

STATE OF TEXAS           §  
  §  
COUNTY OF VICTORIA   §

**ORDER OF COMMISSIONERS COURT**

**Adopting Game Room Regulations**

**WHEREAS**, Victoria County received and reviewed the Takings Impact Assessment concerning the new regulations as authorized by Chapter 234 of the Texas Local Government Code concerning the following general areas: Regulating the operation of game rooms; Restricting the location of game rooms to specified areas of the county, including the unincorporated area of the county; Prohibiting a game room location within a certain distance of a school, regular place of religious worship, or residential neighborhood; and Restricting the number of game rooms that may operate in a specified area of the county; and

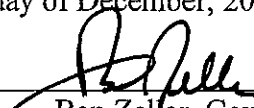
**WHEREAS**, Victoria County scheduled a public hearing for December 16, 2019, on the proposed new regulations concerning Game Rooms; and


**WHEREAS**, Victoria County published the public notice of the scheduled hearing on the proposed new regulations concerning Game Rooms thirty (30) days before the Commissioners Court considered the proposed regulations; and

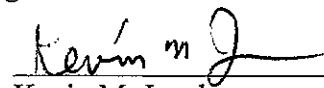
**WHEREAS**, Victoria County received comments and testimony at the public hearing on December 16, 2019, on the proposed regulations concerning Game Rooms; and


**THEREFORE**, the Victoria County Commissioners Court hereby adopts the attached Victoria County Game Room Regulations.

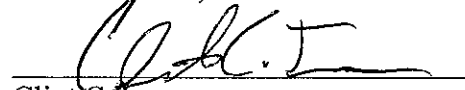
Adopted the 16 day of December, 2019, by a vote of 5 ayes and 0 nays.

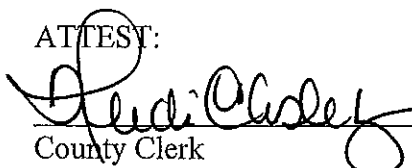
  
Ben Zeller, County Judge

  
Danny Garcia  
Commissioner, Pct. 1

  
Kevin M. Janak  
Commissioner, Pct. 2

  
Gary Burns  
Commissioner, Pct. 3

  
Clint C. Ives  
Commissioner, Pct. 4

ATTEST:  
  
County Clerk



## VICTORIA COUNTY GAME ROOM REGULATIONS

Adopted by Commissioners Court: December 16, 2019

Effective Date: January 1, 2020

### SECTION 1. GENERALLY

WHEREAS, The Legislature of the State of Texas has amended Chapter 234 of the Local Government Code, authorizing counties to regulate Game Rooms; and

WHEREAS, Victoria County, Texas desires to reduce the adverse secondary effects of illicit Game Rooms, which were presented in hearings and reports made available to Victoria County Commissioners Court.

### THEREFORE, VICTORIA COUNTY COMMISSIONERS COURT FINDS:

1. 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.
2. 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.
3. 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 9 p.m. and 8 a.m.
4. Some Illicit Game Rooms, in an apparent effort to avoid detection, operate in locations with inadequate floor space and fire exits, sometimes in locked rooms, which poses a health and safety threat to the public in the event of a fire or any other need to evacuate the premises.
5. Since most Game Room operations are inherently cash based, it is important that those who own and/or operate Game Rooms are of good character in order to protect those who play the games from cheating or other fraudulent activity, or from the other forms of criminal conduct as described herein.
6. Each of the foregoing negative secondary effects constitutes a harm, which Victoria County has a substantial government interest in preventing and abating. This substantial government interest in preventing secondary effects, which is Victoria County's rationale for these Regulations, exists independent of any comparative analysis between legal Game Rooms and illicit Game Rooms. Victoria County's interests in regulating Game Rooms extend to preventing future secondary effects of either current or future Game Rooms that may

locate in Victoria County.

### **1.1 Authority to Regulate**

- (a) These Regulations are promulgated pursuant to and in conformity with Chapter 234 of the Local Government Code, as amended, titled County Regulation of Businesses and Occupations. The commissioners court of a county may regulate the operation of Game Rooms to promote the public health, safety, and welfare, according to Section 234.133 of the Local Government Code. A commissioners court may: (1) restrict the location of game rooms to specified areas of the county, including the unincorporated area of the county; (2) prohibit a game room location within a certain distance to a school, regular place of religious worship or residential neighborhood; and (3) restrict the number of game rooms that may operate in a specified area of the county.
- (b) It is the purpose of the Victoria County Commissioners Court to exercise its police power, as established under Chapter 234 of the 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(s) or regulation(s).

### **1.2 Administration**

- (a) The Victoria County Commissioners Court hereby designates and authorizes any law enforcement agency to investigate for violations of these Regulations. Any Peace Officer certified by the State of Texas may enforce these Regulations and exercise the inspection authority described in Texas Local Government Code Section 234.136.
- (b) Under Section 234.138 of the 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, also allowing prosecution under Section 234.140 and other statutes that would be applicable.
- (c) In accordance with Section 234.133 of the Local Government Code, the State of Texas has granted the Victoria County Commissioners Court authority to promote public health, safety, and welfare.
- (d) The Commissioners Court designates the Victoria County Sheriff as Game Room Permit Administrator for Victoria County. The Victoria County Sheriff shall supervise, control, and operate the Game Room Permit Office. The Victoria 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(s).

