liners as they choose. This is in accord with section 234.133 of the Local Government Code, which provides that a Commissioners Court may regulate the operation of game rooms in their county, may restrict the location of game rooms to specific areas of their county, including the unincorporated area of the county, and may restrict the number of game rooms that may operate in a specific area of the county. Accordingly, except for Karnes City and Kenedy, **NO GAME ROOMS WILL BE ALLOWED TO OPERATE IN KARNES COUNTY.**
- B. Game room owners, operators, and security guards are subject to the provisions, fees, penalties, both civil and criminal, set out below, as are lessors who allow their property to be used for the operation of eight-liners in game rooms.

SECTION 4. SUPPORTING PROVISIONS: LEGAL AUTHORITIES

- A. The Texas Constitution of 1876, as amended, is still in force.
- B. Article III, Section 47 of the Constitution provides that lotteries are forbidden in Texas and requires the Legislature to pass laws prohibiting lotteries.
- C. From the first penal codes after the enactment of Section 47, the Legislature has included provisions prohibiting lotteries. Starting with Articles 351 and 352 the 1879 Penal Code, lotteries were prohibited in all aspects: a person could not "establish a lottery, or...sell, offer for sale, or keep for sale, any ticket or part ticket in any lottery."
- D. The earliest Texas cases made it clear that a slot machine is a lottery. That was the precise holding in Predendergast v. State, 57 S.W. 850, a case decided in 1899 by the Court of Criminal Appeals which said that this was so because it was "a game of hazard or chance, in which small sums are ventured for the chance of obtaining

a larger sum of money.” This is virtually the identical definition of eight-liners used in Rylie: the payment of consideration to win a prize, presumably worth more than the consideration originally paid.

- E. The Legislature carried forward the directive of Section 47 of the Constitution in the most recent Penal Code by passing Chapter 47 of that code. The original version of Chapter 47 provided that a lottery was “any scheme or procedure whereby one or more prizes are distributed by chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or some other name.” (Emphasis added.)
- F. This was still the definition of lottery analyzed in Rylie. At that time Chapter 47 did not contain an exception for See State v. Gambling Device, 859 S.W.2d 519 (Houston [1st Dist.] 1993, writ denied). And it is still the definition.
- G. The Legislature has passed and the people of Texas have adopted amendments to Section 47 allowing several forms of lotteries, such as a State-run lottery and bingo games and raffles run by and for the benefit of charitable organizations.
- H. However, prior to the constitutional amendment allowing bingo games, the Legislature passed a law allowing them, but the law was held to be unconstitutional, which led to the constitutional amendment that allowed them to be used for the limited purposes noted in paragraph G.
- I. In 1995 the Legislature amended chapter 47’s definition of gambling device to make it clear that a gambling device was not a machine made “solely for bona fide amusement purposes” that awarded prizes of minimal value. This amendment is commonly referred to as the “fuzzy-animal exclusion” because it was meant to allow children to enjoy games of chance and win stuffed at such places as Chucky Cheese.
- J. The “fuzzy-animal exclusion” was not authorized by a constitutional amendment.
- K. In Rylie, the Fort Worth Court of Appeals held that the eight-liners were unconstitutional in violation of Section 47. The Court relied on the nationally-accepted definition of a lottery, the payment of consideration of consideration for a chance, unguided by skill, to win a prize. The Court did not rule on the constitutionality or legality of fuzzy-animal machines.
- L. The Texas Supreme Court denied the petition for writ of review filed by the owner-operators of the eight-liners, but the owner-operators have filed a motion for rehearing which the Court is considering.

- M. Sections 234.131 through 231.136 of the Local Government Code govern the **counties'** regulation of game rooms. These statutes were amended by the Legislature in 2023 and passed along with newly enacted sections 234.1341 and 234.1342 of the Code. They became effective September 1, 2023. These laws provide that counties may require a licensing process, and they set out general rules if a county chooses to use such a process.
- N. Like all other codes, the Local Government Code is controlled by the Code Construction Act, which, among other things, defines the meaning of terms in Texas codes and other statutes. It is found in Chapter 311 of the Government Code. As we would expect, Section 311.016(1) says the word "may" in a statute "creates discretionary authority or grants permission or a power."
- O. What this means is that a Commissioners Court may choose to enact the new scheme set out in the new law. Obviously, it means the Court may choose not to choose such a scheme but go in a different direction entirely.
- P. This Court expressly chooses not to utilize these provisions of the Code. Instead, the Court elects to go forward with the procedures set out in this Ordinance, which are also allowed by the new version of the statute. The new version of the statutes, by giving counties permission, to use the rule set out there, obviously do not require counties to do so. Counties are allowed to follow other methods of regulating game rooms, a fact supported by the caption of the act, which says that it is "permitting requirements for game rooms."

