

California Gambling Control Commission
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MINUTES OF APRIL 20, 2006
COMMISSION MEETING

OPEN SESSION

1. Call to Order and Pledge of Allegiance.

Chairman Shelton called the meeting to order at 10:01 a.m., and asked everyone to stand for the Pledge of Allegiance.

2. Roll Call of Commissioners.

Roll Call of Commissioners was taken with Chairman Shelton and Commissioners Cruz and Vuksich present.

SPECIAL ORDER OF BUSINESS – 10:00 a.m.

3. Public Hearing Pursuant to the Administrative Procedure Act Concerning Proposed Regulations: Discipline, Hearings, and Decisions—Title 4, California Code of Regulations, sections 12550-12572.

Staff Counsel Hoganson provided instruction on the process of the public hearing pursuant to the Administrative Procedure Act and then opened the hearing up for public comment on the proposed rulemaking action to make permanent regulations concerning discipline, hearings, and decisions. A copy of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the regulation text are incorporated into the minutes as Attachment A, B, and C, respectively.

David Fried, representing the Oaks Cardroom, California Grand and also speaking on behalf of the Golden State Gaming Association, commented on Sections 12566(a), (b), (7), (9), and (11), and 12554(d) concerning penalty categories, underage persons, and the range levels of fines.

Steven Simas, representing the Golden State Gaming Association, commented on Sections 12554(c) urging that the Commission consider the *preponderance of*

evidence standard, and 12554(d) requesting that the Commission consider striking-out the language any law related to ...gambling establishments.

Kermit Schultz, owner of the Luck Derby Casino and President of the Golden State Gaming Association, commented on behalf of the small card clubs and his concerns that the structure of fines could cause severe hardships on smaller clubs.

Tracy Buck-Walsh, representing Network Management Group, Inc., commented on the fine structure for third-party providers of proposition player services.

Rodney Blonien, lobbyist, commented on Sections 12568(a)(3) and (4) concerning the language adjacent property and requested that the proposed regulation contain a more narrowing definition.

Michael Franchetti, representing Game Source, LLC, commented on Section 12560(b)10, requesting a clearer description of that section's purpose.

Staff Counsel Hoganson announced that the Commission would continue to receive comments on the proposed regulations until 5:00 p.m. April 20, 2006. There being no further public comment on the proposed rulemaking, Staff Counsel Hoganson closed the Administrative Procedure Act Hearing portion of the Commission meeting.

Chairman Shelton announced that the Commission would recess until 1:30 p. m. At 11:04 a.m. the Commission recessed.

REGULAR ORDER OF BUSINESS – 1:30 p.m.

Chairman Shelton reconvened to the afternoon session at 1:30 p.m. with Commissioners Cruz and Vuksich present.

4. Approval of Minutes of March 23, 2006 Commission Meeting.

Upon motion of Commissioner Vuksich, seconded by Commissioner Cruz and unanimously carried in a vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes, the Commission approved the March 23, 2006 meeting minutes.

5. Proposal for Commission Meeting Dates for July 2006 through December 2006.

There was no action taken by the Commission on the proposal for Commission meeting dates for July 2006 through December 2006, which was presented by

Chairman Shelton. A copy of the proposal is incorporated into the minutes as Attachment D.

6. Applications for Work Permit (Pursuant to Business and Professions Code Section 19870):
 - A. Club San Rafael: **Essaff, Jesse**
 - B. Lake Bowl Cardroom: **Beers, Michael**
 - C. Poker Flats Casino: **Pena, Daniel; Veulvilavong, Phousone**
 - D. The 101 Casino: **Cao, Wei; Laoxana, Sandy; Orr, Robert; Sherer, John; Simonson, Kenneth**

Deputy Director Ciau indicated that staff concurs with the Division of Gambling Control's recommendation to approve the applications for a work permit for Jesse Essaff, Item 6.A., Michael Beers, Item 6.B., Phousone Veulvilavong, Item 6.C., and Wei Cao, Sandy Laoxana, Robert Orr, John Sherer, and Kenneth Simonson, Item 6.D. Upon motion of Commissioner Cruz, seconded by Commissioner Vuksich and unanimously carried in a vote by roll-call, with Chairman Shelton and Commissioners Cruz and Vuksich voting yes, the Commission approved the applications for a work permit for Jesse Essaff, Michael Beers, Phousone Veulvilavong, Wei Cao, Sandy Laoxana, Robert Orr, John Sherer, and Kenneth Simonson.

7. Applications for Renewal of State Gambling License (Pursuant to Business and Professions Code Section 19870):
 - A. **Axtion Jaxson Card Room:** Jack Morgan, Sole Proprietor

Deputy Director Ciau indicated that staff recommends that the Commission approve the application for renewal of a state gambling license from May 1, 2006 through April 30, 2007 for Axtion Jaxson, Item 7.A., with the condition that *all future applications and /or renewals shall be submitted within the statutory time requirements*. Upon motion of Chairman Shelton, seconded by Commissioner Vuksich and unanimously carried in a vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes, the Commission approved renewal of a conditional state gambling license through April 30, 2007 for Axtion Jaxson.

- B. **Bay 101: Sutter's Place**, Incorporated, California Corporation

Deputy Director Ciau indicated that staff recommends that the Commission approve the application for renewal of a state gambling license for Bay 101, Item 7.B., through December 31, 2006 and with the following conditions:

1. *The stockowner/key employee's license shall be positioned and location specific. Ronald Werner shall be licensed as Stockowner/General Manager*

and to carry out the function of a General Manager at Sutter's Place Inc., dba Bay 101.

2. *All key employees currently endorsed on the State Gambling License are conditionally licensed pending the completion of the City of San Jose's pending background investigation and approved thereof.*

Commissioner Cruz moved, for discussion purposes, to adopt the staff recommendation and Commissioner Vuksich seconded the motion.

Commissioner Cruz commented on the pending litigation with the City of San Jose concerning Stanley Seiff's appeal of the City's decision to deny his key employee license for failure to provide financial information, and asked staff to take a more aggressive approach to protect the Commission's interest and consider requiring Mr. Seiff to file an application for licensure with the Commission.

Chief Counsel Rickards indicated that staff would look into whether Mr. Seiff should be required to submit an application for licensure with the Commission, and also examine the potential of the Commission seeking to intervene in the litigation.

Chairman Shelton called for the vote. The motion made by Commissioner Cruz and seconded by Commissioner Vuksich, to adopt the staff recommendation, unanimously carried in a vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes.

C. Cap's Saloon: Cap's Enterprises, Inc. dba Cap's Saloon

Deputy Director Ciau indicated that staff recommends that the Commission approve a two-month extension of the state gambling license for Cap's Saloon, Item 7.C., from May 1, 2006 through June 30, 2006 to allow the Division of Gambling Control time to complete a review of the Salinas Police Department's report. Upon motion of Chairman Shelton, seconded by Commissioner Cruz and unanimously carried in a vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes, the Commission approved a two-month extension of the state gambling license for Cap's Saloon.

D. Commerce Casino: California Commerce Club, Inc., California Corporation

Deputy Director Ciau indicated that staff recommends that the Commission approve an extension of the state gambling license for a period of May 1, 2006 through August 30, 2006 for Commerce Casino, Item 7.D., to allow staff time to complete their analysis of the Division's background investigation report. Commissioner Cruz moved to extend the current license for a period to coincide with that which was

granted to Celebrity Casinos at the last Commission meeting.¹ Chairman Shelton seconded the motion, which unanimously carried in a vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes.

E. Gold Sombrero: Jack Xiong, Sole Proprietor

Deputy Director Ciau indicated that staff recommends that the Commission approve an extension of the state gambling license for a period of May 1, 2006 through June 30, 2006 for Gold Sombrero, Item 7.E., to allow staff time to complete their analysis of the Division's background investigation report. Upon motion of Commissioner Cruz, seconded by Commissioner Vuksich and unanimously carried in a vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes, the Commission approved an extension of the state gambling license through June 30, 2006 for the Gold Sombrero.

F. La Primavera Pool Hall and Café: Candelario Salas, Sole Proprietor

Deputy Director Ciau indicated that staff recommends that the Commission approve an extension of the state gambling license for La Primavera Pool Hall and Café, Item 7.F., for the period of May 1, 2006 through June 30, 2006 to allow staff time to complete their analysis of the Division's background investigation report. Deputy Director Ciau further indicated that staff also recommends that the three existing conditions on the license be removed. Upon motion of Commissioner Cruz, seconded by Commissioner Vuksich and unanimously carried in a vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes, the Commission approved an extension of the state gambling license through June 30, 2006 for La Primavera Pool Hall and Cafe, with the previously existing conditions on the license removed.

G. Lucky Chances Casino: Lucky Chances Inc., California Corporation

Deputy Director Ciau indicated that staff recommends that the Commission approve the application for renewal of the state gambling license for Lucky Chances Casino, Item 7.G., for the remaining term through December 31, 2006 with the following condition:

The licensee must reduce its wagering limits to a maximum amount of \$200 per bet for poker games, \$200 per betting slot for Asian games and a wagering limit that is legally authorized under the current local ordinance.

¹ On April 6, 2006, Celebrity Casinos Inc. (Crystal Park Casino) was granted a temporary six-month state gambling license effective on date escrow closed. Escrow closed on Monday, April 10, 2006. The Celebrity temporary license thus expires on October 10, 2006. Therefore, the Commerce Casino extension expires October 10, 2006.

Commissioner Vuksich moved to adopt the staff recommendation and Commissioner Cruz seconded the motion.

Commissioner Vuksich requested that the records indicate that the City of Colma is a city of repose.

Alan Titus, attorney for Artichoke Joes, commented in opposition to Lucky Chances being issued a state gambling license. Mr. Titus indicated that Artichoke Joes contends that the practice of using multiple betting squares by Lucky Chances changes or alters the provisions of the City of Colma's ordinance on wagering limits and is an expansion of gambling.

Jim Parrinello, Nielson, Merksamer and Parrinello, commented on equal protection law as it relates to Lucky Chances and indicated that there is no viable claim to any violation of Lucky Chances equal protection rights.

Michael Franchetti, attorney for Lucky Chances, addressed the Commission in response to comments made by Mr. Titus. Mr. Franchetti also indicated that Lucky Chances has throughout the entire process remained in compliance to all applicable laws and Commission imposed conditions including those concerning wagering limits and will continue to do so.

Rodney Blonien, Lobbyist, commented in support of Lucky Chances being issued a state gambling license, indicating that the City of Colma's revenues have suffered because of the wagering limits.

Mr. Titus addressed the Commission in response to comments made by Mr. Blonien regarding the City of Colma's lose of revenue, indicating that the city has the highest per capita revenue base in the County of San Mateo.

Incorporated into the minutes as Attachment D are written comments submitted to the Commission from Mr. Franchetti concerning Lucky Chances Casino.

Incorporated into the minutes as Attachment E are written comments submitted to the Commission from Mr. Titus concerning Lucky Chances Casino.

There being no further public comments regarding Item 7.G., Chairman Shelton called for the vote. The motion made by Commissioner Vuksich and seconded by Commissioner Cruz to approve renewal of a conditional state gambling license through December 31, 2006 for Lucky Chances, with the condition recommended by staff applied to the license, unanimously carried in a vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes.

H. Lucky Lady Card Room: Stanley Penn, Sole Proprietor

Deputy Director Ciau indicated that staff recommends that the Commission approve the application for renewal of the state gambling license for Lucky Lady Card Room, Item 7.H., for the remaining term of the license through January 31, 2007. Upon motion of Chairman Shelton, seconded by Commissioner Vuksich and unanimously carried in a vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes, the Commission approved renewal of the state gambling license through January 31, 2007 for Lucky Lady Card Room.

I. Oaks Card Club: Oaks Card Club, Limited Partnership

Deputy Director Ciau indicated that staff concurs with the Division of Gambling Control's recommendation to approve a renewal of the state gambling license for Oaks Card Club, Item 7.I., for the remaining term of the license through January 31, 2007 with the following conditions:

Licensee shall submit quarterly reports to the Commission and Division on all incidents occurring in the gambling establishment involving any cheating, misconduct or violations of the Gambling Control Act or local ordinances. The report will include a description of the incident, whether the local jurisdiction was involved, and the gambling establishment resolution, if any.

Commission Vuksich moved to approve the staff recommendation and Chairman Shelton seconded the motion.

Commissioner Cruz inquired whether the Jack Tibbetts Trust was a partner in the limited partnership, and, if so, why the Trust is not licensed.

Debbie McLaughlin, Division of Gambling Control responded to Commissioner Cruz's inquiries indicating that the Division is currently reviewing the application recently submitted for the Jack Tibbetts Trust, and if a determination is made that the Trust should be licensed, the Division will provide the Commission with a recommendation on the state gambling license application for the Jack Tibbetts Trust.

The standing motion made by Commissioner Vuksich and seconded by Chairman Shelton to adopt the staff recommendation were withdrawn.

Commission Cruz moved to extend the existing state gambling license through August 31, 2006 with the conditions recommended by staff applied to the extended license. Chairman Shelton seconded the motion, which unanimously carried in a

vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes.

J. **Sundowner Cardroom:** Augustine Mora Jr., Sole Proprietor

Deputy Director Ciau indicated that staff recommends that the Commission approved a three-month extension of the state gambling license for Sundowner Cardroom, Item 7.J., from May 31, 2006 through July 1, 2006 to allow staff time to complete their analysis of the Division's background investigation report. Upon motion of Commissioner Cruz, seconded by Chairman Shelton and unanimously carried in a vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes, the Commission approved a three-month extension of the state gambling license for Sundowner Cardroom.

8. Application for Tribal-State Compact Gaming Resource Supplier (Vendor) Finding of Suitability – Request for Withdrawal (Authority Pursuant to the Tribal-State Gaming Compact, Section 6.4.5):
Cascade Entertainment Group, LLC

Deputy Director Ciau indicated that staff concurs with the Division of Gambling Control's recommendation to approve, without prejudice, the request for withdrawal of the application for Tribal-State Compact Gaming Resource Supplier Finding of Suitability for Cascade Entertainment Group, LLC, Item 8. Upon motion of Commissioner Vuksich, seconded by Commissioner Cruz and unanimously carried in a vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes, the Commission approved, without prejudice, the request for withdrawal of the application for Tribal-State Compact Gaming Resource Supplier Finding of Suitability for Cascade Entertainment Group, LLC.

9. Applications for Tribal-State Compact Key Employee Finding of Suitability (Authority Pursuant to the Tribal-State Gaming Compact, Section 6.4.4):

- A. Paskenta Band of Nomlaki Indians of California – Rolling Hills Casino:
Pata, Chris
- B. Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation – Pechanga Gaming Center:
Revello, Bennie
- C. Tule River Indian Tribe of the Tule River Reservation – Eagle Mountain Casino:
Cha, Cheng

Deputy Director Ciau indicated that staff concurs with the Division of Gambling Control's recommendation to approve the applications for Tribal-State Compact Key Employee Finding Of Suitability for Chris Pata, Item 9.A., Bennie Revello, Item 9.B., and Cheng Cha, Item 9.C. Upon motion of Commissioner Cruz, seconded by

Commissioner Vuksich and unanimously carried in a vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes, the Commission approved the applications for Tribal-State Compact Key Employee Finding Of Suitability for Chris Pata, Bennie Revello, and Cheng Cha.

10. Application for Tribal-State Compact Key Employee Finding of Suitability – Request For Withdrawal:

Cahuilla Band of Mission Indians of the Cahuilla Reservation –
Cahuilla Creek Casino:
Dean, Virginia

Deputy Director Ciau indicated that staff concurs with the Division of Gambling Control's recommendation to approve, with prejudice, the request for withdrawal of the application for Tribal-State Compact Key Employee Finding of Suitability for Virginia Dean, Item 10. Upon motion of Commissioner Vuksich, seconded by Commissioner Cruz and unanimously carried in a vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes, the Commission approved, with prejudice, the request for withdrawal of the application for Tribal-State Compact Key Employee Finding of Suitability for Virginia Dean.

