

**To the Mayor and Members of the City Council****April 6, 2021**

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SUBJECT: GAMING MACHINE REGULATIONS

Council Member Flores requested this IR asking whether gaming-machine regulations could be imposed on businesses that have fewer than six gaming devices. Council Member Flores also asks whether such businesses should be required to have insurance as a condition of their certificate of occupancy. The complaint is that these businesses can cause problems in their communities.

Local Government Code § 234.131 defines game rooms as businesses that have six or more gaming machines. This statute allows counties to regulate game rooms and the Tarrant County Game Room Regulations flow from this authority. Under the Tarrant County Game Room Regulations and the Tarrant County-Fort Worth game room ILA, game-room enforcement for businesses that have six or more gaming machines falls on Fort Worth Police and Code Compliance. The City adopted in 2014 game-room ordinances that defined game rooms as businesses with only one gaming machine and imposed licensing and zoning regulations. Those ordinances are the subject of more than six years of litigation. Because the legislature defined game rooms so specifically, neither Tarrant County nor Fort Worth may alter the definition or impose regulations such as are in the litigated ordinances or the county regulations where there are fewer than six gaming machines.

Certificates of Occupancy are issued by the Development Services Department after a building or tenant space is inspected and found to be in compliance with the adopted building code and other codes enforced by the Development Services Department. A certificate of occupancy may be suspended or revoked when it is issued in error, if incorrect information is supplied by the owner or tenant, or if it is determined that the building or portion thereof is in violation of any ordinance or regulation. There is no requirement for proof of insurance for the issuance of a Certificate of Occupancy since insurance is unrelated to ensuring compliance with the applicable city codes. If there is a concern that an existing business has electrical, plumbing or other building technical code issues, a Development Services inspector can be sent out to the business to inspect the premises. Should it be determined that there is an issue, the property owner can then be required to bring the premise into compliance. If the property owner fails or refuses to come into compliance with the applicable code, the City Building Official may revoke the Certificate of Occupancy based on the violations of the building technical codes.

Illegal gambling is the underlying problem at businesses where there are only a few eight-liners whereby they fall outside of the Tarrant County Game Room Regulations. While, for the time being, Fort Worth may not regulate gaming machines where there are fewer than six as game rooms, enforcement of the criminal game room statutes should help solve problems at these locations. This is a proven and effective way of handling crime at these locations. We work with the Police when we receive complaints of problems.

If Fort Worth is successful in the game room litigation, we will have many more options for dealing with eight-liners, including those that are in businesses that do not meet the definition of game rooms under the state statute. This solution may lie in the not-so-distant future. Our litigation efforts are looking more promising after the Texas Supreme Court adopted the City's position that eight-liners are unconstitutional machines and therefore do not enjoy protections under the Coin-Operated Machine statute. The only question

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referred to the Fort Worth Court of Appeals is whether eight-liners that are the subject of the litigation are unconstitutional lotteries. In terms of timing, all briefing is completed, and the Court has set oral argument for April 13, 2021. While it is difficult to estimate, it is possible that the Court of Appeals will issue an order sometime between June and October. Of course, there could be further appeals.

For questions regarding this information, please contact Christopher B. Mosley, Senior Assistant Attorney, at 817-391-7603.

David Cooke
City Manager