SECTION 5. AREAS OF COUNTY SUBJECT TO REGULATION

- A. Therefore, no game rooms of any kind will be allowed in Karnes County, except in Kenedy and Karnes City, which are governed by the statutes governing municipalities and which have chosen to enact game room ordinances of their own.

SECTION 6 LOCAL AND STATEWIDE FACTUAL BACKGROUND

- A. The claim of the eight-liner owners and operators that their machines fit within the fuzzy-animal exclusion has now been conclusively rejected in Rylie, and the damaging effect of their industry's preying on the people of Karnes County does not lie open to dispute.
- B. The gambling industry's unconstitutional abuse of the enactment of the fuzzy-animal exclusion has led to an increase in the number of eight-liner machines and the businesses that house them. No sooner are machines confiscated and doors closed

than new machines appear and doors re-opened.

- C. The proliferation of eight-liners has in turn led to the rise of the unconstitutional gambling industry in Karnes County and throughout Texas and the nefarious activities associated with unconstitutional gambling—addiction, corruption, drug use, violence, theft, and organized crime, as well as preventing Sheriff’s deputies from performing other important and necessary duties.

SECTION 7. RIGHT TO ENTER: REASONABLE SUSPICION

- A. The Sheriff, a deputy sheriff, or any peace officer may enter a game room, as defined in Section 2F above, if, outside the game room, there is a sign or display reasonably showing that the public, or some part of the public, is invited to play eight-liners, as that term is defined in Section 2D above, inside the game rooms.
- B. The Sheriff, a deputy sheriff, or any peace officer may enter a game room, as defined in Section 2F above if, at least twice in the prior 2 years, eight-liners have been discovered in operation at that location, in violation of Article III, Section 47 of the Texas Constitution.

SECTION 8. RIGHT TO ARREST: PROBABLE CAUSE

- A. If, once inside a game room pursuant to the provisions of Section 7 above, the Sheriff, a deputy sheriff, or a peace officer observes any eight-liners, he shall have the power to arrest any and all game room owners, operators, and security guards affiliated with the premises at the time of entry. That arrest shall be pursuant to Section 47 of the Texas Penal Code. At the time of the arrest the full name, all addresses, and all phone numbers of the persons arrested shall be taken down and provided to the County Attorney within 24 hours.
- B. The Sheriff, a deputy sheriff, or a peace officer may enter the premises of a game room pursuant to a search warrant based on probable cause signed by a District Judge.

SECTION 9. CIVIL PENALTY: TAKING POSSESSION OF GAME ROOM

- A. After their entry into the game room and the arrest of suspects in violation of Article III, Section 47, the game room will be closed for a period of 36 hours. At that time the lessor will be allowed to re-take possession and use or lease the premises for any constitutional or legal activities. Because of the unconstitutional previous use of the property for the operation of eight-liners, the property will be subject to

inspection by law enforcement authorities until the end of the civil proceedings described in Sections 10 and 11 below. No warrant shall be required for any such inspection.

SECTION 10. CIVIL PENALTY: FORFEITURE OF EIGHT-LINERS

- A. Having now been declared unconstitutional, all eight-liners in the game room shall be confiscated, as will all electronic devices that accompany their operation.
- B. However, before the eight-liners, money, and other devices and matters associated with the game room have been removed from the game room, the Sheriff, his deputies, or any other peace officers shall conduct an inventory of them. They shall then take the eight-liners and other matters to the property room of the Sheriff's Office.
- C. Within 24 hours of the removal of the eight-liners from the game room, which shall be noted by the Sheriff, his deputies, or other peace officer who removed the eight-liners, the County Attorney shall file a temporary restraining order in the District Court of Karnes County barring the use of that property for the use of eight-liners, subject to the resolution of all civil proceedings related to the game room and the eight-liners discovered there.
- D. At the same time that the County Attorney files his temporary restraining order, he will file a motion pursuant to Rule 202 of the Texas Rules of Civil Procedure to depose the operator of the game room, all other persons on the premises of the game room at the time of the entry of the game room, and every other person affiliated with the game room at that location, including the owner of the property on which the game room is situated, and the owner or owners of the eight-liners, even if they even if they are not in Karnes County. All proceedings in the case will cease until the depositions requested pursuant to Rule 202 have been answered to the County Attorney.
- E. By means of the deposition or depositions described in paragraph D, the County Attorney will seek to discover the ownership of the eight-liners, the County's remedy or remedies will become clearer, and the owner or owners will be required to pay a fee of not less than \$5,000.00, nor more than \$25,000.00 to Karnes County for each eight-liner on the premises. This will be true of each law enforcement entry into a game room in Karnes County, except for Kenedy and Karnes City. If the owner or owner is not discovered, the operator of the game room and the owner of the property on which the game room is located will be jointly and severally liable for the fees stated above and the fees and court costs stated below.