### 1.3 Area Covered by these Regulations

Pursuant to Section 234.133 of the Texas Local Government Code, the Regulations apply to all areas of Victoria County, Texas. This includes both the incorporated and unincorporated areas of Victoria County, Texas.

### 1.4 Definitions

As used in these Regulations:

- (a) **“Applicant”** means an individual, proprietorship, corporation, association, and/or other legal entity required to obtain a Game Room Permit or someone who has applied for a Game Room Permit.
- (b) **“Amusement Redemption Machine”** has the meaning assigned by Texas Local Government Code Section 234.131(1). An Amusement Redemption Machine may dispense a representation of value redeemable for a non-cash merchandise prize, which may include a gift certificate issued by and redeemable at a charitable bingo hall licensed by the Texas Lottery Commission at the same address as the redeeming Game Room. Pursuant to 16 TAC § 402.211(d), such a redemption in this County would be a noncash merchandise prize in compliance with Texas Penal Code Section 47.01(4)(B).
- (c) **“Commissioners Court”** means the Commissioners Court of Victoria County, Texas.
- (d) **“County”** means Victoria County, Texas.
- (e) **“County Employee”** means any individual authorized by Victoria County to inspect any Game Room for compliance with these Regulations.
- (f) **“Current Annual Fire Inspection Report”** means a fire inspection report issued by the Victoria County Fire Marshal or a 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.
- (g) **“Fire Safety Official”** means the Victoria 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.
- (h) **“Gambling Device”** means a device described in Article 47.01(4) (A) of the Texas Penal Code.
- (i) **“Game Machine”** means any device described by Texas Local Government Code Section 234.131(2)(A) and (B), and includes “sweepstakes machines” or other devices that afford a

player a chance to win a prize for consideration (either payment, purchase or donation) even if some chances are afforded to players without making any purchase or donation.

- (j) **"Game Room"** has the meaning assigned by Texas Local Government Code Section 234.131(2).
- (k) **"Game Room Owner"** has the meaning assigned by Texas Local Government Code Section 234.131(3).
- (l) **"Game Room Permit Administrator"** means the Sheriff of Victoria County or the Sheriff's designee.
- (m) **Operate(s) a Game Room** means to:
  - 1. be an Owner or Operator of a Game Room as those terms are defined by Subsection 1.4(k) and 1.4(n) of the Regulations;
  - 2. engage in the business of operating a Game Room, including as a Game Room Owner;
  - 3. cause the operation of a Game Room, including as an Operator;
  - 4. be a part of the operation of a Game Room, including as an Operator;
  - 5. fund the operation of a Game Room, including as a Game Room Owner;
  - 6. have a financial interest in a Game Room, including as a Game Room Owner;
  - 7. receive any profit from a Game Room, including as a Game Room Owner;
  - 8. receive any payment from a Game Machine described in Subsection 1.4(i) in a Game Room;
  - 9. receive any profit from a Game Machine described in Subsection 1.4(i) in a Game Room; or
  - 10. have Game Machines described in Subsection 1.4(i) registered in Victoria County or in a Game Room licensed in Victoria County.
- (n) **"Operator"** has the meaning assigned by Texas Local Government Code Section 234.131(4).
- (o) **"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. If certified letter is not signed for and not picked up from the post office after notice has been posted at the establishment, lack of due diligence shall be considered as notice of the contents of the letter.

- (p) **“Peace Officer”** means an individual as described in Article 2.12 of the Texas Code of Criminal Procedure.
- (q) **“Person”** means an Owner, Operator, individual, employee, agent, proprietorship, corporation, association, or other legal entity.
- (r) **“Public Building”** means a building used by Federal, State, or local government that is open to the general public.
- (s) **“Regulations”** means these Regulations of Victoria County, Texas, for the operation of Game Rooms.
- (t) **“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.
- (u) **“Sheriff”** means the Sheriff of Victoria County or the Sheriff’s designated agent.

## **SECTION 2. GAME ROOM PERMITS**

### **2.1 Application**

- (a) It shall be unlawful for a Person to Operate a Game Room, or maintain a Game Room as a Game Room Owner or Operator in Victoria County that has not been issued a permit pursuant to these Regulations.
- (b) A complete 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. A copy of the application can be obtained from the Sheriff’s Office website.
  - (1) The Applicant shall apply in person. The Applicant shall be an Owner of the Game Room. The Game Room Permit Administrator shall 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 \$1,000.00 as established by the Commissioners Court. The application fee shall be attached to the application form.
  - (3) Incomplete applications shall not be accepted. Once a complete application has been submitted, the application process begins.

