

**DRAFT**

**CALIFORNIA GAMBLING CONTROL COMMISSION**  
**DESCRIPTION OF PROPOSED REGULATORY ACTION**  
**HEARING REGULATIONS**

**INTRODUCTION:**

The California Gambling Control Commission (Commission) is proposing regulations that would amend previously adopted regulations, as well as add several new sections related to the manner in which the Commission acts on applications. These regulations better implement various aspects of the Gambling Control Act (Act)<sup>1</sup> and provide further clarification as to the procedures for expeditious Commission action while preserving an applicant's right to an evidentiary hearing.

Essentially, except for a few new terms and new concepts, these proposed regulations establish a transparent process generally consistent with current Commission practice. The Commission will continue to hear applications during Bagley-Keene compliant open meetings in which the vast majority of the applications considered result in unqualified approvals. During the open meeting, Commissioners, applicants, Bureau of Gambling Control (Bureau) staff, Commission staff, and the public are able to engage in meaningful dialogue which encompasses all aspects of the publicly available application process. Most importantly, applicants are able to speak with Commissioners to meet their burden of proof under the Act to prove suitability. Through such a meeting applicants are usually able resolve any questions that the Commissioners may have without the need of an evidentiary hearing. Only a small percentage of the applications considered by the Commission are denied or approved with conditions. From there, an even smaller percentage actually seeks an evidentiary hearing concerning their application. This regulation package attempts to define the main paths of the application process and critical undefined branches which occur on a regular basis.

This proposed regulation also addresses the statutory requirements regarding ex parte communications, and provides a mechanism by which applications may be withdrawn or abandoned.

**EXISTING LAW:**

Business and Professions Code sections 19870 and 19871, along with 19825, provide applicants with an evidentiary hearing concerning their application.

Business and Professions Code section 19872 defines and prohibits ex parte communications while an application is pending.

California Code of Regulations Section 12002 provides pertinent definitions under Title 4, Division 18, Chapter 1.

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<sup>1</sup> Business and Professions Code section 19800, et seq.

California Code of Regulations Section 12047 provides for the withdrawal of applications.

California Code of Regulations Section 12048 provides for the abandonment of applications.

California Code of Regulations Section 12050 provides the working procedures on how and when an evidentiary hearing is to occur.

**PROPOSED ACTION:**

ARTICLE 1. DEFINITIONS AND GENERAL PROCEDURES.

Section 12002 – General Definitions

Four terms would be added to section 12002 and others would be renumbered accordingly.

- Subsection (a) adds the term “APA hearing” which defines evidentiary hearings which occur pursuant to Business and Professions Code sections 19825 and 19930 and are beholden to the Administrative Procedure Act. This definition provides needed clarity between the more extensive APA hearing and the default GCA hearing defined below.
- Subsection (h) adds the term “Employee or Agent of the Commission” to differentiate between employees of the Commission and “Members of the Commission” for purposes of prohibitions on ex parte communications. Ensuring that this distinction is understood helps clarify the applicability of the provisions of the Act regarding ex parte communications.
- Subsection (k) adds the term “GCA hearing” which is the default and basic evidentiary hearing available to an applicant. This evidentiary hearing occurs pursuant to Business and Professions Code sections 19870 and 19871. This definition provides the basis for clarity between the two types of hearings (GCA and APA).
- Subsection (l) adds “Interim License” which is a term more fully developed later in these regulations and in prior regulations adopted by the Commission. Essentially, it is a license of finite duration during the pendency of some event. This definition is necessary to define a category of license which now covers both interim gambling licenses, which were addressed in a prior rulemaking and interim renewal licenses which are addressed here.
- Subsection (m) defines “Member of the Commission” as an individual appointed to the Commission by the Governor pursuant to Business and Professions Code section 19811 and 19812. This helps clarify the application of the provisions of the Act regarding *ex parte* communications and who can communicate with whom.
- Subsection (p) adds “Temporary License” which is a license that the Commission may issue prior to the consideration of an application. A temporary license is generally subject to conditions that the Commission may deem appropriate on a case-by-case basis.

