

AND WHEREAS, the Gaines County Commissioners Court finds each of the foregoing negative secondary effects constitutes a harm in which Gaines County has a substantial governmental interest to prevent or to abate;

AND WHEREAS, the Gaines County Commissioners Court recognizes that this substantial governmental interest in preventing secondary effects, which is the rationale for these regulations, exists independently of any comparative analysis between legal game rooms and illicit game rooms;

AND WHEREAS, the Gaines County Commissioners Court finds Gaines County's interests in regulating game rooms extend to preventing future secondary effects of either current or future game rooms located in Gaines County;

NOW, THEREFORE, BE IT ORDERED BY THE GAINES COUNTY COMMISSIONERS COURT:

SECTION 1

1.1 Authority to Regulate

- a. This Order and the regulations contained herein are promulgated pursuant to and in conformity with Chapter 234, Subchapter E, of the Texas Local Government Code to promote the public health, safety, and welfare, as authorized by Section 234.133 of the Texas Local Government Code.
- b. It is the intent and purpose of the Gaines County Commissioners Court to exercise its police power authorized under Chapter 234, Subchapter E, 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 which include without limitation, gambling and tax evasion.
- c. This Order and regulations do not legalize anything prohibited under the Texas Penal Code or any other law or regulation.

1.2 Administration and Enforcement

- a. Pursuant to Section 234.133 of the Local Government Code, the State of Texas has granted the Gaines County Commissioners Court

authority to promote the public health, safety, and welfare by regulating the operation of game rooms.

b. The Gaines County Commissioners Court hereby designates and directs the Gaines County Sheriff and his department to enforce these regulations.

c. The Commissioners Court designates the Gaines County Sheriff as Game Room Permit Administrator. The Gaines County Sheriff or his designee shall supervise, control, and operate the Permit Office. The Gaines County Sheriff or his designee shall investigate, deny, issue, attach conditions to, administratively suspend, or revoke game room permits pursuant to these regulations and any other applicable law.

1.3 Area Covered by Regulations

a. These regulations apply to game rooms located in Gaines County.

b. If any incorporated municipality located within Gaines County, under its authority, has adopted regulations applicable to game rooms within its municipal limits, these Regulations do not, and are not intended to, modify, alter, or override such regulations adopted by such municipality.

1.4 Definitions

As used in these regulations:

a. "Amusement redemption machine" means any electronic, electromechanical, or mechanical contrivance designed, made, or 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 in an amount not more than 10 times the amount charged to play the game or device once, or \$5, whichever amount is less.

b. "Applicant" means a person, corporation, partnership, or other business entity required to submit an application for a game room permit and includes all owners and operators of any game room

covered by the application.

c. "Gambling device" means a device described in Article 47.01(4) (a) of the Texas Penal Code.

d. "Game room" means a for-profit business located in a building or place that contains in any combination, six or more amusement redemption machines or 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.

e. "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 10% 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; or

9. signs an alarm permit for a game room.

f. "General residential operation" has the meaning assigned by Section 42.002(4) of the Texas Human Resources Code.

g. "Institution of higher education" means any public or private technical institute, junior college, senior college, or university, medical or dental unit, or "other agency of higher education" as defined by Section 61.003(6) of the Texas Education Code.

- h. "Minor" means a person who is younger than 18 years of age.
- i. "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 any 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 the 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.
- j. "Peace officer" means an individual as described in Article 2.12 of the Texas Code of Criminal Procedure.
- k. "Person" includes an individual, partnership, corporation, association, or other legal entity.
- l. "Playground" means any outdoor facility that is not on the premises of a school and that:
 - 1. is intended for recreation;
 - 2. is open to the public; and
 - 3. contains three or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards.
- m. "Premises" means real property and all buildings, fixtures, and appurtenances located on the real property.
- n. "Public Building" means a structure used by federal, state, or local government that is open to the general public.
- o. "Regulations" refers to the provisions of this Order.
- p. "School" means a private or public elementary or secondary school or a day-care center, as defined by Section 42.002, Human Resources Code, and includes any facility or premises, including all

attached playgrounds, dormitories, stadiums, and other fixtures or appurtenances that are part of the facility or premises, owned by a public or private primary or secondary school.

q. "Sheriff" means the Sheriff of Gaines County or the Sheriffs designated agent or deputy.

r. "Video arcade facility" means any facility that:

1. is open to the public, including persons who are 17 years of age or younger;
2. is intended primarily for the use of pinball or video machines; and
3. contains at least three pinball or video machines.

s. "Youth center" means any recreational facility or gymnasium that:

1. is intended primarily for use by persons who are 17 years of age or younger; and
2. regularly provides athletic, civic, or cultural activities.