CONSENT CALENDAR

11. Applications for Renewal Work Permit: (Authority Pursuant to Business and Professions Code Section 19870):

- A. Empire Sportsmen's Association: **Hermiz, Hermiz**
- B. Outlaws Card Parlour: **Simpson, David**
- C. Napa Valley Casino: **Tang, Yan Ping**
- D. The 101 Casino: **Convey, Adriana; Rink, Amy**

12. Applications for Tribal-State Compact Key Employee Finding of Suitability: Authority Pursuant to the Tribal-State Gaming Compact, section 6.4.4):

- A. Alturas Indian Rancheria – The Desert Rose Casino
Barnett, Jeremy **Walston, James**
- B. Augustine Band of Cahuilla Mission Indians of the Augustine Reservation – Augustine Casino: **Gordon Waldespuhl**
- C. Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation – Barona Valley Ranch Resort and Casino:
Murphy, Michael **Warner, Gradon**
Summers, Keith **Wisler, Cheri**
- D. Big Valley Band of Pomo Indians of the Big Valley Rancheria – Konocti Vista Resort and Casino: **Dajalos, Roy**
- E. Cachil DeHe Band of Wintun Indians – Colusa Casino & Bingo:
Helmann, Matthew
- F. Elk Valley Rancheria – Elk Valley Casino: **Davis, Tabatha**

- G. Morongo Band of Cahuilla Mission Indians of the Morongo Reservation – Casino Morongo:
Brundige, Thomas **Gamon-Cervantes, Hector**
- H. Pala Band of Luiseno Mission Indians of the Pala Reservation – Pala Casino:
Strafeldas, Erich
- I. Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation – Casino Pauma: **Garcia, Jennifer**
- J. Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation – Pechanga Gaming Center:
Campbell, Paul **Smith, Raun**
Gusky, Mitchel
- K. Picayune Rancheria of Chukchansi Indians of California – Chukchansi Gold Resort and Casino:
Domingo, Marcku **Sidabout, Thaisavath**
- L. Pit River Tribe - Pit River Casino: **Wolfin, Randy**
- M. Rincon Band of Luiseno Mission Indians of the Rincon Reservation – Harrah's Rincon Casino and Resort:
Calvo, John **Grizas, Frances**
Erickson, John **Hoang, Sy**
- N. San Pasqual Band of Diegueno Mission Indians of California – Valley View Casino:
Corona, Nicolas **Kido, Kelly**
- O. Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation – Chumash Casino Resort:
Chambers, Rhonda **Newman, Steven**
Davis, Matthew **Robles, Aaron**
Flores, Oscar **Rodriguez, Roberto**
Gallegos, Gregory **Romero, Joaquin**
Harter, Douglas **Stetson, Jean**
Lange, Mary
- P. Sycuan Band of Diegueno Mission Indians of California – Sycuan Casino and Resort:
Nonu, Faamaopo
- Q. Table Mountain Rancheria of California – Table Mountain Casino:
Her, Thao **Oudomdy, Joy**
Johnson, Vester **Simon, Jalani**
- R. Tule River Indian Tribe - Eagle Mountain Casino:
Duran, Jose **Reynoso, Salvador**
Hunter, Morris
- S. Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California – Black Oak Casino:
Babbitt, Benjamin **Bundesen, Michael**

- T. United Auburn Indian Community of the Auburn Rancheria of California – Thunder Valley Casino:
Chavez, Mario **LeMay, Matthew**
- U. Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation – Viejas Casino:
Fidler, Bret **Webb, John**
13. Applications for Tribal-State Compact Key Employee Finding of Suitability - Renewals:
- A. Agua Caliente Band of Cahuilla Indians of the Agua Caliente Reservation – Agua Caliente Casino:
Avakian, Hrair **Longoria, Raul**
Bingham, Leslie **Power, Peter**
Calvert, Danny **Ramirez, Melissa**
Cockrell, Clay **Tovar, Lorena**
Cooper, Dennis **Tucker, John**
- B. Agua Caliente Band of Cahuilla Indians of the Agua Caliente Reservation – Agua Caliente Spa Hotel and Casino: **Morgan, Michael**
- C. Alturas Indian Rancheria – The Desert Rose Casino: **Jones, Dorothy**
- D. Augustine Band of Cahuilla Mission Indians of the Augustine Reservation – Augustine Casino:
Beltran, Araceli **Hicks, Timothy**
Benner, Gregory **Oaks, Michael**
Brisco, Francis **Reyes, Patricia**
Davila, Fernando **Salas, Sereriano**
Dunn, Michael **Sambrano, Adam**
Garcia, Rosario **Warren, Erika**
Hernandez, Manuela
- E. Blue Lake Rancheria – Blue Lake Casino: **Rebik, Clint**
- F. Cher-Ae-Heights Indian Community of the Trinidad Rancheria – Cher-Ae-Heights Casino:
Morais, John
- G. Elk Valley Rancheria – Elk Valley Casino:
Mattz, DeVon **Morrow, Maggie**
McClafin, Stacy **Rodriguez, Johnnie**
- H. Jackson Rancheria of Me-Wuk Indians of California – Jackson Rancheria Casino, Hotel, and Conference Center:
Andrews, Martin **Rice, Kimberley**
Bullock, Benjamin **Sarno, Catherine**
Davis, Sandra **Thiang, Hou**
Francis, Daniel **Truelock, Jeremiah**
Miller, Edgar **Vasko, Melissa**
Pitzer, William

- I. Morongo Band of Cahuilla Mission Indians of the Morongo Reservation – Casino Morongo:
Murphy, Paula **Rufe, Edith**
Nash, Vickie **Tobin, Marilyn**
Rathke, Carl
- J. Pala Band of Luiseno Mission Indians of the Pala Reservation – Pala Casino:
Contreras, Milton **Siddons, Barbara**
- K. Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation – Casino Pauma:
Darcy, Wendy **Murray, Scott**
- L. Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation – Pechanga Gaming Center:
Hulej, Brian **Newcomb, Michael**
Lancelle, Moriah **Nguyen, An**
Le, An **Snyder, Robert**
Madariaga, Michael
- M. Redding Rancheria – Win-River Casino: Freeman, Regenia
- N. Rincon Band of Luiseno Mission Indians of the Rincon Reservation – Harrah's Rincon Casino and Resort:
Livingston, Robert **Polk, Dawn**
O'Day, Bonnie **Sebastian, John**
O;Kane, Brendan **Smith, Thomas**
Pinzon, Kathryn **Villalobos, Juan**
- O. Rumsey Indian Rancheria of Wintun Indians of California – Cache Creek Casino Resort:
Barreto-Franco, Miguel **Khiev, Vanthan**
Khampanya, Sounthone **Simons, Jason**
- P. San Manuel Band of Serrano Mission Indians of the San Manuel Reservation – San Manuel Indian Bingo & Casino:
DeCastro, Erik **Nicholas, Adrian**
Malone, Linda **Pham, Ben**
Muehter, Paul **Yglesias, Felix**
- Q. San Pasqual Band of Diegueno Mission Indians of California – Valley View Casino:
Gomez, Laura **McLaughlin, Christina**
Jackson, Todd **Sandage, Dale**
- R. Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation – Chumash Casino Resort:
Angkahan, Jaime **James, Eunice**
Angkahan, Mariano **Jose, Christopher**
Arriola, Richard **Kamidol, Evan**
Bangalan, Romeo **Leontiouk, Iouri**
Bowers, Thomas **Padelford, Warren**

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| | Brents, David | Ramirez, Stefani |
| | Greene, Beth | Terrones, Fidel |
| | Jackson, Robert | Thompson, Antonio |
| S. | Smith River Rancheria – Lucky 7 Casino: | |
| | James, Carl | Rusk, Gary |
| | Orozco, Roberto | Scott, John |
| T. | Susanville Indian Rancheria – Diamond Mountain Casino: | |
| | Chambers, Claire | Sweeney, David |
| | Fogal, Jacob | |
| U. | Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California – Black Oak Casino: | |
| | Abernathy, Lanna | Pauly, Tina |
| V. | United Auburn Indian Community of the Auburn Rancheria of California – Thunder Valley Casino: | |
| | Angus, Robert | Mayhew, Julio |
| | Barnett, Paul | Myers, Leslie |
| | Bowman, Cynthia | Nguyen, Mai |
| | Dove, Leon | Nguyen, Quy |
| | Gaela, Dennis | Niguidula, Ria |
| | Gomez, Angelica | Ramey, Sooneun |
| | Heza, John | Saefong, Mouang |
| | Huynh, See | Saelee, Kao |
| | Johnson, Minette | Saeteurn, Foochiem |
| | Kapono, David | Vann, Savoeun |
| | Kaur, Harmandeep | Vann, Sony |
| | Le, Johnny | Venus, Jerome |
| | Lee, Ying | Vobouxasinh, Sonexay |
| | Lucia, Allen | You, Sam |
| | Masangya, Felipe | Yu, Alan |
| | Maxey, Kim | Zysman, Jason |
| W. | Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation – Viejas Casino: | |
| | Abasolo, Guillermo | Durler, Jeffrey |
| | Busch, Leslie | Munoz, Lilia |
| | Clark, Stephen | Neal, Janis |
| | Coghe, Timothy | Olivos, Eduardo |
| | Colergo, Manny | Wild, James |
| | Diosdado, Christopher | |

Deputy Director Ciau announced that Jeremy Barnett, Item 12.A. was tabled at the request of staff and then presented the remaining Consent Calendar items to the Commission for its consideration of the applications for work permit renewals, Tribal-State Compact Key Employee Findings of Suitability and renewal of Tribal-State Compact Key Employee Findings of Suitability. Upon motion of Chairman Shelton,

seconded by Commissioner Cruz and unanimously carried in a vote by roll-call with Chairman Shelton and Commissioners Cruz and Vuksich voting yes the Commission approved the Consent Calendar.

PUBLIC COMMENT:

Rodney Blonien, Lobbyist, commented on Business and Professions Code section 19876, concerning renewals of state gambling licenses and urged the Commission to consider changing the license term from one to two years.

CLOSED SESSION:

Chairman Shelton announced that the Commission would not adjourn to Closed Session since there were no new matters under Government Code section 11126(e) that required discussions.

ADOURNMENT

Upon motion to adjourn the meeting by Commissioner Vuksich, seconded by Commissioner Cruz and unanimously carried in a roll-call vote, with Chairman Shelton and Commissioners Cruz and Vuksich voting yes, the meeting adjourned at 2:36 p.m.



STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

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DEAN SHELTON, CHAIRMAN

JOHN CRUZ

J.K. SASAKI

ALEXANDRA VUKSICH

TITLE 4. CALIFORNIA GAMBLING CONTROL COMMISSION**NOTICE OF PROPOSED RULEMAKING****Chapter 10 – Discipline, Hearings, and Decisions**

The California Gambling Control Commission (“Commission”) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION: The Commission proposes to adopt sections 12550, 12552, 12554, 12556, 12558, 12560, 12562, 12564, 12566, 12568, and 12572 of Title 4 of the California Code of Regulations, concerning discipline (via accusations and hearings) of licensees, registrants, permit holders, or holders of findings of suitability or other approvals, settlements, and the adoption of precedential decisions.

PUBLIC HEARING: April 20, 2006

The Commission will hold a public hearing starting at 10 a.m. on Thursday, April 20, 2006, at 2399 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833-4231. The room is wheelchair accessible. Please call Lisa King, Assistant to the Commission, at 916-263-0493 or TDD 1-800-345-4275, to request any special accommodations for persons with disabilities. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD: March 3, 2006 through April 20, 2006

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission at any time during the 45-day public comment period. To be considered for summary and response, all written comments must be received no later than 5:00 p.m., April 20, 2006 (the day of the public hearing).

Written comments for the Commission’s consideration should be directed to:

Heather Hoganson, Counsel, California Gambling Control Commission,
2399 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833-4231;
Fax: 916-263-0452, E-mail: hhoganson@cgcc.ca.gov

AUTHORITY AND REFERENCE

Authority for the proposed regulations is provided by various provisions of the Gambling Control Act, which may be found in Business and Professions ("B & P") Code sections 19800--19980. In particular, B & P Code sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19912, 19914, 19920, 19922, 19924, 19930, 19931, 19942, 19971, and 19984.

The reference citations are as follows: the proposed regulations implement, interpret, or make specific B & P Code sections 19824, 19840, 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878, 19880, 19912, 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941, and 19942, and Government Code section 11425.60.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Under the Gambling Control Act, the California Gambling Commission has the authority to discipline the Commission's regulated community, which includes licensees, registrants, and permit holders, as well as findings of suitability and approval. Pursuant to the Administrative Procedure Act, the Commission is promulgating disciplinary guidelines so that consistent and uniform administrative penalties are available in order to encourage and reinforce voluntary compliance with the law. These regulations provide for protection of the public, notice to the industry of how violations of law will be handled by the Commission, and procedures and guidelines to ensure that discipline is administered in a fair, reasoned, and consistent fashion, in a manner authorized by law.

Increased or decreased discipline may be recommended based on facts of individual cases where supported by aggravating or mitigating circumstances.

The Administrative Procedure Act also allows for the adoption of precedential decisions; these regulations clarify how that will be handled at the Commission.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: These regulations do not impose a mandate on local agencies or school districts.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed upon local agencies: None

Cost or savings in federal funding to the state: None

Cost impact on representative private person or business: A licensee or registrant may be liable for penalties and/or costs if found to have violated the law regarding controlled gambling.

Impact on Business: The Commission has made an initial determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: The Commission has made an initial determination that the proposed regulatory action would not affect housing costs.

Effect on small business: The Commission has made an initial determination that, in the event that a cardroom is considered a small business, the effect these regulations will have on small business will be minor.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would be 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 action.

ASSESSMENT REGARDING CREATION OR ELIMINATION OF JOBS IN CALIFORNIA

The Commission has made an assessment and determined that the adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action should be directed to:

Heather Hoganson, Counsel, California Gambling Control Commission,
2399 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833-4231
Telephone: 916-263-0490, Fax: 916-263-0452, E-mail: hhoganson@cgcc.ca.gov.

Requests for a copy of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other technical information upon which the rulemaking is based should be directed to:

Pam Ramsay, California Gambling Control Commission,
2399 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833-4231
Telephone: 916-263-8111, Fax: 916-263-0499.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. A copy may be obtained by contacting Pam Ramsay at the address or telephone number listed above or accessing the Commission's website at <http://www.cgcc.ca.gov>. Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Regulations Coordinator or viewed on the website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing, the Commission may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, will be made available to the public for at least 15 days prior to the date on which the Commission adopts the regulation. Requests for copies of any modified regulation should be sent to the attention of Pam Ramsay at the address indicated above.

The Commission will accept written comments on the modified regulation for 15 days after the date on which it is made available.

CALIFORNIA GAMBLING CONTROL COMMISSION

Physical Address: 2399 Gateway Oaks Drive, Suite 100 • Sacramento, CA 95833-4231

Mailing Address: P.O. Box 526013 • Sacramento, CA 95852-6013

Phone: (916) 263-0700 • FAX: (916) 263-0452

**Initial Statement of Reasons**

California Code of Regulations, Title 4. Business Regulations
Division 18. California Gambling Control Commission

Chapter 10 – Discipline, Hearings, and Decisions

The Gambling Control Act¹ provides the California Gambling Control Commission (hereafter, "Commission") the authority to discipline the Commission's regulated community. This includes work permit holders, holders of findings of suitability or approvals, key employee licensees, registrants, licensees, and owner licensees of gambling establishments. The intent of such enforcement authority is to ensure that the industry maintains a good reputation, does not cheat or harm the public, and is made up of people of good character. Discipline for violations of law ensures that others in the regulated community do not violate the law, that the public is protected, and that any criminal or corruptive elements are excluded from the industry.

The Gambling Control Act is "an exercise in the police power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes."² The Legislative Findings and Declarations of the Gambling Control Act, Business and Professions Code, section 19801, subdivision (f), states:

Public trust that permissible gambling will not endanger public health, safety, or welfare requires that comprehensive measures be enacted to ensure that gambling is free from criminal and corruptive elements, that it is conducted honestly and competitively, and that it is conducted in suitable locations.

Business and Professions Code, section 19801, subdivision (g), further states:

Public trust and confidence can only be maintained by strict and comprehensive regulation of all persons, locations, practices, associations, and activities related to the operation of lawful gambling establishments and the manufacture and distribution of permissible gambling equipment.

¹ Business and Professions Code, section 19800 et seq.

² Business and Professions Code, section 19971.

The Commission is tasked with carrying out this legislative intent and

- Assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.³
- Assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.⁴

Pursuant to Business and Professions Code, section 19930, the Division of Gambling Control (hereafter, "Division") is charged with investigating violations of the Gambling Control Act and regulations adopted thereunder. If the Division, as a result of such investigations, determines that a license, permit, finding of suitability, or approval should be suspended or revoked, the Division (who will generally be represented by a Deputy Attorney General from the Indian and Gaming Law Section of the Office of the Attorney General) must file an accusation in accordance with the Administrative Procedure Act⁵. With regard to such an accusation, the Administrative Procedure Act provides:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.⁶

The Commission, in addition to actions taken against a license, permit, finding of suitability, or approval, may require the payment of fines or penalties.

According to the Administrative Procedure Act in the California Government Code, no agency may base a penalty on a guideline unless that guideline has been adopted as a regulation.⁷ Adopting Disciplinary Guidelines in this chapter satisfies the Government Code requirement and provides notice to the industry of how violations of law will be handled by the Commission.

