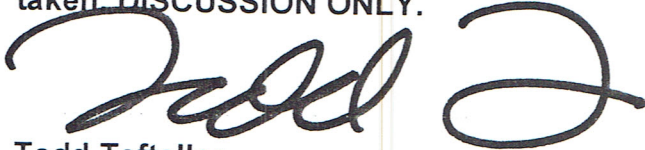


**NOTICE OF MEETING**  
**COMMISSIONERS COURT OF UPSHUR COUNTY, TEXAS**  
**WEDNESDAY, FEBRUARY 19, 2020, 10:00 AM, WORKSHOP AGENDA**  
**3<sup>RD</sup> FLOOR, UPSHUR COUNTY COURTHOUSE, COURTHOUSE SQUARE, GILMER, TEXAS**

**AGENDA**

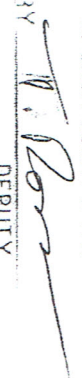
**DISCUSSION ONLY WORKSHOP**

Discuss proposed Game Room regulations for Upshur County. NO ACTION will be taken. DISCUSSION ONLY.



Todd Tefteller,  
Upshur County Judge

2-14-2020  
@ 1:50 P.M.

FILED  
TERRI ROSS  
COUNTY CLERK  
2020 FEB 14 PM 1:51  
UPSHUR COUNTY, TX.  
BY  DEPUTY

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## UPSHUR COUNTY GAME ROOM REGULATIONS

Adopted by Commissioners Court: \_\_\_\_\_, 2020

### SECTION 1. GENERALLY.

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

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

### THEREFORE, THE UPSHUR 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 adverse secondary effects upon such uses, and should be separated from other Game Rooms, to minimize the adverse 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 other crimes against persons between the hours of \_\_\_\_\_ a.m. and \_\_\_\_\_ p.m., or otherwise authorized in writing in the Game Room Permit issued by the Game Room Permit Administrator.
4. Each of the foregoing adverse secondary effects constitutes a harm, which Upshur County, Texas has a substantial government interest in preventing and abating. The substantial government interest in preventing adverse secondary effects, which is Upshur County, Texas' rationale for the Regulations, exists independent of any comparative analysis between legal Game Rooms and illicit Game Rooms. Upshur County, Texas' interests in regulating Game Rooms extends to preventing future adverse secondary effects of either current or future Game Rooms that may locate in Upshur County, Texas.

#### 1.1. Authority to Regulate.

- (a) The 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.

- (b) It is the purpose of the Upshur 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) The Regulations do not legalize anything prohibited under the Texas Penal Code or any other law(s) or regulation(s).

### **1.2. Administration.**

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

### **1.3. Areas Covered by the Regulations.**

Pursuant to Section 234.132 of the Local Government Code, the Regulations apply to all areas of Upshur County, Texas. This includes the incorporated and unincorporated areas of Upshur County, Texas.

#### 1.4. Definitions.

As used in the Regulations:

- (a) **"Game Room"** means a for-profit business located in a building or place that contains six (6) or more:
  - (1) Amusement Redemption Machines, or
  - (2) 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 non-cash 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) **"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) **"Interlocal Agreement"** means a cooperative agreement between Upshur County, Texas and an incorporate municipality.
- (e) To **"Operate a Game Room"** means to:
- (1) be an Owner or Operator of a Game Room as those terms are defined by Subsection 1.4(c) and 1.4(f) of the Regulations;
  - (2) perform security services for a Game Room, including but not limited to, screening Game Room customers, regulating entry of customers into a Game Room, monitoring Game Room customers, and locking and/or unlocking a Game Room's door(s) during business hours;
  - (3) fund the operation of a Game Room;
  - (4) have a financial interest in a Game Room;
  - (5) receive any profit from a Game Room;
  - (6) supply machines described in Subsection 1.4(a) (1)-(2) to a Game Room;
  - (7) own machines described in Subsection 1.4(a) (1)-(2) located in a Game Room;
  - (8) receive any profit from a machine described in Subsection 1.4(a) (1)-(2) located in a Game Room; or,
  - (9) have machines described in Subsection 1.4(a) (1)-(2) registered in your name with Upshur County, Texas, the City of Houston, and/or the Texas Comptroller located in a Game Room.
- (f) **"Operator"** means an individual who:
- (1) operates a cash register, cash drawer, or other depository on the premises of a Game Room or of a business where money earned or the records of credit card transactions or other credit transactions generated in any manner by the operation of a Game Room or activities conducted in a Game Room are kept;
  - (2) displays, delivers, or provides to a customer of a Game Room; merchandise, goods, entertainment, or other services offered on the premises of a Game Room;
  - (3) takes orders from a customer of a Game Room for merchandise, goods, entertainment, or other services offered on the premises of a Game Room;
  - (4) acts as a door attendant to regulate entry of customers or other persons into a Game Room; or,

