

**ORDINANCE NO. O-2024-023**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUTTO, TEXAS, AMENDING CHAPTER 8 “BUSINESS REGULATIONS” OF THE HUTTO CODE OF ORDINANCES BY ADDING ARTICLE 8.08 “GAME ROOMS AND AMUSEMENT REDEMPTION MACHINES”; PROVIDING FOR A SEVERABILITY CLAUSE; REPEALING CLAUSE; OPEN MEETING CLAUSE; PENALTY CLAUSE; PUBLICATION; AND EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Hutto, Texas has determined that there is a need for regulations related to the operation of game rooms within the city; and;

**WHEREAS**, the City of Hutto (the “City”) has experienced growth and interest in the operation of game rooms in the City and recognizes concern over the number of game rooms, location, and method of operation of the game rooms and possible adverse effects; and

**WHEREAS**, the City Council desires to provide control over the possible adverse effects and thereby protect the health, safety, and welfare of the citizenry as well as provide an atmosphere suitable for economic growth within the City; and

**WHEREAS**, the City Council has the statutory authority to adopt an ordinance that is for the peace and order of the municipality and for trade and commerce pursuant to Texas Local Government Code Chapter 51; and

**WHEREAS**, the City Council has the statutory authority to restrict the exhibition of a coin-operated amusement machine within 300 feet of a church, school, or hospital pursuant to Texas Occupations Code Chapter 2153; and

**WHEREAS**, the City Council has the statutory authority to impose an Occupations Tax on the operation of eight-liners pursuant to Texas Occupations Code Chapter 2153; and

**WHEREAS**, regulation by the City is deemed desirable to insure that the locations in which such machines are safe and have adequate facilities to accommodate the number of persons likely to be attracted by the placement of such machines to insure that activities conducted on the premises are not deleterious to the health, welfare, safety, and morals of persons under the age of eighteen; to ensure that the peace and order of the community will not be disrupted by persons operating or waiting to operate such machines; to ensure that the persons exhibiting such machines are of good moral character; and to require that the owner or operator of any establishment used for the exhibition of such machines is responsible for protecting the peace and order of the community from disturbances caused by patrons of such establishments; and

**WHEREAS**, the City Council finds that the unlicensed and unauthorized operation of machines in game rooms constitutes a public nuisance and potential threat to the community; and

**WHEREAS**, the provisions herein are necessary to promote and protect the health, safety, and welfare of the public by creating an environment that is protective of the public and provides an enhanced quality of life for the citizens of the City of Hutto, Texas.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF HUTTO, TEXAS:**

**1. FINDINGS OF FACT**

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as expressly set forth herein.

**2. ENACTMENT**

The regulations in **Attachment “A”** are hereby authorized and adopted as the “Hutto Game Room Ordinance” and shall be codified in the Hutto Code of Ordinances under Chapter 8 “Business Regulations” as Article 8.08 “Game Rooms and Amusement Redemption Machines.”

**3. SEVERABILITY**

The provisions of this ordinance are severable, and if any sentence, section, or other parts of this ordinance should be found to be invalid, such invalidity shall not affect the remaining provisions, and the remaining provisions shall continue in full force and effect.

**4. REPEALER**

All ordinances and resolutions and parts thereof in conflict herewith are hereby expressly repealed insofar as they conflict.

**5. OPEN MEETING**

The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this ordinance and the subject hereof were discussed, considered, and formerly acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**6. PENALTY**

A violation of this Ordinance shall be a Class C Misdemeanor as provided for in Hutto City Code Section 1.01.009 “General Penalty for Violations of Code; Continuing Violations” with a fine up to \$500.00 or up to \$2,000.00 if a culpable mental state is alleged in the offense or if the offense is a violation of a rule, ordinance or police regulation that governs fire safety, zoning or public health and sanitation.

**7. PUBLICATION**

The City Secretary of the City of Hutto is hereby authorized and directed to publish the caption of this Ordinance in the manner and for the length of time prescribed by law.

**8. EFFECTIVE DATE**

This ordinance shall take effect and be in force from and after its passage.

**READ** and **APPROVED** on first reading on this the 2nd day of May 2024 at a meeting of the Hutto, Texas City Council; there being a quorum present.

**READ, PASSED, and ADOPTED** on second reading of ordinance this 16th day of May, 2024 at a meeting of the Hutto, Texas City Council; there being a quorum present.