These licenses have been granted in the past and are referenced in statute, but have not been specifically addressed in past regulations.

Section 12012 – Ex Parte Communication

This section is added to address and clarify “*ex parte*” communications. The Act<sup>2</sup> imposes prohibitions on communication between “members of the Commission” and an applicant or an agent of an applicant under certain conditions. These prohibitions are ambiguous. Section 12012 is added to clarify and provide guidance regarding prohibited communications to members of the Commission, Commission staff, Bureau staff, and the regulated industry. Specifically, the proposed regulation does the following:

- Subsection (a) states that the APA limitations on *ex parte* communications apply when a proceeding is pending and that a proceeding is pending only once an evidentiary hearing process has commenced. This clarification is vital to provide operational clarity for all parties.
- Subsection (b) clarifies that the *ex parte* limitations of the Act apply as soon as an application is filed with the Commission. This clarification is necessary to provide a finite starting point to the *ex parte* limitations, which is vital to provide reasonable expectations of all parties.
- Subsections (c) & (d) state that a communication conveyed to an “employee or an agent of the Commission” is not an *ex parte* communication unless that communication is conveyed to a “Member of the Commission.” If that information is conveyed to a Member of the Commission then it must be provided to all parties so they may participate in the communication. These subsections will provide clarity to all parties on the definition of a prohibited communication in order to avoid violations of the Act.
- Subsections (e) & (f) state the consequences and remedy for a violation of the prohibitions on *ex parte* communication. This clarification is vital to provide operational clarity for all parties and to provide notice of the penalties for violating these provisions of the Act.
- Subsection (g) allows a member of the Commission who has communicated on an *ex parte* basis to recuse him- or herself from consideration of the application, as long as that recusal does not prevent the existence of a quorum. This section provides helpful clarification to Commission members and the public as to the consequences of an *ex parte* communication.
- Subsection (h) states that, in the event of a conflict between relevant *ex parte* communication prohibitions under the Act and the APA, the more stringent rule or penalty applies. The Commission is dedicated to ensuring that all communications to Commission members related to pending applications or hearings are open to public view

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<sup>2</sup> Specifically Business and Professions Code section 19872

and in full accordance with the law. To that end, it is preferable to operate under more stringent disclosure requirements.

Section 12015 – Withdrawal of Applications

Previous Section 12047 is deleted and replaced with Section 12015. This new section continues the current application withdrawal procedures and expands upon them. The application process can be lengthy, especially for those applying to be owners of a cardroom, and requires a significant investment in time and funds for the applicant, the Bureau, and the Commission. If at any point in the process, the applicant no longer wishes to proceed with the application, it is beneficial to all parties to have a procedure by which the application can be terminated. The Act, in section 19869, provides for a request to withdraw an application and differentiates between a withdrawal granted “with prejudice” and one granted “without prejudice.”

- Subsection (a) defines the time during which an applicant may seek to withdraw his or her application and establishes internal procedures for confirmation of the request. This subsection will provide helpful guidance to the industry and Commission staff.
- Subsection (b) states that the Commission may grant a request either with or without prejudice at its discretion based upon the relevant facts of the application and request.
- Subsection (c) requires any unused portion of the background investigation deposit to be returned, if the request to withdraw is granted. The background deposit is intended to reimburse the Bureau for their expenses related to a background investigation. If an application is withdrawn, no further background investigation is required and any unexpended deposit balance should be returned to the applicant.
- Subsection (d) clarifies that, if a request for withdrawal is granted with prejudice, the applicant is not eligible to apply for licensure until after one year from the date the requested is granted. This prohibition is imposed by section 19869 and is included in the regulation for the sake of clarity.
- Subsection (e) requires the Bureau to continue and conclude its investigation of an applicant in the event a request to withdraw an application is denied, as allowed by section 19869.

Section 12017 – Abandonment of Applications

Previous Section 12048 is deleted and replaced with Section 12017. This new section continues the practice of allowing the abandonment of applications under specified circumstances.

