



GAMBLING CONTROL COMMISSION

2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231
(916) 263-0700 Phone
(916) 263-0499 Fax
www.cgcc.ca.gov

PAULA LABRIE, CHAIR
CATHLEEN GALGIANI
ERIC C. HEINS
WILLIAM LIU
EDWARD YEE

March 17, 2022

To: ALL INTERESTED PARTIES

Re: Changes to Commission Practices Following AB 120 in Regards to Commission Meetings and Licensing Information

As you may be aware, Assembly Bill (AB) 120 (Salas, Chapter 45, Statutes of 2021) recently became effective on January 1, 2022. AB 120 was in direct response to a formal recommendation made by the California State Auditor (Auditor) in [Audit Report 2018-132](#). AB 120 changed a number of items under the Gambling Control Act (Act) pertaining to Commission actions on applications. In addition to providing a greater timeline for withdrawing applications, it importantly provided the Commission with the authority to deny an application, or approve an application with limits, restrictions, or conditions, without an evidentiary hearing provided that the action of the Commission is stayed for 30 days to allow the applicant the opportunity to request an evidentiary hearing.

Once AB 120 became effective, the Commission undertook a rulemaking process to amend its regulations to be consistent with AB 120's changes. Those regulations were approved by the Office of Administrative Law and will become effective on April 1, 2022, and can be found on the Commission's website under [Recently Adopted, Amended, and Repealed Regulations](#). These combined statutory and regulatory changes have also necessitated modifications to the Commission's internal and external practices and specifically how the Commission's Licensing Division will provide information to the public. The Commission is providing you with this notice in an effort to be transparent about these modifications.

Denial or Approval with Conditions at Regular Meetings

Prior to AB 120, the Act required that the Commission provide an evidentiary hearing to every applicant when the Commission considered the applicant's application. This meant that applications often times were referred to an evidentiary hearing rather than decided in the first instance at a regular meeting simply due to statute. In cases where the Commission was prohibited from approving, inclined to deny, or inclined to approve with conditions, this led to unnecessary hearings where there were no real factual questions that would benefit from a fact finding proceeding. This was especially true for mandatory denials due to conviction of a felony or misdemeanor crime involving moral

turpitude. The problem with this statutory mandate in leading to inefficient outcomes was highlighted in [Audit Report 2018-132](#).

AB 120 generally resolves this concern by allowing the Commission to approve, approve with conditions, or deny applications at a regular meeting without requiring an evidentiary hearing for all applications. No longer will an application involving the imposition of conditions or denial involving mandatory disqualification go to a hearing in all instances.

Denials and Approvals with Conditions are Automatically Stayed

AB 120's changes in favor of efficiency are balanced by a new requirement that stays a Commission decision automatically for a period of 30 days where the Commission has acted on an application to deny or approve with conditions. During these 30 days, the applicant will be notified of the decision and informed that they may still request an evidentiary hearing on their application.

To that end, the Commission currently sends letters to applicants where the Commission refers an application to an evidentiary hearing. This practice will continue and be expanded to include approvals with conditions and for denials. In all three of these situations, a "Notice of Defense" Form (CGCC-CH1-03 (Rev. 09/21))¹ will be included for the applicant to return. Depending on the nature of the Commission action, the applicant may have either 30 days from the action, or 30 days from service to send the Notice of Defense back requesting or waiving a hearing.

Importantly, if a hearing is requested during those 30 days, any decision to deny or approve with conditions is set aside and has no effect. If an application was ostensibly denied, any underlying temporary license would be rendered void under California Code of Regulations (CCR) section 12122. If approved with conditions, the temporary license would remain valid. If the application was for a renewal license, then the applicant will receive an interim renewal license under CCR section 12035.

Commission Licensing Division Information via Memorandums

In order to facilitate the forgoing changes in statute and regulation, the Commission's Licensing Division and its role at regular meetings will change in relation to how they have provided information to the public, including the Bureau of Gambling Control (Bureau), applicants and Designated Agents. This change will be implemented starting with the April 7, 2022 regular meeting.

