

INITIAL STATEMENT OF REASONS
NOTICE OF CHANGE IN CONTACT INFORMATION AND
NOTICE OF RELOCATION OF GAMBLING ESTABLISHMENT
CGCC-GCA-2012-04-R

- Section 19860(a) requires the Commission to deny a license with respect to any gambling establishment that is located in a local jurisdiction that does not have an ordinance governing, among other things, the location of gambling establishments.

The Act also provides some authority, under specified limited circumstances, for the Commission to consider the location of gambling establishments:

- Section 19824 authorizes the Commission to “take actions deemed to be reasonable to ensure that gambling activities take place only in suitable locations.”
- Section 19801(l) states that “consideration of [the location of lawful gambling premises] by a state regulatory agency ... is warranted when local governmental regulation respecting those subjects is inadequate or the regulation fails to safeguard the legitimate interests of residents in other governmental jurisdictions.” (emphasis added)
- Section 19841(p) allows the Commission to promulgate regulations to “define and limit the area” of controlled games if it determines that “local regulation of these subjects is insufficient to protect the health, safety, or welfare of residents in geographical areas proximate to a gambling establishment.” (emphasis added)
- Section 19862 allows the Commission to deny a license for a new gambling establishment, or the expansion of the existing establishment, if the proposed location is next to an unsuitable location (e.g., a school, place of worship, playground, hospital, or convalescence facility) in a neighboring jurisdiction. (emphasis added)

Taken together, these sections of the Act place primary authority to determine the appropriate location of gambling establishments with the local jurisdiction, and provide limited authority to the Commission to ensure that the interests of residents in neighboring jurisdictions are protected. The main role of the Commission and the Bureau is to regulate the gaming operation, not to get involved in local zoning decisions.

For several years after the Commission was first established, approval of relocation requests was handled by the Executive Director – the owner-licensee would request approval to relocate the gambling establishment and the Executive Director would approve or disapprove the request. Over the past few years, relocation requests have instead been put before the Commission to vote on in a public forum.

In order to request relocation under current practice, an owner-licensee submits a written request to the Commission. A copy of the Bureau’s supplemental information form is required to be submitted as part of the request. Commission staff reviews the application for completeness, and forwards the application to the Bureau. Bureau staff reviews the supplemental information form for games to be played, rent or lease information, required local conditional use permits, required local business licenses or permits, a cardroom security plan, floor and table layout, and the lease or rental agreement. It should be noted that the Bureau does not currently inspect the proposed

site prior to Commission action. After the Commission approves the relocation and gambling operations have begun, the Bureau will conduct a site visit, for which the gambling enterprise is charged a deposit of \$600, pursuant to Title 11, CCR, Section 2037.

PROPOSED ACTION:

This proposed action would make the following specific changes within Division 18 of Title 4 of the California Code of regulations:

Section 12004

Section 12004 is amended to clarify that any change of contact information must be reported to the Commission within 10 days of such change. The Commission must have up-to-date contact information for all licensees in order to properly notify individuals of any information that may be of interest. The relevant form (CGCC-032) with which to notify the Commission of such changes is updated and the date is changed accordingly. Additionally, amendments are made to clarify that this section does not apply to the physical relocation of a gambling establishment.

- CGCC-032 (Rev. 06/12) – The previous version of the form, *Notice of Address Change, CGCC-032 (New 06-05)*, is repealed and replaced with new version *Notice of Contact Information Change, CGCC-032 (Rev. 06/12)*. The form is streamlined and removes some of the superfluous information (e.g., previous address and previous phone number). Spaces are added to include the individual’s license, permit, or registration number and type to ensure proper routing within the Commission.

Section 12364

This proposed regulation establishes a streamlined process by which a gambling enterprise planning a physical relocation of its gambling establishment must receive approval for a new location from the local governing jurisdiction and then notify the Bureau of that proposed relocation. Specifically, the proposal does the following:

Subsection (a) defines a “physical relocation” to be the relocation of a gambling establishment to a site for which a different parcel number has been assigned by the county assessor. This definition is included to clarify the circumstances under which an establishment has undergone a “relocation” rather than a “remodel.”

