

ORDINANCE NO. 1915

AN ORDINANCE ADOPTING AND ESTABLISHING GAME ROOM REGULATIONS IN ACCORDANCE WITH THE AUTHORITY AND PROVISIONS OF CHAPTER 234 OF THE TEXAS LOCAL GOVERNMENT CODE, RESTRICTING THE NUMBER OF GAME ROOMS WITHIN WILLACY COUNTY, PROVIDING FOR AN APPLICATION PROCESS, PROVIDING FOR OTHER REGULATIONS, PROVIDING FOR A CIVIL PENALTY FOR VIOLATION OF THESE REGULATIONS, AND PROVIDING FOR RELATED MATTERS.

WHEREAS, Chapter 234 of the Local Government Code authorizes certain counties, including Willacy County, to regulate game rooms; and

WHEREAS, Willacy County, Texas, has experienced a proliferation of game room operations that have had a negative impact on the quality of life of its residents; and

WHEREAS, the Willacy County Commissioners Court desires to reduce the adverse secondary effects of illicit game rooms; and

WHEREAS, the Willacy County Commissioners Court finds and deems it in the best interest of Willacy County and its residents that game rooms be limited in number and regulated to minimize potential negative impact on the residents of Willacy County; and

WHEREAS, the Willacy County Commissioners Court finds 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, negative impacts on surrounding properties, urban blight, and litter; and

WHEREAS, the Willacy County Commissioners Court believes game rooms should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other game rooms, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of game rooms in one area; and

WHEREAS, the Willacy County Commissioners Court believes game rooms should have restricted hours of operation to minimize negative secondary effects; and

WHEREAS, the Willacy County Commissioners Court finds each of the foregoing negative secondary effects constitutes a harm which Willacy County has a substantial government interest in preventing and/or abating; and

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

WHEREAS, the Willacy County Commissioners Court finds Willacy County's interests in regulating game rooms extend to preventing future secondary effects of either current or future game rooms that may locate in Willacy County;

NOW, THEREFORE, BE IT ORDAINED BY THE WILLACY COUNTY COMMISSIONERS COURT:

SECTION 1

1.1 Authority to Regulate

(a) This Ordinance and these regulations are promulgated pursuant to and in conformity with Chapter 234 of the Texas Local Government Code, as amended, to promote the public health, safety, and welfare, as authorized by Section 234.133 of the Local Government Code.

(b) It is the intent and purpose of the Willacy County Commissioners Court to exercise its police power, as authorized 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 or regulation.

1.2 Administration and Enforcement

(a) Pursuant to Sections 234.132 and 234.133 of the Local Government Code, the State of Texas has granted the Willacy County Commissioners Court authority to promote the public health, safety, and welfare by regulating the operation of game rooms.

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

(c) The Commissioners Court designates the Willacy County Sheriff as Game Room Permit Administrator. The Willacy County Sheriff or his designee shall supervise, control, and operate the Permit Office. The Willacy 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 applicable state law.

(d) In accordance with Section 234.138(b) 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.

1.3 Area Covered by Regulations

These regulations apply to game rooms located:

- (a) in the unincorporated area of Willacy County, and
- (b) in the incorporated cities or towns of Willacy County that execute cooperative agreements with Willacy County for application of these regulations.

1.4 Definitions

As used in these regulations:

(a) "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.

(b) "Amusement redemption machine" means any electronic, electromechanical, or mechanical contrivance designed, made, and adopted for bona fide amusement purposes that rewards the player exclusively with noncash merchandise, prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once, or \$5, whichever amount is less.

(c) "Game room owner" means a person who:

- (1) has an ownership interest in, or receives the profits from, a game room or an amusement redemption machine located in a game room;
- (2) is a partner, director, or officer of a business, company, or corporation that has an ownership interest in a game room or in an amusement redemption machine located in a game room;
- (3) is a shareholder that holds more than ten (10) percent of the outstanding shares of a business, company, or corporation that has an ownership interest in a game room or in an amusement redemption machine located in a game room;
- (4) has been issued by the county clerk an assumed name certificate for a business that owns a game room or an amusement redemption machine located in a game room;
- (5) signs a lease for a game room;
- (6) opens an account for utilities for a game room;
- (7) receives a certificate of occupancy or certificate of compliance for a game room;
- (8) pays for advertising for a game room; or
- (9) signs an alarm permit for a game room.