- (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 Game Room permit.
- (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. Furthermore, it shall be the responsibility of the Applicant to provide an interpreter, if necessary, during these inspection(s).
  - i. After the initial inspection, the Applicant will be informed of what corrections must be made to the proposed Game Room in order to comply with these Regulations.
  - ii. A re-inspection will be performed and the Applicant will again be informed of what corrections must be made to the proposed Game Room in order to comply with these Regulations.
  - iii. 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.
  - iv. If the proposed Game Room passes final inspection, the Game Room Permit Administrator shall approve the application.
- (6) The Applicant has sixty (60) days from the initial inspection to complete the inspection process. Applicant shall request inspections that may be conducted at the convenience of the Permit Administrator. Failure to complete the inspection process within these sixty (60) days shall result in denial of the application. It is the duty of the Applicant to ensure the process is completed in the requisite sixty (60) days.
- (7) Failure to provide any information required by this Section shall be grounds for denial of the application. If the Game Room Permit Administrator determines that inaccurate, erroneous, or incomplete information has been submitted, such a filing shall be grounds for denial of the application.

(c) Each complete application shall be accompanied by:

- (1) a Current Annual Fire Inspection Report from a Fire Safety Official showing compliance with all applicable Fire Safety Codes and with all corrections ordered;

- (2) a copy of certification of occupancy or certification of compliance issued by the appropriate entity for the proposed Game Room;
- (3) a diagram or floor plan to include designed occupancy load prepared by a licensed architect or engineer as well as a scaled drawing that shows a view from above of the entire property, and which indicates the size and distance between streets, compliant parking spaces, driveways, driveway aisles, spaces, sidewalks, and ADA compliant handicapped parking spaces;
- (4) a true and correct copy of the assumed name certificate filed in the office of the Victoria 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, including proof that applicant is authorized to do business in the State, if applicant is a foreign business organization;
- (6) a non-refundable application fee of \$1,000.00 -- if the Applicant holds a current license issued by the Texas Lottery Commission that included a criminal background check, the fee is waived and the Sheriff may rely upon the Lottery Commission license in lieu of a criminal background check;
- (7) a photocopy of the Applicant's driver's license or government-issued photo identification;
- (8) proof as required in Subsection 3.16 that the proposed Game Room is exempt from the requirements set forth by Subsections 3.3, 3.4, 3.6, 3.7 and 3.8 of these Regulations;
- (9) the name, mailing and physical address and telephone number of the Game Room's single financial institution of record, as required by Subsection 4.1, which will handle all deposits and withdrawals for proceeds and expenses of the operation of the Game Room;
- (10) the intended hours of operation of the Game Room and the name, residence addresses and telephone numbers of the manager or other individual to be principally in charge of the operation of the Game Room;
- (11) proof as required in Subsection 3.3 that the proposed Game Room is exempt from, or will be located in compliance with, the requirements set forth by Subsection 3.3 of these Regulations;
- (12) a current lease agreement for the Game Room premises with the Applicant, listed as an Owner of the Game Room, and premises lessee, or proof of property ownership. If the property leased by the Game Room Owner, the application



shall also be signed by the Property Owner or if the Property Owner is a business organization, a natural person who attaches to the application documentary evidence demonstrating that they are authorized to sign the application on behalf of the Property Owner. Further, the Property Owner must sign the following acknowledgment: "I own the property described in this application, and I have actual knowledge of the proposed or current operation of a Game Room on my property. I acknowledge that I may personally be held criminally liable for illegal activity associated with the Game Room on my property, including keeping a gambling place under Chapter 47 of the Penal Code, operating an unauthorized Game Room under Victoria County Game Room Regulations and other applicable statutory provisions.";

- (13) a list of all Owner(s), Operator(s), employee(s), agent(s), and any other individual(s), proprietorship(s), corporation(s), association(s), or other legal entity(s) acting for, or acting on behalf of the Game Room along with a photocopy of their driver's license(s) or government-issued identification and incorporation papers as applicable, and a brief description of the amusement, gaming or similar business history and experience five (5) years prior to the date of application for each Game Room Owner, including, but not limited to, whether or not such individual has previously operated in this or another county or state, whether such operation was under a license or permit, and whether the applicant has ever had such license or permit denied, revoked, or suspended and the reasons therefore;
- (14) a copy of the State of Texas coin-operated machine occupation tax records, the State of Texas coin-operated machine license or registration certificate, and the Victoria County coin-operated machine occupation tax records for each machine exhibited or displayed, or permitted to be exhibited or displayed in the Game Room in a spread sheet format. Records shall include information detailing each machine found on the premises of the Game Room by identifying the machine by:
  - i. the name of manufacturer;
  - ii. the serial number;
  - iii. the type of machine;
  - iv. the State of Texas Tax stamp including the year of expiration of each tax stamp required;
  - v. the Victoria County Tax Stamp including the year of expiration of each tax stamp required; and
  - vi. the name of the individual(s), proprietorship(s), corporation(s), association(s), and/or other legal entity(s) that owns, receives profits

from, and has registered the machine in their name with Victoria County and the Texas Comptroller and a description of their ownership and financial interest in the machine.