Subsection (b) requires an owner-licensee to notify the the Bureau of a planned physical relocation of a gambling establishment at least 90 days in advance of the intended commencement of gambling operations, using a newly-created form, CGCC-050 (New 06/12). A 90-day advance notification of relocation is intended to be sufficient time for the Bureau to work with the owner-licensee to schedule a site visit and provides notice to the Bureau to expect to receive the required documentation.

- CGCC-050 (New 06/12) – this new form is to be used to notify the Bureau of the planned physical relocation of a cardroom. Once received by the Bureau, it will be scanned into

the joint Commission/Bureau Licensing Information System database and the Commission staff will be notified electronically.

- Section 1 requests basic information from the owner-licensee, including the name of the owner-licensee, license number, name of the gambling establishment, the previous address, the new address, the new phone and fax numbers, the date of the planned commencement of gambling operations, and the local jurisdiction. The local jurisdiction is requested so that the Bureau can confirm the gambling establishment will be operating within the requirements of the local gambling ordinance.

This section also includes a place to indicate whether or not the new location is within 1,000 feet of the boundary line of the local jurisdiction. The regulation provides for different procedures to be followed depending on the distance of the new location from the boundary line of the local jurisdiction, as detailed further below.

- Section 2 provides a summary of the required documentation that must be provided to the Bureau prior to the commencement of the associated activity [see subparagraphs (A) through (D) of paragraph (1) of subsection (b)]. This provides a convenient reference for those completing the form.
- Section 3 applies only to those gambling establishments that will be located within 1,000 feet of the boundary line of the local jurisdiction. Paragraph (2) of subsection (b) requires the owner licensee to obtain documentation from a neighboring jurisdiction confirming that the neighboring jurisdiction has no concerns with the location. Section 3 of form CGCC-050 provides a convenient location for the appropriate individual in the neighboring jurisdiction to indicate there are no concerns with the location or, if such documentation cannot be obtained, for the owner-licensee to request the matter be placed before the Commission for review.
- Section 4 includes the standard declaration and signature included on all Commission forms.
- Paragraph (1) addresses circumstances in which the new location gambling establishment will not be within 1,000 feet of the boundary line of the local jurisdiction. The Commission believes that the Act provides primary responsibility for the location of gambling establishments to the local governing jurisdiction, and does not desire to intercede in what is seen as a local zoning issue. The focus of the Commission is to ensure that laws and regulations concerning the operation of gambling establishments are complied with, and that public safety and the integrity of the gambling operation are adequately protected. To that end, paragraph (1) requires that the following information be submitted to the Bureau prior to the commencement of gambling operations.

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- Subparagraph (A): A copy of the rental or lease agreement, or evidence of the owner-licensee's ownership of the new location. The Act³ allows the Commission to require the licensure of "any person who owns an interest in the premises of a licensed gambling establishment or in real property used by a licensed gambling establishment." By reviewing the copy of the rental or lease agreement, the Bureau can determine if any other persons need to be licensed and make a recommendation to the Commission.
- Subparagraph (B): A copy of the licensee's fully executed fire safety and evacuation plan for the new location. Section 12370, CCR Title 4, requires all licensees to have fire safety and evacuation plans in place. This will enable the Bureau to determine whether the licensee's plan has been revised to conform to the configuration of the new establishment.
- Subparagraph (C): A copy of the licensee's security and surveillance plan. Section 12372, CCR Title 4, requires all licensees to have a security and surveillance plan in place. This will enable the Bureau to determine whether the licensee's plan has been revised to conform to the configuration of the new establishment.
- Subparagraph (D): Documentary evidence of all required approvals, licenses, and permits by any applicable local jurisdictional entity. The Commission wants to ensure that the gambling establishment is in a location that has been approved by the local jurisdiction and this requirement will assist the Bureau in performing their review.
- Subparagraph (E): Documentary evidence of all required approvals, licenses, and permits by any applicable state or federal agency. This would include, but is not limited to, check cashing permits or liquor licenses. The evidence of such permits is not required to be submitted prior to the commencement of gambling operations, but rather prior to the commencement of the associated activity. Some activities, such as the serving of alcohol, may lag behind the opening of the new establishment for gambling purposes. There is no need to require permits or licenses not directly associated with gambling operations to be in place before gambling operations begin.
- Paragraph (2) addresses circumstances in which the new location of the gambling establishment will be within 1,000 feet of the boundary line of the local jurisdiction. Although the Act assigns primary authority to local governments to determine the location of gambling establishments, the Commission is granted some authority to ensure that the interests of residents in neighboring jurisdictions are protected. Thus, if the gambling establishment is to be located near the boundary of a local jurisdiction, and the neighboring jurisdiction may potentially realize impacts from the location of that