- (5) supervises or manages other persons at a Game Room in the performance of an activity listed in this Subsection.
- (g) **"Applicant"** means an individual, proprietorship, corporation, association, and/or other legal entity required to obtain a Game Room Permit and/or an individual, proprietorship, corporation, association, and/or other legal entity that has applied for a Game Room Permit.
- (h) **"Sheriff"** means the Sheriff of Upshur County, Texas or the Sheriff's designated agent.
- (i) **"Game Room Permit Administrator"** means the Sheriff of Upshur County, Texas, the Sheriff's designated agent, or the designated official for a cooperating municipality.
- (j) **"Current Annual Fire Inspection Report"** means a fire inspection report issued by the Upshur 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.
- (k) **"Peace Officer"** means an individual described in Article 2.12 of the Texas Code of Criminal Procedure.
- (l) **"Person"** means an Owner, Operator, individual, employee, independent contractor, agent, proprietorship, corporation, association, or other legal entity.
- (m) **"Public Building"** means a building used by Federal, State, or local government that is open to the general public.
- (n) **"Regulations"** and/or **"the Regulations"** means these Regulations of Upshur County, Texas for the operation of Game Rooms.
- (o) **"School"** means a facility, including all attached playgrounds, dormitories, stadiums, and other appurtenances that are part of the facility, used for the primary purpose of instruction or education, including primary and secondary schools, colleges, and universities, both public and private.
- (p) **"Gambling Device"** means a device described in Article 47.01(4) (A) of the Texas Penal Code.
- (q) **"Fire Safety Official"** means the Upshur 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.
- (r) **"Notice"** is deemed effective on the date written notice to an Applicant, permit holder, or agent thereof is hand delivered or posted on the front exterior door of the

- Game Room, or upon receipt by certified mail.
- (s) **"County Employee"** means any individual authorized by Upshur County, Texas to inspect a Game Room for compliance with the Regulations
  - (t) **"Residence"** means any house, apartment or other structure where one or more persons live or reside, and includes any yard or curtilage associated with any such structure occupied as a residence. The term **"residence"** also includes any lot, tract or parcel of land zoned as residential by any municipal authority within Upshur County, Texas.
  - (u) **"Place of Worship"** means any building, structure or any other fixture to real property is exempt from taxation and which is used primarily for religious worship and instruction. The term **"place of worship"** includes but is not limited to any building, structure, or other improvement to real property used as a place of worship and includes any curtilage to any of said structures.

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

### **2.1. Application.**

(a) It shall be unlawful for a Person to Operate a Game Room, use a Game Room, or maintain a Game Room in Upshur County, Texas that has not been issued a Game Room Permit pursuant to these Upshur County Game Room Regulations. Any Game Room Owner or any Game Room Operator or any Person who violates this Subsection shall be assessed a civil penalty not to exceed \$10,000 per violation.

In addition to the civil penalties specified above, any Game Room Owner, any Game Room Operator, or any other Person who intentionally or knowingly violates this Subsection commits a Class A misdemeanor. A Class A misdemeanor is punishable by confinement of up to one (1) year in the Upshur County Jail and a fine of up to \$4,000.00, or both.

Each day a violation occurs or continues to occur is considered a separate violation.

- (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 or on an accurate and legible copy of that form. A copy of the application can be obtained from the Upshur County Sheriff's Office website or from another source as determined by the Game Room Permit Administrator of a cooperating municipality.
  - (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 the Game Room Permit Office website with the application form. The fee shall not exceed the annual Game Room Permit fee limit of \$1,000 as established by the Upshur County 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 will begin.
- (4) A receipt shall be hand delivered or sent by certified mail to the Applicant within fourteen (14) days of submission of a complete application and payment of the application fee to the Game Room Permit Administrator. A receipt showing payment of the application fee is not a 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 the 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 the inspection(s).

After the initial inspection, the Applicant will be informed in writing of what corrections must be made to the proposed Game Room in order to comply with the Regulations.

- ii. A re-inspection will be performed and the Applicant will again be informed in writing of what corrections must be made to the proposed Game Room in order to comply with the Regulations.
- iii. If after a third and final inspection, the Applicant's proposed Game Room fails to comply with the Regulations, the Game Room Permit Administrator shall deny the application.