- (15) the Game Room Applicant's Federal Employer Identification Number (EIN);
  - (16) a certification that none of the Owner(s), Operator(s), employee(s), agent(s), and/or any other individual(s) acting for, or acting on behalf of the Game Room have been convicted of any level of any of the offenses listed in Subsection 2.2(b) (1) of these Regulations; and
  - (17) a certification that all of the contents of the application and the above presented materials are true and correct under the penalty of Perjury as defined under Section 37.02 of the Texas Penal Code. In addition, any misrepresentation on the application is a third degree felony offense as defined under Section 37.10 of the Texas Penal Code.
- (d) A Game Room application shall be rejected upon failure to produce all documents required in Subsections 2.1(c), except for the exemptions listed in Subsections 2.1(c) (8)-(11). Failure to provide the proof required by Subsection 2.1(c) (7)-(10) will result in denial of the specific exemption described in that particular Subsection.
- (e) A GAME ROOM SHALL NOT OPERATE DURING THE PENDENCY OF THE APPLICATION AND UNTIL THE GAME ROOM APPLICATION IS APPROVED AND THE PERMIT ISSUED. Game Rooms existing upon the effective date of this regulation will be given no more than 30 days within which to make application for the necessary permit in order to continue operating. Game Rooms which fail to make the necessary application with the 30-day period will be prohibited from further operation until such permit is issued.
- (f) 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 Owner(s) must reapply and must do so before the Game Room may operate.
- (g) 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 37.02 of the Texas Penal Code. In addition, any misrepresentation on the application is a third degree felony offense as defined under Section 37.10 of the Texas Penal Code.

## **2.2 Grounds for Denial, Revocation, or Suspension of a Game Room Permit**

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

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

(1) An Applicant, Owner, or Operator has previously violated or been convicted of any level of offense for 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; and

A. less than two (2) years have elapsed since the date of violation, or conviction, or the date of release from confinement imposed by the conviction, whichever is the later date if the violation or conviction was a misdemeanor offense; or

B. less than five (5) years have elapsed since the date of violation, or conviction, or the date of release from confinement imposed by the conviction, whichever is the later date, if the violation or conviction was a felony offense.

(2) an Applicant makes a misleading statement in the application for the Game Room permit, provides false, fraudulent, or untruthful information in the application for a Game Room permit, and/or withholds pertinent information in the application for a Game Room permit;

(3) an Applicant has had a Game Room, or other similar license or permit revoked or suspended by any state or local agency outside this County within two (2) years immediately prior to the date of the application;

- (4) an Applicant is under eighteen (18) years of age;
  - (5) an Applicant, Owner, or Operator has had a Game Room permit denied within the one hundred and eighty (180) day period immediately preceding the date the application was filed, or revoked within the one-year period immediately preceding the date the application was filed;
  - (6) an Applicant, Owner, or Operator is delinquent in the payment to Victoria County of taxes, fees, fines, or penalties assessed or imposed regarding the operation of a Game Room;
  - (7) an application or renewal fee required by these Regulations has not been paid;
  - (8) an Applicant fails to complete the inspection process within the sixty (60) day period described in Subsection 2.1;
  - (9) an offense described in Subsection 2.2(b) (1) or Subsection 3.12(a) of these Regulations was committed at the Game Room or another Game Room at the same location within one (1) year prior to the application; or
  - (10) any violation of Sections 2 or 3 of these Regulations.
- (c) If the Game Room Permit Administrator denies a Game Room permit, the Game Room Permit Administrator shall document the denial and provide Notice to Applicant of the denial within twenty one (21) days of the date on which the denial was documented by the Game Room Permit Administrator. The denial letter shall provide the reason(s) for the action.
- (d) **Revocation or Suspension of a Game Room 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 (1) or more of the following events or conditions has occurred:
- (1) any violation of any of the offenses described in Subsection 2.2(b) (1) or Subsection 3.12(a) of these Regulations has occurred on the premises of the Game Room;
  - (2) the Applicant made a misleading statement in the application for the Game Room permit, provided false, fraudulent, or untruthful information in the application for a Game Room permit, and/or withheld pertinent information in the application for a Game Room permit;
  - (3) the Game Room permit should not have been issued pursuant to these Regulations;

- (4) an Applicant, Game Room Owner, or Operator has had a Game Room, or other similar license or permit revoked or suspended by any federal, state or local agency;
  - (5) an Applicant, Game Room Owner, or Operator has failed to make corrections ordered by a Fire Safety Official;
  - (6) a Game Room Owner, Operator, employee, agent, and/or any other individual acting for, or acting on behalf of the Game Room has violated any of the offenses contained in Subsection 2.2(b) (1) or Subsection 3.12(a) of these Regulations; or
  - (7) any violation(s) of Section 2 or 3 of these Regulations.
- (e) If any of the stated events or conditions providing a basis for revocation or suspension of a Game Room permit under Subsection 2.2(d) has occurred, the Game Room Permit Administrator shall document the violation and provide Notice to Applicant or permit holder of revocation or suspension within twenty one (21) days of the date on which the violation was documented by the Game Room Permit Administrator. The revocation letter shall provide the reason(s) for the action. The revocation shall become final on the seventh (7<sup>th</sup>) day after Notice.
- (f) Revocation shall take immediate effect upon Notice by the Game Room Permit Administrator if:
- (1) an Owner, Operator, employee, agent, and/or any other individual acting for, or acting on behalf of a Game Room has violated any offense described in Subsection 2.2(b) (1) or Subsection 3.12(a) of these Regulations;
  - (2) a violation of any offense described in Subsection 2.2(b) (1) or Subsection 3.12(a) of these Regulations has occurred on the premises of the Game Room;
  - (3) there is a necessity for immediate action to protect the public from injury or imminent danger; or
  - (4) 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 Appeal

