

Game Room Regulation A Success Story

Thomas A. Gwosdz
City Attorney
Victoria, Texas
(361) 485-3520
TGwosdz@VictoriaTx.org

Thomas doesn't gamble, unless you count paying his children's college tuition. He currently has three of his five kids enrolled at Texas A&M University. A senior daughter is completing her student teaching toward a degree in Special Education; a freshman son is just starting out in Biomedical Science; and another freshman son is in the Texas A&M Engineering Academy at Blinn-Brenham. Thomas also has an older son successfully navigating the workforce, and a younger son who, as a high-school sophomore, is learning what it feels like to be the only child in the house. To say that Thomas is proud is an understatement.

Thomas has represented the City of Victoria for ten years. He is currently training his third mayor and third City Manager, who each started with the City this spring within three weeks of each other.

Before joining the City himself, Thomas was staff attorney at the Texas Association of School Boards, where he enjoyed both travelling the state teaching school board members why they couldn't fire the football coach, and coming home to a strong Texas woman in a small house in the Texas hill country.

Thomas has also represented large corporate clients in transactions involving too many zeroes between the dollar-sign and the decimal.

Due to the eight years he spent teaching high school English to reluctant teenagers, Thomas eschews obfuscation whenever possible, and delights in reducing complex, convoluted Texas law to practical paradigms.

Game Room Regulation A Success Story

*Thomas A. Gwosdz
City Attorney
Victoria, Texas
(361) 485-3520
TGwosdz@VictoriaTx.org*

This presentation constitutes an examination of the relative effectiveness of certain changes made to the City's regulation of game rooms, specifically those offering eight-liner machines. Some of those changes had a significant deterrent effect, others did not. Printed below is the full text of the regulations, as they were adopted by City Council in October of 2018. These regulations may have been updated since their initial adoption. For the current version of the City's regulations, please visit the City's MuniCode library: https://library.municode.com/tx/victoria/codes/code_of_ordinances

Please also see the accompanying PowerPoint deck, which includes a "Top Ten" list of changes implemented by this adoption, ranked in order from most effective to least effective.

Chapter 14 - OCCUPATIONAL LICENSES, TAXES AND REGULATIONS

ARTICLE X. - GAME ROOMS AND AMUSEMENT REDEMPTION MACHINES

Sec. 14-145. - Definitions.

For the purpose of this Article, the following terms shall have the meanings respectively ascribed to them:

Amusement Redemption Machine: A recreational machine that provides a single user or multiple users with an opportunity to receive something of value other than the right of replay. A coin-operated amusement machine designed primarily for children is not an Amusement Redemption Machine.

Applicant: A natural person who applies for a Game Room Permit on behalf of a Permittee.

Game Room: A building, facility, or other place that is operated for profit and that contains one or more operational amusement redemption machines

Operational Machine: a machine that is ready to be played and is accessible to the public.

Permittee: A business entity which has been issued a Game Room Permit or which has been named in a Game Room Permit application as the intended recipient of the Game Room Permit.

Property Owner: The owner of the lot, parcel, tract, or other real estate on which a permittee operates or intends to operate a Game Room.

(Ord. No. 2015-27 , § 1, 10-20-15)

Sec. 14-146. - Game room permit.

- A. Permit required. It is a misdemeanor offense to operate a Game Room within the City without a currently valid Game Room Permit. Every person desiring to operate any Game Room shall make application to the City Secretary, on a form provided for that purpose, for a Game Room Permit.
1. Game Room Permits shall be issued only to business entities which have been registered and are currently active with the Texas Secretary of State and to whom the Texas Comptroller of Public Accounts has issued a currently valid Texas Tax Identification Number.
 2. Game Room Permits shall not be issued to a Permittee unless the application is signed by an Applicant:
 - a. who is named in public filings with the Texas Secretary of State as either an officer or a managing member of the Permittee;
 - b. who signs the following acknowledgement on the face of the application:
 - (1) I am applying for a Permit on behalf of the Permittee and I have actual knowledge of the operation of a Game Room under this permit; I acknowledge that any person operating a Game Room under this permit will do so under my direction and control, and I further acknowledge that I may be held **criminally liable** for illegal activity associated with the Game Room under this permit, including gambling, gambling promotion, or keeping a gambling place under Chapter 47 of the Penal Code; operating an unauthorized Game Room under Chapter 14 of the City Code; and other applicable penal statutes.
 3. Game Room Permits shall not be issued to a Permittee unless the application is signed by a natural person:
 - a. who is
 - (1) the Property Owner or,
 - (2) if the Property Owner is a business organization, a natural person who attaches to the application documentary evidence demonstrating that they are authorized to sign the application on behalf of the Property Owner; and
 - b. who signs the following acknowledgement on the face of the application:
 - (1) I own the property described in this application, and I have actual knowledge of the proposed or current operation of a Game Room on my property. I acknowledge that I may personally be held **criminally liable** for illegal activity associated with the Game Room on my property, including keeping a gambling place under Chapter 47 of the Penal Code, operating an unauthorized Game Room under Chapter 14 of the City Code, and other applicable penal statutes.
- B. Contents of permit application. The application for a Game Room Permit to be issued pursuant to this article shall be sworn and shall contain information required by the City Secretary on a form provided for that purpose, including:
1. The full and correct business name of the Permittee, as currently filed with the Texas Secretary of State's office;
 2. The trade name of the Permittee, if different from the business name on file with the Texas Secretary of State's office;
 3. The Texas Tax ID number of the Permittee, as issued by the Texas Comptroller of Public Accounts;