If the proposed Game Room passes 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. 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 that the process is completed in the requisite sixty (60) days.
  - (7) Failure to provide any information required by this Section, or a determination by the Game Room Permit Administrator that inaccurate, erroneous, and/or incomplete information has been submitted, the Game Room Permit application shall be denied.
- (c) In municipalities which have elected to adopt these Regulations, and where the Upshur County Commissioners Court has approved an Interlocal Agreement between the municipality and Upshur County, Texas, the municipality shall designate an entity to receive and process Game Room applications. The municipality shall adopt a common operating procedure with requirements and processes reasonably similar to those set out by these Regulations. The municipality shall provide the application along with a description of the application and inspection process on the municipality's website.
  - (d) Each 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 showing all corrections have been made that were ordered by the Fire Safety Official;
- (2) a copy of the certificate of occupancy and/or certificate of compliance issued by the appropriate entity for the proposed Game Room;
- (3) a copy of the diagram and/or floor plan to include the designed occupancy load approved by the Fire Safety Official with competent jurisdiction;
- (4) a true and correct copy of the assumed name certificate filed in the office of the Upshur 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(s) (e.g., the Articles of Incorporation);
- (6) a non-refundable application fee of \$1,000 (the amount established by the Upshur County Commissioners Court);
- (7) a photocopy of the Applicant's driver's license or government-issued photo identification;
- (8) proof as required by Subsection 3.13 that the proposed Game Room is exempt from the requirements set forth in Subsection 3.2 of the Regulations;
- (9) proof as required by Subsection 3.13 that the proposed Game Room is exempt from the requirements set forth in Subsection 3.4 of the Regulations;
- (10) proof as required by Subsection 3.13 that the proposed Game Room is exempt from the requirements set forth in Subsection 3.5 of the Regulations;
- (11) proof as required by Subsection 3.13 that the proposed Game Room is exempt from, or will be located in compliance with, the requirements set forth in Subsection 3.9 of the Regulations;
- (12) a copy of the current and valid lease agreement between the owner of the real property where the proposed Game Room is planning to operate from, and the Applicant, with the Applicant listed as an Owner of the Game Room, or proof that the Applicant owns the real property where the proposed Game Room is planning to operate from;
- (13) a complete and accurate list of all Owner(s), Operator(s), employee(s), independent contractor(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 the individual(s) driver's license or government-issued identification or incorporation papers as applicable;

- (14) a copy of the Upshur County, Texas coin-operated machine occupation tax record(s) 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 the manufacturer;
    - ii. the serial number;
    - iii. the type of machine;
    - iv. the Upshur County Tax stamp including the year of expiration of each tax stamp required; and
    - v. copies of all Upshur County Tax stamps which correlate with each machine identified with this Subsection; and
    - vi. the name of the individual(s), proprietorship(s), corporation(s), association(s), and/or other legal entity(s) that own, receive profits from, and has registered the machine in their name with Upshur County, Texas and the Texas Comptroller along with a description of their ownership and financial interest in the machine
  - (15) the Game Room Applicant's Federal Employer Identification Number (EIN) if one has been issued. At such time as a Federal Employer Identification Number (EIN) is issued, a copy of the document assigning the number shall be delivered to the Game Room Permit Administrator within 10 days of receipt by the Game Room Operator.
  - (16) a certification that none of the Owner(s), Operator(s), employee(s), independent contractor(s), agent(s), and 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 the Regulations; and,
  - (17) a certification that all of the contents of the application, and the material presented above, are true and correct under the penalty of Perjury as defined by Section 37.02 of the Texas Penal Code. Additionally, any misrepresentation by the Applicant on his/her application is a third degree felony offense as defined by Section 37.10 of the Texas Penal Code.
- (e) A Game Room application shall be rejected upon failure to produce all documents required in Subsection 2.1(d), except for the exemptions listed in Subsection 2.1(d) (8)-(11). Failure to provide proof required by Subsection 2.1(d) (8)-(11) will result in denial of the specific exemption described in that particular Subsection.
- (f) A GAME ROOM SHALL NOT OPERATE DURING THE PENDENCY OF THE APPLICATION AND SHALL NOT OPERATE UNTIL THE GAME ROOM

APPLICATION HAS BEEN APPROVED AND THE GAME ROOM PERMIT ISSUED.

- (g) A Game Room Permit, in accordance with the Regulations, is not transferable, assignable, or divisible, and it is a violation of the 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.

- (1) A Person commits a Class A misdemeanor if they intentionally or knowingly transfer, assign, or divide a Game Room Permit issued pursuant to the Regulations, or attempt to do so. Further, they shall be assessed a civil penalty not to exceed \$10,000 per violation. Each Game Room Permit transferred, assigned, or divided or attempted to transfer, assign, or divide is a separate violation.