³ Business and Professions Code, section 19823, subdivision (a)(1).

⁴ Business and Professions Code, section 19823, subdivision (a)(2).

⁵ Government Code, section 11500 et seq.

⁶ Government Code section 11503.

⁷ Government Code, section 11425.50, subdivision (e).

The Administrative Procedure Act provides for a quasi-judicial forum to adjudicate disputes. For example, if the Division were to believe that a licensee or registrant was in violation of the law, and that licensee or registrant disputed that belief, then a hearing would be held before the Commission (or an administrative law judge sitting on behalf of the Commission), using the procedures detailed in the Government Code and regulation, to reach a Decision. If the Decision confirmed the violation of law, the penalty would be arrived at by the use of these disciplinary guidelines. Penalties are designed to be deterrents, not punishment.

The objective of a disciplinary proceeding is to protect the public, the occupation, maintain occupational integrity, its high standards, and preserve public confidence in state licensure and registration. These proceedings are not for the primary purpose of punishing an individual.⁸

A more recent court agreed:

The license revocation procedure is designed to protect the public, not to administer punishment to individual licensees. (*citation.*) As the court stated in *Small v. Smith* (1971) 16 Cal. App. 3d 450, 457, "The object of an administrative proceeding aimed at revoking a license is to protect the public, that is, to determine whether a licensee has exercised his privilege in derogation of the public interest, and to keep the regulated business clean and wholesome."⁹

The Commission has engaged in extensive outreach in developing these proposed regulations. Staff researched a number of other gaming jurisdictions as well as other California licensing agencies, and maintained a dialog with the Division to determine what offenses should be specifically listed. Staff worked closely with industry members, both informally by letters, telephone calls, and meetings, as well as formally by holding two open and publicly noticed workshops, one in February 2005 and one in July 2005, before discussing the penultimate notice draft at a regularly noticed Commission meeting on February 9, 2006.

Section 12550 is the introduction to this chapter, detailing the purpose and scope of the regulations. **Subsection (a)** indicates that this chapter applies to all types of licenses, registrations, permits, findings of suitability, or approvals issued by the Commission, which is necessary because some might think that this chapter was only applicable to cardrooms or cardroom employees.

In those cases where an immediate suspension of a license, permit, or registration is required, these regulations are not to be an impediment. **Subsection (c) of 12550** clarifies that these regulations do not limit the authority of the Commission or Division which is granted in the Business and Professions Code, to issue **either Orders of**

⁸ *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.

⁹ *Mann v. Department of Motor Vehicles* (1999) 76 Cal. App. 4th 312, 320.

Summary Suspension or Emergency Orders, respectively, to go to superior court, or to refer the matter to the appropriate agencies for further action.

Many administrative agency disputes settle before, during, or even after a formal hearing has been presented, but before a decision is issued. **Section 12552** provides a method for holders of a license or registration to settle a dispute regarding a violation without going through a formal hearing process pursuant to the Administrative Procedure Act. For example, the Division might, during an inspection or investigation, observe a violation of law. The Division would then issue a Notice of Violation which would specify the law violated and the circumstances surrounding the violation. A settlement would allow (with Commission approval) a holder of a license or registration, who admits that the violation did occur, to pay a monetary penalty instead of going through a formal hearing process. An analogy might be paying a speeding ticket when there is no dispute that the driver was going 70 in a 45 mph zone rather than going to traffic court.

Any fines or penalties collected will go into a Fines & Penalties sub-account in the General Fund. The Division may appropriate money from this account to offset costs incurred pursuant to the Gambling Control Act.¹⁰

If a holder of a license or registration disputes that there was a violation, however, the holder would so notify the Division. The Division would have the option of dropping the Notice of Violation (based on exonerating information given by the holder, perhaps) or of pursuing the violation through the formal hearing process described in this chapter.

Section 12552, subsection (b), clarifies that Commission must approve any offers to pay a penalty in lieu of the formal hearing process. If an offer is not approved within the timeframe of three Commission meetings, the Division shall proceed with the formal hearing process described in this chapter. This timeframe provides the parties with a necessary deadline for negotiation, since most settlements happen at the last minute, and also ensures that cases are not left hanging for lengthy periods of time.

Subsection (a) of 12554 provides that disputes will be handled by following the provisions of the administrative adjudication portion of the Administrative Procedure Act, Government Code sections 11500 et seq. This provides a clear set of rules for all participants to follow. For those unfamiliar with administrative hearings, additional information that the decision will be based on findings of fact, etc., is added for purposes of clarity. **Subsection (c) of 12554 also discusses the burden of proof**, which is clarified as being a "preponderance of the evidence" standard. Case law has indicated that there are different levels of proof required for different types of licensees. This clarifies for all participants what level of proof is required to prove that a licensee or registrant violated the law.

It has been generally recognized that administrative proceedings, including proceedings to revoke or suspend a license, are civil rather than criminal in nature.¹¹ Generally,

¹⁰ Business and Professions Code, section 19950.

proof in civil cases is required by a preponderance of the evidence.¹² However, in a number of situations, a greater degree of proof, usually clear and convincing evidence, is required.¹³ Thus, stating the burden of proof in regulation is necessary.

A professional license often represents the fulfillment of extensive education, training and rigorous testing. A professional licensee has an extremely strong interest in retaining the professional license that he or she worked so hard to obtain. A higher standard of proof than a preponderance of the evidence is required to revoke or suspend a professional license -- proof by clear and convincing evidence is required.¹⁴ "Clear and convincing evidence" means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered.¹⁵ The evidence must be so clear as to leave no substantial doubt and so strong as to command the unhesitating assent of every reasonable mind.¹⁶ "Clear and convincing evidence" is a higher standard of proof than proof by a "preponderance of the evidence"¹⁷ and requires a finding of high probability for the propositions advanced in an Accusation against a targeted licensee. Thus, the standard of proof in an administrative disciplinary action that seeks the suspension or revocation of a professional license, such as a doctor, lawyer, dentist, veterinarian, registered nurse, licensed vocational nurse, pharmacist, psychiatric technician, smog check technician, chiropractor, psychologist, insurance agent, real estate agent, barber, or cosmetologist, or of a teaching credential, is "clear and convincing evidence to a reasonable certainty."¹⁸

On the other hand, where an occupational or professional license may be obtained without education and training, the standard of proof required to suspend or revoke such a license is merely a "preponderance of the evidence."¹⁹ A "preponderance of the evidence" means evidence that has more convincing force than that opposed to it.²⁰

Licenses to process foods, sell vehicles, or to operate such facilities as a substance abuse treatment facility, a child day-care facility, or a health care facility all use the

¹¹ *Petrucci v. Board of Medical Examiners* (1975) 45 Cal.App.3d 83, 88 and *Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540; Quoted in *Ettinger v. Board of Medical Quality Assurance*, 135 Cal. App. 3d 853, 855 (Cal. Ct. App., 1982)

¹² Evidence Code, section 115: Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

¹³ *Belli v. Curtis Pub. Co.* (1972) 25 Cal.App.3d 384, 388 and *Trujillo v. City of Los Angeles* (1969) 276 Cal.App.2d 333, 343; Quoted in *Ettinger v. Board of Medical Quality Assurance*, 135 Cal. App. 3d 853, 855 (Cal. Ct. App., 1982).

¹⁴ *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889.

¹⁵ *People v. Mabini* (2001) 92 Cal.App.4th 654, 662.

¹⁶ *In re Michael G.* (1998) 63 Cal.App.4th 700, 709-710, fn 6; *In re David C.* (1984) 152 Cal.App.3d 1189, 1208.

¹⁷ BAJI No. 2.62 (8th ed. 2002) [Book of Approved Jury Instructions, Standard Jury Instructions, Civil], and CACI No. 201 [Judicial Council of California Civil Jury Instructions].

¹⁸ *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853; *James v. Board of Dental Examiners* (1985) 172 Cal. App.3d 1096, 1105; *Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.

¹⁹ *Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312.

²⁰ BAJI 2.60.

preponderance of the evidence standard.²¹ A notary public, who must take a one-day course to pass an examination and must be trustworthy and of good moral character, also has a preponderance of the evidence standard in disciplinary actions.

No formal training or examinations must be taken in order to obtain a license or registration in the gambling industry. Applicants must be honest, reputable, fiscally responsible, and trustworthy individuals – this is determined by a background investigation by the Division, for which the applicants themselves complete supplemental information forms. The background check in and of itself does not raise the standard of proof, since day care and health care facility workers must also pass similar investigations. As a nonprofessional license, the preponderance of the evidence standard is stated as the burden of proof for disciplinary actions. This is the same standard used by the Nevada Gaming Commission in their disciplinary hearings.

Section 12554, subsection (d), details the options open to the Commission for discipline. These include outright revocation, suspension, the imposition of fines or monetary penalties, and/or conditions. The Commission could, for example, find that an order of revocation should be stayed, on certain terms and conditions.

Subsection (d)(7) of 12554 provides for a stay of suspension and payment of monetary penalties. As mentioned previously, the Division might recommend that a respondent in a disciplinary action pay a monetary penalty in lieu of serving a suspension. That would ensure that employees or vendors would not be out of work for the period of a suspension for an employer's or supervisor's error, or that a city would not be out revenue taxes, if the circumstances so warrant. (An example might be a cardroom or proposition player service paying a fine instead of not conducting controlled gambling during the period of suspension.) A fine may serve as an appropriate deterrent in some instances, and the amounts are detailed. Because the fine may be based on the number of tables or gross revenue of a cardroom, or the amount of tables for which a third-party contract exists, **subsections (g) and (h)** require this information to be included in the written decision.

Along similar lines of keeping employees employed while disciplining an owner, in **subsections (e) and (f) of 12554**, the Commission could revoke a cardroom or proposition player service owner but allow a reasonable amount of time for the business to be sold. Due to the current moratorium on new cardrooms, this was a suggestion by industry, so that cities would not lose a source of revenue in the event that an owner's license were to be revoked. In the interests of parity, this option was mirrored for third-party providers of proposition player services and gambling businesses.

Cost recovery was recently added to Section 19930 of the Business and Professions Code and became effective January 1, 2005. It is included in **subsection (i) of 12554** so that decisions will include findings and orders with regard to the costs of investigation and prosecution of the case.

²¹ *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889.

Cardrooms, while under the regulatory jurisdiction of the Commission, may also be subject to regulation by other agencies. For instance, if a cardroom serves alcohol, it would also be regulated by the Department of Alcoholic Beverage Control (ABC). If it has employees, it would fall under the jurisdiction of the Labor Commissioner, etc. In the event that one incident gives rise to different agencies imposing a discipline, or in the event that a cardroom is being disciplined for more than one violation, it is necessary for the Commission decision to state whether a suspension should be concurrent or consecutive, which is indicated in **subsection (j)**.

While it may be shown in the course of formal hearing that a holder of a license, work permit, or registration violated a particular law, the penalty for that violation may be either lessened/mitigated by a showing of the holder's cooperation, clean history, restitution, etc., or heightened/aggravated by a showing of the holder's lack of cooperation, previous history of violations, refusal to make restitution, etc. **Section 12556 thus allows for factors in mitigation or aggravation** of the penalty. Many of these factors were added in looking at other jurisdictions, or from input by industry members during our workshops or informal comment periods. **Subsection (p)** allows for the respondent to bring in any relevant evidence, to cover additional fact patterns not otherwise accounted for in the listed factors in mitigation.

Sections 12558-12568 are disciplinary guidelines for various types of licenses, registrations, and work permits.

Many holders of permits, licenses, registrations, or entities requiring findings of suitability or approval have already been exposed to disciplinary guidelines (and, possibly, the administrative adjudication process) by virtue of interactions with the Department of Alcoholic Beverage Control (ABC) or other regulatory agencies. The ABC guidelines were considered in the drafting of these proposed disciplinary guidelines.

Aggravating and mitigating factors would be taken into account (for example, this is the third violation in two months or perhaps there was an honest misunderstanding). In addition, references to subsection (d)(7) of section 12554 indicates that a monetary penalty may be imposed in lieu of serving an actual suspension.

These guidelines were written with a range of penalties to take into account the totality of the situation and the seriousness of the offense. The listed offenses came from industry, from other gambling jurisdictions, and from the Division, based upon the violations of law most commonly seen in the field of controlled gambling. Because the Commission is charged with keeping unsuitable characters out of the gambling industry, the Commission has determined that anything which would preclude a person from initially obtaining a gambling license, registration, etc., such as a felony conviction, should also be a ground for revoking the license, registration, etc., in the interests of protection of the public.

Subsection (a) of 12566, disciplinary guidelines for gambling establishments, looks at small infractions, and takes into account the size and income of the

establishment, as required by the Gambling Control Act, rather than set a fixed monetary penalty that may seem enormous to a small cardroom and a pittance to a large cardroom. The maximum suspension would be one day of normal business operation. More serious violations are in **subsection (b)** and carry a maximum seven-day suspension, which may be stayed on payment of the monetary penalty in subsection (d)(7) of section 12554.

Allowing **minors on the premises**, especially if they engage in drinking or gambling, is a very real issue with regard to public safety and is treated very seriously in other states and is addressed in **Section 12566, subsections (b)(9) and (11)**. Recently, a Nevada casino stipulated to a \$10,000 fine as a result of allowing a minor to gamble and drink in their casino.²² This incident was caught by the casino and self-reported to regulators. In 1997, a casino in Missouri was fined \$250,000 after regulators caught a 12-year-old girl playing the slots in their riverboat casino. After other allegations in 2000, including allowing a 16-year-old girl and two other minors to gamble on their riverboats, the casino surrendered its Missouri gambling licenses and sold its gambling interests.

In a similar vein of protecting minors, the Department of Alcoholic Beverage Control (ABC) has a penalty of a 15-day suspension for the first violation of allowing persons under 21 to consume or purchase alcohol in a licensed establishment, with a second violation within 36 months having a penalty of 25 days suspension and a third violation within 36 months being cause for revocation.

The felony of "**loan-sharking**" is listed as a reason for suspension in **Section 12560, subsections (b)(15) and (d)(4); Section 12562, subsections (b)(9) and (d)(4); and Section 12568, subsection (b)(6)**. Loan-sharking is described as follows:

Any person who willfully makes or negotiates, for himself or another, a loan of money, credit, goods, or things in action, and who directly or indirectly charges, contracts for, or receives with respect to any such loan any interest or charge of any nature, the value of which is in excess of that allowed by law, is guilty of loan-sharking, a felony, and is punishable by imprisonment in the state prison for not more than five years or in the county jail for not more than one year. This subdivision shall not apply to any person licensed to make or negotiate, for himself or another, loans of money, credit, goods, or things in action, or expressly exempted from compliance by the laws of this state with respect to such licensure or interest or other charge, or to any agent or employee of such person when acting within the scope of his agency or employment.

This was enacted as an initiative measure by the people of the State of California in the Statutes of 1919, and amended by Statutes of 1970, chapter 784, section 1. While it may be found in West's California Codes as Civil Code section 1916-3, it is found in Deering's Uncodified Initiative Measures and Statutes Code on page 35 and in Appendix I of the Deering's Civil Code (in the pocket supplement to the last volume).

²² "Venetian agrees to \$10,000 fine over underage gambling: Las Vegas Sun, January 21, 2005. Available at <http://www.lasvegassun.com/sunbin/stories/gaming/2005/jan/21/518162515.html> or in Attachment A to this Initial Statement of Reasons.

Section 12572 provides for the Commission's adoption of all or part of a final decision or stipulated decision pursuant to a settlement agreement as a **precedential decision**. Precedential decisions are described in Government Code 11425.60, and are a way for an agency to indicate that a particularly significant legal or policy determination of general application would be binding on the regulated community. For instance, the Commission could determine, during the course of a formal hearing, that a certain crime was a "crime of moral turpitude" with regard to those involved in gaming activity or gambling establishments. Rather than repeat the legal arguments the next time this certain crime came up in a hearing, the Commission could adopt the first decision, in whole or in part, which indicated the findings and conclusions regarding the crime. Any precedential decisions adopted would be maintained in an index, on the Commission's web page, for the public to access.

Required Determinations

LOCAL MANDATE

These regulations do not impose a mandate on local agencies or school districts.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND REASONS FOR REJECTING THOSE ALTERNATIVES.

The Commission is not aware of any reasonable alternatives that would as effectively achieve the regulatory purpose of processing additional temporary table applications and achieving compliance in situations where temporary tables have been requested.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The Commission is not aware of any reasonable alternatives that would lessen any adverse impact on small businesses.

IMPACT ON PRIVATE PERSONS

The Commission is not aware of any reasonable alternatives that would be more effective or as effective and less burdensome to private persons.