- Subsection (a) defines a process whereby the Executive Director may deem an application abandoned based on certain criteria, including when an applicant is essentially no longer cooperating in the application process. This section is intended to provide a helpful ministerial mechanism to address applications which do not warrant

going through the full application process due to an applicant's lack of interest or other circumstances that may warrant abandonment, such as the applicant's death.

- Subsections (b) & (c) discuss Commission staff procedures for the treatment of abandonment requests and corresponding deposits related to the application. This provides important additional details about the abandonment process.
- Subsection (d) & (e) provides procedures whereby the Executive Director may deem an application abandoned and the handling of corresponding application deposits.
- Subsection (f) addresses when the Commission may determine an application to be abandoned. This provides important criteria for the Commission to use when considering the approval of the abandonment of an application after the Bureau takes final action.

## ARTICLE 2. INTERIM RENEWAL LICENSES

### Section 12035 – Interim Renewal License

The term “interim license” is referenced briefly in Business and Professions Code section 19841, but no definition or other information is included in the statute. The Commission has a rulemaking file in process (CGCC-2011-01-R) that creates a category of “interim gambling licenses” for use during a specific qualifying event. This proposal adds a definition of “interim license” to Section 12002, and clarifies that an “interim license” includes both (1) an interim gambling license issued pursuant to Section 12349, and (2) an interim *renewal* license issued pursuant to Section 12035, created by this package.

- Subsection (a) states that an interim renewal license is to be granted upon an applicant's request for an evidentiary hearing. An evidentiary hearing may be requested after the Commission issues a tentative decision denying a license or approving a license with terms and conditions. The request for an evidentiary hearing effectively stays the Commission's tentative decision. The applicant's previously issued license will, at some point, expire, leaving him or her without a valid license and legally unable to continue in the licensed activity. The interim renewal license is to be issued to address this gap in licensure while the evidentiary hearing is pending.
- Subsection (b) lists the relevant conditions that will be imposed on interim renewal licenses.
  - Paragraph (1) states that the interim renewal license shall be issued under the same terms and conditions as the previously held license, except for any condition that has been satisfied.
  - Paragraph (2) sets the term of the interim renewal license at two years from the date the previous license expires, or the conclusion of the evidentiary hearing, whichever is sooner. Two years is the standard term for licenses issued by the Commission. This paragraph also states that interim renewal licenses cannot be

renewed; however, the Commission may issue a subsequent, new interim renewal license if the evidentiary hearing process has not been concluded.

- Paragraph (3) requires the holder of an interim renewal license for a state gambling license to pay all applicable annual fees. Annual fees are assessed pursuant to section 19951 and Sections 12008 and 12357. Annual fees are used to fund regulatory oversight of gambling establishments. Any gambling establishment with an active license is obligated to pay annual fees. This paragraph makes that obligation explicitly clear for holders of an interim renewal license.
- Paragraph (4) states that the issue date of the most recently granted interim renewal license shall serve as the issue date for any regular license that may be granted at the conclusion of the evidentiary hearing process. This is intended to ensure that licensees pay the correct amount in annual fees.
- Subsection (c) clarifies that the issuance of an interim renewal license does not limit in any way the discretion vested in the Commissioners with respect to the license at issue.

### ARTICLE 3. HEARING PROCEDURES AND DECISIONS.

#### Section 12050 – Commission Meetings; General Procedures; Scope

The current Section 12050 is amended and renumbered as Section 12062. The new Section 12050 provides general procedures regarding the hearing process.

- Subsections (a) & (b) clarify Commission authority and that this article does not apply to disciplinary proceedings which helps all parties understand their rights and obligations.
- Subsection (c) lists the specific notice that applicants are to receive in advance of a meeting. This is to insure that each applicant is informed and has an opportunity to address the Commission if they so chose.