Previously, the Commission's Licensing Division in acting as the Commission's advisor would prepare a memorandum (Memo) analyzing the Bureau's Background Investigation Report and any information from the applicant. This Memo would be

¹ Please note, the updated CGCC-CH1-03 (Rev. 09/21) form will be available on the Commission's website once the regulations go into effect on April 1, 2022.

provided to the Bureau, applicant and/or Designated Agent, and the Commissioners prior the Commission meeting. This Memo would list Commission options including for instance application approval, approval with conditions, or referral to an evidentiary hearing. It importantly would not include a denial recommendation since that was not authorized prior to AB 120 absent an evidentiary hearing.

As the Memos did not ever directly recommend an application's denial, these memos were provided to all parties to encourage transparency and aid in efficient meetings.

Following AB 120 though, it is possible for the Commission to make an adverse decision against an applicant at a regular meeting including denying an application. In order to ensure that the Commission makes an informed decision at these meetings, advice and assistance from Commission staff is necessary. To that end, the Commission's Licensing Division in its principal role as the Commission's advisor will provide unfettered and confidential analysis to the Commissioners so that they can make the best decision possible.

This means that the Memo, which was previously provided to all parties, will no longer be provided to the Bureau, applicant and/or Designated Agent. Instead it will be provided solely to the Commissioners. While this may seem like a loss of insight by the Bureau and the applicant into the Commission's process, it is important to note two things.

First, as stated above, the Memo never provided a denial recommendation on an application including an underlying analysis which supported that recommendation. This new policy is consistent with that prior practice in that the applicant will still not receive any such denial recommendation analysis.

Second, most state agencies function differently than the Commission and have in-house staff serving in the roll of advocates and advisors. Under the Act, the Bureau performs investigations and then issues a recommendation to the Commission, essentially in the role of an advocate. The Commission's Licensing Division, while serving as an advisor to the Commission, would supplement the analysis in the Bureau's report, but leave the investigation untouched, in effort to aid in the Commission's decision-making process. The Commission's Licensing Division has never served and will not serve as an advocate, including for instance at a subsequent evidentiary hearing, and will only ever serve as Commission advisors.

Commission Licensing Division's Staff Recommendation will be provided in Advance of Regular Meetings

Despite the Memos no longer being public, the practice of providing the Commission Licensing Division's recommendation to the public will still continue. While this is a break from common practice in providing an advisor's opinion, it is believed that as much transparency into this decision-making process as possible is still in the applicant

All Interested Parties

March 17, 2022

Page 4 of 4

and public's best interest given the bifurcated agencies structure under the Act and the need for applicants to be prepared for the regular meetings.

To that end, the Commission currently notifies all interested parties pursuant to the Bagley-Keene Open Meeting Act that a regular meeting will occur no less than 10 days in advance of that meeting with a meeting agenda. In addition, starting roughly 7 days ahead of the April 7, 2022 meeting, and before each subsequent regular Commission meeting, there will be another document provided on the Commission's website². This document will include a list of all the items on the regular meeting agenda and will provide a list of curated options available to the Commissioners with the option that the Commission's Licensing Division ultimately recommends.

This options and recommendations document will not include any analysis or supporting documentation for any individual item.

Importantly, while the basis for the Commission's Licensing Division's recommendation may not be immediately clear, applicants will have access to the same information available to the Bureau and the Commission's Licensing Division. This includes the Bureau Report and recommendation along with the applicant's own information, which covers the entirety of relevant facts available to the Commissioners. As the Commission's Licensing Division does not perform any investigation and, to the extent it asks the parties any questions in advance of the meeting, those questions and answers are provided to all parties to avoid any ex parte concerns. This means that the Commission Licensing Division's recommendation is made based on the same information as is available to the Bureau and applicant, and it is only the analysis from a Commission advisor which is not provided to the public.

Should you have any questions please do not hesitate to contact the Commission's Legal Division at (916) 263-0700 or comments@cgcc.ca.gov.

Sincerely,



STACEY LUNA BAXTER
Executive Director

cc: Yolanda Morrow, Acting Bureau Director, Bureau of Gambling Control
Sara Drake, Senior Assistant Attorney General, Indian and Gaming Law Section,
Department of Justice

² The options and recommendations document will be posted on the Commission's [Meetings](#) webpage, next to the date of the Commission meeting.