IMPACT ON BUSINESS

The Commission has made a determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.



100



Proposed Addition: California Code of Regulations, Title 4, Division 18,

Chapter 10. Discipline, Hearings, and Decisions

1
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15

16 **12550. Purpose and Scope**

- 17 (a) The purpose of this chapter is to set forth disciplinary procedures and guidelines
18 applicable to the holder of any license, registration, permit, finding of suitability,
19 or approval issued by the Commission.
20 (b) The disciplinary guidelines in this chapter are designed to promote fairness and
21 flexibility in dealing with a wide range of disciplinary scenarios. Variation in
22 penalties based on circumstances and factors in aggravation or mitigation are
23 part of this disciplinary scheme to promote compliance with applicable laws and
24 regulations.
25 (c) Nothing in this chapter is intended to limit the authority of the Commission to
26 issue orders of summary suspension pursuant to Business and Professions
27 Code section 19913, or to limit the authority of the Division to issue emergency
28 orders pursuant to Business and Professions Code section 19931.
29 (d) Nothing in this chapter shall be construed to prevent the Commission from
30 ordering an investigation by Commission staff on a matter brought before the
31 Commission; instituting a civil action in any superior court to restrain a violation of
32 the Gambling Control Act, pursuant to Business and Professions Code section
33 19824, subdivision (g); referring a matter to the Attorney General or any district
34 attorney or city attorney for civil, criminal or administrative action; or requesting
35 the Division of Gambling Control to conduct an investigation pursuant to
36 information gathered independently by the Commission or supplied to it by a third
37 party.
38 (e) Nothing in this chapter precludes any person from notifying the Commission or
39 the Division regarding any violations of law or reasons why the holder of any
40 license, registration, permit, finding of suitability, or approval should be
41 disciplined.
42 (f) Nothing in this chapter precludes the Division, in its discretion, from issuing
43 warning notices, notices to cure, advisory letters regarding violations or possible
44 violations of law, or from withdrawing such upon further investigation.
45

1 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19912, 19914,
2 19920, 19922, 19924, 19930, 19971, and 19984 of the Business and Professions Code.
3 Reference: Sections 19913, 19930, and 19931 of the Business and Professions Code.
4

5 **12552. Settlements**

- 6 (a) At any time, the Commission and respondent may enter into a settlement of the
7 accusation as provided in this section.
8 (b) Any settlement of an accusation shall include a plan for immediate abatement of
9 the violation, a plan for immediate compliance with all statutory and regulatory
10 requirements, an agreement to any penalty imposed, and shall be a full and final
11 settlement of the violation including a complete waiver of all judicial or other
12 review unless otherwise agreed to by the Commission.
13 (c) Any settlement of an accusation shall be submitted by the Division for approval
14 by the Commission at a noticed Commission meeting. The Commission shall
15 have final approval authority concerning any such settlement. If the Commission
16 rejects a settlement or agreement, and no amended agreement or settlement is
17 reached before two additional regularly noticed Commission meetings have
18 concluded, or sixty days have elapsed, whichever is later, the Division shall
19 proceed with the formal hearing process under this Chapter.
20

21 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19912, 19920,
22 19930, 19942, and 19984 of the Business and Professions Code.
23 Reference: Sections 19824, 19826, 19827, 19840, and 19930 of the Business and Professions Code.
24

25 **12554. Formal Hearing Process**

- 26 (a) Upon the filing with the Commission of an accusation by the Division
27 recommending revocation, suspension, or other discipline of a holder of a
28 license, registration, permit, finding of suitability, or approval, the Commission
29 shall proceed under Chapter 5 (commencing with Section 11500) of Part 1 of
30 Division 3 of Title 2 of the Government Code.
31 (b) In the event that the Division cannot present the accusation, the Commission
32 may request outside counsel or representation by another state agency or may
33 adequately segregate one or more Commission staff members from the
34 Commissioners and Commission legal unit to present the accusation.
35 (c) The Administrative Law Judge and Commission shall base their decisions on
36 written findings of fact, including findings concerning any relevant aggravating or
37 mitigating factors. Findings of fact shall be based upon a preponderance of the
38 evidence standard. The "preponderance of the evidence standard" is such
39 evidence as when considered and compared with that opposed to it, has more
40 convincing force, and produces a belief in the mind of the fact-finder that what is
41 sought to be proved is more likely true than not true.

1 (d) Upon a finding of a violation of the Gambling Control Act, any regulations
2 adopted pursuant thereto, any law related to gambling or gambling
3 establishments, violation of a previously imposed disciplinary or license
4 condition, or laws whose violation is materially related to suitability for a license,
5 registration, permit, or approval, the Commission may do any one or more of the
6 following:

- 7 (1) Revoke the license, registration, permit, finding of suitability, or
8 approval;
- 9 (2) Suspend the license, registration, or permit;
- 10 (3) Order the licensing authority of a city, county, or city and county to
11 revoke a work permit, pursuant to Business and Professions Code
12 section 19914, subdivision (a),
- 13 (4) Impose any condition, limitation, order, or directive (including but not
14 limited to a directive to divest an interest in a business entity pursuant
15 to Business and Professions Code, section 19879);
- 16 (5) Impose any fine or monetary penalty consistent with Business and
17 Professions Code sections 19930, subdivision (c), and 19943,
18 subdivision (b);
- 19 (6) Stay, in whole or in part, the imposition of a revocation or suspension
20 against the holder of a license, registration, work permit, finding of
21 suitability, or approval, or
- 22 (7) Order the holder to pay a monetary penalty in lieu of all or a portion of a
23 suspension. Within the guidelines of Business and Professions Code
24 sections 19930, subdivision (c), and 19943, subdivision (b):
- 25 (A) If the respondent is an owner of a gambling establishment, the
26 monetary penalty shall be equivalent of Fifty percent of the average
27 daily gross gaming revenue, but not less than \$500, for the number
28 of days for which the suspension is stayed.
- 29 (B)
- 30

31 **OPTION 1:** If the respondent is an owner of a third-party provider of
32 proposition player services, the monetary penalty shall be the sum of
33 \$500 plus the total of \$100 multiplied by the maximum number of
34 tables for which proposition player services have been contracted at
35 the gambling establishment where the violation was charged, which
36 sum shall be multiplied by the number of days for which the
37 suspension is stayed.

38 **OPTION 2:** If the respondent is an owner of a third-party provider of
39 proposition player services, the monetary penalty shall be the sum of

1 \$500 plus the total of \$300 multiplied by the maximum number of
2 tables for which proposition player services have been contracted at
3 the gambling establishment where the violation was charged, which
4 sum shall be multiplied by the number of days for which the
5 suspension is stayed.¹

6 (C) If the respondent is an owner of a gambling business, the
7 monetary penalty shall be \$1500 per day for the number of days for
8 which the suspension is stayed.

9 (D) If the respondent is a key employee of a gambling establishment
10 or a supervisor of a gambling business or third-party provider of
11 proposition player services, the monetary penalty shall be \$100 per
12 day for the number of days for which the suspension is stayed.

13 (E) If the respondent is a holder of a work permit, a player or other
14 employee of a gambling business or third-party provider of
15 proposition player services, or a person not otherwise described
16 above, the monetary penalty shall be \$50 per day for the number of
17 days for which the suspension is stayed.

18 (e) If a person's state gambling license for a gambling establishment is revoked by
19 the Commission pursuant to this chapter, the Commission may stay such
20 revocation for a reasonable period of time to allow such person to sell or divest
21 himself or herself of such person's ownership interest in the gambling
22 establishment, provided that after the date on which the revocation is stayed by
23 the Commission, such person shall not be entitled to, realize, or receive any
24 profits, distributions, or payments that might directly or indirectly be due to such
25 person or which arise out of, are attributable to, or are derived from controlled
26 gambling.

27 (f) If an owner of a third-party provider of proposition player services or gambling
28 business has his or her owner's license or registration revoked by the
29 Commission pursuant to this chapter, the Commission may stay such revocation
30 for a reasonable period of time to allow such person to sell or divest himself or
31 herself of such person's ownership interest in the third-party provider of
32 proposition player services or gambling business, provided that after the date on
33 which the revocation is stayed by the Commission, such person shall not be
34 entitled to, realize, or receive any profits, distributions, or payments that might
35 directly or indirectly be due to such person or which arise out of, are attributable
36 to, or are derived from the provision of proposition player services.

¹ Note to Reader: This section (Option 1 and 2) will be modified based upon comments received during the 45-day notice and comment period and the public hearing.

- 1 (g) For decisions concerning a gambling establishment, findings shall be made
2 regarding the number of tables in operation at the establishment and the annual
3 gross gaming revenue of the establishment.
- 4 (h) For decisions concerning an owner of a third-party provider of proposition player
5 services, findings shall be made regarding the maximum number of tables for
6 which proposition player services have been contracted at the gambling
7 establishment where the violation was charged.
- 8 (i) Any order to pay the costs of investigation or prosecution of the case shall be
9 fixed pursuant to Business and Professions Code section 19930, subdivision (d).
- 10 (j) For multiple violations, or for suspensions imposed by other jurisdictions based
11 on the same violations, the decision shall state whether any Commission-
12 imposed suspensions shall run consecutively or concurrently.

13
14 Authority: Sections 19811, 19823, 19824, 19840, 19850, 19853(a)(3), 19854, 19912, 19914, 19920,
15 19922, 19924, 19930, 19932, 19971, and 19984 of the Business and Professions Code.

16 Reference: Sections 19857, 19858, 19859, 19862, 19870, and 19878 of the Business and Professions
17 Code, Section 11045 of the Government Code, and Section 10335 of the Public Contract
18 Code.

19

20 **12556. Factors in Mitigation or Aggravation of Penalty**

21 If presented by complainant or respondent, the Commission shall consider the
22 following factors in mitigation or aggravation of the penalty imposed:

- 23 (a) Violation of any previously imposed or agreed upon condition, restriction or
24 directive.
- 25 (b) Whether or not the conduct was knowing, willful, reckless, or inadvertent.
- 26 (c) The extent to which respondent cooperated with the Division or Commission
27 during the investigation of the violation.
- 28 (d) The extent to which respondent was honest with the Division or Commission
29 during the investigation of the violation.
- 30 (e) The extent to which respondent is willing to reimburse or otherwise make
31 whole any person who has suffered a loss due to the violation.
- 32 (f) Whether respondent has initiated remedial measures to prevent similar
33 violations.
- 34 (g) The extent to which respondent realized an economic gain from the violation.
- 35 (h) Disciplinary history of respondent, repeated offenses of the same or similar
36 nature, or evidence that the unlawful act was part of a pattern or practice.
- 37 (i) Any other aggravating factors, including any factors which the Commission
38 determines to bear on the health, safety, or welfare of the public.

- 1 (j) The extent to which there was actual or potential harm to the public or to any
2 patron.
- 3 (k) The extent to which an owner licensee or key employee of a gambling
4 establishment, owner or supervisor of a third-party provider of proposition
5 player services, or owner or supervisor of a gambling business exercised due
6 diligence in management or supervision.
- 7 (l) If the violation was caused by an employee of a third-party provider of
8 proposition player services or gambling business, the extent to which the
9 owner licensee, licensee, or registrant knew or should have known of the
10 employee's improper conduct; the level of authority of the employee involved
11 and the extent to which the employee acted within the scope of his or her
12 authority in committing the violation.
- 13 (m) If the violation was caused by a third-party provider of proposition
14 player services or gambling business, the extent to which the owner licensee
15 or gambling establishment knew or should have known of the improper
16 conduct.
- 17 (n) If the violation was caused by an independent contractor of a gambling
18 business, the extent to which the gambling business owner licensee, licensee,
19 or registrant knew or should have known of the independent contractor's
20 improper conduct; the level of authority of the independent contractor involved
21 and the extent to which the independent contractor acted within the scope of
22 his or her authority in committing the violation.
- 23 (o) If the violation was caused or committed by a third party, the extent to which
24 the owner licensee, licensee, or registrant knew or should have known of the
25 third party's improper conduct.
- 26 (p) Any relevant evidence offered by respondent in mitigation of the violation.
27

28 Authority: Sections 19811, 19823, 19824, 19840, 19850, 19853(a)(3), 19854, 19912, 19914, 19920,
29 19922, 19924, 19930, 19932, 19971, and 19984 of the Business and Professions Code.

30 Reference: Sections 19857, 19858, 19859, 19862, 19870, and 19878 of the Business and Professions
31 Code.

32

33 **12558. Disciplinary Guidelines for Holders of Work Permits**

34 Pursuant to Business and Professions Code, section 19914, the holder of a work
35 permit shall be subject to a minimum penalty of a three-day suspension, which may
36 be stayed on terms and conditions and any monetary penalty as described in
37 section 12554(d)(7) of this chapter, up to a maximum penalty of revocation by the
38 Commission if the Commission finds that the holder:

- 39 (a) Engaged in or committed a prohibited act specified in Business and
40 Professions Code 19914, subdivision (a).

1 (b) Does not currently meet any criterion for eligibility or qualification.

2 (c) Violated or is in violation of any condition, limitation or directive previously
3 imposed on the work permit.

4 (d) Violated or is in violation of any Commission or Division regulations, including
5 those regulations regarding work permits in the California Code of
6 Regulations, title 4, division 18, chapter 2 (commencing with section 12100).

7 Authority: Sections 19811, 19823, 19824, 19911, 19912, 19914, 19920, 19930, 19932, and 19971 of
8 the Business and Professions Code.

9 Reference: Section 19878 of the Business and Professions Code.

10
11 **12560. Disciplinary Guidelines for Third-party providers of proposition player**
12 **services licensees or registrants**

13 (a) If the Commission finds that an owner of a third-party provider of proposition
14 player services, as that term is used in California Code of Regulations, title 4,
15 section 12200, is out of compliance with any mandatory duty specified in or
16 imposed by the Gambling Control Act or any Commission or Division regulation,
17 which is not otherwise listed in these disciplinary guidelines, the penalty shall be
18 one day of suspension of proposition player services from either specified
19 gambling establishments or all gambling establishments, as the circumstances
20 and factors in mitigation or aggravation apply, which may be stayed by the
21 Commission upon the payment of a monetary penalty as follows:

22 (1) *If the third party provider of proposition player services has 5 or less*
23 *licensees or registrants, the penalty shall be between \$50 and \$100,*
24 *based upon factors in mitigation and aggravation.*

25 (2) *If the third party provider of proposition player services has 6 to 12*
26 *licensees or registrants, the penalty shall be between \$100 and*
27 *\$2000, based upon the factors in mitigation and aggravation.*

28 (3) *If the third party provider of proposition player services has 13 or*
29 *more licensees or registrants, the penalty shall be between \$2000*
30 *and \$10000, based upon the factors in mitigation and aggravation.²*

31
32 (b) A license or registration granted by the Commission for an owner of a third-
33 party provider of proposition player services, as that term is used in California
34 Code of Regulations, title 4, section 12200, shall be subject to a minimum
35 discipline of suspension of seven days from either specified gambling
36 establishments or all gambling establishments, as the circumstances and factors
37 in mitigation or aggravation apply, and a maximum discipline of revocation, which

2 Note to Reader: This section will be modified based upon comments received during the 45-day notice and comment period and the public hearing.