**THE CITY OF HUTTO, TEXAS**

  
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Mike Snyder, Mayor

Attest:

  
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Amanda Taylor, Interim City Secretary



**ARTICLE 8.08**  
**GAME ROOMS AND AMUSEMENT REDEMPTION MACHINES**

**§ 8.08.001 Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Amusement redemption machine* means any electronic, electromechanical, or mechanical contrivance, including sweepstake machines, designed, made, and adapted solely for bona fide amusement purposes, and that by operation of chance or a combination of skill affords the user, in addition to any right of replay, an opportunity to receive exclusively non-cash merchandise prizes, toys, or novelties, or a representation of a value redeemable for those items and is in compliance with section 47.01(4)(b) of the Texas Penal Code. Amusement redemption machine does not include:

- (a) A machine that awards the user non-cash merchandise prizes, toys, or novelties solely and directly from the machine, including claw, crane, or similar machines; nor
- (b) A machine from which the opportunity to receive non-cash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, varies depending upon the user's ability to throw, roll, flip, toss, hit, or drop a ball or other physical objects into the machine or a part thereof, including basketball, golf, bowling, or similar machines where the theme of the machine is not one traditionally recognized or associated as a casino-type gambling activity or game such as eight-liners, games played with cards, dice or other playing boards or mediums, such as poker, blackjack, keno, bingo, slots, craps, roulette, baccarat or similar games. A representation of value means cash paid under authority of sweepstakes contestants as provided by the Texas Business and Commerce Code, § 43.
- (c) A machine or any device defined in V.T.C.A., Penal Code § 47.01 as a gambling device, or any activity prohibited or described in V.T.C.A., Penal Code ch. 47.

*Applicant* means a natural person who applies for a game room license on behalf of the licensee.

*Arcade game* means any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes that does not afford the user any opportunity of a free replay or a chance to receive any additional consideration other than amusement through playing.

*Chief building official* means the chief building official for the City of Hutto or the chief building official's authorized representative.

*Chief of police* means the chief of police of the City of Hutto authorized to enforce and administer this article or the chiefs authorized representative.

*City* means the City of Hutto.

*City manager* means the city manager of the City of Hutto authorized to enforce and administer this article or the city manager's authorized representative.

*City secretary* means the city secretary of the City of Hutto or the city secretary's authorized representative.

*Compensation* means any and all forms of payment as remuneration for the provision of playing an amusement redemption machine.

*Fire marshal* means the fire marshal of the Hutto Fire Rescue or the fire marshal's authorized representative.

*Game room* means a building, facility, or other place, including private club or commercial business location that derives any revenue directly or indirectly from the operation of one or more amusement redemption machines, or from patrons playing non-electronic games of any type, including, without limitation, cards, dice, dominos, board games, but specifically excluding bingo establishments operated under other law; or possesses one or more amusement redemption machines, whether operating or not on the premises.

*Game room owner* or *owner* means a person who has an ownership interest in a game room.

*Licensee* means any person, individual, firm, company, association, or corporation operating an amusement redemption machines game room in the city.

*Manager, operator* or *owner* means an individual who supervises, manages, or participates in the performance of activities that contribute to the functioning of a game room, including, but not limited to, operating cash register/drawer, credit card transaction or some other depository on the premises of a game room, displays, delivers, or provides to a customer of a game room merchandise, goods, entertainment or other services, takes orders from a customer of a game room for merchandise, goods, entertainment or other services or acts as a door attendant to regulate entry of customers.

#### **§ 8.08.002 License required.**

No person shall operate a game room in the city without first obtaining a license from the city, as required by this article. No license shall be issued until:

- (a) The state occupation tax has been paid for each amusement redemption machine within the premises<sup>1</sup>; and
- (b) The city's occupation tax, sometimes referred to herein as the annual tag fee, has been paid for each amusement redemption machine within the premises<sup>2</sup>; and
- (c) The annual inspection and game room license fee has been paid; and
- (d) All other licensing requirements as set forth in this article have been met.

#### **§ 8.08.003 Payment of annual inspection and license fee; issuance of license.**

An owner, operator, or lessee of a game room shall be required to secure a license annually. A game room shall be required to secure a license by paying to the city an annual inspection and

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<sup>1</sup> Tex.Occ.Code Sec. 2153.401(b) The state occupation tax is \$60.00.

<sup>2</sup> Tex.Occ.Code Sec. 2153.451(b) The city occupation tax can not exceed one-fourth of the state tax.

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game room license fee (the "license fee") in the amount of \$2,400.00. Upon payment of the license fee, payment of the annual tag fee of the city for each amusement redemption machine within the premises, and compliance with all licensing requirements, the license shall be issued by the city.