SECTION 2. PERMITS

2.1 Permit Required

a. An owner or operator of a game room may not operate, use, or maintain, or allow the operation, use, or maintenance, of any room, building, or facility in Gaines County as a game room without first obtaining a permit from the Sheriff as provided in these regulations.

b. An applicant shall file a completed application for a game room permit with the Sheriff. The application shall be made on the form attached hereto as Exhibit A or on an accurate and legible copy of that form. The applicant shall apply in person at the Sheriff's office, during the days and hours designated by the Sheriff.

c. The applicant shall submit the following information with the application:

1. a copy of the certificate of occupancy or certificate of compliance issued by the appropriate building official, if any, for the proposed game room;
2. a true and correct copy of the certificate of formation or incorporation of any business entity that proposes to operate the game room, as well as any assumed name certificate filed in the

office of the Gaines County Clerk, bearing the file mark or stamp that evidences its filing, if the owner or operator will run the game room under an assumed name;

3. the specific number of amusement redemption machines to be located in the proposed game room, including the following information:

i. a copy of the State of Texas coin-operated machine occupation tax records, the State of Texas coin-operated machine license or registration certificate, any Gaines County coin-operated machine tax records for each machine exhibit, displayed, or permitted to be exhibited or displayed in the game room;

ii. a numbered listing of the name of the manufacturer; serial number; and type of each machine; and

iii. a schematic drawing showing the layout of the game room and the approximate location in the game room of each machine listed above, by its listing number.

4. a signed release to allow the Sheriff to obtain a criminal history of each individual owner or operator of the game room;

5. a copy of the applicant's government-issued photo identification;

6. a certification 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; and

7. a non-refundable application fee of \$1,000.00, paid by cashier's check, or money order.

d. The applicant's failure to provide the required information or to pay the application fee constitutes grounds to deny the application.

e. The Sheriff will mail a notice of any deficiencies found in an application to the applicant within 10 business days of receipt of the application. Any failure to provide the information after a notice of deficiencies or a determination by the Sheriff that the application contains inaccurate, erroneous, or incomplete information will provide grounds for denial or revocation of the application. the Sheriff or his designee may conduct any such inspections of the proposed game room as he deems necessary to make a determination whether to approve or to deny the application.

f. Upon approval of the application, the Sheriff shall issue the

applicant a signed permit. The applicant may operate the game room under the permit for one year from the date of its issuance, in accordance with the representations made in the application and the regulations.

g. A game room may not operate during the pendency of any original application process, and may not operate after the expiration of a permit, if the permit holder has failed to file a renewal application as provided below.

h. A permit holder may apply to renew the permit for another year no sooner than 60 days prior to the expiration of the current permit. The permit holder must file a complete application as specified in Section 2.l.c., above, and the permit holder must pay the same application fee. A renewal application shall be subject to the same requirements in these regulations for an original application.

i. A permit holder cannot assign, sell, or otherwise transfer a permit to another person. Any change in ownership or operation of the game room will require the new owner or operator to file a new application for a game room permit. Continuing operation of a game room by a new owner or operator without submitting a new application due to change of ownership shall constitute grounds for revocation of the game room permits.

2.2 Grounds for Denial

a. Any violation of these regulations or failure to meet any requirement of these regulations will be a ground 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. The Sheriff shall deny a game room permit upon a determination that:

1. less than five years have elapsed since the applicant was convicted of any of the following crimes:

i. 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;

- ii. forgery, credit card abuse, or commercial bribery as described in Chapter 32 of the Texas Penal Code;
 - iii. a criminal offense as described in Chapter 34 of the Texas Penal Code;
 - iv. 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
 - v. a criminal offense as described in Sections 352.021 or 352.022 of the Texas Local Government Code; and
2. 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, for a misdemeanor offense; or
 3. 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, for a felony offense;
 4. the applicant made a misleading statement in the application for the game room permit;
 5. the applicant is under 18 years of age;
 6. the applicant has had a game room permit revoked within the 180-day period immediately preceding the date the application was filed;
 7. the applicant is delinquent in the payment to the county of any taxes, fees, fines, or penalties owed to the County;
 8. the applicant has failed to pay the application or renewal fee;
 9. the applicant has submitted an incomplete application has failed to provide all required documentation;
 10. a permit has previously been revoked for a game room in the same location of the proposed game room.
 11. The proposed game room does not meet the distance requirements of Section 3.4.b., below; or
 12. No available, open permits exist, as provided by Section 3.4.a.
- c. The Sheriff shall not issue a game room permit until final disposition of any charge of any of the offenses listed in Section 2.2.b.1., above, that is pending or that arises during the investigation period.

d. If the Sheriff denies a game room permit, he will give the applicant written notice of the basis for denial.