(d) "Operator" means an individual who:

- (1) operates a cash register, cash drawer, or other depository on the premises of a game room or of a business where the money earned or the records of credit card transactions or other credit transactions generated in any manner by the operation of a game room or activities conducted in a game room are kept;
- (2) displays, delivers, or provides to a customer of a game room; merchandise, goods, entertainment, or other services offered on the premises of a game room;
- (3) takes orders from a customer of a game room for merchandise, goods, entertainment, or other services offered on the premises of a game room;
- (4) acts as a door attendant to regulate entry of customers or other persons into a game room; or
- (5) supervises or manages other persons at a game room in the performance of an activity listed in this subsection.

(e) "Applicant" means a person, corporation, partnership, or other business entity required to submit a game room application and includes all game room owners and operators of the particular game room that is the subject of the application.

(f) "Sheriff" means the Sheriff of Willacy County or the Sheriff's designated agent.

(g) "Peace officer" means an individual as described in Article 2.12 of the Texas Code of Criminal Procedure.

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

(i) "Public Building" means a building used by federal, state, or local government that is open to the general public.

(j) "Regulation" refers to this ordinance and these regulations of Willacy County, Texas, governing the operation of game rooms.

(k) "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.

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

SECTION 2. PERMITS

2.1 Permit Required

(a) It shall be unlawful for an owner or operator of a game room to operate, use or maintain, or to allow the operation, use or maintenance, of any room, building or facility in Willacy County as a game room under the definition provided in this regulation without first securing an official permit from the Willacy County Game Room Permit Administrator. A person who violates this regulation shall be assessed a civil penalty of \$10,000.00 per violation, with each day a violation occurs or continues to occur being considered a separate violation.

(b) A completed application for a game room permit shall be filed with the Willacy County Sheriff. The application shall be filed on the form provided by the Sheriff or on an accurate and legible copy of that form. A copy of the application can be obtained at the Sheriff's Office. The applicant shall apply in person at the Sheriff's office. The Sheriff will establish the hours when an application can be submitted. A notice of deficiencies in an application will be mailed to the applicant within ten (10) business days of receipt of the application if not all the information required by these regulations has been provided in the application. A receipt shall be mailed to the applicant within ten (10) business days of submission of a complete application to the Sheriff. Any failure to provide the information after a notice of deficiencies or a determination by the Sheriff's Office that inaccurate, erroneous, or incomplete information has been submitted will provide grounds for denial or revocation of the application. The Sheriff or his designee is authorized to conduct such inspections of the proposed game room as he deems necessary to make a determination whether to approve or deny the application.

(c) Each application shall be accompanied by:

- (1) a current annual inspection report from the Willacy County Fire Marshal showing compliance with all corrections ordered;
- (2) a copy of certification of occupancy or certification of compliance issued by the building official as appropriate for the proposed game room;
- (3) a true and correct copy of the assumed name certificate filed in the office of the Willacy County Clerk, bearing the file mark or stamp that evidences its filing, if the game room will be operating under an assumed name;
- (4) the specific number of amusement redemption machines to be located in the proposed game room (which shall not exceed the number of persons who may occupy the game room premises without exceeding any occupancy restrictions that may be imposed by the Fire Marshall);
- (5) a non-refundable application fee, the amount of which shall be established by the Willacy County Commissioners Court;
- (6) a copy of the applicant's government-issued photo identification; and
- (7) 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.

(d) The game room permit administrator shall assess and collect at the time of submission of an

application a fee of \$1,000.00 to cover the cost of processing the application and investigating the applicant. Any failure by the applicant to provide the documents or pay the application fee required under this section will provide grounds for denial of the application.

(e) A permit may be renewed for the following year no sooner than 60 days prior to the 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 subsection 2.1(d) of these regulations. A renewal application shall be subject to the same requirements in these regulations for a permit application.

(f) A new application for a game room permit must be submitted if there is any change in ownership of the game room. Continuing operation of the game room without submitting a new application due to change of ownership shall be grounds for revocation of the game room permit.