**§ 8.08.004 Occupation tax assessed; display of tax certificates.**

- (a) An occupation tax permit issued by the state and all seals required by the state shall be securely affixed to each amusement redemption machine. Such permits and seals shall be affixed on the front of each machine in a clearly visible location.
- (b) The city hereby assesses, and the city secretary shall collect an annual occupation tax in the amount of \$15.00, per machine, which shall be paid before a tax certificate ("tag") may be issued<sup>3</sup>.
- (c) A tag issued by the city shall be securely affixed to each amusement redemption machine. This tag shall bear the name of the machine, and the serial number of the machine to which it is issued to and affixed. The tag shall be affixed on the front of the machine in a clearly visible location. The tag shall, for its valid period, remain legible and undamaged.
- (d) All tags shall be issued on the basis of a calendar year. Occupation taxes shall not be prorated. Tags issued at any time during a calendar year shall automatically expire on December 31st of each year.
- (e) Replacement tags issued by the city must meet all requirements listed in this section. Replacement tags shall not be prorated and shall bear the word "REPLACEMENT". Replacement tags will be issued for damaged original tags. The original tag must be surrendered to the city before a replacement tag is issued. Replacement tags for lost original tags will be issued only when an affidavit is completed explaining the loss. The affidavit will also include serial number and name of the amusement redemption machine to which the replacement tag shall be issued.

**§ 8.08.005 Term of license; jurisdiction; scope.**

A license issued for a game room under this article:

- (a) Is an annual license which expires December 31st of each year unless it is suspended or cancelled earlier;
- (b) Is effective for a single place of business only;
- (c) Vests no property right in the licensee except to maintain, display for public patronage, and permit the use or skill or pleasure of amusement redemption machines in accordance with the terms and conditions of this article;
- (d) Shall automatically expire if the licensee thereof sells the property or the business, transfers equity to accomplish same, or otherwise disposes of amusement redemption machines; and

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<sup>3</sup> Tex.Occ.Code Sec. 2153.451(b)



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- (e) Is not assignable or transferable.
  - (f) In addition, the city shall not refund any portion of a license fee after the license is issued, nor shall it prorate or reduce in amount any fee due to the city.

**§ 8.08.006 Restrictions, regulations, controls, and limitations.**

- (a) No amusement redemption machines or related business activities shall be allowed to be situated or performed outdoors.
  - (b) The hours of operation for a game room shall be limited to the following hours:
    - (1) Sunday through Thursday, open at 9:00 a.m. and close at midnight; and
    - (2) Friday through Saturday, open at 9:00 a.m. and close at 2 a.m.
  - (c) The owner, operator, or manager of the licensed premises must be present to supervise the operation of the game room. The game room shall not be left unattended during hours of operation.
  - (d) Amusement redemption machines must be situated within the licensed premises as to be in full and open public view, which entails being visible to all patrons of the establishment.
  - (e) No person under the age of 18 years shall be permitted inside the building, structure, facility, or space, housing the game room.
  - (f) A sign in one and one-half inch or larger typed block letters and which is legible from a distance of at least 25 feet stating that no one under the age of 18 is allowed inside the game room shall be posted in plain sight immediately inside the entrance stating that:

"No person under the age of 18 years shall be permitted inside the building, structure, facility or space housing the game room."
  - (g) A game room owner, operator or lessee must be a person who is at least 18 years of age.
  - (h) The owner, operator, or manager of the licensed premises shall mark each entrance to a game room with a typed sign which bears the words "GAME ROOM" in one and one-half inch or larger block letters and which is legible from a distance of at least 25 feet.
  - (i) Game rooms are deemed to be public places to which the public has access.
  - (j) All entrances and exits to game rooms are to remain unlocked during hours of operation. Entrances and exits may not make use of a "buzzer" system or any other system or device that prevents individuals from freely opening a door during hours of operation. This does not apply to emergency exits, which must meet all applicable fire codes and regulations:
    - (1) The exterior of all entrances and exits must be clearly illuminated during hours of darkness.
    - (2) The exterior of all emergency exits must be clearly illuminated during hours of darkness.
  - (k) Nothing contained herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table, or gaming machine, the keeping, exhibition, operation, display or maintenance of which is illegal or in violation of any ordinance of the city, any
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regulation of the county, any section of the penal code of this state, or the constitution of this state.