³ Business and Professions Code section 19853

gambling establishment, the Commission wishes to ensure that the impacts on that neighboring jurisdiction have been considered.

The original draft of this proposal set the standard for consideration of the neighboring jurisdiction at one mile from the boundary line. Information was received from industry representatives that one mile is far outside the standard used in zoning decisions in other contexts. California local jurisdictions typically use 1,000 feet as the standard “buffer zone” from which businesses with potential secondary effects (such as adult businesses or medical marijuana dispensaries) must be distanced from schools, churches, public libraries, public parks, or other youth-oriented locales. At this time, the Commission sees no need to treat gambling establishments with stricter scrutiny than is the standard for other adult-oriented businesses.

Paragraph (2) also requires the owner-licensee to obtain the signature of the appropriate official in the appropriate agency or department attesting that the neighboring jurisdiction has no objections to the proposed location of the gambling establishment. This will provide sufficient assurances that the possible impacts to the neighboring jurisdiction have been considered.

If the neighboring jurisdiction objects, the regulation requires the objection to be based upon evidence of probable negative effects resulting from the location of the gambling establishment or proof that the legitimate interests of the residents in the neighboring jurisdiction are threatened. The appropriate role for the Commission in terms of the locations of gambling establishments is to ensure that the public interest has been protected. Local jurisdictions, when determining zoning issues, have mechanisms in place to address the needs of residents. There are not likely to be any mechanisms in place to address the needs of residents in a neighboring jurisdiction, leaving a potential gap appropriately filled by the Commission.

Subsection (c) provides an alternate path for those circumstances in which the proposed location of the gambling establishment is within 1,000 feet of the neighboring jurisdiction and the owner-licensee cannot obtain sign-off from that jurisdiction. Under this subsection, the owner-licensee may request that the matter be placed before the Commission for consideration. The Commission will notify the neighboring jurisdiction of the scheduled Commission hearing, so that representatives of the jurisdiction have the opportunity to attend and be heard. The Commission can then determine if the gambling establishment should be permitted to move to the desired location.

Subsection (d) offers two options for public comment. The Commission wishes to hear the comments from interested parties on both options before making a decision regarding the desired policy. The options are as follows:

- Option 1: Requires the Bureau to schedule and conduct a site visit of the new location prior to the commencement of gambling operations or within 30 days after gambling

operations have begun. A written report of the findings must be provided to the Commission. This option mirrors current practice, in which the Bureau conducts a site visit after gambling operations have begun. At the Commission's first public meeting on this proposed regulation (September 2011), the Bureau expressed concerns that staffing needs may prevent inspections from taking place in advance of the commencement of gambling operations. In order to mitigate those concerns, the regulation was revised to allow for the inspections to occur within 30 days after gambling operations have begun.