- F. In addition to the fees set out in Paragraph E, the owner or owners, or the property owners and operators will be liable for the County's court costs and attorney's fees, including the cost of outside counsel, expert witnesses, court reporters, and the like. The cost of the attorneys in the County Attorney's Office will be a part of their annual salary; that of outside counsel at a billing rate in an agreement that balances their normal fees with an amount that has the approval of the Court.
- G. If outside counsel is needed to assist in the representation of the County, he will be chosen by the Court, in consultation with the County Attorney's Office.
- H. If any person involved in the operation of a game room attempts to avoid or refuse to answer an incriminating question or questions posed in a deposition in accord with paragraph D and E above, he shall be offered use immunity for the answers and, subject to the ruling of the Court, be forced to answer the question(s).
- I. All reasonable fees owing to the County Attorney as a result of this constitutional violations set out in this Ordinance shall be assessed and collected within 30 days of the final judgment in the case that results from the civil proceeding, including those which may develop after the proceedings set out in Section 11, if any.

SECTION 11. PROCEEDINGS PURSUANT TO RULE 202

- A. The use of Rule 202 in the cases will be used to investigate and determine a potential claim or suit, as allowed by Rule 202.1(b). This claim or suit, not yet foreseeable, would be how to enforce the holding in Rylie that all eight-liners are unconstitutional slot machines.
- B. However, Rule 202.1(a) will also be an important part of the County's Rule 202 motions. The depositions will be designed to reveal who the owner or owners of the unconstitutional eight-liners are, thus who are truly liable for the sanctions set out above.
- C. The Rule 202 petitions will comply with all requirements of Rules 202.2 and 202.3. To the extent depositions are allowed, petitioner will comply with Rule 202.5.
- D. Once the identity of the game room owner or owners is discovered, his or their operation of any other game room in Karnes County shall be subject to the provisions of Section 10. No game room owned by them shall be allowed to operate during the pendency of the original petition for temporary restraining order and Rule 202 motion, and a temporary motion for temporary restraining order and Rule 202 motion shall be filed as to that game room as well.

- E. If the County, despite diligent efforts, is unable to find any game room owner, operator, or employee or any kind to take his deposition, that fact shall not prevent the temporary restraining order or subsequent proceeding from going forward according to law.

SECTION 12. CIVIL JURISDICTION, VENUE

- A. Jurisdiction shall be exclusively in the District Courts of Karnes County, Texas.
- B. Venue shall be in the District Courts of Karnes County, Texas.

SECTION 13. CRIMINAL OFFENSE AND PENALTY

- A. A game room owner, operator, security guard, or other person identified in this ordinance may be charged, if applicable, in accord with the provisions of Chapter 47 of the Texas Penal Code and, if found guilty, be punished accordingly.
- B. All punishments, fees, and fines collected solely as a result of a violation of the provisions of Chapter 47 of the Penal Code shall be collected in accord with the provisions of the Penal Code and the Code of Criminal Procedure.

SECTION 14. NOTICE, EFFECTIVE DATE

- A. The full text of this Amended Ordinance shall be posted inside the front door of the Historic Karnes County Courthouse, 101 North Panna Maria Avenue, Karnes City, Texas 78118 on the same day it is passed. It will remain there for two weeks. At the end of that time it will become fully effective and enforceable and will constitute notice to all parties and to the public at large of its provisions.

SECTION 15. SEVERABILITY

- A. If any portion of this Ordinance is deemed unconstitutional or invalid for any reason by any Court or other body with binding authority, the remainder of the Ordinance shall remain in full force and effect.