2.2 Grounds for denial, revocation, or suspension

(a) Any violation of these regulations or failure to meet any requirement of these regulations, if applicable, 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 game room permit shall be denied upon the finding by the Sheriff that:

(1) 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 Chapter 352, Subchapter B of the Texas Local Government Code; and

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

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

(2) The applicant made a misleading statement in the application for the game room permit;

(3) The applicant is under eighteen (18) years of age;

(4) The applicant has had a game room permit revoked within the one-hundred eighty (180) day period immediately preceding the date the application was filed;

(5) The applicant is delinquent in the payment to the county of taxes, fees, fines or penalties assessed or imposed regarding the operation of a game room; or

(6) The application or renewal fee required by these regulations has not been paid;

(7) The application is incomplete or fails to provide all required documentation; or

(8) The location of the proposed game room is one for which a game room permit previously has been revoked.

(c) The Sheriff shall have the authority and power to initiate a proceeding to revoke or suspend a game room permit if one or more of the following events or conditions have occurred:

- (1) any violation of any of the offenses contained in subsection 2.2(b) (1) of this regulation 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 contained in subsection 2.2(b) (1) of this regulation; or
- (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.

2.3 Issuance or denial

(a) The Sheriff shall not issue a game room permit until final disposition of any charge of any of the crimes listed in subsection 2.2(b)(1) that is pending or that arises during the investigation period. No game room permit shall be issued before there is a final determination of the criminal charge.

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

2.4 Revocation or Suspension

(a) If any of the stated events or conditions providing a basis for revocation or suspension of a game room permit under subsection 2.2(c) has occurred, the Sheriff shall forward to the game room permit holder or its designated agent a written notice of revocation. The notice shall set out the reasons for the action. The revocation shall become final on the fifth (5th) day after issuance of notice.

(b) The enterprise or its designated agent shall have the opportunity to appear before a hearing examiner appointed by the Commissioners Court upon written request submitted to the Sheriff within ten (10) business days of delivery of the notice of revocation. The hearing examiner shall not have participated in any investigation of the alleged grounds for the revocation. The hearing shall be held within fourteen (14) business days of the request for hearing and the enterprise and the Sheriff shall be provided an opportunity to present evidence, cross-examine witnesses and be represented by legal counsel.

(c) Upon finding that the facts presented at the hearing support a finding that grounds exist for revoking or suspending the game room permit, the hearing examiner may request that the parties present relevant evidence to show whether suspension or revocation of the game room permit is more appropriate. Reasonable conditions may be attached to a game room permit by the hearing examiner based on the evidence presented at the hearing.

(d) If the hearing examiner determines that a game room permit should be revoked, the hearing examiner shall issue a written order revoking the game room permit, effective immediately.

(e) If the hearing examiner determines, based upon the nature of the violations, that a suspension in lieu of revocation is appropriate, operation of the game room permit may be suspended for a period not to exceed six (6) months. The hearing examiner shall issue a written order suspending the game room permit and attaching conditions, if applicable, effective upon notice to the owner.

(f) Upon the finding that subsection 2.2(c) (3), 2.2(c) (4), or 2.2(c) (5) of these regulations has been violated, revocation of the game room permit shall be mandatory.

(g) Revocation shall take immediate effect upon notice by the Sheriff, subject to reinstatement resulting from an appeal when:

- (1) there is a necessity for immediate action to protect the public from injury or imminent danger;
- or
- (2) a game room permit was issued based on a misrepresentation in the application and but for the misrepresentation, the game room permit would not have been issued.

2.5 Hearings

(a) A request for hearing must be in writing and delivered to the Game Room Permit Administrator within twenty days of the denial, revocation, or suspension. The applicant waives the right to hearing if the request is not timely received by the administrator.

(b) The applicant may re-apply for a game room permit if changes are made to bring the proposed game room or application into compliance with these regulations.

(c) The decision of the hearing officer shall be final.

(1) On final decision of the hearing examiner, the losing party may appeal the decision by filing a petition in a district court in the county within 30 days after the date of the decision.

(2) An appeal under this section is under the substantial evidence rule, and the judgment of the district court is appealable as in other civil cases.