4. All addresses and telephone numbers of the Permittee;
5. The names and dates of birth of each and every officer, managing member, or person who owns 20% or greater interest in the Permittee.
6. A list of all prior criminal convictions of each and every officer, managing member, or person who owns 20% or greater interest in the Permittee, for all felony offenses, and for misdemeanors involving drug offenses, fraud, theft, gambling, or weapons offenses, or offenses against public administration;
7. Whether alcoholic beverages will be sold or permitted on the premises of the business;
8. The address of the premises where the Permittee will operate the Game Room, and the full and correct name of the property owner of such premises as recorded in the deed records of Victoria County;
9. A diagram of each public space of the game room in which Amusement Redemption Machines may be located during the term of the permit, including the maximum number of Amusement Redemption machines in each space, and the total square footage of each space;
10. If the premises where the Permittee will operate the Game Room is located within a multiple tenant structure where tenants share collective parking, a list of all tenants in the structure, the use of each leased space in the structure, and the square footage of the structure used by each tenant in the structure; and
11. Each Application shall be accompanied by the following:
 - a. The fee required by this ordinance or separate ordinance.
 - b. A copy of a receipt from the Texas Comptroller of Public Accounts showing the total number of Amusement Machines for which the state occupations tax has been paid and for which registration decals have been issued by the Texas Comptroller of Public Accounts for the time period of the relevant permit application.

C. Background check.

1. The Chief of Police, or a duly authorized representative, shall conduct an investigation into the publicly filed business records of the Permittee and the background of all Applicants and each officer, managing member, or owner of 20% or greater interest in the Permittee. The investigation may be completed by the Victoria Police Department or by a third-party vendor approved in advance by the Chief of Police. Any fees associated with the investigation shall be paid by the Applicant. The investigation shall include fingerprinting the individual and a check of the individual's local, state, and national criminal records in accordance with Texas Government Code, Sections 411.087 and 411.122. The investigation shall include making a permanent record of the identity of all individuals described in this paragraph.
2. The Chief of Police shall deny issuance of a permit if the application or investigation shows any of the following:
 - a. The Applicant or an officer, managing member, or owner of 20% or greater interest in the Permittee has been convicted, within the five (5) years preceding the date of the application, of any crime required to be listed on the permit application and not disclosed thereupon, or of a felony, or for gambling, gambling promotion, keeping a gambling house, fraud, theft, an offense against public administration, or another crime that directly relates to the duties and responsibilities of a permittee pursuant to this article;
 - b. The permit application includes a false statement by the Applicant;