- (a) If the Game Room Permit Administrator denies a Game Room permit application, or suspends or revokes a Game Room permit, 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 Victoria County Game Room Permit Administrator within fourteen (14) days upon Notice to Applicant or permit holder. The Applicant waives the right to hearing if the request is not timely received by the Game Room Permit Administrator.
- (c) The hearing shall be held within twenty one (21) days of the receipt of request for a hearing.
- (d) 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.
- (e) It shall be the responsibility of the Applicant or permit holder to provide a court reporter and an interpreter, if necessary, for the hearing before the hearing examiner.
- (f) The Applicant or permit holder shall be present in person at the hearing. If the Applicant or permit holder is not present in person at the hearing, his or her Game Room permit shall automatically be denied or revoked.
- (g) The hearing examiner has the power to uphold or reverse the denial, suspension, or revocation of a Game Room permit. The hearing examiner shall issue a written order based on his or her determination within twenty one (21) days of the hearing.
- (h) 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 shall be suspended for a period not to exceed one hundred and eighty (180) days. The hearing examiner shall issue a written order suspending the Game Room permit and attaching conditions, if applicable, and the suspension shall become effective on the date the hearing examiner issues his or her order.
- (i) Upon a finding by the hearing examiner that Subsection 2.2(d) (1), 2.2(d) (2), 2.2(d) (3), 2.2(d) (4), or 2.2(d) (5) of these Regulations has been violated, revocation of the Game Room permit shall be mandatory.
- (j) 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 with jurisdiction within thirty (30) days after the date of the decision. Appeals to the District Court shall be governed by the substantial evidence rule described in Section 2001.174 of the Local Government Code.

#### **2.4 Game Room Operation During Pendency of Appeals to District Court**

- (a) If the Applicant's or permit holder'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 Applicant's 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 the appeal to the district court.
- (c) No Game Room may operate pending an appeal for denial of a Game Room permit to the district court.

## **2.5 Reapplication**

- (a) After a hearing examiner's final ruling of permit denial, an Applicant may reapply for a Game Room permit after the expiration of one hundred and eighty days (180) from the date of the final ruling. After a hearing examiner's final ruling of revocation an Applicant may reapply for a Game Room permit after the expiration of one year from the date of the final ruling,
- (b) This application will be considered a new application in regard to the application timelines and fee established in Subsection 2.1 and for the distance requirements set forth in Subsection 3.9.

## **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 in these Regulations. A renewal application shall be subject to the same requirements 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) An Owner shall pay a non-refundable annual permit fee of \$1,000.00. 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 Owner within fourteen (14) days of the receipt of the non-refundable fee.

## **2.7 Contents of a Game Room Permit**

When the application process is complete and the proposed Game Room has met all the requirements set forth in these Regulations, the Game Room Permit Administrator shall give the Applicant a signed certificate. The certificate constitutes a permit to operate the Game Room for one (1) 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, and the physical address of the Game Room. If the permit holder is a corporation, or legal entity, then

the permit shall also list the person(s) asserting control over the legal entity. The permit shall list any applicable exemptions to the requirements of Section 3 for which the permit holder qualified. The Game Room Permit Administrator shall keep an original signed copy of the permit for the Administrator's records.

## **2.8 Civil Remedies and Penalties**

- (a) Any violation of these Regulations is grounds for denial, suspension, or revocation of a Game Room permit.
- (b) Any violation of these Regulations is subject to a civil penalty of \$10,000.00 for each violation, plus all reasonable attorney's fees, court costs and investigatory costs, pursuant to Texas Local Government Code Section 234.137(c). Such penalty to be forfeited to Victoria County, Texas. Each day that a violation continues constitutes a separate ground for recovery.
- (c) The Commissioners Court of Victoria County, Texas may bring a legal action to enjoin violations of these Regulations and seek judgment for any civil penalties.

## **2.9 Criminal Penalty**

- (a) Operating a game room in violation of these Regulations constitutes a Class A misdemeanor.
- (b) Each day that a violation continues constitutes a separate offense under these Regulations.

## **2.10 Effect**

Each Applicant, Owner, Operator, employee, agent and/or any other individual acting for, or acting on behalf of a Game Room must meet and comply with all requirements of all applicable law(s). The issuance of a permit under these Regulations shall not excuse any Owner, Operator, employee, agent, and/or any other individual acting for, or acting on behalf of a Game Room, or any patrons of such premises from compliance with such law(s) or regulation(s).