1 may be stayed on terms and conditions and any monetary penalty as described
2 in section 12554 (d)(7) of this chapter, if the Commission finds that:

- 3 (1) The owner has violated or is out of compliance with any conditions,
4 limitations, orders, or directives imposed by the Commission, either as
5 part of an initial grant of license or registration, renewal of such, or
6 pursuant to disciplinary action,
- 7 (2) The owner has been found, by any administrative tribunal or court, to
8 have violated or be in violation of any law involving or relating to
9 gambling,
- 10 (3) The owner has intentionally misrepresented a material fact on an
11 application or supplemental application for licensure or registration,
- 12 (4) The owner has engaged in any dishonest, fraudulent, or deceptive
13 activities in connection with controlled gambling or the provision of
14 proposition player services,
- 15 (5) The owner has violated any law or ordinance with respect to campaign
16 finance disclosure or contribution limitations, pursuant to Business and
17 Professions Code, section 19982,
- 18 (6) The owner has violated California Code of Regulations, title 4,
19 regarding annual fees for third party providers of proposition player
20 services,
- 21 (7) The owner has provided proposition player services in violation of
22 California Code of Regulations, title 4, section 12200.7, subdivision
23 (b)(9) or (b)(11),
- 24 (8) The owner has failed to fully disclose financial arrangements in violation
25 of California Code of Regulations, title 4, section 12200.7, subdivision
26 (b)(15),
- 27 (9) The primary owner has failed to report cheating, in violation of
28 California Code of Regulations, title 4, section 12200.7, subdivision
29 (b)(18),
- 30 (10) The owner has purchased, leased, or controlled equipment in
31 violation of California Code of Regulations, title 4, section 12200.7,
32 subdivision (b)(21),
- 33 (11) The owner has failed to have the proposition player contract
34 approved, in violation of California Code of Regulations, title 4, section
35 12200.7, subdivision (b)(22), or section 12200.9,
- 36 (12) The owner has authorized or provided payment to or receipt by
37 the gambling establishment, in violation of California Code of
38 Regulations, title 4, section 12200.7, subdivision (c),

- 1 (13) The owner has been cheating, or has induced or instructed
2 another to cheat, pursuant to Penal Code, sections 337t, 337u, 337v,
3 337w, or 337y,
- 4 (14) The owner has committed extortion (as that term is defined in
5 Chapter 7 of Title 13 of Part 1 of the Penal Code, commencing with
6 section 518),
- 7 (15) The owner has committed loan-sharking (as that term is used in
8 Civil Code section 1916-3, subdivision (b)),
- 9 (16) The owner has conducted or negotiated illegal sales of controlled
10 substances (as that term is used in Chapter 1 (commencing with
11 Section 11000) of Division 10 of the Health and Safety Code) or
12 dangerous drugs (as that term is used in Business and Professions
13 Code, section 4022),
- 14 (17) The owner has committed bribery (as that term is used in Penal
15 Code section 67 or 67.5),
- 16 (18) The owner has committed money laundering (as that term is used
17 in Chapter 10 of Title 7 of Part 1 of the Penal Code, commencing with
18 Section 186.9),
- 19 (19) The owner has granted rebates to patrons without full disclosure,
20 in violation of California Code of Regulations, title 4, section 12200.7,
21 subdivision (19),
- 22 (20) The owner has violated the provisions regarding playing books
23 listed in California Code of Regulations, title 4, section 12200.13,
- 24 (21) The owner has committed any of the acts listed in California
25 Code of Regulations, title 4, section 12200.18, subdivisions (a), (b), (d),
26 (e), (f), (i), (j), (l), (m), or (n), or
- 27 (22) The owner is providing services as a gambling business without
28 first obtaining a gambling business registration or license, in violation of
29 California Code of Regulations, title 4, section 12220 et seq.

30 (c) A supervisor, player, or other employee, as those terms are used in California
31 Code of Regulations, title 4, section 12200, shall be subject to a minimum
32 monetary penalty of \$100 and/or a suspension of three days and a maximum
33 penalty of revocation if the Commission finds that:

- 34 (1) The supervisor, player, or other employee has violated or is out of
35 compliance with conditions, limitations, or orders or directives imposed
36 by the Commission, either as part of an initial grant of license or
37 registration, renewal of such, or pursuant to disciplinary action,

- 1 (2) The supervisor, player, or other employee has engaged in any
2 dishonest, fraudulent, or deceptive activities in connection with
3 controlled gambling or the provision of proposition player services,
- 4 (3) The supervisor, player, or other employee has committed any act
5 punishable as a crime, not otherwise listed in these disciplinary
6 guidelines, which substantially relates to the duties and qualifications of
7 the licensee or registrant, or which occurred in a gambling
8 establishment or the associated adjacent property, or
- 9 (4) The supervisor, player, or other employee has engaged in any conduct
10 on the premises of the gambling establishment or in connection with
11 controlled gambling or the provision of proposition player services
12 which is inimical to the health, welfare, or safety of the general public.
- 13 (5) The supervisor, player, or other employee has either failed to wear a
14 badge, worn a badge which was covered, worn a false or altered badge
15 or a badge issued for a different gambling establishment, worn another
16 person's badge, or worn an expired badge,
- 17 (6) The supervisor, player, or other employee has engaged in fighting or
18 has intentionally provoked a patron or employee at a gambling
19 establishment,
- 20 (7) The supervisor, player, or other employee has maliciously or willfully
21 destroyed or damaged the property of the gambling establishment,
22 employee, or patron,
- 23 (8) The supervisor, player, or other employee has accepted tips, gratuities,
24 complimentaries, or gifts from gambling establishment staff or patrons
- 25 (9) The supervisor, player, or other employee has committed any of the
26 acts listed in California Code of Regulations, title 4, section 12220.18,
27 subdivision (a), or
- 28 (10) The supervisor, player, or other employee has failed to comply
29 with California Code of Regulations, title 4, section 12200.21.
- 30 (d) A supervisor, player, or other employee, as those terms are used in California
31 Code of Regulations, title 4, section 12200, shall be subject to a minimum
32 monetary penalty of \$300 and/or a suspension of 7 days and a maximum penalty
33 of revocation if the Commission finds that:
 - 34 (1) The supervisor, player, or other employee has intentionally
35 misrepresented a material fact on an application, request to convert, or
36 supplemental application for licensure, registration, or approval,
 - 37 (2) The supervisor, player, or other employee has been cheating, pursuant
38 to Penal Code, section 337x,

- (3) The supervisor, player, or other employee has committed extortion (as that term is defined in Chapter 7 of Title 13 of Part 1 of the Penal Code, commencing with section 518),
- (4) The supervisor, player, or other employee has committed loan-sharking (as that term is used in Civil Code section 1916-3, subdivision (b)),
- (5) The supervisor, player, or other employee has conducted or negotiated illegal sales of controlled substances (as that term is used in Chapter 1 (commencing with Section 11000) of Division 10 of the Health and Safety Code) or dangerous drugs (as that term is used in Business and Professions Code, section 4022),
- (6) The supervisor, player, or other employee has committed bribery (as that term is used in Penal Code section 67 or 67.5),
- (7) The supervisor, player, or other employee has committed money laundering (as that term is used in Chapter 10 of Title 7 of Part 1 of the Penal Code, commencing with Section 186.9),
- (8) The supervisor, player, or other employee has granted rebates to patrons without full disclosure, in violation of California Code of Regulations, title 4, section 12200.7, subdivision (19), or
- (9) The supervisor, player, or other employee has committed any of the acts listed in California Code of Regulations, title 4, section 12200.18 subdivisions (b), (c), (d), (f), (g), (h), (i), (j), or (k).

(e) A license or registration granted by the Commission for an owner of a third-party provider of proposition player services, or for a supervisor, player, or other employee, as those terms are used in California Code of Regulations, title 4, section 12200, shall be subject to revocation if the Commission finds that:

- (1) The owner, supervisor, player, or other employee has been convicted of a felony or a crime of moral turpitude that would disqualify the holder from licensure, or
- (2) The owner, supervisor, player, or other employee no longer meets any criterion for eligibility, pursuant to California Code of Regulations, title 4, sections 12204 or 12200.11.

Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19854, 19859, 19875, 19912, 19913, 19914, 19920, 19922, 19924, 19930, 19931 19971, and 19984 of the Business and Professions Code.

Reference: Sections 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878, 19880, 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941 and 19942 of the Business and Professions Code.

1 **12562. Disciplinary Guidelines for Gambling business licensees or registrants**

2 (a) If the Commission finds that an owner of a gambling business, as that term is
3 used in California Code of Regulations, title 4, section 12220, is out of
4 compliance with any mandatory duty specified in or imposed by the Gambling
5 Control Act or any Commission or Division regulation, which is not otherwise
6 listed in these disciplinary guidelines, the penalty shall be one day of suspension
7 of gambling business services from either specified gambling establishments or
8 all gambling establishments, as the circumstances and factors in mitigation or
9 aggravation apply, which may be stayed by the Commission upon the payment of
10 a monetary penalty as follows:

- 11 (1) *If the gambling business has 5 or less licensees or registrants, the*
12 *penalty shall be between \$50 and \$100, based upon factors in*
13 *mitigation and aggravation.*
- 14 (2) *If the gambling business has 6 to 12 licensees or registrants, the*
15 *penalty shall be between \$100 and \$2000, based upon the factors in*
16 *mitigation and aggravation.*
- 17 (3) *If the gambling business has 13 or more licensees or registrants, the*
18 *penalty shall be between \$2000 and \$10000, based upon the factors*
19 *in mitigation and aggravation.³*

20 (b) A license or registration granted by the Commission for an owner of a
21 gambling business, as that term is used in California Code of Regulations, title 4,
22 section 12220, shall be subject to a minimum monetary penalty of \$2500 and/or
23 a discipline of suspension of seven days from either specified gambling
24 establishments or all gambling establishments, as the circumstances and factors
25 in mitigation or aggravation apply, and a maximum discipline of revocation by the
26 Commission if the Commission finds that:

- 27 (1) The owner has violated or is out of compliance with any conditions,
28 limitations, orders, or directives imposed by the Commission, either as
29 part of an initial grant of license or registration, renewal of such, or
30 pursuant to disciplinary action,
- 31 (2) The owner has been found, by any administrative tribunal or court, to
32 have violated or be in violation of any law involving or relating to
33 gambling,
- 34 (3) The owner has intentionally misrepresented a material fact on an
35 application or supplemental application for licensure or registration,

³ Note to Reader: This section will be modified based upon comments received during the 45-day notice and comment period and the public hearing.

- 1 (4) The owner has engaged in any dishonest, fraudulent, or deceptive
2 activities in connection with controlled gambling or the provision of
3 proposition player services as a gambling business,
- 4 (5) The owner has violated any law or ordinance with respect to campaign
5 finance disclosure or contribution limitations, pursuant to Business and
6 Professions Code, section 19982,
- 7 (6) The owner has violated California Code of Regulations, title 4,
8 regarding annual fees for gambling businesses,
- 9 (7) The owner has been cheating, or has induced or instructed another to
10 cheat, pursuant to Penal Code, sections 337t, 337u, 337v, 337w, or
11 337y,
- 12 (8) The owner has committed extortion (as that term is defined in Chapter 7
13 of Title 13 of Part 1 of the Penal Code, commencing with section 518),
- 14 (9) The owner has committed loan-sharking (as that term is used in Civil
15 Code section 1916-3, subdivision (b)),
- 16 (10) The owner has conducted or negotiated illegal sales of controlled
17 substances (as that term is used in Chapter 1 (commencing with
18 Section 11000) of Division 10 of the Health and Safety Code) or
19 dangerous drugs (as that term is used in Business and Professions
20 Code, section 4022),
- 21 (11) The owner has committed bribery (as that term is used in Penal
22 Code section 67 or 67.5),
- 23 (12) The owner has committed money laundering (as that term is used
24 in Chapter 10 of Title 7 of Part 1 of the Penal Code, commencing with
25 Section 186.9),
- 26 (13) The owner is providing services as a gambling business without
27 first obtaining a gambling business registration or license, in violation of
28 California Code of Regulations, title 4, section 12220 et seq., or
- 29 (14) The owner has committed any of the acts listed in California
30 Code of Regulations, title 4, section 12220.18, subdivisions (a), (b), (d),
31 (e), (f), (l), or (m).

32 (c) A supervisor, player, or other employee, as those terms are used in California
33 Code of Regulations, title 4, section 12220, shall be subject to a minimum
34 monetary penalty of \$100 and/or a suspension of three days and a maximum
35 penalty of revocation if the Commission finds that:

- 36 (1) The supervisor, player, or other employee has violated or is out of
37 compliance with conditions, limitations, or orders or directives imposed
38 by the Commission, either as part of an initial grant of license or
39 registration, renewal of such, or pursuant to disciplinary action,

- 1 (2) The supervisor, player, or other employee has engaged in any
2 dishonest, fraudulent, or deceptive activities in connection with
3 controlled gambling,
- 4 (3) The supervisor, player, or other employee has committed any act
5 punishable as a crime, not otherwise listed in these disciplinary
6 guidelines, which substantially relates to the duties and qualifications of
7 the licensee or registrant, or which occurred in a gambling
8 establishment or the associated adjacent property,
- 9 (4) The supervisor, player, or other employee has engaged in any conduct
10 on the premises of the gambling establishment or in connection with
11 controlled gambling which is inimical to the health, welfare, or safety of
12 the general public.
- 13 (5) The supervisor, player, or other employee has either failed to wear a
14 badge, worn a badge which was covered, worn a false or altered badge
15 or a badge issued for a different gambling establishment, worn another
16 person's badge, or worn an expired badge,
- 17 (6) The supervisor, player, or other employee has engaged in fighting or
18 has intentionally provoked a patron or employee at a gambling
19 establishment,
- 20 (7) The supervisor, player, or other employee has maliciously or willfully
21 destroyed or damaged the property of the gambling establishment,
22 employee, or patron,
- 23 (8) The supervisor, player, or other employee has accepted tips, gratuities,
24 complimentaries, or gifts from gambling establishment staff or patrons,
- 25 (9) The supervisor, player, or other employee has committed any of the
26 acts listed in California Code of Regulations, title 4, section 12220.18,
27 subdivision (a), or
- 28 (10) The supervisor, player, or other employee has failed to comply
29 with California Code of Regulations, title 4, section 12220.21.

30 (d) A supervisor, player, or other employee, as those terms are used in California
31 Code of Regulations, title 4, section 12220, shall be subject to a minimum
32 penalty of a monetary penalty of \$300 and/or a suspension of 7 days and a
33 maximum penalty of revocation if the Commission finds that:

- 34 (1) The supervisor, player, or other employee has intentionally
35 misrepresented a material fact on an application, request to convert, or
36 supplemental application for licensure, registration, or approval,
- 37 (2) The supervisor, player, or other employee has been cheating, pursuant
38 to Penal Code, section 337x,

1 (3) The supervisor, player, or other employee has committed extortion (as
2 that term is defined in Chapter 7 of Title 13 of Part 1 of the Penal Code,
3 commencing with section 518),

4 (4) The supervisor, player, or other employee has committed loan-sharking
5 (as that term is used in Civil Code section 1916-3, subdivision (b)),

6 (5) The supervisor, player, or other employee has conducted or negotiated
7 illegal sales of controlled substances (as that term is used in Chapter 1
8 (commencing with Section 11000) of Division 10 of the Health and
9 Safety Code) or dangerous drugs (as that term is used in Business and
10 Professions Code, section 4022),

11 (6) The supervisor, player, or other employee has committed bribery (as
12 that term is used in Penal Code section 67 or 67.5),

13 (7) The supervisor, player, or other employee has committed money
14 laundering (as that term is used in Chapter 10 of Title 7 of Part 1 of the
15 Penal Code, commencing with Section 186.9),

16 (8) The supervisor, player, or other employee has committed any of the
17 acts listed in California Code of Regulations, title 4, section 12220.18
18 subdivisions (c), (d), (f), (g), (h), (i), (j), or (k).

19 (e) A license or registration granted by the Commission for an owner of a
20 gambling business, or for a supervisor, player, or other employee, as those terms
21 are used in California Code of Regulations, title 4, section 12220, shall be subject
22 to revocation if the Commission finds that:

23 (1) The owner, supervisor, player, or other employee has been convicted of a
24 felony or a crime of moral turpitude that would disqualify the holder from
25 licensure, or

26 (2) The owner, supervisor, player, or other employee no longer meets any
27 criterion for eligibility, pursuant to California Code of Regulations, title 4,
28 sections 12224 or 12220.11.

29
30 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19859, 19875,
31 19912, 19913, 19914, 19920, 19922, 19924, 19930, 19931, and 19971 of the Business and
32 Professions Code.

33 Reference: Sections 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878, 19880,
34 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941 and 19942 of the
35 Business and Professions Code.

36 37 **12564. Disciplinary Guidelines for Manufacturers or Distributors**

38 A registration granted by the Commission for a manufacturer or distributor of
39 gambling equipment shall be subject to suspension or revocation by the
40 Commission if the Commission finds that the registrant has violated California Code
41 of Regulations, title 4, section 12303, subdivision (b).

1
2 Authority: Sections 19801(g), 19811, 19823, 19824, 19827(a)(1), 19840, 19841(r), 19850, 19854,
3 19859, 19875, 19912, 19913, 19914, 19920, 19922, 19924, 19930, 19931, and 19971 of the
4 Business and Professions Code.

5 Reference: Sections 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878, 19880,
6 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941 and 19942 of the
7 Business and Professions Code.

8
9 **12566. Disciplinary Guidelines for Gambling Establishments**

10 (a) If the Commission finds that a gambling establishment is out of compliance with
11 any mandatory duty specified in or imposed by the Gambling Control Act or any
12 Commission or Division regulation, or any local ordinance, which is not otherwise
13 listed in these disciplinary guidelines, pursuant to Business and Professions
14 Code section 19922, the penalty shall be one day of suspension, stayed upon
15 the payment of a penalty, within the guidelines of Business and Professions
16 Code, sections 19930, subdivision (c), and 19943, subdivision (b), as follows:

17 (1) If the establishment has five tables or less and has an annual gross
18 gaming revenue up to and including \$10,000, the penalty shall be between
19 \$50 and \$100, based upon the factors in mitigation and aggravation.