- c. The City of Victoria has revoked the Applicant's permit of the type requested within the past five years.
- D. Issuance of Game Room Permit to qualified Applicant. Once an Applicant is approved for a Game Room Permit, a printed permit form shall be issued to the Permittee. The permit form will be signed by the City Secretary.
 1. The cumulative number of Amusement Redemption Machines allowed to operate or be displayed on the premises of a Permittee shall not exceed the lesser of (a) the total number of Amusement Machine Decals issued by the Texas Comptroller of Public Accounts as demonstrated by the receipt attached to the permit application, or (b) the number of off-street parking spaces available to the Permittee on the premises of the permitted Game Room. For example, a game room permittee who has been issued twenty amusement machine decals by the Comptroller but is permitted to operate on a premises that includes only eighteen off-street parking spaces shall be allowed to operate or display no more than eighteen Amusement Redemption Machines, in combination.
 2. The cumulative number of Amusement Redemption Machines allowed to operate or be displayed on the premises of a Permittee shall be stated clearly on the face of each Game Room Permit in both letters and numerals, such as "Eighteen (18)"
 3. A person commits an offense if the person cumulatively operates or displays more Amusement Redemption Machines on any premises than allowed under the valid Game Room Permit for that premises.
 4. For the Purpose of this section 14-146(D), any Amusement Redemption Machine that allows more than one person to play simultaneously shall be counted as multiple machines, based on the maximum number of simultaneous players. For example, a machine that is designed to be simultaneously played by up to four players shall be counted as four Amusement Redemption Machines.
- E. Administrative Suspension or Revocation of Game Room Permit.
 1. Suspension. Upon receipt of information tending to show that illegal activities are occurring or have occurred on the premises of a Permittee, the Chief of Police may provisionally suspend a Game Room Permit.
 - a. The Chief of Police or designee shall notify the Permittee, the Applicant, and the Property Owner of the provisional suspension by first class mail sent to the addresses listed in the game room permit application. Such notification shall include the date on which the provisional suspension is to begin, a description of the illegal activity alleged to have occurred on the premises, and the date, time, and location of the hearing described below.
 - b. The provisional suspension shall not begin before the third calendar day after the notice is placed in the mail.
 - c. It is a misdemeanor offense for a Permittee to operate a game room, or for an Applicant or Property Owner to allow the operation of a game room during the provisional suspension of a game room permit.
 - d. The Chief of Police or designee shall hold a hearing not earlier than ten days after the notice is placed in the mail, and not later than fifteen days after the notice is placed in the mail, at which hearing the Permittee, the Applicant, and the Property Owner may present any relevant information tending to refute the allegations described in the notice. The hearing described in this paragraph is not intended to be a full evidentiary hearing, but rather an opportunity for the Permittee, the Applicant, and the Property Owner to be heard.

- e. Within five business days after the hearing, if a preponderance of the evidence shows that the illegal activity occurred or is occurring on the premises of the Permittee, the Chief of Police shall suspend the Game Room Permit and notify the Permittee, the Applicant, and the Property owner of the suspension. Such suspension is effective immediately, and remains in effect until the expiration of the permit so suspended. A Permittee, Applicant, or Property Owner may not submit a new Game Room Permit application during the term of the suspension. If a preponderance of the evidence shows that the illegal activity did not occur and is not occurring, the Chief of Police shall reinstate the Game Room Permit and notify the Permittee, the Applicant, and the Property owner of the reinstatement.
 - f. The suspension a Game Room Permit shall not prohibit a Permittee, Applicant, or Property Owner from applying for a new Game Room Permit after the expiration of the permit so suspended.
2. **Revocation.** The Chief of Police may revoke a Game Room permit if the Applicant or an officer, managing member, or owner of 20% or greater interest in the Permittee is convicted of any felony, or of any offense involving gambling, fraud, theft, an offense against public administration, or another crime that directly relates to the duties and responsibilities of a permittee pursuant to this article. The Chief of Police shall notify the Permittee, the Applicant, and the Property Owner of the revocation by first class mail sent to the addresses listed in the game room permit application. Such notification shall include the date on which the revocation is to begin, which shall be no earlier than the third calendar day after the date the notice is placed in the mail.
- F. **Expiration date for permits.** Any Game Room Permit shall expire on December 31st of each year and the Permittee will be required to obtain a new permit to be effective January 1st of each year. The applicant shall pay a permit fee as prescribed by separate ordinance, enacted from time to time, copies of which are on file in the City Secretary's office. Each new permit shall be subject to the rules, regulations, ordinances, and codes applicable during that permit year and as such rules, regulations, ordinances and codes may be amended from time to time; no Game Room Permit shall create any vesting of rights in the privileges established during prior permit years.

(Ord. No. 2015-27 , § 1, 10-20-15; Ord. No. 2017-7 , § 1, 6-20-17)

Sec. 14-147. - Manner of operation of a permitted Game Room.

- A. At all times during which a Permittee holds a valid Game Room Permit, the Permittee shall display a sign which says "Game Room" on the premises of the permitted game room which
 - 1. Is displayed in a conspicuous manner clearly visible to the public from the entrance of the premises,
 - 2. Appear in contrasting colors with block letters at least four inches in height.
- B. At all times during operation of a Game room, a Permittee shall display signs which
 - 1. Are displayed in a conspicuous manner clearly visible to the public,
 - a. at each entrance to the Game Room, and
 - b. at each location within the Game Room where patrons may collect winnings, and
 - 2. Include written language identical to the following, in English and Spanish: "Gambling is a crime. If you win more than \$5.00 per play, you may be arrested and fined \$500.00," and "El juego es un crimen. Si usted gana más de \$5.00 por jugada, es posible que sea arrestado y deba pagar una multa de \$500.00," and
 - 3. Appear in contrasting colors with block letters at least one inch in height.