- (l) Premises operating eight-liners shall not be within three hundred feet (300') from any church, school, or hospital when measured in a straight line from any public entrance, unless the premises operated eight-liners prior to the enactment of this article.<sup>4</sup>

**§ 8.08.007 Compensation.**

Compensation for the playing of an amusement redemption machine is limited to tangible, physical merchandise awarded from the game room, or replays on the amusement redemption machine. Prohibited compensation includes, but is not limited to, money, vouchers for utilities, vouchers for other businesses or services, food, beverages, services, gift certificates, or prepaid credit/debit cards.

**§ 8.08.008 Application for game room license.**

- (a) It shall be unlawful for any person to operate any game room within the city without first obtaining a license from the city secretary's office. The license shall at all times be displayed in a conspicuous place within the licensed premises. Any license issued to operate a game room shall expire on the 31st day of December in the year of issuance. Licenses shall be issued to the owner or documented lessee of the premises only and shall not be transferable.
- (b) *Contents of game room license application.* The application for a game room license 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 licensee, as currently filed with the Texas Secretary of State's office;
  - (2) The trade name of the licensee, if different from the business name on file with the Texas Secretary of State's office;
  - (3) The Texas Tax ID number of the licensee, as issued by the Texas Comptroller of Public Accounts;
  - (4) All addresses and telephone numbers of the licensee;
  - (5) The names and dates of birth of each and every officer, managing member, or person who owns ten percent, (10%), or greater interest in the licensee.
  - (6) A list of all prior criminal convictions of each and every officer, managing member, or person who owns ten percent or greater interest in the licensee, 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;

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<sup>4</sup> Tex.Occ.Code Sec. 2153.452(b)



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- (8) The address of the premises where the licensee 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 Williamson County;
  - (9) A list of all cities and/or counties that the applicant and every officer, managing member or person who owns ten percent, 10%, or greater interest in the licensee has operated and whether or not they had a license or permit of the type requested revoked, denied or suspended within the past five years.
- (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 licensee and the background of all applicants and each officer, managing member, or owner of ten percent or greater interest in the licensee. The investigation may be completed by the Hutto Police Department or by a third-party vendor approved in advance by the chief of police. 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, §§ 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 ten percent or greater interest in the licensee has been convicted, within the five 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 licensee pursuant to this article;
    - (B) The permit application includes a false statement by the applicant.
    - (C) The City of Hutto or any other city or county has revoked the applicant's or licensee's license or permit of the type requested within the past five years.
- (d) As part of the licensure process applicant shall make the premises to be licensed available for city inspection, which shall include without limitation, inspection by the chief of police, chief building official and city fire marshal, or their respective authorized representatives. No license shall be issued until such premises conforms to the requirements of this article and the Code of Ordinances.
- (e) The city secretary shall collect a license fee as set forth in this article as established by the city council for each game room license issued.

**§ 8.08.009 Renewal of amusement redemption machine game room license.**

- (a) A license may be renewed for the following calendar year beginning October 1st of each year by filing a completed application for each license and paying the applicable fee set forth in

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this article. A renewal application shall be subject to the same requirements in this section as for a license application.

- (b) Upon the expiration of a license, the licensee shall be required to obtain a renewal of the expired license if the licensee wishes to continue operating an amusement redemption machine game room. Failure to obtain the renewal within 30 days after expiration may require such person to pay an additional late fee in an amount equal to 50 percent of the fee as currently established or as hereafter adopted by city council from time to time. Nothing herein authorizes the licensee to operate after the expiration of a license and before a renewal is effective.

**§ 8.08.010 Grounds for denial of license; suspension or revocation of license.**

The city shall not issue or renew a license under this article and shall suspend or cancel a license if it be determined that the applicant or licensee is indebted to the city for any fee or costs related to this article until such time as the amount due is paid.

**§ 8.08.011 Suspension or revocation of license for violation of article.**

- (a) *Power and authority.* If any individual, company, corporation or association who owns, operates, exhibits, or displays any amusement redemption machine(s) in a game room in this city shall violate any provision of this article, the city shall have the power and authority to suspend or revoke the license(s) issued hereunder to any of the foregoing by giving written notice, stating the reason justifying such suspension or revocation, and the same shall be suspended or revoked ten days from the date of such notice.
- (b) *Suspension.* The city manager shall immediately suspend a license for a period not to exceed 30 days if he or she determines that a licensee or an employee of a licensee has:
  - (1) Violated or is not in compliance with any of the provisions of this article;
  - (2) Refused to allow or interfered with an inspection of the game room premises; or
  - (3) Demonstrated an inability to operate or manage a game room in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.
- (c) *Revocation for continuing violations.* The city manager shall revoke a license if a cause of suspension occurs, and the license has been previously suspended within the preceding 12 months.
- (d) *Automatic revocation.* The city manager or the city manager's authorized representative shall revoke a license if:
  - (1) A licensee gave false or misleading information in the material submitted to the city during the application process;
  - (2) A licensee or an employee of a licensee knowingly allowed the possession, use, or sale of a controlled substance on the premises; or
  - (3) A licensee or an employee of a licensee operated the amusement redemption machine game room during a period of time when the licensee's license was suspended.