20 (2) If the establishment has ten tables or less or has an annual gross gaming
21 revenue over \$10,000, up to and including \$200,000, the penalty shall be
22 between \$100 and \$2000, based upon the factors in mitigation and
23 aggravation.

24 (3) If the establishment has more than ten tables or has an annual gross
25 gaming revenue over \$200,000, the penalty shall be between \$2000 and
26 \$10,000, based upon the factors in mitigation and aggravation.

27 (b) A state gambling license for a gambling establishment granted by the
28 Commission shall be subject to a minimum discipline of suspension for seven
29 days of normal business operation and a maximum discipline of revocation,
30 which may be stayed on terms and conditions and any monetary penalty as
31 described in section 12554(d)(7) of this chapter, if the Commission finds that the
32 establishment has:

33 (1) Violated or is out of compliance with conditions, limitations, or orders or
34 directives imposed by the Commission, either as part of an initial grant of
35 license or registration, renewal of such, or pursuant to disciplinary action,

36 (2) Been found, by any administrative tribunal or court, to have violated or be
37 in violation of any law involving or relating to gambling,

38 (3) Intentionally misrepresented a material fact on an application or
39 supplemental application for licensure or registration,

40 (4) Failed to maintain adequate financing for chips in use or for player banks,

- 1 (5) Failed to report the operation of unregistered gambling businesses when
2 the owners or management of the establishment knew or should have
3 known that these gambling businesses were operating in the
4 establishment,
- 5 (6) Concealed or did not disclose ownership, interest, or key employee status,
6 pursuant to Business and Professions Code, sections 19850, 19851,
7 19853, 19854, 19855, 19883, or 19901,
- 8 (7) Violated Business and Professions Code, section 19878 (contract with,
9 employment of, services provided by person(s) with denied, suspended, or
10 revoked license or registration),
- 11 (8) Violated Business and Professions Code, section 19912 (failure to have
12 valid work permit),
- 13 (9) Violated Business and Professions Code, section 19921 (failure to exclude
14 persons under 21 from access to gambling areas),
- 15 (10) Violated Business and Professions Code, section 19924 (failure to
16 maintain security controls),
- 17 (11) Violated Business and Professions Code, section 19941 (failure to
18 prohibit persons under 21 from gambling, loitering, being employed in
19 gambling areas, or using fraudulent identification to gamble, loiter, or be
20 employed),
- 21 (12) Violated Business and Professions Code, section 19942 (willful failure
22 to report or pay license fee),
- 23 (13) Violated any law or ordinance with respect to campaign finance
24 disclosure or contribution limitations, pursuant to Business and Professions
25 Code, section 19982,
- 26 (14) Provided false or intentionally incomplete financial data, in violation of
27 California Code of Regulations, title 4, chapter 7, article 4 (commencing
28 with section 12400), regarding accounting and financial reporting,
- 29 (15) Refused to allow Division or Commission inspection of records or
30 information required to be maintained pursuant to California Code of
31 Regulations, title 4, chapter 7, article 4 (commencing with section 12400),
32 regarding accounting and financial reporting,
- 33 (16) Violated California Code of Regulations, title 11, section 2050,
34 subsection (a) (failure to maintain owner licensee or key employee on
35 premises),
- 36 (17) Violated California Code of Regulations, title 11, section 2052 (failure to
37 furnish information regarding employees), or
- 38 (18) Violated California Code of Regulations, title 11, section 2070
39 (unsuitable gaming activities).

1 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19859, 19875,
2 19912, 19913, 19914, 19920, 19922, 19924, 19930, 19931 19971, and 19984 of the
3 Business and Professions Code.

4 Reference: Sections 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878, 19880,
5 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941 and 19942 of the
6 Business and Professions Code.

7
8 **12568. Disciplinary Guidelines for Holders of Licenses, Findings of Suitability,
9 or Approvals**

10 (a) A license for an individual or any finding of suitability or approval granted by the
11 Commission shall be subject to a minimum discipline of suspension for three
12 days of normal business operation and a maximum discipline of revocation,
13 which may be stayed on terms and conditions and any monetary penalty as
14 described in section 12554(d)(7) of this chapter, if the Commission finds that the
15 holder has:

- 16 (1) Violated or is out of compliance with conditions, limitations, or orders or
17 directives imposed by the Commission, either as part of an initial grant of
18 license or registration, renewal of such, or pursuant to disciplinary action,
19
20 (2) Engaged in any dishonest, fraudulent, or deceptive activities in connection
21 with controlled gambling,
22
23 (3) Committed any act punishable as a crime, not otherwise listed in these
24 disciplinary guidelines, which substantially relates to the duties and
25 qualifications of the licensee or registrant, or which occurred in a gambling
26 establishment or the associated adjacent property, or
27 (4) Engaged in any conduct on the premises of the gambling establishment or
in connection with controlled gambling which is inimical to the health,
welfare, or safety of the general public.

28 (b) A license, finding of suitability, or approval granted by the Commission shall be
29 subject to a minimum discipline of suspension for seven days of normal
30 scheduled work and a maximum discipline of revocation, which may be stayed
31 on terms and conditions and any monetary penalty as described in section
32 12554(d)(7) of this chapter, if the Commission finds that the holder has:

- 33 (1) Intentionally misrepresented a material fact on an application or
34 supplemental application for licensure or registration,
35
36 (2) Intentionally provided untruthful responses during an investigation by the
37 Division, pursuant to Business and Professions Code, section 19827,
38
39 (3) Willfully interfered with the performance of Commission or Division duties,
40 pursuant to Business and Professions Code, section 19944,
(4) Committed an act prohibited by Chapter 9 (commencing with section 319)
and Chapter 10 (commencing with section 330) of Title 9 of Part 1 of the

- 1 Penal Code, including but not limited to operation of a banked or
2 percentage game (Penal Code, section 330), possession or sale of a slot
3 machine (Penal Code, section 330b) or agreement for slot machine payout
4 (Penal Code, section 330.1), bookmaking (Penal Code, section 337), and
5 cheating (Penal Code, section 337x),
- 6 (5) Committed extortion (as that term is defined in Chapter 7 of Title 13 of Part
7 1 of the Penal Code, commencing with section 518),
- 8 (6) Committed loan-sharking (as that term is used in Civil Code section 1916-
9 3, subdivision (b)),
- 10 (7) Conducted or negotiated illegal sales of controlled substances (as that
11 term is used in Chapter 1 (commencing with Section 11000) of Division 10
12 of the Health and Safety Code) or dangerous drugs (as that term is used in
13 Business and Professions Code, section 4022),
- 14 (8) As an owner licensee, not taken reasonable steps to prevent the crimes
15 listed in subsections (b)(5) through (b)(8) from occurring at the gambling
16 establishment, when the owner licensee knew or should have known that
17 these crimes were being committed,
- 18 (9) Committed bribery (as that term is used in Penal Code section 67 or 67.5),
- 19 (10) Committed money laundering (as that term is used in Chapter 10 of
20 Title 7 of Part 1 of the Penal Code, commencing with Section 186.9),
- 21 (11) Been convicted of a crime involving fiscal dishonesty, including but not
22 limited to tax evasion (26 U.S.C. § 7201),
- 23 (12) Been convicted in any jurisdiction of any offense involving or relating to
24 gambling, or
- 25 (13) Been found to have violated or be in violation of any law involving or
26 relating to gambling in a final administrative decision in any jurisdiction.
- 27 (c) A state gambling license, finding of suitability, or approval granted by the
28 Commission shall be subject to revocation by the Commission on any of the
29 following grounds:
- 30 (1) If the Commission finds the holder to have been convicted of a felony or a
31 crime of moral turpitude that would disqualify the holder from licensure,
- 32 (2) If the Commission finds the holder to have engaged in or committed a
33 prohibited act specified in Business and Professions Code section 19863
34 (no more than one gambling establishment at racetrack),
- 35 (3) If the Commission finds the holder no longer meets any criterion for
36 eligibility, qualification, suitability or continued operation, including those
37 set forth in Business and Professions code sections 19857, 19858, or
38 19880, as applicable, or

1 (4) If the Commission finds the holder currently meets any of the criteria for
2 mandatory denial of an application set forth in Business and Professions
3 Code sections 19859 or 19860.

4 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19859, 19875,
5 19912, 19913, 19914, 19920, 19922, 19924, 19930, 19931 19971, and 19984 of the
6 Business and Professions Code.

7 Reference: Sections 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878, 19880,
8 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941 and 19942 of the
9 Business and Professions Code.

10
11 **12572. Precedential Decisions.**

12 Pursuant to Government Code section 11425.60, the Commission, at a noticed
13 Commission meeting, may:

14 (a) Designate all or part of any of the following as a precedential decision:

15 (1) An adopted final decision, or

16 (2) An adopted stipulated decision pursuant to a settlement agreement.

17 (b) Reverse in whole or in part the prior designation of a decision as a
18 precedential decision.

19
20 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19854, 19912, 19914, 19920, 19922,
21 19924, 19930, and 19971 of the Business and Professions Code.

22 Reference: Sections 19857, 19858, 19859, 19862, 19870, 19878, 19912, 19913, 19914, 19930, and
23 19931 of the Business and Professions Code. Section 11425.60 of the Government Code.

CALIFORNIA GAMBLING CONTROL COMMISSION

Physical Address: 2399 Gateway Oaks Drive, Suite 100 • Sacramento, CA 95833-4231

Mailing Address: P.O. Box 526013 • Sacramento, CA 95852-6013

Phone: (916) 263-0700 • FAX: (916) 263-0452

**Memorandum**

DATE: April 3, 2006

TO: Chairman and Commissioners

FROM: Steve Giorgi, Executive Director

SUBJECT: *Proposed Commission Meeting Dates for July 1, 2006 through December 31, 2006*

The following dates are being proposed for the Commission's meetings for the remaining 2006 calendar year.

- ⇒ Thursday, July 20, 2006
- ⇒ Thursday, August 3, 2006
- ⇒ Thursday, August 17, 2006
- ⇒ Thursday, September 7, 2006
- ⇒ Thursday, September 21, 2006
- ⇒ Thursday, October 5, 2006
- ⇒ Thursday, October 19, 2006
- ⇒ Thursday, November 2, 2006
- ⇒ Thursday, November 16, 2006
- ⇒ Thursday, December 7, 2006

Attached for your information, is a calendar reflecting the State holidays for the six-month period remaining in 2006.

Attachment

cc: Cy Rickards
Terri A. Ciau

RECEIVED
BY

MICHAEL FRANCHETTI
Attorney at Law

CA

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RECEIVED
BY
CA GAMBLING CONTROL
COMMISSION

Via Messenger

January 31, 2006

Dean Shelton
Chairman
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento CA 95833

Re: Lucky Chances Casino

Dear Chairman Shelton:

I am contacting you on behalf of my client Lucky Chances Casino to attempt to clarify an issue which was discussed during the December Commission hearing at which the Lucky Chances Casino gambling license was approved. This issue was raised by representatives of the Artichoke Joes Casino which appeared in opposition to the issuance of the Lucky Chances Casino license.

The issue involves 1) the validity of Lucky Chances using multiple betting squares in Asian games at the Casino; and 2) the validity of Lucky Chances "stacking" wagers or bets at Asian game tables. In my opinion the testimony presented by Artichoke Joes was misleading and confusing, and I hope by this letter to explain the legal basis for both of these wagering protocols.

Summary

In summary this analysis points out that there is no state law which prohibits multiple betting slots. There is no state law which prohibits stacking of bets. There is no state law which grants the Division or the Commission the authority to establish wagering limits at gambling establishments or to prohibit multiple betting slots or stacking of multiple bets in jurisdictions which allow such practices.

The authority to establish and enforce wagering limits at gambling establishments has been expressly delegated to the local jurisdiction.

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BY

FEB 01 2006

CA GAMBLING CONTROL
COMMISSION

The only question involved in the multiple squares and stacking issue is whether or not the local ordinance prohibits such wagering protocols. This is an issue of interpretation which is within the jurisdiction of the local agency which has authorized the operation of a gambling establishment within its boundaries.

The Town of Colma has expressly found that multiple squares and stacking are authorized by its wagering limit ordinance. This interpretation is reasonable and consistent with its ordinance, and should be supported by the Commission.

Wagering Limit Compliance is a Local Issue

The issue of whether or not wagering protocols such as multiple squares and stacking of chips are allowed by the wagering limits ordinance of a specific jurisdiction is a matter for that jurisdiction to determine. So long as the local jurisdiction's interpretation of its ordinance is reasonable and is not inconsistent with the Gambling Control Act the Division or the Commission should not overrule that interpretation.

This is because the enforcement of an ordinance adopted by a local jurisdiction is specifically delegated to that local jurisdiction by section 19960 of the Business and Professions Code¹. This section states that the Gambling Control Act does not "prohibit the enactment, amendment, or enforcement of any ordinance by any city....relating to gambling establishments that is not inconsistent with this chapter."

Enforcement of an ordinance by necessity requires that the jurisdiction interpret the meaning and intent of that ordinance. When that ordinance relates to wagering limits that interpretation falls within the jurisdiction granted by Section 19960. This is because an interpretation relating to wagering limits cannot be "inconsistent" with the Gambling Control Act.

The reason for this is that the Gambling Control Act does not set standards for wagering limits nor does it delegate to the Division or the Commission the authority to set such standards. Rather the Act places exclusive responsibility for establishing wagering limit standards in the local jurisdiction licensing that gambling establishment. This is done through Section 19860 which specifically requires, with no requirement as to content, that a local jurisdiction enact an "ordinance governing..... (4) Wagering limits in gambling establishments..."

In effect since the Gambling Control Act does not address the substance of a wagering limit ordinance there is nothing in the Gambling Control Act with which the jurisdiction's interpretation of its ordinance can be inconsistent, and the authority granted the local jurisdiction by section 19960 is controlling. In such case the local jurisdiction's interpretation and application of the ordinance need only be consistent with the wagering limit ordinance itself in order to be in compliance with the law.

¹ All section references are to the Business and Professions Code.

The Colma Ordinance Expressly Authorizes Multiple Squares and Stacking

In response to the Division of Gambling Controls allegation that the Colma wagering limit ordinance adopted in 1998 allowing for unlimited wagering was not valid pursuant to Sections 19961 and 19962, Colma recently amended its wagering limit ordinance to reinstate the exact language of the ordinance in effect in 1996.

The most of the re-enacted language in the ordinance is identical to the pre-1998 language and in pertinent part reads:

(1) No cardroom permittee, owner, or employee shall allow any person playing in any poker game to make any single bet or wager in excess of two hundred dollars (\$200.00)....

(2) No cardroom permittee, owner or employee shall allow any person playing in any Asian game to make any single bet or wager per betting slot in excess of two hundred dollars (\$200.00)

In the same amendment Colma also expressly codified its interpretation that these sections allow multiple square wagering and stacking of bets. It did this by enacting the following new language;

(5) A cardroom permittee may allow betting on multiple betting spots and the stacking of multiple bets provided that the betting rules or protocols shall be submitted to the City Manager for prior approval.

Accepted rules of statutory interpretation demonstrate that this interpretation is not unreasonable or arbitrary and should be respected by the Commission.

Statutory Interpretation

Fundamental rules of statutory interpretation require the following

1. Look at the plain meaning of the language used;
2. Give meaning to every word and phrase.
- 3 Give great weight to the interpretation made by the agency responsible for establishing and enforcing the law.

Dean Shelton
January 31, 2006
Page Four

Multiple Squares

The language of the Colma ordinances expressly refers to a single bet or wager **per betting slot**. The plain meaning of the words "per betting slot" clearly demonstrates that the ordinance envisions more than one betting slot. If it was not intended to allow more than one betting slot there would have been no need for the use of the word "per".

The Colma ordinance does not establish a specific maximum total amount which a person may bet or wager in an Asian game. Thus the number of betting slots allowed is not restricted by a specific maximum dollar amount which may be wagered in a game.

If it had been the intent of the Town of Colma to limit the number of betting slots which could be used in an Asian game the ordinance would have limited that number by setting a maximum number of betting slots which could be played in a game (e.g. "No more than three betting slots may be used in a game"). Similarly If it had been the intent of the Town of Colma to limit wagers by establishing a specific maximum total amount which could be wagered or bet in an Asian game the ordinance would have expressly included language establishing those limits (e.g. "no person may bet or wager more than a total of \$1,000 in any game").

The Town of Colma ordinance does not contain such language.

The Town of Colma which has the sole responsibility for enacting and enforcing the wagering limit ordinance has expressly stated that its interpretation of its own ordinance allows multiple square wagering. This interpretation is consistent with the language of the ordinance.