2.3 Revocation

a. The Sheriff shall have the authority and power to revoke a game room permit if one or more of the following events or conditions have occurred:

1. the commission of any of the offenses listed in Section 2.2.b.1., above, 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 is convicted of a criminal offense listed in Section 2.2.b.1., above;
5. there has been a change in the ownership of the game room from that disclosed in the application upon which the current permit was issued; or
6. After written notice of a violation of these regulations, the owner or operator has failed to correct the violation for more than 3 days.

b. If a law enforcement agency determines probable cause exists to believe that an owner or operator has violated Chapter 47 of the Texas Penal Code, then the game room permit shall be immediately revoked as of the date that the law enforcement agency refers those charges to the Gaines County Attorney's Office.

c. Any owner or operator who is charged with any criminal offense under Chapter 47 of the Texas Penal Code, and whose permit was automatically revoked under Section 2.3.b., must submit a new application in order to regain the revoked permit. A revoked permit may not be re-issued in such a case unless the owner or operator can demonstrate actual innocence of the charged criminal offense.

2.4 Appeal Procedures for Denial or Revocation

In the event that the Sheriff denies an original or renewal application, or revokes an existing permit, the following procedures shall apply:

- a. The applicant shall submit a written notice of appeal of the denial or

revocation to the Gaines County Judge, as agent for the Commissioners Court, within 10 business days of delivery of the notice of the denial or revocation.

b. Upon receipt of the written notice of appeal, the Commissioners Court shall convene, as required by the Texas Open Meetings Act and any other applicable legal authority, and appoint a hearing examiner within 5 business days. The hearing examiner shall not have participated in any investigation of the alleged grounds for the revocation.

c. The hearing examiner shall convene a hearing within 14 business days of the appointment, and the applicant and the Sheriff shall each have the opportunity to present evidence, examine and cross-examine witnesses. The Rules of Evidence shall not apply to presentation of evidence at the hearing. Either party may appear through an attorney at the hearing.

d. The hearing examiner shall determine whether substantial evidence exists to support the denial or revocation of the permit. The hearing examiner will issue a written decision.

e. If the hearing examiner determines that the Sheriff erred by denying the application or revoking the permit, the Sheriff will issue a permit within two business days of the examiner's written decision.

f. If the hearing examiner determines that the Sheriff appropriately denied the application or revoked permit, the denial or revocation will take immediate effect.

g. 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 6 months. The hearing examiner shall issue a written order suspending the game room permit and attaching reasonable conditions for the owner to obtain reinstatement of the permit.

h. Upon the finding of a violation of Sections 2.2c.3., .4, or .5 of these regulations, the hearing examiner must uphold revocation of the permit.

i. The losing party may appeal the hearing examiner's decision by filing a petition in a state district court in Gaines County within 30 days

from the date of the decision.

j. The district court shall consider an appeal under this section under the substantial evidence rules, and the parties may appeal the judgment of the district court as in other civil cases.

2.5 Special Provisions for Currently Existing Game Rooms

The owner and operator of any game room that exists and operates within Gaines County on the date of the passage of these regulations must submit an application for a permit in conformity with the provisions of these regulations within 60 days of the Effective Date shown below. The owner or operator may not operate a pre-existing game room for which application of a permit has not been made after 60 days from the Effective Date.

2.6 Effect

Each person who holds a permit under these regulations must meet and comply with all other requirements of any law or regulation applicable to the premises or any activity conducted thereon, and the issuance of a permit under this article shall not excuse the permittee, his agents or his employees, or any patrons of such premises, for any violation of any law, whether civil or criminal.

SECTION 3. OPERATION OF GAME ROOMS

3.1 Inspection by Law Enforcement Officer

a. Pursuant to Section 234.136 of the Texas Local Government Code, a peace officer or county employee may enter the premises of a permitted game room during its normal business hours to determine the number of amusement redemption machines or other machines subject to permit under these regulations or Section 234.131(2)(B) of the Texas Local Government Code.

b. A peace officer or county employee may enter the premises of any business in which six or more amusement redemption machines or other machines subject to permit under these regulations or Section 234.131(2)(B) of the Texas Local Government Code are located in order to determine compliance with these regulations or the provisions of Chapter 234, Subchapter E of the Texas Local

Government Code.