## **SECTION 3. GAME ROOMS**

### **3.1 Inspection by a Peace Officer**

- (a) **Inspection.** Peace Officers, Fire Safety Officials, and designated County Employees are authorized to inspect any business in Victoria County during its hours of operation for violations of these Regulations pursuant to Texas Local Government Code Section 234.136. These Regulations do not authorize a right of entry prohibited by law. Peace Officers, Fire Safety Officials, and designated County Employees may enter a business outside of hours of operation with consent, with a warrant, or under exigent



circumstances. A Game Room permit issued pursuant to these Regulations gives Peace Officers, Fire Safety Officials, and designated County Employees implied consent to enter and to inspect any Game Room for violations of these Regulations.

- (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(i) located in the Game Room—or by any other means—is subject to inspection by any Peace Officer, Fire Safety Official, and designated County Employee pursuant to Texas Local Government Code Section 234.136 and is a Game Room under these Regulations.
  - (1) Refusal to allow any Peace Officer, Fire Safety Official, and designated County Employee entry to inspect such unpermitted Game Rooms may be considered in establishing probable cause for the issuance of a search warrant to inspect for violations of these 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.** Any Peace Officer, Fire Safety Official and designated County Employee may inspect a permitted Game Rooms located within their jurisdiction to determine whether the Game Room is in compliance with these Regulations pursuant to Texas Local Government Code Section 234.136.
- (d) **Consent to Entry.** A Person who does not allow a Peace Officer, Fire Safety Official, or designated County Employee to inspect a Game Room commits an offense, and may be assessed a civil penalty not to exceed \$10,000 per violation. Each Peace Officer, Fire Safety Official, and Designated County Employee denied entry is considered a separate violation. Each day a refusal of access occurs or continues to occur is considered a separate violation.

### **3.2 Location of Game Rooms; Restrictions in Incorporated Territory and Unincorporated Areas**

Game Rooms operating any Game Machines described by Texas Local Government Code Section 234.131(2)(B) may only be operated on premises located entirely in Unincorporated Territory of Victoria County. Only Game Rooms that operate Amusement Redemption Machines and no other Game Machines may operate on premises located in whole or in part in Incorporated Territory of Victoria County. This restriction does not prohibit a Game Room located on the same premises in the Incorporated Territory of the County as a Charitable Bingo Hall that has been licensed by the Texas Lottery Commission and conducted bingo sessions for at least five years in the location prior to applying for a Game Room Permit. There shall be no more than two (2) game rooms that may operate in any

Commissioners Precinct within Victoria County specified area of the county.

### **3.3 Distancing Restrictions**

- (a) It shall be the duty of any Owner or Operator to ensure compliance with this Subsection.
- (b) A Game Room in operation shall not be located:
  - (1) within 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 2,000 feet from where two (2) or more other Game Rooms are located.
- (c) 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 (b) above.
- (d) Once a Game Room Permit has been issued for a particular location, it shall not be a ground for non-renewal that a school, regular place of worship, or residential neighborhood is constructed or moved within 1,500 feet of the pre-existing Game Room Permitted location.

### **3.4 Game Room Sign and Name Tags Required**

- (a) It shall be the duty of any Owner or Operator to ensure compliance with this Subsection.
- (b) A Game Room shall have each outside door marked with a sign that:
  - (1) reads "GAME ROOM" in four (4) inch or larger block lettering; and
  - (2) is legible and visible at all times from a distance of twenty five (25) feet from the outside door.
- (c) Each employee is required to wear a clearly displayed name tag affixed to the upper left chest area of the employee's clothing. The name tag shall be at least 3"x5" in size and shall state the employee's correct legal first name and last name, and shall state his/her position (i.e. Manager) on a separate line. The lettering shall be clearly visible, in a font size of at least 36. A Texas Lottery Commission registration badge worn by an employee in a licensed Charitable Bingo Hall satisfies this name tag requirement.

### **3.5 Fire and Life Safety**

- (a) It shall be the duty of any Owner or Operator to ensure compliance with this Subsection.
- (b) A Game Room shall 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.
- (c) A Game Room or commercial establishment shall comply with all construction and fire codes, and shall pay any court-approved fee(s) associated with a fire and life safety inspection, plan review, occupancy load calculation, or complaint.
- (d) All construction and fire code regulations will be strictly enforced and Game Rooms shall provide any Fire Safety Official with immediate access to the premises at all times.
- (e) A Game Room shall not use electronic locks to prevent entry during business hours.
- (f) Game Rooms shall have at least one marked fire exit for every twenty-five Game Machines in operation on the premises.