Stacking Multiple Bets

Applying the same rules of interpretation to the issue of stacking bets demonstrates that Colma's interpretation of its ordinance as allowing stacking is valid.

There is no express prohibition against stacking multiple bets in the ordinance. There is no express requirement that bets be actually placed on a betting spot. The absence of such prohibitions is consistent with the method used by the Town of Colma to establish wagering limits.

The manner in which Colma chose to establish maximum wagering limits in Asian games was to create a formula which determines the maximum wager allowable in Asian games. The maximum allowable wager is determined by multiplying A) the \$200 the maximum wager by B) the number of better slots on the table.

The stacking of chips has no impact on this formula and does not result in wagers in excess of the formula's restrictions. The formula controls, for example, whether a player individually places a \$200 chip on each of ten betting slots or places ten 200 chips at a position ahead of the ten betting slots. The maximum bet is the same and is always determined by multiplying \$200 times the number of betting slots.

Dean Shelton
January 31, 2006
Page Five

Significantly the stacking of multiple bets protocol furthers the public policy goal of ensuring more efficient operation and better control of Asian games which use the multiple betting slot formula. This is because it is easier for the dealer to control and follow wagers if they are stacked than if they are individually placed on multiple betting slots. This is an important consideration for the enforcing agency because it directly relates to the integrity of games played within its jurisdiction.

In view of the absence of any prohibition against stacking, the absence of any requirement that wagers be placed on a specific betting slot, the fact that the maximum wager will always be the same with or without stacking, and the public policy benefits of stacking multiple wagers on a multiple wagering square table, Colma's interpretation of its wagering ordinance as allowing the wagering protocol of stacking is reasonable and consistent with its ordinance.

The Commission Should Not Object to Colma Allowing Multiple Squares and Stacking

The Town of Colma has interpreted its own ordinance as allowing both multiple betting slots and stacking of multiple bets. Its interpretation is not arbitrary or unreasonable, but is based on a reasonable interpretation of its ordinance which is consistent with the wagering limit formula established by that ordinance, and which is consistent with improving the quality of play at multi square tables.

In view of the above the Commission should not object to the use of multiple squares and the stacking of bets at Lucky Chances Casino.

I am sending copies of this letter to Mr. Giorgi and Mr. Rickards, and would appreciate the opportunity to meet with you and them to discuss this issue which is of great importance to my client. The goal of such a meeting would be to obtain agreement from the Commission that these wagering protocols are authorized pursuant to the Town of Colma wagering limit ordinance.

Sincerely,
Original signed by
MICHAEL FRANCHETTI

Michael Franchetti

cc: Steve Giorgi
Cyrus Rickards

MICHAEL FRANCHETTI
Attorney at Law

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**RECEIVED
BY**

Via Messenger

March 21, 2006

2 2 2006
**CA GAMBLING CONTROL
COMMISSION**

Received by Licensing

MAR 22 2006

CGCC

Dean Shelton
Chairman
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento CA 95833-4231

Re: Lucky Chances Casino

Dear Chairman Shelton:

I am contacting you on behalf of my client Lucky Chances Inc., which owns and operates the Lucky Chances Casino, concerning the Federal grand jury indictment recently filed against Rene Medina, the sole shareholder of Lucky Chances Inc.

The indictment alleges violations of the Internal Revenue Code involving three types of business deductions claimed by Mr. Medina during the period 1999-2001. The disputed deductions consist of deductions for printing of advertising literature, deductions for payments to various proposition player companies, and deductions for payments made for consulting and remodeling expenses at Lucky Chances Casino. The Internal Revenue Service alleges that these deductions either reflect payments which were never actually made or payments which did not qualify as a business expense. The alleged total tax underpayment for the three year period is approximately \$970,000.00.

Mr. Medina denies that these deductions were improper. He states that he fully paid all Federal income tax due during the 1999-2001 time period. He points out that during that period of time he reported taxable income in the amount of \$26,642,1912.00 and paid Federal income taxes in the amount of \$12,880,582.00. This is hardly, he states, the track record of a person attempting to avoid paying his fair share of Federal taxes.

Mr. Medina intends to vigorously defend against these charges. Of course under the law he is presumed innocent unless proven guilty.

Dean Shelton
Page Two
March 21, 2006

In the months to come, as this matter is resolved, Lucky Chances will continue to be operated as an ethical and honest business which provides excellent services to its patrons, and which contributes to the community through payment of taxes and support of worthwhile causes.

At the present time Mr. Medina is the CEO and President of Lucky Chances Inc. Because of health concerns, however, he has been in the process of divesting himself of ownership in his two major businesses. He recently completed the sale of Lucky Money Inc. which transmits money from the United States to the Philippines and other countries. This sale was made to his three sons and required the approval of the California Department of Financial Institutions.

In August, 2004, Mr. Medina signed a sale purchase agreement for Lucky Chances Inc. with the intent of selling Lucky Chances Inc. to his three sons. In September 2004 the sale documents as well as gambling license applications prepared by the three sons were submitted to the Division of Gambling Control.

At that time it was Mr. Medina's intent to withdraw his application for a state gambling license in favor of his sons. However the Division of Gambling Control requested that the sale and the new license applications be held in abeyance until it completed its review of Mr. Medina's application and Mr. Medina received a state gambling license. This request was complied with. In January 2005 the Division recommended that Mr. Medina be granted a state gambling license. In December 2005 the Commission issued that license.

Immediately after the issuance of the state gambling license to Mr. Medina, we updated the gambling license applications of his sons, and asked the Division to complete its background investigation. The sale documents are currently being reviewed by Commission staff.

Given the substantial delay incurred by our compliance with the Division's 2004 request we request that the Commission expedite its review of the sales agreement so that we can complete the sales transaction as soon as possible. This will allow a smooth transition of ownership at Lucky Chances Inc. It will also moot any issues which might be raised regarding the Lucky Chances gambling license in view of the indictment discussed above.

If you have any questions regarding this letter please don't hesitate to contact me.

Sincerely

**Original signed by
MICHAEL FRANCHETTI**

Michael Franchetti

cc:

Steve Giorgi
Cy Rickards
Terri Ciau
Cara Podesto

MICHAEL FRANCHETTI
Attorney at Law

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MAR 23 2006
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Via Messenger

March 22, 2006

Cy Rickards
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento CA 95833-4231

Re: Lucky Chances Casino

Dear Mr. Rickards:

This is to follow up on our conversation yesterday regarding the renewal of the Lucky Chances Inc./Rene Medina gambling license which terminates on April 30, 2006.

In that conversation I requested that the hearing on renewal be held at the Commission's April 20, 2006 meeting. This will allow the Commission to consider the results of the April 11, 2006 Colma election at which the voters of Colma are expected to approve an amendment to the Town gambling establishment ordinance authorizing unlimited wagering at Lucky Chances Casino.

As we briefly discussed it is our position that this election will meet the requirements of Business and Professions Code Section 19961 that increases in wagering limits exceeding 25% must be submitted to the voters for approval. As we also discussed it is our position that the moratorium on expansion of gaming established by Business and Professions Code Section 19962 does not apply to an election involving only an increase in wagering limits.

It is our intention to present evidence at the Commission hearing relating to the election. We will urge the Commission to remove the current license condition limiting the amount of wagers allowed at Lucky Chances Casino based on compliance with Section 19961.

To the extent necessary we will also present evidence demonstrating that a substantial number of jurisdictions in which there are gambling establishments operate under ordinances which are not in compliance with Business and Professions Code Section 19860, or which have been amended without compliance with Section 19961. We will further present evidence that the Division and the Commission

Cy Rickards
March 22, 2006
Page Two

are aware of these violations and, with the one exception of Lucky Chances Casino, have not taken any action to enforce the law against gambling establishments operating in these numerous jurisdictions. It is our belief that this conduct violates Lucky Chances' right to equal protection under the law.

We will also be prepared to present evidence and argument relating to the issues of multiple squares and "stacking" to the extent that these issues are considered by the Commission in relation to the Lucky Chances license.

It seems to me that the facts relating to the election can be stipulated to. The facts relating to the enforcement issue have been admitted to by representatives of the Division on a number of occasions. Hopefully they also can be the subject of a stipulation. If not we may need to have a representative of the Division testify at the hearing. We have no desire to unnecessarily prolong the hearing and are open to any suggestions you may have as to how to most efficiently establish a record for review of the Commission's actions should review be necessary.

I would appreciate it if you would advise me as soon as possible of the Commission's decision as to when the Lucky Chances Inc. /Rene Medina license renewal hearing will be held.

Sincerely,



Michael Franchetti

ROBB & ROSS

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

JOSEPH W. ROBB*
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* A PROFESSIONAL CORPORATION
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PLANNING, PROBATE AND TRUST
LAW, THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION

April 18, 2006

Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA

Re: Lucky Chances – Colma Ordinance Expanding Gambling

Dear Chairman Shelton and Commissioners Cruz and Vuksich:

I write on behalf of Artichoke Joe's, regarding issues raised at your December 15, 2005 meeting on the license application of Lucky Chances. The Commission asked the Division to investigate possible violations of the state moratorium on expansion of gambling due to an ordinance introduced the night before in Colma which allows one player to place bets in multiple squares at his or her seat and to stack those bets into one pile, thereby avoiding the town's newly restored \$200 betting limit. These issues have significant impacts on Artichoke Joe's, which is located just five miles from Lucky Chances. This letter presents Artichoke Joe's positions on these issues, previously conveyed to the Division of Gambling Control, and responds to arguments made by Mr. Franchetti in letters dated January 31, 2006 to Chairman Shelton and March 22, 2006 to Chief Counsel Cy Rickards.

For the reasons discussed below, our position can be briefly summarized as follows:

- Lucky Chances' installation and use of up to 60 betting slots at each seat in its Asian games, since enforcement of the \$200 betting limit, is an end run around the limit and Colma's ordinance allowing this violates the state moratorium on expansion of cardroom gaming.
- Lucky Chances' argument that disallowing its use of multiple squares would outlaw such use in many other jurisdictions is wrong; Lucky Chances' situation is unique.
- Lucky Chances' request that it be allowed to "stack" bets is a further end run around the \$200 betting limit.
- The "equal protection" claim is nothing more than litigation posturing.

Background

In 1992, the City Council of the Town of Colma decided that it wanted to allow a cardroom in the town, and in January 1993, it introduced a cardroom ordinance and held a public hearing on the ordinance. The ordinance contained a number of strict limitations, including a \$200 betting limit. Unlike any other ordinance in the state, it expressly applied not only to poker games but also to the new Asian games that had been introduced in California just a few years earlier. As required by the Gaming Registration Act, the city submitted the matter to the voters, and in the Voter's Pamphlet set forth the argument for allowing a cardroom, stating that it would be under "stringent" control. The voters approved the measure by only an eight vote margin.

In July 1995, the Legislature enacted a statewide moratorium on the expansion of cardroom gaming, to become effective January 1, 1996. Lucky Chances immediately sought changes in tables limits but not to the wagering limit. In a letter to the Colma City Attorney dated August 10, 1995, just days after the moratorium was first enacted, Mr. Franchetti wrote, "The recent enactment of SB 100 (Maddy) [Chapter 95-0387, Stats. 1995] prohibits the expansion of the number of tables authorized by a city ordinance after January 1, 1996 and maintains that moratorium until January 1, 1999. We believe that any provision limiting the number of tables at the Lucky Chances Club will, at the very least, provide the basis for third party legal actions claiming that any increase over the 50 tables proposed in the draft resolution violates that prohibition." (The Franchetti letter is attached hereto as Exhibit A.)

In 1998, just before Lucky Chances opened for the first time, Colma amended its ordinance to repeal the \$200 betting limit in violation of the moratorium.¹ Artichoke Joe's immediately raised the issue to the Division, but was informed that the issue would await review of the application for permanent license. For seven years, Lucky Chances operated under an illegal ordinance, causing my client substantial losses and forcing the termination of approximately 100 employees. Then, in July 2005, the Division determined that the 1998 amendment violated the state moratorium and informed Lucky Chances that they would have to implement a \$200 betting limit. Lucky Chances waited until December 14, just a day before the hearing on their application, to comply with the Division's direction. That night, the Colma City Council amended their ordinance to reinstate the \$200 limit.

¹ Lucky Chances claims that at the time they thought the moratorium did not apply since there was not yet gambling in the town. However, the 1995 letter from Mr. Franchetti clearly contradicts that argument. He was very aware that the moratorium might apply. It is also notable that Lucky Chances did not even ask the Division for its opinion. Rather, it simply chose to take its chances.

At the December 14 City Council hearing, Lucky Chances requested that a provision be added to the new ordinance to allow players to use multiple squares at a seat and to allow stacking of bets. Despite the fact that these two changes essentially gut the betting limit, and despite the fact that the language had not been submitted to the Division of Gambling Control for review and comment as required by Section 19961.1 of the Gambling Control Act, the Colma City Council included the requested language in the introduction of the ordinance.

The tables at Lucky Chances were modified on December 14 to include up to sixty betting squares at each seat at the table. Previously each seat had at most six betting squares. Instead of being limited to \$200, a bettor using every square at his or her seat can now bet up to \$12,000 per game, every few minutes. (See before and after pictures attached as Exhibit B hereto.)

This new scheme was clearly designed to circumvent the \$200 limit. In fact, Lucky Chances lead shift manager, Dustin Chase, admitted as much at the December 14, 2005, Colma City Council meeting, saying: "With the advent of implementing \$200 wagering limit, we had to come up with a system that could still allow our clients to make a decent size, a decent amount of bets in order to keep that game going. If all they could place is one \$200 wager, we obviously, we don't have a high limit game." (See Transcript attached as Exhibit C hereto.)

For the most part Mr. Franchetti's January 31 letter avoids the issue of violation of the moratorium. Mr. Franchetti discusses whether there is state law which prohibits multiple betting slots and whether wagering limits are governed by state or local law. However, these are not the issue. Rather, the issue is whether Colma's new ordinance violates the state moratorium on the expansion of gaming under Business & Professions Code §19962 and clearly it does.

Multiple Slots

Pai gow has been played in Asian countries and in Asian communities in this country for many years. Traditionally, there are multiple slots at each seat. However, under traditional rules, a single player never occupies more than one slot at a single seat. Rather, the other slots are for other bettors, either backline players or players at other seats who can bet on another player's hand. Even today at Artichoke Joe's, players never take more than one slot at a single seat. The rule is "one slot per player."

When the bet of a single player is divided among separate slots in Asian games, it should still be considered one bet. The Division has argued that the use of multiple slots is akin to placement of multiple bets in poker games. However, in poker games, bets are made seriatim and each bet has independent significance. One person bets at a time, and each bet is made in response to cards dealt or bets previously placed. Though a player might make multiple bets,

each bet is independent from the other bets. In contrast, in Asian games, bets are placed before cards are dealt and are placed all at once, not in rounds. There is no independent significance to bets placed by a single player in multiple squares. These "multiple" bets are nothing but one big bet by the player.

The fact that bets in multiple squares are in fact a single bet is underscored by the way the bets are placed and settled, and fees charged at Lucky Chances. A bettor places a large stack of chips on a slot signifying his bet, and the dealer then separates them and places them in \$200 increments in separate slots at that seat. One fee is charged for each line in which any slots are occupied regardless of the number of slots occupied. The bets are settled by placing a stack of chips at the end of each line of slots, as if the bets in the separate slots were just one bet.

Lucky Chances has argued that Colma interprets the old ordinance to allow multiple slots and stacking, and that the state must defer to Colma's interpretation. However, there are at least three legal defects with this position.

First, if an ordinance has a plain meaning and is not ambiguous, no "interpretation" is necessary or even allowed. Here, the plain meaning of the Colma ordinance's \$200 limit "per betting slot" is to limit to \$200 the amount that a single bettor can bet in a single game at each seat. There is no indication in the ordinance that a single bettor can occupy more than one betting slot at a single seat. Moreover, the term "slot" connotes a singular designated place. An item has its slot. A person has his or her slot. Thus, one definition of the term is "an allotted place." The Oxford American Dictionary, (2001).

There is a second legal defect in the argument that Colma's interpretation deserves deference. Another rule of construction holds that an interpretation must be reasonable. If one interpretation is reasonable and another unreasonable, the reasonable one is preferred. Here, Lucky Chances' interpretation of the ordinance produces an unreasonable result since it would read out of existence any meaningful limit. As Mr. Franchetti acknowledges, under his reading, there is no limit on the number of multiple slots and therefore, no real betting limit. Such an interpretation is unreasonable on its face as it effectively reads the limit out of existence.