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- (e) *Effect of revocation.* No license shall be issued within a period of one year to anyone whose license has been revoked. If the license of an individual, company, corporation, or association owning, operating, or displaying amusement redemption machines in this city is cancelled, such individual, company, corporation or association shall not operate, display or permit to be operated or displayed such amusement redemption machines in any game room until a new license is granted.

**§ 8.08.012 Appeal from denial, suspension or revocation of license.**

If the city manager or chief of police refuses to approve the issuance of a license or the renewal of a license to an applicant, or suspends or revokes a license issued under this article, this action is final unless the applicant or licensee, within ten days after the receipt of written notice of the action, files a written appeal with the city secretary, who shall, within ten days after the appeal is filed forward same to the city council for its consideration at a public meeting following a hearing. The city council shall, within 30 days, grant such hearing to consider the action. The city council has authority to sustain, reverse, or modify the action appealed. The decision of the city council is final.

**§ 8.08.013 Display of license.**

A valid license issued under this article for a game room shall be displayed at or near the entrance of the business premises, and such display shall be permanent and conspicuous.

**§ 8.08.014 Inspections.**

- (a) The premises in which such amusement redemption machines are located shall conform to all building codes and fire prevention codes of the city and the fire marshal of the city and his assistants, the city inspector/code enforcement officer, and the chief building official may enter into the premises where such amusement redemption machines are located at any time during normal business hours for the purposes of inspecting said premises for fire hazards.
- (b) All law enforcement personnel and the inspector/code enforcement officer of the city shall have the right to enter into said premises at any time during normal business hours for the purpose of inspection and enforcement of the terms of this article.
- (1) The chief of police or chief's authorized representation from the police department shall conduct regular, recurring inspections.
- (c) The city shall have the authority to seal any amusement redemption machines located in any game room for which the license fee, occupation tax, or city tag fee has not been paid. A fee in the amount of \$5.00 will be charged for the release of any machine sealed for nonpayment of said tax or fee.

**§ 8.08.015 Responsibility of licensee.**

A licensee hereunder shall not permit any of the following activities within the licensed premises:

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- (a) The operation of any amusement redemption machine by a person younger than 18 years of age;
  - (b) Gambling by any person;
  - (c) The possession of gambling materials; and
  - (d) Unlawful or criminal activity of any kind, to include violations of this Code.

**§ 8.08.016 Enforcement and Penalty.**

- (a) *Nuisance.* The City shall have the power to administer and enforce the provisions of this article as may be required by governing law. Any person violating any provision of this article is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this article is hereby declared to be a nuisance.
- (b) *Criminal Prosecution.* Any person violating any provision of this article shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00) per offense. Each day that a provision of this article is violated shall constitute a separate offense. An offense under this article is a misdemeanor.
- (c) *Civil Remedies.* Nothing in this article shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this article and to seek remedies as allowed by law, including, but not limited to the following:
  - (1) injunctive relief to prevent specific conduct that violates the article or to require specific conduct that is necessary for compliance with the article; and
  - (2) a civil penalty up to one hundred dollars (\$100.00) a day when it is shown that the defendant was actually notified of the provisions of the article and after receiving notice committed acts in violation of the article or failed to take action necessary for compliance with the article; and
  - (3) other available relief.

**§ 8.08.017 Violations of existing laws not authorized.**

Nothing herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table, or gaming machine, the keeping, exhibition, operation, display or maintenance of which is illegal or in violation of any ordinance of the city, any regulation of the county, any section of the penal code of this state, or the constitution of this state.

**§ 8.08.018 Requirements for existing game rooms; exemptions.**

- (a) Any game room that has a certificate of occupancy issued by the city and has continually operated and existed on or before the effective date of this article shall have 90 days to obtain a license as required herein and comply with all terms of this article.
  - (b) Any game room with a certificate of occupancy issued by the city and continually operated before the effective date of this article shall be exempt from the requirements of Section 8.08.006(l) as long as a renewal fee required by Section 8.08.009 has been paid and no violation or pending violation of this article.
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