#### Section 12052 – Bureau Recommendation and Information; Commission Staff Recommendation

The Act, in subdivision (a) of section 19826, allows the Bureau to recommend the denial or limitation, conditioning, or restriction of any license, permit, or approval, after the completion of the background investigation. Section 12052 details the manner in which any recommendation shall be provided to the applicant and how the information may be considered by the Commission. Specifically:

- Subsection (a) requires the Bureau to provide the applicant with the Bureau's report and any recommendation at the same time it is provided to the Commission. This requirement ensures that all parties are informed, are provided the same information, and can all properly address the Commission at the Commission meeting.

- Subsection (b) clarifies that the authority to make a decision on the suitability of an applicant ultimately rests with the Commission and, if the Commissioners deem it appropriate, the Administrative Law Judge.

Section 12053 – Scheduling

Under current Commission practice, an application is initially heard at a Bagley-Keene-compliant public meeting. If the application is denied, or if restrictions or conditions are imposed, the applicant can request an evidentiary hearing (either a GCA hearing or an APA hearing). This section creates an option for the Executive Director to schedule an application for a GCA hearing under Section 12062(c) without an initial Bagley-Keene public meeting. The Commission still retains the option of sending a matter that has been scheduled for a GCA hearing to an APA hearing. This is intended to provide speedier resolutions of applications which would benefit the applicant and the public in general and comports with the spirit of the Act.

Section 12054 – Commission Meeting; Tentative Approval, Denial, Limitation or Conditioning; Commission Elected Hearings

- Subsection (a) and its relevant paragraphs describe the actions Commissioners may take at a Commission meeting, including approval of an application, tentative approval of an application with conditions, tentative denial of an application, sending a matter to a hearing under section 12062 (an evidentiary hearing), extending a license as necessary under Business and Professions Code section 19876(c), or tabling or continuing an item. This list is intended to be informative and provides all parties with a non-exhaustive list of the possible actions that may occur during the meeting process.
- Subsections (b) and (c) state that the Commission must notify an applicant of a tentative approval with conditions, limitations, or restrictions, or a tentative denial within 10 days of the Commission action, and provides 60 days for the applicant to request an evidentiary hearing under Section 12062. Unless an applicant affirmatively requests a hearing, the right to a hearing will be deemed waived. An applicant may also waive the right to an evidentiary hearing prior to the expiration of the 60-day deadline, by executing and submitting form CGCC-XXX. If the applicant waives the right to a hearing, or the right to a hearing is deemed waived by failure to request one, the Commission's tentative decision is considered final. In order to provide finality to the Commission's decisions, a firm deadline by which an applicant needs to request an evidentiary hearing must be established. Sixty days is a reasonable amount of time for the applicant to consider the issue and obtain legal advice, if desired.
- Subsection (d) stays the Commission's tentative decision for the duration of the evidentiary hearing process. In such cases, an interim renewal license will be issued pursuant to Section 12035.

- Subsection (e) provides that the Commission is not bound by a tentative decision. This makes it clear that a tentative decision is merely based on what is before the Commissioners at the time the tentative decision is rendered, but to the extent that they are presented with additional evidence outside or inside a subsequent evidentiary hearing process, they are free to reevaluate their decision based on that evidence and corresponding argument.
- Subsection (f) states that a tentative decision becomes final when (1) the applicant affirmatively waives the right to a hearing; (2) the right to a hearing is deemed waived under subsection (b); or (3) the Commission adopts the decision through the evidentiary hearing process. This process ensures applicants can exercise their due process rights, while allowing for finality in the licensing process.
- Subsection (g) requires the Executive Director to provide notice of the final decision to the Bureau and the applicant within 10 days of the decision.
- Subsection (h) states that evidentiary hearings are not available to an applicant when the Executive Director or Commissioners disapprove a request to withdraw an application or deem an application abandoned. This is to improve efficiency and clarity in the application process. If a party wanted to contest the rejection of the withdrawal or abandonment via an evidentiary hearing they are still able to avail themselves of the normal licensing process which affords them an opportunity for an evidentiary hearing.