- C. A Permittee shall not cause or allow the following:
1. Operation of the game room during the following hours:
 - a. For game rooms where no alcoholic beverages are sold, between 1:00 a.m. and 1:00 p.m. on a Sunday, or between 1:00 a.m. and 7:00 a.m. on any other day.
 - b. For game rooms where alcoholic beverages are sold, any time when the sale of alcoholic beverages is prohibited.
 2. Operation of the permitted game room without transparent unobstructed windows or open space on at least one (1) side so that the open area is open to view by the general public passing by on a public street or using a corridor, lobby or other room to which the public has access and is admitted without charge. The owner, manager or employee of a game room shall not permit any obstruction of such public view by the use of drawn shades, blinds, partitions, tinting or other structures or obstructions.
 - a. It is an affirmative defense to prosecution under subsection (B) above that:
 - (1) The game room is located in a structure registered as a historic landmark, or the structure is within a historic district and deemed to have architectural or historic significance which would qualify the structure for registration as a historic landmark; and
 - (2) Compliance with the unobstructed view requirement would require alterations to the structure that would have a substantially detrimental effect on its historic or architectural features.
 3. Allowing any person under the age of eighteen (18) years to enter a game room when such person is not accompanied by a parent or guardian.
 4. Failure to promptly report to the police department any violations of state law or City ordinances committed by employees or patrons on game room premises.
 5. Game Room memberships for any purpose.
 - a. 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.
 - b. Game Rooms shall not issue membership cards to any individual for any purpose.
 - c. 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.
 - d. A Person who operates a Game Room in violation of this Subsection commits an offense. Each person denied entry is considered a separate offense. Each membership card issued is considered a separate offense. Each individual subjected to any check in procedure prior to entering or before exiting a Game Room is considered a separate offense. Each day a violation occurs or continues to occur is considered a separate offense.
 - e. Any violation of this Subsection is grounds for denial, revocation, or suspension of a Game Room permit.
- D. Inspection. Peace Officers, Fire Safety Officials, and designated City Employees are authorized to inspect any business in The City of Victoria for violations of these Regulations. These Regulations do not authorize a right of entry prohibited by law. Peace Officers, Fire Safety Officials, and designated City Employees may enter a business with consent, whether that consent is implied or express, with a warrant, or under exigent circumstances. A Game Room permit issued pursuant to these Regulations

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

1. Any Peace Officer, Fire Safety Official or designated City employee may inspect a permitted Game Rooms located within the City to determine whether the Game Room is in compliance with this Section.
2. A Person who does not allow a Peace Officer, Fire Safety Official, or designated City employee to inspect a Game Room commits an offense. Each Peace Officer, Fire Safety Official, and Designated County Employee denied entry is considered a separate violation. Each denial is considered a separate offense. Each day a violation occurs or continues to occur is considered a separate offense.

(Ord. No. 2015-27 , § 1, 10-20-15)

Sec. 14-148. - Compliance with article.

A. A person commits an offense if the person:

1. operates or allows operation of a game room within the City limits without a current, valid Game Room Permit issued by the City Secretary's office;
2. operates a permitted Game Room during the time that the Game Room Permit is provisionally suspended, or revoked;
3. knowingly leases, rents, lets, subleases, or sublets property within the City limits on which a game room operates without a valid Game Room Permit issued by the City Secretary's office;
4. knowingly leases, rents, lets, subleases, or sublets property within the City limits on which a permitted game room operates during the time that the Game Room Permit is provisionally suspended, suspended, or revoked;
5. operates a permitted game room within the City limits without displaying a current Game Room Permit in a conspicuous location within an area of the business accessible to the public;
6. operates a permitted game room within the City limits in any manner that violates the "manner of operation" standards set forth in Section 14-147 of this article;
7. forges, alters, or counterfeits a Game Room Permit required by this section; or
8. possesses a forged, altered, or counterfeited Game Room Permit required by this section.

B. It is an affirmative defense to prosecution under this section that:

1. the Game Room Owner or Game Room Permit holder is a religious, charitable, or educational organization authorized under state law to operate a game room, or
2. the Game Room derives at least fifty-one percent (51%) of its net revenue from sources other than amusement redemption machines.

C. An offense under this section is a Class "C" misdemeanor.

(Ord. No. 2015-27 , § 1, 10-20-15)