### **3.6 Transparent and Uncovered Windows and Doors Required**

- (a) It shall be the duty of any Owner or Operator to ensure compliance with this Subsection.
- (b) A Game Room shall provide at least one (1) window in the front of the building and at least one (1) other window on one (1) other side meeting the criteria set forth in Subsection (c), allowing a clear and unobstructed view of all machines described in Subsection 1.4(i) located in the Game Room.
- (c) It shall be unlawful for a Person to exhibit or display, or to permit to be exhibited or displayed, for commercial use any machine described in Subsection 1.4(i) in a Game Room unless the required transparent walls or windows of the Game Room:
  - (1) are located on at least two (2) sides of the Game Room, and each machine described in Subsection 1.4(i) located therein is visible through such walls or windows; and
  - (2) at the lowest point are not more than four (4) feet above the adjacent sidewalk or ground level; and
  - (3) at the highest point are at least eight (8) feet higher than the adjacent sidewalk or ground level; and
  - (4) are at least four (4) feet wide.
- (d) A Game Room shall provide transparent uncovered glass in each exterior Game Room window or door.

- (e) It shall be unlawful for a Person to cover or tint a Game Room window or door, or otherwise block a window or door so as to obscure the view of any machine described in Subsection 1.4(i) located in a Game Room, or the interior of the location from a sidewalk through a Game Room window or door.

### **3.7 Hours of Operation**

- (a) It shall be the duty of any Owner or Operator to ensure compliance with this Subsection.
- (b) A Game Room shall operate only between the hours of 8 a.m. and 9 p.m.

### **3.8 Display of a Game Room Permit**

- (a) It shall be the duty of any Owner or Operator to ensure compliance with this Subsection.
- (b) A Game Room shall 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, along with a list of all Game Room Owners connected with the Game Room.

### **3.9 Recordkeeping**

- (a) It shall be the duty of any Owner or Operator to ensure compliance with this Subsection.
- (b) A Game Room shall maintain onsite, and produce to any Peace Officer, Fire Safety Official, and/or designated County Employee 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 the Department of Homeland Security, 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. Every Owner, Operator, employee, agent, and/or any other individual acting for or acting on behalf of the Game Room is required to sign the daily register with the information required above immediately upon entering the Game Room;
  - (3) a daily prize register that contains a list of all cash prizes awarded or non-cash merchandise prizes over \$50 in value redeemed each day and the name, date of birth, state identification number or social security number of each prize winner; and
  - (4) a copy of the Victoria County and State of Texas tax record forms detailing each machine found on the premises of the Game Room by identifying the

machine by name of manufacturer, serial number, type of machine, the serial number of the State of Texas Tax stamp to include the year of expiration of each tax stamp required, the Victoria County Tax Stamp to include the year of expiration of each tax stamp required, and the name of the individual(s), proprietorship(s), corporation(s), association(s), or other legal entity(s) that owns, receive profits from, and has registered the machine in their name with the Texas Comptroller with a brief description of their ownership and financial interest in the machine in a spread sheet format.

- (c) A Game Room shall preserve the daily register required by Subsection (b)(2) 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 any Person on duty at the Game Room, and must be made available to any Peace Officer, Fire Safety Official, and/or designated County Employee upon request.

### **3.10 Prohibited Employment**

- (a) It shall be the duty of any Owner or Operator to ensure compliance with this Subsection.
- (b) It shall be unlawful for any Owner, Operator, employee, agent, and/or any other individual acting for, or acting on behalf of a Game Room to have been previously convicted of, entered a plea of nolo contendere or guilty, or received deferred adjudication for any offense set forth in Subsection 2.2(b) (1).
- (c) It is the responsibility of any Owner or Operator to conduct a criminal background check on every Owner, Operator, employee, and/or any other individual acting for, or acting on behalf of a Game Room.

### **3.11 Game Room Memberships**

- (a) It shall be the duty of any Owner or Operator to ensure compliance with this Subsection.
- (b) Game Room memberships are prohibited for any purpose.
- (c) A Game Room shall not restrict entry to a Game Room and/or prohibit the participation in any activity inside a Game Room by a patron through the requirement of a Game Room membership.
- (d) Game Rooms shall not issue membership cards to any individual for any purpose.
- (e) Game Rooms shall not have, make use of, employ, and/or require check-in procedures of any kind prior to entering or before exiting a Game Room.

### **3.12 Machines Located in a Game Room**

- (a) It shall be the duty of any Owner or Operator to ensure compliance with this Subsection.
- (b) A Game Room shall obtain an occupation tax permit from the Victoria County and State

of Texas Tax Assessor-Collector for each Machine described in Subsection 1.4(i) located in the Game Room.

- (1) The annual fee to be paid to the Victoria County Tax Assessor-Collector will be twenty five (25) percent of the State's annual fee per machine.
- (2) All Machine tax permit applications are required to indicate the location on the application where the Machines described in Subsection 1.4(i) are physically located.
- (3) Whenever a machine described in Subsection 1.4(i) is found not to be in compliance as to tax permits, it shall be locked by the Tax Assessor-Collector's Office or any Peace Officer and cannot be used until the Owner purchases a tax permit for the machine at a cost of \$100, regardless of which quarter of the year the unlock fee is paid, and then pays an "unlock fee" of \$5 per machine.