#### Section 12056 – Pending Accusations; Renewals

The issue of how the Commission should consider an application for license renewal when a Bureau accusation is pending against the license has been unclear. Section 12056 provides that the Commission can act on the renewal application as normal under Section 12054, or can issue an interim renewal license for the duration of the accusation process. This section provides guidance to all parties where there may be conflicting interests on a renewal license. This system preserves the Commission's discretion in addressing licensing matters.

#### Section 12058 – Rescheduling of Meeting

This section codifies existing practice of allowing the Executive Director to reschedule items before a meeting and the Commissioners at a meeting.

#### Section 12060 – Reconsideration of Tentative Decision

Under current practice, applicants are provided a copy of the Bureau's recommendation (if any) and Commission staff's recommendation at least 10 days in advance of the hearing, in order to properly prepare to address any issues before the Commission. However, the final decision on the license application ultimately rests with the Commission. Occasionally, this has led to situations in which the applicant had no notice of the possible basis for denial and was unable to prepare a defense. This occurrence has been informally referred to as a "surprise denial." Section 12060 specifies that an applicant may request reconsideration of a tentative decision

after a “surprise denial.” Further, previous applicants have, on occasion, requested reconsideration of a Commission decision. There has been no guidance in the Act or Commission regulations as to under what circumstances such a request may be granted. This section will provide helpful guidance to the Commission and the industry as to when reconsideration of a decision may be an option.

Specifically, this section addresses the following:

- Subsection (a) lists the requirements for a tentative decision reconsideration request to be valid. The request for reconsideration must be based on the following:
  - Paragraph (1) – Both Bureau and Commission staff recommended approval of the license;
  - Paragraph (2) – The applicant was informed that Commission staff recommended approval;
  - Paragraph (3) – New or additional concerns arose during further review of the application, staff reports, or during the Commission meeting;
  - Paragraph (4) – The new or additional concerns had not been provided to the applicant in advance of the meeting;
  - Paragraph (5) – The new or additional concerns constituted possible grounds for denial, or approval with limitations, restrictions, or conditions; and
  - Paragraph (6) – The applicant has shown good cause as to why reconsideration should be granted.

This subsection is intended to limit the scope of permissible reconsideration requests to only those that might be meritorious, while preserving an applicant’s due process rights.

- Subsection (b) states that a request for reconsideration does not toll the period to request an evidentiary hearing and reiterates that, similar to withdrawal and abandonment requests, there is no right to an evidentiary hearing regarding the denial of a reconsideration request.
- Subsection (c) provides the process by which a reconsidered decision shall be heard. The process is identical to the standard process for hearing an application.

### Section 12062 – Evidentiary Hearings

The Act provides two ways by which the Commission may consider matters. Business and Professions Code sections 19870 and 19871 describe the manner by which the Commission shall conduct meetings and section 19825 allows the Commission to require any matter that the Commission is authorized to consider in a hearing or meeting of adjudicative nature to be conducted according to the APA. In order to expedite the handling of applications, this regulation defines the “meeting” required by Business and Professions Code sections 19870 and 19871 as a GCA evidentiary hearing.

After the Commission has issued a tentative approval with conditions, limitations, or restrictions, or a tentative denial, the applicant can request an evidentiary hearing. An evidentiary hearing is a more in-depth examination of the application conducted either in front of the Commission,

with or without an Administrative Law Judge presiding, or before the Administrative Law Judge, with or without the Commissioners present. Section 12062 describes the two different hearing pathways which an application may follow: Gambling Control Act (GCA) hearings or Administrative Procedure Act (APA) hearings.