- (h) An Applicant who submits an application under the Regulations must swear and affirm the truth of the contents therein under the penalty of Perjury as defined by Section 37.02 of the Texas Penal Code. Additionally, any misrepresentation on the application is a third degree felony offense as defined by 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 the Regulations, or failure to meet all requirements of any Section or Subsection of the Regulations, where applicable, shall be grounds for denial, revocation, or suspension of a Game Room Permit. If a Game Room's Permit has been denied, revoked, or suspended, the Game Room shall not operate during the pendency of any appeal to the hearing examiner from the denial, revocation, 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(s), Operator(s), employee(s), independent contractor(s), agent(s), and any other individual(s), acting for, or acting on behalf of the Game Room, 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 by Chapter 47 .of the Texas Penal Code;
    - ii. forgery, credit card abuse, or commercial bribery as described by Chapter 32 of the Texas Penal Code;

- iii. any criminal offense described by 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 has elapsed since the date of the violation, or of the conviction, or of 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 has elapsed since the date of the 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; or
  - v. An Applicant, Operator, Owner or employee, has had its or their Game Room Permit revoked or suspended in Upshur County, Texas or any other County in Texas within the previous 180 days.
- (2) an Applicant makes a misleading statement in the application for a 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 is under eighteen (18) years of age;
  - (4) an Applicant, Owner(s), Operator(s), employee(s), independent contractor(s), agent(s), and any other individual(s), acting for, or acting on behalf of the Game Room, has had a Game Room Permit revoked within the one hundred and eighty (180) day period immediately preceding the date the application was filed;;
  - (5) an Applicant, Owner(s), Operator(s), employee(s), independent contractor(s), agent(s), and any other individual(s), acting for, or acting on behalf of the Game Room, is delinquent in the payment to the county of taxes, fees, fines, or penalties assessed or imposed regarding the operation of a Game Room;
  - (6) an application or renewal fee required by the Regulations has not been paid;
  - (7) an Applicant fails to complete the inspection process within the sixty (60) day period described in Subsection 2.1 of the Regulations;
  - (8) an offense described in Subsection 2.2(b) (1) or Subsection 3.12(b) of the Regulations was committed at the Game Room or another Game Room at the same location within one (1) year prior to the application; or

- (9) any violation of Section 2 or 3 of the Regulations.
- (c) If the Game Room Permit Administrator denies a Game Room Permit application, the Game Room Permit Administrator shall document the denial and provide Notice to the Applicant of the denial within twenty one (21) days from 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 administratively 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(b), of the 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 the Regulations;
  - (4) an Owner(s), Operator(s), employee(s), independent contractor(s), agent(s), and any other individual(s), acting for, or acting on behalf of the Game Room has failed to make corrections ordered by a Fire Safety Official;
  - (5) an Applicant, Owner(s), Operator(s), employee(s), independent contractor(s), agent(s), and any other individual(s), acting for, or acting on behalf of the Game Room has violated any of the offenses described in Subsection 2.2(b) (1), or Subsection 3.12(b), of the Regulation; and/or,
  - (6) any violation(s) of Section 2 or 3 of these Regulations, including but not limited to operating the game room in violation of the hours authorized in the Game Room Permit.
- (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 the Applicant or permit holder of revocation or suspension within three (3) business days from the date on which the violation was documented by the Game Room Permit Administrator. The revocation or suspension letter shall provide the reason(s) for the action. A revocation or suspension of a Game Room Permit by the Game Room Permit Administrator shall become final on the tenth (10th) day after Notice, except for situations outlined in Subsection 2.2(g) of the Regulations.

- (f) A revocation or suspension of a Game Room Permit by the Game Room Permit Administrator shall take immediate effect upon Notice by the Game Room Permit Administrator if:
- (1) an Applicant, Owner(s), Operator(s), employee(s), independent contractor(s), agent(s), and any other individual(s), acting for, or acting on behalf of the Game Room violated any offense described in Subsection 2.2(b) (1) or Subsection 3.12(b) of the Regulations;
  - (2) a violation of any offense described in Subsection 2.2(b) (1) or Subsection 3.12(b) of the Regulations has occurred on the premises of the Game Room;
  - (3) any violation(s) of Sections 2 or 3 of these Regulations has occurred, including but not limited to operating the Game Room in violation of the hours authorized in the Game Room Permit;
  - (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.
- (g) Notwithstanding anything to the contrary contained within Subsections 2.1(f) or 2.2(d)(e) or (f), upon proper appeal to the hearing examiner in cases of revocation or suspension of a Game Room Permit, the hearing examiner may grant to the violator authorization to operate the Game Room pending the disposition of the appeal before the hearing examiner, if the violator so requests in his notice of notice of appeal and with reasonable notice to the Game Room Permit Administrator.