3.2 Hours of Operation

A game room may operate between the hours of 8:00 o'clock A.M. and 9:00 o'clock P.M.

3.3 Display of Game Room Permits

The owner or operator of a game room shall post or display the current game room permit in a conspicuous place within the game room in plain sight in a common area to which the public has access without having to enter a controlled area of the business.

3.4 Number of Game Rooms; Distancing and Location Restrictions

- a. The number of available game room permits at any given time shall be limited to one permit per 25,000 Gaines County residents, according to the most recent census by the US Census Bureau.
- b. Game Rooms must be located:
 1. at least 1,500 feet from the premises of a school, a regular place of religious worship, the premises of a public or private youth center, or a playground;
 2. at least 300 feet from the premises of a public swimming pool or video arcade facility;
 3. at least 1,500 feet from any premises owned, rented, or leased by a general residential operation operating as a residential treatment center;
 4. at least 1,500 feet from any occupied residence; and
 5. on property having frontage to a state highway or direct access to a state highway.
- c. For the purposes of this subsection, measurements shall be made in a straight line from the points on each exterior property line nearest each other.
- d. A game room in operation before the passage of this Order is exempt from the requirements imposed by Section 3.4.b., so long as the game room remains in continuous operation at the same location. Additionally, a game room that operates at a particular location before the establishment of a residence, school, a regular

place of religious worship, public or private youth center, or a playground, public swimming pool or video arcade facility or general residential operation at a location within the above-stated minimum distances are exempt from the requirements imposed by Section 3.4.b., so long as the game room remains in continuous operation at the same location.

3.5 Regulation of Amusement Redemption Machines

- a. The owner or operator of a game room must operate the game room only with the specific amusement redemption machines listed in the permit application as provided by Section 2.l.c.3.ii., above, and the machines must remain in the locations indicated on the schematic drawing required by Section 2.l.c.3.ii., above. The failure to operate a game room in this manner constitutes a violation of these regulations.
- b. An owner or operator has a duty to provide updated information to the Sheriff when any amusement redemption machine used in the game room changes or if the location of any amusement redemption machine changes from that shown on the schematic filed with the application. The failure to provide an update within 3 business days of a change under this subsection constitutes a violation of these regulations.

3.6 Illegal Machines

These regulations do not authorize or permit the keeping, exhibition, operation, display, or maintenance of any gambling device that is prohibited by the Texas Constitution or Chapter 47 of the Texas Penal Code. The keeping, exhibition, operation, display, or maintenance of any gambling device that is prohibited by the Texas Constitution or Chapter 47 of the Texas Penal Code by any permit applicant or permit holder shall constitute a violation of these regulations and shall constitute grounds for denial or revocation of an application or permit.

3.7 Owners of Real Property Operated as Illegal Gaming Facility

An owner of real property who leases the property to an operator of a game room that operates in violation of these regulations may have liability for any civil penalty imposed by the regulations, if the owner has

knowledge of the violation and does not take steps to remedy the violation.

3.8 Injunction and Civil Penalty

As provided in Section 234.137 of the Texas Government Code, the County may sue in district court for an injunction to prohibit the violation or threatened violation of these regulations and to recover civil penalties owed by an owner or operator under these regulations. The County is entitled to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including reasonable attorney's fees, court costs, and investigatory costs.

SECTION 4. VIOLATIONS

4.1 Civil and Criminal Penalties

- a. An owner or operator who violates any of the provisions of these regulations shall incur a civil penalty of \$10,000.00. Each day a violation occurs or continues to occur shall constitute 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 these regulations.

SECTION 5. MISCELLANEOUS

5.1 Miscellaneous Provisions

With regard to construction of these regulations:

- a. The masculine shall include the feminine.
- b. The singular shall include the plural, and vice versa.
- c. If any part of these regulations is found to be illegal or unenforceable by a court of competent jurisdiction, that provision shall be deemed struck out, and the remainder of the regulations shall continue in full force and effect to the extent practicable.

This Ordinance shall become effective as of January 1, 2025.

BE IT SO ORDERED.

Adopted this 18th day of December 2024, by the Gaines County Commissioners Court.



Cindy Therwhanger, County Judge



Brian Rosson, Commissioner, Precinct 1



Josh Elder, Commissioner, Precinct 2



David Murphree, Commissioner, Precinct 3



Biz Houston, Commissioner, Precinct 4

ATTEST:



Terri Berry, Gaines County Clerk