2.6 Application fee; amount

There shall be levied and collected from an applicant for a game room permit an application fee of \$1,000.00 per application for initial permit or a renewal thereof, as authorized by Section 234.135 of the Local Government Code.

2.7 Application fee payment; permit

The application fee provided for in subsection 2.6 of this Ordinance shall be paid to the Sheriff. If the application is approved, the Sheriff shall give the applicant a signed permit. The permit authorizes the applicant to operate the game room for one year from the date the permit is issued, in accordance with the representations made in the application.

2.8 Violations

(a) Any owner or operator occupying, using, operating or maintaining any place for which a game room permit is required without first paying the fee and securing a permit therefor as required by subsection 2.6 of this Ordinance, or who operates, uses or maintains such place after the permit therefor has been revoked or suspended, shall be assessed a civil penalty of \$10,000.00 per violation, with each day a violation occurs or continues to occur being considered a separate violation.

(b) An owner or operator commits a Class A misdemeanor offense if the owner or operator intentionally or knowingly operates a game room in violation of this subsection.

2.9 Effect

Each permittee 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 employees or any patrons of such

premises for any violation of law.

SECTION 3. OPERATION OF GAME ROOMS

3.1 Inspection by law enforcement officer

(a) INSPECTION: A peace officer of the Willacy County Sheriff's Department is authorized to inspect any business in Willacy County for violations of these game room regulations. This regulation does not authorize a right of entry prohibited by law. Peace officers may enter a business with consent, with a warrant, or under exigent circumstances. A game room permit granted under these regulations gives peace officers implied consent to enter to inspect.

(b) CONSENT TO ENTRY. Any owner or operator of a game room or other person who does not allow a law enforcement officer to inspect a game room or an amusement redemption machine as required under the Texas Local Government Code Section 234.136 commits an offense. If a person violates this subsection, then that person shall be assessed a civil penalty of \$10,000.00 per violation, with each day a violation occurs or continues to occur being considered a separate violation.

(c) An owner or operator commits a Class A misdemeanor offense if the owner or operator intentionally or knowingly operates a game room in violation of this subsection.

3.2 Hours of operation

(a) A game room may operate between the hours of 10:00 a.m. and 11:00 p.m., Sunday through Thursday, and between the hours of 10:00 a.m. and 1:00 a.m., Friday through Sunday morning.

(b) The owner or operator of a game room shall be assessed a civil penalty of \$10,000.00 for each violation of this regulation. Each day a violation occurs or continues to occur shall be considered a separate violation.

(c) An owner or operator commits a Class A misdemeanor offense if the owner or operator intentionally or knowingly operates a game room in violation of this subsection.

3.3 Game room permits

(a) It shall be the duty of any owner or operator of a game room to keep posted or displayed within the game room in plain sight in a common area accessible to the public without having to enter a controlled area of the business a current game room permit.

(b) Failure to post or display the original current game room permit will result in the owner or operator of the game room being assessed a civil penalty of \$10,000.00 per violation.

(c) An owner or operator commits a Class A misdemeanor offense if the owner or operator intentionally or knowingly operates a game room in violation of this subsection.

3.4 Distancing and location restrictions

(a) No more than three (3) game rooms shall be allowed to exist or operate in Willacy County at any one time and shall be located:

(1) a minimum of three hundred (300) feet from any existing or planned school, regular place of

religious worship, or residence; "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;

- (2) a minimum of five thousand (5,000) feet from an existing game room; and
- (3) only on property having frontage and direct access to a state highway or interstate highway.

(b) This subsection shall apply only to property uses or planned uses in existence at that location at least thirty (30) days prior to the date of application.

(c) For the purposes of this subsection, measurements shall be made in a straight line from the nearest portion of the building or appurtenances as a game room to the nearest portion of the building or appurtenances that is used for the purposes identified in subsection (a) above.

(d) Game rooms in operation before the passage of this Ordinance and game rooms in construction for which building permits were issued prior to the passage of this Ordinance are exempted from the requirements imposed by Section 3.4 of this Ordinance so long as the game room remains in continuous operation at the same location.

(e) If an owner or operator violates this subsection then that person shall be assessed a civil penalty of \$10,000.00 per violation, with each day a violation occurs or continues to occur being considered a separate violation.