#### **Game Room Permit Appeal Hearings.**

If the Game Room Permit Administrator denies a Game Room Permit application, revokes a Game Room Permit, or administratively suspends 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 Upshur County Commissioners Court. The hearing examiner shall not have participated in any investigation of the alleged grounds for denial, revocation, or suspension.

- (a) All requests for hearings must be in writing and delivered to the Game Room Permit Administrator within ten (10) days upon Notice to the Applicant or permit holder. The Applicant or permit holder waives the right to a Game Room Permit appeal hearing if the request is not timely received by the Game Room Permit Administrator.
- (b) The Game Room Permit appeal hearing shall be held within twenty one (21) days from the receipt of request for a Game Room Permit appeal hearing by the Game Room Permit Administrator. The Applicant, permit holder, and 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.
- (c) It shall be the responsibility of the Applicant or permit holder to provide a court reporter and an interpreter if necessary for the Game Room Permit appeal hearing

before the hearing examiner.

- (d) The Applicant or permit holder shall be present in person at the Game Room Permit appeal hearing. If the Applicant or permit holder is not present in person at the Game Room Permit appeal hearing, his or her Game Room Permit shall be automatically denied or revoked.
- (f) The hearing examiner has the power to uphold or reverse the denial, revocation, or suspension of the Game Room Permit. The hearing examiner shall issue a written order based on his or her determination within ten (10) days from the date of the Game Room Permit appeal hearing.
- (g) If the hearing examiner determines, based upon the nature of the violations, that a suspension in lieu of revocation is appropriate, operation of the Game Room 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.
- (h) 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), and/or 2.2(d) (5) of the Regulations has been violated, revocation of the Game Room Permit shall be mandatory.
- (i) The decision of the hearing examiner shall be final. On final decision by 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 by the hearing examiner. Appeals to the district court shall be governed by the substantial evidence rule defined by Section 2001.174 of the Government Code.

### **2.3. Game Room Operation During the Pendency of an Appeal 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 an appeal to the district court.
- (b) If the Applicant's or permit holder's appeal to the hearing examiner for denial, revocation, or suspension is successful, the Game Room may resume operation and may operate during the pendency of an appeal to the district court.
- (c) No Game Room may operate pending an appeal for denial of a Game Room Permit to the district court, unless ordered by the Presiding Judge in District Court.

### **2.4. Reapplication.**

- (a) After the hearing examiner's final ruling of permit denial or revocation, an Applicant may reapply for a Game Room Permit after the expiration of one hundred and eighty (180) days from the date of his or her 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.

**2.5. Permit Renewal; Permit Fee-Levied; Amount; Payment.**

- (a) A Game Room Permit may be renewed for the following year starting sixty (60) days before expiration of the current permit by filing a complete application for a Game Room Permit with the Game Room Permit Administrator and paying the applicable fee set forth in the Regulations. A renewal application shall be subject to the same requirements in the Regulations as are required for a Game Room 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 the Regulations as to whether the Game Room Permit will be renewed.
- (b) An Applicant shall pay a non-refundable Game Room Permit fee of \$1,000 as established by Upshur County Commissioners Court. The Game Room Permit fee shall be paid in person to the Game Room Permit Administrator upon application renewal. A receipt of payment and of renewal application submission shall be hand delivered or sent by certified mail to the Applicant within fourteen (14) days of the receipt of the non-refundable fee.

**2.6. 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 the Regulation, the Game Room Permit Administrator shall give the Applicant a signed certificate. The certificate constitutes a Game Room Permit to operate the proposed Game Room for one (1) year from the date the Game Room Permit is issued. The Game Room Permit shall list the identity of the issuing Game Room Permit Administrator. The Game Room Permit shall list the date of issue and the date of expiration. The Game Room 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, the Game Room Permit shall list the individual(s) asserting control over the legal entity. The Game Room Permit shall list any and all exemptions to the requirements of Section 3 of the Regulations for which the permit holder has qualified for. The Game Room Permit Administrator shall keep a signed copy of the Game Room Permit for the Administrator's records.

**2.7. Penalty for Operating a Game Room without a Game Room Permit.**

- (a) A Person who Operates a Game Room without first paying the fee and securing a Game Room Permit pursuant to the Regulations, or who Operates a Game Room after the Game Room Permit has been revoked or suspended, shall be assessed a civil penalty no to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation.



- (b) A Person commits a Class A misdemeanor offense if they intentionally or knowingly Operate a Game Room in violation of this Subsection.
- (c) A violation of Section 2 of the Regulations is grounds for denial, revocation, or suspension of a Game Room Permit.