Paragraph (2) requires the Bureau to issue a notice to correct any noted deficiency, specifying a reasonable time in which the deficiency is to be corrected. This paragraph also limits the circumstances under which a noted deficiency can delay the commencement of gambling operations or suspend gambling operations to those cases in which the deficiency prevents substantial compliance with laws or regulations, materially threatens public safety or the integrity of gambling operations, and cannot be cured or mitigated within a reasonable time.

- Option 2: Requires the Bureau to conduct a site visit of a new location prior to the commencement of gambling operations to ensure that specified internal controls meet existing regulatory standards. Paragraph (2) requires any deficiency noted by the Bureau to be corrected before gambling operations begin.

Option 2 differs from Option 1 in that Bureau inspections are required to be conducted prior to the conduct of any gambling operations. At the May 16, 2012, public hearing on the proposal, the Commissioners expressed differences of opinion on whether the gambling operations may begin prior to a Bureau inspection. Some concern was expressed as to whether the Bureau would be able to conduct a background investigation prior to opening. However, others felt that the potential detriment to public safety and the integrity of the gambling operation if the critical internal controls were inadequate was sufficiently large to require a pre-opening inspection, and consequently, a potential delay to the commencement of gambling operations if the internal controls were in fact deficient. The Commission would like to receive and evaluate comments from interested parties in order to make a decision as to the appropriate course of action.

Subsection (e) states that gambling operations may not be conducted at the new location until the required notifications and reviews have been completed. This provision clarifies that gambling operations may not begin until the gambling enterprise is in compliance with all of the requirements of Section 12364.

Subsections (f) and (g) explicitly apply the disciplinary provisions of Chapter 10 to violations of subsection (e). This provision is included to ensure that all gambling enterprises are aware of the possible consequences of violations.

UNDERLYING DATA:

Technical, theoretical, or empirical studies or reports relied upon:
None.

BUSINESS IMPACT:

The Commission has made an initial determination that the adoption of these regulations would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This regulation modifies the process by which a relocation of a gambling establishment is addressed by the Commission and the Bureau. Specifically, rather than requiring Commission approval for any relocation, this regulation requires only *notification* to the Bureau for the majority of relocations. In a small number of cases, the relocation would have to be reviewed by the Commission; however, this process would not differ significantly in terms of cost to businesses from the current process.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

These regulations do not mandate the use of specific technologies or equipment.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

IMPACT ON JOBS/NEW BUSINESSES:

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California.

BENEFITS OF PROPOSED REGULATION:

This proposed action will likely result in a minor decrease in the cost associated with a gambling establishment relocation, as the owner-licensee would not need to appear before the Commission at a public hearing. This proposal also decreases the uncertainty regarding relocating a gambling establishment. Under the existing practice, there is no certainty that the Commission will approve the new location. Under this proposal, there is no need, except in limited cases, for the Commission to approve the location. If the owner-licensee receives the necessary approvals required by the local governing jurisdiction as to the proposed location, there would be no need for approval by the Commission. The owner-licensee would be required only to notify the Bureau of the change of location.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

- (1) Maintain Status Quo: Because the Commission considers each request to relocate a gambling establishment on a case-by-case basis, one alternative to the proposed regulation is to continue with the current practice. This alternative was rejected because of the uncertainty it creates for owner-licensees. Without knowing for sure if the Commission will approve of a proposed location, owner-licensees may be hesitant to make investments of time and money toward what can be a critical business decision – the location of the facility. Furthermore, the location of a gambling establishment is essentially a local jurisdictional issue.
- (2) Require Advance Commission Approval: The second alternative considered and rejected by the Commission was to require advanced Commission approval of all gambling establishment location changes. This alternative is similar to the current process, except that it would be formalized in regulation. Ultimately, this alternative was rejected as being unnecessarily burdensome and not in keeping with the spirit of the Act. As previously discussed, the Act places primary authority for the approval of gambling establishment locations with the local jurisdiction. Rather than second-guess or simply repeat the oversight provided by the local jurisdiction, the Commission would rather place its focus on the gambling operations conducted in the new location.