3.5 Regulation of amusement redemption machines

(a) It shall be the duty of any owner or operator of a game room when applying for a game room permit from the Willacy County Sheriff to specify the number of amusement redemption machines to be on the game room premises.

(1) All game room permit applications are required to indicate the location on the game room premises where the amusement redemption machines are physically located.

(2) It shall be a violation of this regulation for any owner or operator of a game room to have a greater number of amusement redemption machines located in the game room premises than that number specified on the application upon which the current permit was issued.

(b) If an owner or operator of a game room violates this subsection then that person shall be assessed a civil penalty of \$10,000.00 per violation, with each day a violation occurs or continues to occur being considered a separate violation.

(c) An owner or operator commits a Class A misdemeanor offense if the owner or operator intentionally or knowingly operates a game room in violation of this subsection.

3.6 Illegal machines

(a) These regulations shall not be construed to authorize or permit the keeping, exhibition, operation, display, or maintenance of any gambling device that is prohibited by the constitution of this state or Chapter 47 of the Texas Penal Code.

(b) A civil penalty of \$10,000.00 shall be assessed against the owner or operator of a game room for any machine used for illegal gambling.

(c) If a law enforcement agency determines through investigation that a game room was in violation of Texas Penal Code Chapter 47, then the game room permit shall be immediately revoked.

3.7 Owners of real property operated as illegal gaming facility

It is not a defense to prosecution under this section that an owner of real property is leasing the property to an operator of a game room who operates it as an illegal gaming facility; both shall have civil liability for violation of this regulation.

3.8 Injunction and Civil Penalty

The County Attorney is authorized to sue in district court for an injunction to prohibit the violation or threatened violation of these game room regulations adopted under Texas Local Government Code § 234.133. 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. MISCELLANEOUS

4.1 Publication of Notice

The Commissioners Court shall cause a notice of the passage of this Ordinance to be published twice within thirty (30) days of the passage of the Ordinance in a newspaper of general circulation within Willacy County. The notice shall announce the passage of the Ordinance and the availability of additional information from the Willacy County Commissioners Court.

4.2 Special provision for currently existing game rooms

It shall be the duty of any owners and operators of game rooms existing and operating within Willacy County on the date of the passage of this Ordinance or in construction for which building permits were issued prior to the date of the passage of this Ordinance to submit within sixty (60) days of the passage of this Ordinance an application in conformity with the provisions of this Ordinance. Any person who continues with the operation of a game room without complying with this requirement shall be in violation of this Ordinance and shall be assessed a civil penalty of \$10,000.00 per violation, with each day a violation occurs or continues to occur being considered a separate violation.

4.3 Effective Date

This Ordinance shall become effective upon passage.

THE STATE OF TEXAS §
COUNTY OF WILLACY §

The Commissioners Court of Willacy County, Texas, met in regular session at its regular term at the Willacy County Administration building in the City of Raymondville, Texas on February 22, 2018, with all members present except _____.

A quorum was present. Among other business, the following was transacted:

ORDER ADOPTING ORDINANCE 1915 ESTABLISHING GAME ROOM REGULATIONS

CHAIRMAN

~~COMMISSIONER~~ **GUERRA** introduced an order and moved that Commissioners Court adopt the order. Commissioner **DE LUNA** second the motion for adoption of the order. The motion, carrying with the adoption of the order, prevailed by the following vote.

	Yes	No	Abstain
Aurelio Guerra, County Judge	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Eliberto Guerra, Commissioner Pct. 1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Oscar De Luna, Commissioner Pct. 2	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry De La Paz, Commissioner Pct. 3	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Eduardo Gonzales, Commissioner Pct. 4	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge announced that the motion had duly and lawfully carried, and this order was duly and lawfully adopted. The order adopted follows:

The Commissioners Court approved this Ordinance Establishing Game Room Regulations pursuant to §234.133 of the Texas Local Government Code.

Therefore, IT IS ORDERED as follows:

1. The attached proposed Game Room Regulations are hereby adopted.
2. All Willacy County officials and employees are authorized to do any things necessary or convenient to accomplish the purpose of the Order.