## **2.8. Effect.**

Each Applicant, Owner(s), Operator(s), employee(s), independent contractor(s), agent(s), and any other individual(s), 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 Game Room Permit pursuant to the Regulations shall not excuse any Applicant, Owner(s), Operator(s), employee(s), independent contractor(s), agent(s), and any other individual(s), 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/or designated County Employees are authorized to inspect any business in Upshur County, Texas for violations of the Regulations. The Regulations do not authorize a right of entry prohibited by law. Peace Officers, Fire Safety Officials, and/or designated County Employees may enter a business with consent, with a warrant, or under exigent circumstances. A Game Room Permit issued pursuant to the Regulations gives Peace Officers, Fire Safety Officials, and/or designated County Employees implied consent to enter and to inspect any Game Room for violations of the 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, and/or by offering for play or displaying six (6) or more machines described in Subsection 1.4(a) (1)- (2), is subject to inspection by any Peace Officer, Fire Safety Official, and/or designated County Employee and is a Game Room under the Regulations.
  - (1) Refusal to allow any Peace Officer, Fire Safety Official, and/or designated County Employee entry to inspect such unpermitted Game Room may be considered in establishing probable cause for the issuance of a search warrant to inspect for violations of the Regulations.
  - (2) An unpermitted Game Room is subject to the Regulations and will be held liable for all civil and criminal penalties listed herein.
- (c) **Compliance Inspection.** Any Peace Officer, Fire Safety Official, and/or designated County Employee may inspect a permitted Game Room located within their jurisdiction to determine whether or not the Game Room is in compliance with the

## Regulations.

- (d) **Consent to Entry.** A Person who does not allow a Peace Officer, Fire Safety Official, and/or designated County Employee to inspect a Game Room commits an offense. If a Person Operates a Game Room in violation of this Subsection, they shall be assessed a civil penalty not to exceed \$10,000 per violation. Each Peace Officer, Fire Safety Official, and/or designated County Employee denied entry will be considered a separate violation.
- (e) A Person commits a Class A misdemeanor offense if they intentionally or knowingly Operate a Game Room in violation of this Subsection.
- (f) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room Permit.

### 3.2. Game Room Sign Required.

- (a) It shall be the duty of any Owner or Operator 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) A Person who Operates a Game Room in violation of this Subsection shall be assessed a civil penalty not to exceed \$10,000 per violation. Each outside door not marked is considered a separate violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (d) A Person commits a Class A misdemeanor offense if they intentionally or knowingly Operate a Game Room in violation of this Subsection.
- (e) A Game Room that has been issued an exemption pursuant to Subsection 3.13 of the Regulations is exempt from the Game Room sign requirements.
- (f) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room Permit.

### 3.3. Fire and Life Safety.

- (a) It shall be the duty of any Owner or Operator 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 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) A Person who Operates a Game Room in violation of this Subsection shall be assessed a civil penalty not to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (g) A Person commits a Class A misdemeanor offense if they intentionally or knowingly Operate a Game Room in violation of this Subsection.
- (h) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room Permit.

(i)

### **3.4. 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(a) (1)-(2) 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, any machine described in Subsection 1.4(a) (1)-(2) 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(a) (1)-(2) 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 and uncovered glass in each of the exterior Game Room windows required by Subsection (b) above.
- (e) It shall be unlawful for a Person to cover or tint any Game Room window, or otherwise block any Game Room window required by Subsection (b) above, so as to obscure the view of any machine described in Subsection 1.4(a) (1)-(2) located in a Game Room, or the interior of the location from a sidewalk through a Game Room window.
- (f) A Person who Operates a Game Room in violation of this Subsection shall be assessed a civil penalty not to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (g) A Person commits a Class A misdemeanor offense if they intentionally or knowingly Operate a Game Room in violation of this Subsection.
- (h) A Game Room that has been issued an exemption pursuant to Subsection 3.13 of the Regulations is exempt from the Game Room windows requirements.
- (i) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room Permit.

### **3.5. Hours of Operation.**

- (a) It shall be the duty of any Owner or Operator to ensure compliance with this Subsection.
- (b) Game Room shall operate only between the hours of \_\_\_\_ a.m. and \_\_\_\_\_ p.m., unless the Game Room Permit authorizes different hours.
- (c) A Person who Operates a Game Room in violation of this Subsection shall be assessed a civil penalty not to exceed \$10,000 per violation. Each hour of the day that a Game Room is operating during prohibited hours in violation of the Regulations is a separate violation.
- (d) A Person commits a Class A misdemeanor offense if they intentionally or knowingly Operate a Game Room in violation of this Subsection.
- (e) A Game Room that has been issued an exemption pursuant to Subsection 3.13 of the Regulations is exempt from the Game Room hours of operation requirements.
- (f) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room Permit.