### **3.13 Premises – Minimum Square Footage**

Any room in which Game Machines are operated must contain at least fifteen square feet of open floor space per machine, and must be generally accessible consistent with the requirements of the Americans with Disabilities Act.

### **3.14 Maximum Number of Machines**

No Game Room in this County may operate more than fifty Game Machines. A Game Room located on the same premises as a Charitable Bingo Hall licensed by the Texas Lottery Commission may operate no more than four Game Machines for each bingo session conducted per week based on an average number of sessions conducted over the five years in the location prior to applying for a Game Room Permit or renewal. It shall be a violation of these Regulations for a Game Room 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. Each machine and each day it is kept, exhibited, operated, displayed, or maintained is a separate violation.

### **3.15 Posting of Rules**

At least one poster per 800 square feet must be posted in a prominent location in any room in which Game Machines are being operated. Each poster must display, in legible type in both English and Spanish the complete rules of any games in operation, the prizes available, the odds of winning, the Game Room license number issued by the County, and the telephone number designated by the Sheriff to refer complaints about the operation of the Game Room.

### **3.16 Requirements to Qualify for Food and Beverage Sales or Charitable Bingo Exemptions**

A Game Room permit 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 from the Regulations in Subsections 3.3, 3.4, 3.6, 3.7 and 3.8 if the Applicant can show a valid and current Texas Lottery Commission Charitable Bingo License as described in Chapter 2001 of the Texas Occupations Code Chapter, and that bingo sessions have been conducted at the location on at least a weekly basis for at least five years prior to the filing of the Application. An original certificate or copy of this license and a copy of the Lottery Commission Quarterly Bingo Reports presented with the complete Game Room permit application at the time of application or permit renewal is sufficient to make this showing. A Game Room that has a Charitable Bingo Exception from Subsection 3.7 may only operate a Game Room when the bingo hall is open and on days a charitable bingo session is being conducted.
- (c) **Food and Beverage Sales Exemption.** An Applicant is qualified for a Food and Beverage Sales exemption from the Regulations in Subsections 3.3, 3.4, 3.6, 3.7 and 3.8 if the Applicant 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:
- i. Food or Beverage Service - 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;
  - ii. Entrée - main dish of a meal;
  - iii. Multiple Entrées - no fewer than eight different entrees per meal period must be available to customers; and
  - iv. Food Service Facilities - 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:
- i. with respect to the operation of a Game Room, the Applicant's primary business on the premises is Food or Beverage Service;
  - ii. multiple entrees are available to customers;
  - iii. Food Service Facilities are maintained on the premises;

- iv. The Game Room does not operate outside the hours of operation for sale and Food or Beverage Service and
- v. at least 51 percent 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:
  - i. the menu or, if no menu is available, a listing of the food and beverage items;
  - ii. hours of operation of Food or Beverage Service;
  - iii. 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;
  - iv. listing of equipment used in preparation and Food or Beverage Service versus the equipment used in operation of a Game Room;
  - v. 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;
  - vi. if alcoholic beverages are served, the TABC license or permit as applicable with the TABC food and beverage certificate as applicable; and
  - vii. 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 3.16(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 include:
  - i. 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 proceeds from machines described in Subsection 1.4(i) located in the Game Room. Purchase invoices must be maintained to reflect the total purchases of beverages, food, and other major purchase categories;

- ii. complimentary food and beverages, including alcoholic beverages, shall not be calculated in determining whether the premises meets the 51 percent or more food or beverage sales threshold;
- iii. all records are required to be maintained for four years and made available to authorized representatives of the Game Room Permit Administrator upon reasonable request; and
- iv. 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.

### **3.17 Owners of an Illegal Game Room**

It is not a defense to prosecution under these Regulations if an individual does not have the DBAs in his/her name and/or does not lease the property in his/her name.

### **3.18 Exemption from Location Restrictions and Distancing Restrictions**

Game Rooms are exempt from the location restrictions (*see* Section 3.2) and distancing restrictions (*see* Section 3.3) upon proof that the Applicant including the Game Room Owner(s) continuously owned and operated the Game Room at the same location and under the same name prior to January 1, 2019. If the Game Room changes its name, its Owner, and/or adds another Owner after the effective 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 location restrictions and distancing restrictions. All applications claiming a distance exemption under this section must have been submitted on or before January 31, 2020.

## **SECTION 4. FINACIAL REQUIREMENTS**

### **4.1 Records**

- (a) Each game room must have only one financial institution of record. All out going

payments must be by a check from its bank of choice. All revenue must be deposited into their bank of choice.

- (b) To change banks of choice, it is required that the change must be reported to Victoria County within fifteen business days.
- (c) Each game room is only allowed to have one bank of choice at any given time.
- (4) Exception: during the transfer period as long as both banking institutions are listed there may be a one hundred twenty day period to close one banking institution while the new bank of choice is being opened.

## **SECTION 5. CUMULATIVE EFFECT OF REGULATIONS; SEVERABILITY**

### **5.1 Cumulative Effect**

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

### **5.2 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.