- Subsection (a) states that a GCA hearing, as described in Business and Professions Code sections 19870 and 19871, is the default evidentiary hearing pathway, unless otherwise specified by the Commission or the Executive Director. Because a GCA hearing may be conducted without an Administrative Law Judge (ALJ) presiding, the Commission can act on its own timeline without the common lengthy process associated with the Office of Administrative Hearings. Setting a GCA hearing as the default allows matters to be considered in a more timely manner.
- Subsection (b) states that the Commission will determine whether an APA hearing will be held before an ALJ sitting on behalf of the Commission or before the Commission itself with an ALJ presiding in accordance with Government Code section 11512, and that notice of the hearing will be provided pursuant to the APA.
- Subsection (c) defines the GCA hearing as the “meeting” described in Business and Professions Code sections 19870 and 19871. This section also requires the Executive Director to give notice of the hearing to the Office of the Attorney General, the Bureau, and the applicant no later than 45 days in advance of the hearing. This notice is intended to ensure all parties have sufficient time to prepare.
- Subsection (d) clarifies that the Bureau will be the “Complainant” in all instances. However, it explains that the Bureau in its role as Complainant is not required to do anything more than prove the facts and statements contained in their report in a GCA hearing, or through the additional step of filing a Statement of Issues and proving that in an APA hearing. This provides an important point of clarification to all parties and reiterates that the burden of proof rests with the applicant and not the Complainant.
- Subsection (e) describes the important GCA hearing procedures which are meant to facilitate a quick and expeditious evidentiary hearing without requiring onerous burdens on either party. This provides guidance to both the applicant and the Complainant on appropriate conduct in advance of and during a GCA hearing.
- Subsection (f) allows the Commission to take the matter under submission at the conclusion of the hearing and to discuss the matter in closed session. This process confirms current Commission practices after an APA or GCA hearing.
- Subsection (g) reiterates the requirement that certain elements of a Bureau report remain confidential from an applicant, as specified in the Act.

Section 12064 – Issuance of GCA Hearing Decisions

- Subsection (a) requires the designated presiding officer to issue to the Commission a proposed decision with a detailed statement of reasons within 30 days of the conclusion of the hearing.
- Subsection (b) requires the Commission to issue its decision, in compliance with Business and Professions Code section 19870, within 45 days of the issuance of the proposed decision. The decision shall be served upon the applicant at the applicant's address of record by certified mail.
- Subsection (c) requires all decisions to specify an effective date and allows the inclusion of directions as to any stay provisions or orders to divest.
- Subsection (d) restricts voting on the decision only to members of the Commission who heard the evidence presented in the hearing, unless such restriction would prevent the existence of a quorum. In such case, another member may be allowed to vote after a review of the record and any additional briefing or hearing deemed necessary.

*Section 12066 – Decisions Requiring Resignation or Devestiture*

This section takes much of subsection (c) from former Section 12050 and relocates it here. It remains in substantially the same form.

*Section 12068 – Requests for Reconsideration; Final Decision after GCA or APA Hearing*

- Subsection (a) allows an applicant to request reconsideration of an issued decision within 30 days of service of that decision.
- Subsection (b) specifies the conditions under which an applicant may request reconsideration, either:
  - Paragraph (1) – Newly discovered evidence or legal authorities that could not reasonably have been presented at the hearing or before the Commission's issuance of a decision; or
  - Paragraph (2) – Other good cause for which the Commission may, in its sole discretion, decide merits reconsideration.
- Subsection (c) authorizes the Executive Director to initially determine whether a request for reconsideration is complete, potentially meritorious, and should be placed on the Commission agenda for consideration.
  - Paragraph (1) states that if no action has been taken on the request within 30 days, the request shall be deemed denied.
  - Paragraph (2) requires the approved request to be placed on the Commission agenda within 60 days of its receipt, and requires the applicant to be given at least

10 days advance notice of the Commission meeting. This paragraph also states that the applicant will be notified of the Commission's decision on the request within 10 days following the meeting.

- Subsection (d) clarifies that the granting or denying of a reconsideration request shall be at the sole discretion of the Commission.
- Subsection (e) clarifies that the appeal of a denial or imposition of conditions following an evidentiary hearing shall be subject to judicial review under Code of Civil Procedure section 1085.
- Subsection (f) provides that the decision of the Commission following a GCA or APA hearing shall become final: (1) 30 days after service of the decision, if reconsideration has not been granted; (2) immediately after the Commission affirms its decision or issues a reconsidered decision, if reconsideration has been granted; or (3) immediately upon the applicant's waiver of reconsideration.