### **3.6. 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 the current original 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.
- (c) A Person who Operates a Game Room in violation of this Subsection shall be assessed a civil penalty not to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation.

A Person commits a Class A misdemeanor offense if they intentionally or knowingly Operate a Game Room in violation of this Subsection.

- (d) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room Permit.

### **3.7. Recordkeeping.**

- (a) It shall be the duty of any Owner or Operator 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 1-9 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 and/or independent contractor present at the establishment that day. Every Owner, Operator, employee, independent contractor, 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; and,
  - (3) a copy of the Upshur 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 Upshur 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.
- (d) A Person who Operates a Game Room in violation of this Subsection shall be assessed a civil penalty not to exceed \$10,000 per violation. Each record required under this Subsection that is missing and/or is deficient is considered a separate violation. Each day the record is missing and/or is deficient is considered a separate violation.
- (e) A Person commits a Class A misdemeanor offense if they intentionally or knowingly Operate a Game Room in violation of this Subsection.
- (f) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room Permit.

### **3.8. 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, independent contractor, 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, independent contractor, and/or any other individual acting for, or acting on behalf of a Game Room.
  - (d) Failure to comply with any of the requirements of this Subsection shall result in a violation and be punishable by a civil penalty assessed against any Owner or Operator not to exceed \$10,000 per violation. Every prohibited Owner, Operator, employee, independent contractor, and/or any other individual acting for, or acting on behalf of a Game Room that was 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) and/or not subjected to a criminal background check is considered a separate violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (e) An Owner or Operator commits a Class A misdemeanor offense if they intentionally or knowingly Operate a Game Room in violation of this Subsection.
- (f) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room Permit.

### 3.9. Distance 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, place of worship, residential neighborhood 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; or,
  - (2) within a distance of one (1) mile from where any other Game Room is 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) Game Rooms are exempt from the distancing restrictions upon proof that the Applicant continuously owned and operated the Game Room at the same location and under the same name prior to January 1, 2020. If the Game Room changes its name, its Owner, and/or adds another Owner after this date, or if the Game Room Permit was suspended or revoked, or if the Game Room Permit was denied renewal, or if the Game Room Permit is allowed to lapse, then the Game Room will be considered a new Game Room and not exempt from the distance requirements outlined in this Subsection. **All applications claiming a distance exemption under this Subsection must have been submitted on or before May 1, 2020.**
- (d) A Person who Operates a Game Room in violation of this Subsection shall be assessed a civil penalty not to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (e) A Person commits a Class A misdemeanor offense if they intentionally or knowingly Operate a Game Room in violation of this Subsection.
- (f) The following Game Rooms are exempt from the distancing requirements set forth in this Subsection:
  - (1) Game Rooms that meet the requirements of Subsection 3.13(c) below; and,
  - (2) Game Rooms that meet the requirements of Subsection 3.9(d) above.
- (g) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game

Room Permit.

### **3.10. 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.
- (f) A Person who Operates a Game Room in violation of this Subsection shall be assessed a civil penalty not to exceed \$10,000 per violation. Each person denied entry is considered a separate violation. Each membership card issued is considered a separate violation. Each individual subjected to any check in procedure prior to entering or before exiting a Game Room is considered a separate violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (g) A Person commits a Class A misdemeanor offense if they intentionally or knowingly Operate a Game Room in violation of this Subsection.
- (h) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room Permit.

### **3.11. 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 Upshur County and the State of Texas Tax Assessor-Collector for each Machine described in Subsection 1.4(a) (1)-(2) located in the Game Room and affix the tax permit to the appropriate Machine described in Subsection 1.4(a) (1)-(2).
  - (1) The annual fee to be paid to the Upshur County Tax Assessor-Collector will be twenty five (25) percent of the State's annual fee permachine.
  - (2) All Machine tax permit applications are required to indicate the location on the application where the Machines described in Subsection 1.4(a) (1)-(2) are physically located.



- (3) Whenever a machine described in Subsection 1.4(a) (1)-(2) 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.
- (4) A Game Room shall allow a Peace Officer, Fire Safety Official, and designated County Employee entry to the Game Room to inspect for violations of the Subsection.
- (c) A Person who Operates a Game Room in violation of this Subsection shall be assessed a civil penalty not to exceed \$10,000 per violation. Each machine described in Subsection 1.4(a) (1)-(2) located in the Game Room that is not registered with a valid current year video tax stamp decal from Upshur County and the State of Texas prominently displayed on each machine will be considered a separate violation. Each day a violation occurs or continues to occur is considered a separate violation.
- (d) A Person commits a Class A misdemeanor offense if they intentionally or knowingly Operate a Game Room in violation of this Subsection.
- (e) Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room Permit.

### **3.12. Illegal Machines.**

- (a) It shall be the duty of any Owner or Operator to ensure compliance with this Subsection.
- (b) It shall be unlawful 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.
- (c) Additionally, a civil penalty not to exceed \$10,000 shall be placed on a Person who Operates a Game Room for any machine described in Subsection 1.4(a) (1)-(2) located in the Game Room that is being used and/or has been used for illegal gambling.
- (d) If a law enforcement agency determines through an investigation(s) that a Game Room was in operation violating Chapter 47 of the Texas Penal Code, then every machine described in Subsection 1.4(a) (1)-(2) located in the Game Room shall be considered in violation of this Subsection. A Person who Operates a Game Room in violation of this Subsection shall be assessed a civil penalty not to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation
- (e) Any violation of this Subsection is grounds for mandatory denial and/or mandatory revocation of a Game Room Permit.

- (f) An individual's compliance with the Regulations, including Operating a Game Room under a permit issued pursuant to the Regulations, is not a defense to prosecution for an offense under Chapter 47 of the Texas Penal Code.

**3.13. 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 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. An original certificate or copy of this license presented with the complete Game Room permit application at the time of application or permit renewal is sufficient to make this showing.
- (c) Food and Beverage Sales Exemption. An Applicant is qualified for a Food and Beverage Sales exemption if the Applicant 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. Entree - main dish of a meal;
    - iii. Multiple Entrees - 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;
    - 11. multiple entrees are available to customers;

- iii. Food Service Facilities are maintained on the premises;
  - iv. the hours of operation for sale and Food or Beverage Service are the same as the hours of operation of the Game Room; 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.
- 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 3.13(c) (3) (a)-(g) above.
- (5) Failure to meet all requirements of this Subsection or accurately maintain required records is grounds for denial or revocation of a Food and Beverage Sales Exemption.
- (6) In verifying that the exemption holder is maintaining Food or Beverage Service as the primary business on the premises, the Game Room Permit Administrator may examine all books, papers, records, documents, supplies, and equipment of the exemption holder.
- (7) Recordkeeping requirements for holders of food and beverage sales exemptions 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(a) (1)-(2) 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.

### **3.14. Owners of an Illegal Game Room.**

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

### **3.15. Injunction; Civil Penalty; Fees.**

- (a) **Injunction.** Pursuant to Section 234.137 of the Local Government Code, Upshur County, Texas is authorized to sue in district court for an injunction to prohibit the violation or threatened violation of the Regulations.
  - (1) **Parties Subject to Injunction.** Upshur County, Texas may sue in district court for an injunction to prohibit the violation or threatened violation of the Regulations against any Owner, Operator, or other person or entity who maintains, owns, uses, is a party to the use, or who owns the real property where the violation or threatened violation of the Regulations is occurring and/or has occurred.
  - (2) **Notice.** As a prerequisite to filing a suit seeking injunctive relief under Subsection 3.15(a), Upshur County, Texas shall give written Notice to the party from which relief is sought at least thirty (30) days before filing suit. This written Notice will advise the party from which relief is sought of the violation or threatened violation occurring on the premises.

- (3) **Abatement.** A person or entity against whom a suit is pending who does not receive written Notice, as outlined in Subsection 3.15(a) (2), may file a plea in abatement not later than the thirtieth (30<sup>th</sup>) day after the date the person or entity files an original answer in the court in which the suit is pending. The court shall abate the suit if the court, after a hearing, finds that the person or entity is entitled to an abatement because Notice was not provided as required by Subsection 3.15(a) (2). The court shall abate the suit no longer than thirty (30) days.
- (b) **Civil Penalty.** Pursuant to Section 234.137 of the Local Government Code, a person who violates a Section or Subsection of the Regulations is liable to Upshur County, Texas for a civil penalty of not more than \$10,000 for each violation. Each day a violation continues is considered a separate violation for purposes of assessing a civil penalty. Upshur County, Texas may bring suit in district court to recover a civil penalty.
- (c) **Fees.** Pursuant to Section 234.137 of the Local Government Code, Upshur County, Texas 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. CUMULATIVE EFFECT OF REGULATIONS; SEVERABILITY.**

### **4.1. Cumulative Effect.**

Authority under the Regulations is cumulative of other authority that Upshur County, Texas and its incorporated municipalities have to regulate Game Rooms and does not limit that authority.

### **4.2. Severability Clause.**

If a Section or Subsection of the 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.