The third legal defect is that deference to an agency interpretation is not automatic. Neither the Commission nor the courts are bound by Colma city attorney's interpretation. *Baldwin v. City of Los Angeles* (1999) 70 Cal.App.4th 819. Rather, the level of deference accorded a city's interpretation "turns on a legally informed commonsense assessment of its merits in the context before" the court. *Brown v. Fair Political Practices Com.* (2000) 84 Cal.App.4th 137, 150. Courts consider two broad categories of factors, those "indicating that the agency has a comparative interpretive advantage over the courts," and those "indicating that the interpretation is probably correct." *Yamaha Corp. Of America v. State Bd. Of Equalization*

(1998) 19 Cal.4th 1.) "Factors suggesting the agency is correct include indications of careful consideration by senior officials, particularly a collective decision reached after public notice and comment; evidence that the agency has consistently maintained the interpretation; and indications that the interpretation is contemporaneous with the enactment of the statute or regulation being interpreted." *Brown*, at p. 150. Mr. Franchetti ignored these rules, undoubtedly because Colma's interpretation does not satisfy them.

Here, as to the first category, the ordinance is not technical in nature, and the Town has no interpretative advantage warranting deference. The text is not "technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion." *Yamaha*, at p. 12. This is a simple provision setting a fixed limit.

As for the second category of factors, the interpretation was not carefully considered, was not contemporaneous with passage of the ordinance, and was not consistently held. No formal interpretation has ever been rendered. At best, there were a couple of casual comments at city council hearings in December 2005 and January 2006. A careful consideration would need to take account of the circumstances in 1993. At that time, the ordinance was drafted as the town was preparing for the election to approve the cardroom. The ordinance was subjected to a public hearing just a month before the election. The \$200 betting limit was just one of a number of strict requirements imposed on the cardroom, including prohibition on play by the owner, on house credit for players, and players being allowed to leave monies on account at the club. (See excerpts of Ordinance No. 450 attached hereto as Exhibit D.) In the 1993 Voter's Pamphlet, the City Council promised to adopt "stringent" requirements. (See Exhibit E hereto.) The Town was evenly and bitterly divided and authorized cardrooms by only an eight vote margin. These circumstances all point to disallowing use of multiple squares. The city attorney's interpretation was not contemporaneous with the enactment of the ordinance but instead was first announced in December last year, 13 years after enactment.

Moreover, the interpretation is not consistent with comments made last August to a legislative committee. At that time, the Town's lobbyist, seeking to change the moratorium, testified before the Senate Governmental Organizations Committee that if the law was not changed, Lucky Chances "would lose all of their no limit Texas Hold 'Em games and their other games. No one could bet more than \$200 and there are not people betting a \$1000, \$2000, etc." (Emphasis added; see transcript of committee hearing of August 29, 2005 attached hereto as Exhibit F.) This testimony is not consistent with use of multiple squares. Further, the Town estimated a fall in revenue of 40%, meaning a drop of about 33% to the club, again reflecting a strict \$200 limit, and not an ordinance allowing use of multiple squares. Only after the Legislature rejected the Town's bill did the new interpretation surface.

There is a factual defect as well in Lucky Chances' argument seeking deference to Colma's interpretation of the ordinance. The fact that they felt compelled to make a change in the ordinance is evidence that the original language did not allow this. Mr. Franchetti proposed the new ordinance at the December 14, 2005 meeting of the Colma City Council, and stated:

"I would like to propose an amendment to this new ordinance ... [T]his would allow us to have more betting squares at each table and also allow us to raise the maximum total of bets which can be made under this new system." See Transcript attached as Exhibit C, p. 15.

A new interpretation of the old ordinance constitutes a change in "the scope and effect" of the ordinance and is thus an amendment. See *Franchise Tax Board v. Cory* (1978) 80 Cal.App.3d 772, 776, quoting Sutherland, *Statutory Construction* (4th Ed. 1972) §22.01, p. 105. Such an amendment is an expansion of gambling and violates the moratorium.

We note that we do not contend the ordinance, reasonably construed, intended to or does restrict the banker to a \$200 bet. At the Asian games, the banker makes separate bilateral bets with each other player, and each bilateral bet has independent significance.

Lucky Chances has tried to claim that a rule disallowing its use of multiple squares would apply widely around the state to many other cardrooms and would constitute a change in state law. Lucky Chances argues that many cities limit bets but allow the use of multiple squares. We disagree. The Colma ordinance is unique in the state, and as such presents a novel situation. The Colma ordinance alone applies betting limits to Asian games and makes clear that the limit is based on a "one slot per player" rule. There are at most five other jurisdictions that (a) have betting limits, (b) allow Asian games, (c) employ multiple slots and (d) changed this after 1995 (when the moratorium took effect). (See Chart attached hereto as Exhibit G.) However, these five jurisdictions differ from Colma in a critical respect--their ordinances were adopted years before these jurisdictions approved play of Asian games and by their terms, the ordinances did not expressly address those games and the use of multiple squares. In contrast, Colma specifically addressed Asian games when it adopted its ordinance in 1993 and, as shown above, assumed "one slot per person" per seat position, not multiple squares per person. Colma's is the only ordinance that clearly intended this result. Thus, a determination that the Colma's ordinance precludes a single player from betting more than \$200 in such a game is Colma-specific and does not extend to the other five cities.

Stacking Multiple Bets

The newly-adopted Colma ordinance also allows the "stacking" or "consolidation" of bets. This practice is sometimes called "virtual squares." Where players are allowed to place

bets in multiple slots at a seat, this practice allows a bettor to place a single stack of chips greater than the betting limit, and have them be considered separate bets even though they are never physically placed into separate slots. This would turn the betting limit into a complete sham. There would be no limit on bets and no difference in procedure from unlimited betting. Bets would be placed in a stack and paid off in a stack.

Mr. Franchetti, in his January 31 letter, argues that stacking of multiple bets "furthers the public policy goal of ensuring more efficient operation and better control." He argues that the fewer bets on the table the easier for the dealer to can control them. However, there is no public policy goal of ensuring more efficient operation. Moreover, if the public policy of control gambling comes into play here, then it should result in bets being limited to \$200 and multiple squares for a single bettor not being allowed in the first place. Turning a \$200 betting limit into a sham constitutes a lack of control over betting. It is the allowance of unlimited betting.

Application of Section 19962 to Wagering Limits

In his March 22, 2006 letter to Mr. Rickards, Mr. Franchetti argues that section 19962 does not prevent an election to amend an ordinance to allow only an increase in wagering limits. His argument is that the moratorium does not apply to wagering limits. Therefore, since the voters in Colma approved the abolition of betting limits, that election is valid and effective.

Mr. Franchetti presents no legal support for his position, and his argument has no basis. The plain meaning of section 19962 applies to any expansion of gaming. Further, section 19962 is at least as broad as 19961, and 19961 includes wagering limits within its definition of expansion of gaming. Moreover, legislative history clearly contradicts Mr. Franchetti's position. When the moratorium was enacted in 1995, Senator Maddy made clear that it was to apply to "any further...expansion of existing ordinances." (See letter from Senate Maddy to Governor Wilson dated July 29, 1995, attached hereto as Exhibit H.)

In 1997, SB 8 reenacted the moratorium essentially verbatim. Although it is possible that the term expansion of gaming was meant to be limited to the items delineated in section 19961, there is absolutely no reason to read it as narrower than 19961.

Equal Protection Issue

In his March 22, 2006 letter to Mr. Rickards, Mr. Franchetti raised an equal protection issue. He alleges that there are a number of jurisdictions with gaming ordinances in jurisdictions other than Colma out of compliance with section 19860 or which have been amended without compliance with section 19961. He provides no details, but argues that enforcement of the moratorium against Lucky Chances is somehow selective and discriminatory.

Rod Blonien, lobbyist for Colma, recently made similar remarks at a meeting of the Cardroom Association. He claimed that there are 25 cities whose ordinances are non-compliant because they allow cardrooms to set wagering limits. However, section 19860 does not require local jurisdictions to set the exact wagering limits, or, for that matter, the exact hours of operation or exact number of tables. Rather, it simply requires such subjects be "governed." In many cases, cities set maximum limits, such as maximum number of tables and maximum wagering limits, but the clubs can set lower limits. If a local jurisdiction does not have limits on hours of operation or on wagering limits, it is now required to make that clear. Statement that a city does not prohibit something is unusual. A city could pass an ordinance saying "wagering is not subject to any limits." In effect clubs would be left to decide whether to have limits. Many cities without wagering limits instead enacted ordinances which simply provide that the club can set the wagering limits. That accomplishes the same effect and is well within the requirements of section 19860.

The ordinances in these 25 cities do not have the same problem as Colma, and even if they did, it provides no basis to justify Colma's violations of the moratorium on expansion of gambling. Section 19860 is very different than 19960.

If anyone has an equal protection claim it is Artichoke Joe's and the other large cardrooms in the state which were found to have played jackpot illegally between the date the appellate court ruled it illegal and the date the Supreme Court denied the petition for review. The Attorney General forced them all to disgorge revenues made on the illegal gaming. Here, for the last seven years, Lucky Chances has operated illegally without the betting limits, making revenues of approximately \$80 million on the illegal gaming, but the regulators have made no attempt to seek the same discipline as in the jackpot cases. Consistency requires that Lucky Chances should have to disgorge profits obtained illegally. At the very least it should have to disgorge profits obtained from August 30, 2005, the first deadline set by the Division to implement the \$200 limit until it actually implemented the limit.

Division Letter

After this letter was written, we obtained a copy of the Division's April 3, 2006 letter to the Commission on this issue. The Division misstates the issue and provides paltry and weak analysis.

In the first paragraph, the Division indicates it investigated whether the use of multiple betting squares violated section 19961. However, that is not the issue. The issue is whether the adoption of a new ordinance by Colma, "allow[ing] betting on multiple betting spots and the stacking of multiple bets" constitutes an expansion of gaming in violation of section 19962. In the second paragraph of its letter, the Division seems to look at a different issue. The Division

asserts that it has previously approved game rules that allow use of multiple squares and treats the issue as whether there is a basis for rescinding approval of the game rules. However, the game rules were approved before the issue was raised of whether use of multiple betting squares to circumvent the \$200 limit violates the old Colma ordinance and whether the new ordinance violates the state moratorium, and the Division's prior approval of game rules does not speak to the issue.

The Division's analysis is likewise weak. We met with the Division and submitted a detailed letter brief setting forth the positions stated in this letter. The Division's letter, however, does not set forth analysis of any of the numerous issues we raised. The Division fails to address our argument that the plain meaning of the ordinance controls. As noted above, if there is a plain meaning, then there is no construction and no need to resort to interpretation by the city attorney or anyone else. Nor does the Division consider our argument that an interpretation must be reasonable and the interpretation proffered by Colma is not reasonable. The Division states it "believes that questions regarding the intent or interpretation of ordinances ... generally should be resolved by the local jurisdictions that adopted them..." The Division fails to provide any summary of the law on this subject. Then having failed to cite to any law, the Division fails to discuss the factors that need to be considered.

The Division's letter then discusses stacking and states that the practice is not allowed and that therefore, the issue is "immaterial." However, the ordinance clearly allows it, and if the practice would violate state law, then the license still needs to be conditioned to prohibit it.

In the end, the Division's letter fails to take a position on either issue, the use of multiple squares to circumvent the \$200 betting limit or the stacking. It fails to answer the Commission's inquiry whether or not the new ordinance expands gaming in Colma, but leaves this without much guidance to the Commission.

Conclusion

The Colma ordinance enacted in January, allowing a single player to use multiple slots at a single seat and to stack his or her bets, violates the statewide moratorium against expansion of gaming and Lucky Chances should not be allowed to implement such practices.

Gambling Control Commission
April 18, 2006
Page 10

Section 19962 applies to wagering limits, and therefore, the recent election in Colma was meaningless. Nor is there any equal protection problem in enforcing the state moratorium.

Thank you for your attention to this matter.

Sincerely,


Alan Titus

Enc.

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August 10, 1995

Roger Peters
Cornell, Lange, and Peters
101 California Street
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San Francisco, CA
94111

Re: Cardroom Permit

Dear Roger:

I have had the opportunity to review with Mr. Medina and Mr. Kuramoto the draft "Resolution Granting A Conditional Use, And Cardroom Permit" which you faxed to me on August 7, 1995. This is to share with you our comments and suggestions.

1. Mr. Medina and Mr. Kuramoto are both owners of of Lucky Chances. Because of this we request that the permit be issued to both of them individually and as persons doing business as Lucky Chances.
2. Mr. George Karadanis owns the land and will own the actual club facility. As a result we believe that he should be named in the use permit. He should not, however, be named as receiving the Cardroom Permit. This is because he cannot legally be involved in anyway in the actual operation of the cardroom because of his ownership of gaming operations in Nevada. Will this require two permits?

9

Medina user
approval -
They should
work out
private grant
and not
involve us.

1

Roger Peters
August 9, 1995

3. We have the following suggestions regarding the substance of the resolution:

A. 2.1 CONDITIONS APPLICABLE PRIOR TO ISSUANCE OF A BUILDING PERMIT AND A GRADING PERMIT

2.1.a-- Amend the last full sentence as follows:

"...Permit will be revoked whenever the lease expires unless replacement parking of equal, if required, or greater quantity is provided at a location convenient to the cardroom site boundary"

Reason: Experience will demonstrate that current parking is excessive and not needed in view of the Lucky Chances Club bus marketing policy.

2.1.e-- Amend as indicated below and move to Section 2.6 "MISCELLANEOUS CONDITIONS":

"That the Permittee obtain approval for a Lot Line Adjustment for the auxiliary parking lot located at the northwest corner of Serramonte and Hillside Boulevards and record the proper documents with the San Mateo County Recorder prior to executing the lease for the property but not later than July 1, 1996.

Reason: Salem Cemetery does not wish to allow the Lot Line Adjustment until the actual lease is entered into. Lucky Chances currently has an option on the property and does not wish to incur lease payments until it actually plans to begin development of the site. The option terminates on July 1, 1996.

2.1.g-- We do not understand what is meant by "That plans for facility lighting shall be certified, in writing, by a qualified lighting engineer...". We do not believe that plans can be "certified", and would suggest that "reviewed and approved" be substituted. We have no problem with certification after construction is completed.

enter into
lease ^{or} ~~or~~ ^{option}
open for business
~~with~~ ~~at~~ ~~times~~
for st.

Substitute:
~~that required lighting~~
~~plans~~
"that qualified ^{lighting} engineer
verify that ~~approved~~
lighting ~~plans~~ ^{drawings} are
project plans show
P. 84
lighting design that
can meet required
lighting levels"

Roger Peters
August 9, 1995

2.1.h--We suggest that the language be amended to read as follows:

"That the Permittee obtain approval of the Chief of Police and the City Council of a Preliminary Security Plan for the facility. The Preliminary Security Plan shall include but not be limited to provisions, supporting calculations, or specifications for: (1) surveillance camera and optimum lighting levels for their operation; (2) utilization of full time and intermittent recording by cameras as surveilled areas require; (3) availability of the recordings to the Chief of Police; (4) [DELETE REFERENCE TO PANIC BUTTON]; (5) [DELETE AS REPETITIOUS OF 2.1.g]; (6) (9) as is.

agree

Reason: (2) We do not believe that full time surveillance recording of certain areas of the facility are needed. For example, executive offices, locker area, portions of the casino which are not in operation. The mix of full time and intermittent recording should be decided by security staff on a day by day basis.

Let security plan suggest areas to be full and part-time - final by Council. O.K. to

(4) The panic button serves no purpose that is not better served by security personnel. It is not used in other modern card clubs to our knowledge. It is an unnecessary expense which will not add to security at the club.

delete

B. 2.2 CONDITIONS APPLICABLE TO THE BUILDING AND FACILITIES

2.2.h--Amend the language to read:

"That lighting in the parking lots and over the gaming tables be adequate to ensure proper implementation of the Security Plan."

Specified in the Security Plan

definition of and surveillance and security operations
visibility of the (and pan) premises and areas to be observed by surveillance cameras

Reason: Lighting levels need to be adequate to ensure proper security as determined by needs of the security cameras and the security plan. The lighting levels proposed are too high for the parking lot, and are excessively bright and will interfere with the ambience of the cardroom.

2.2.j--DELETE THIS PROVISION

based on discussion - other over (Backup-proc)

No but record

that 2500 can be targeted in the building or AT camera affiliate P. 85 location

Roger Paters
August 9, 1995

Reason: This is micro managing. Lucky Chances Club management is in the best position to determine storage needs which are related to procurement practices and policies which will be established by management. The Town of Colma is not in a position to make that determination at this time.

True - rely on
consultant
advice

2.2.g--DELETE THIS PROVISION

Reason: The Lucky Chances Club currently will provide 771 parking spaces. However as has been indicated in the past, Lucky Chances believes that its marketing plan will substantially reduce the number of patrons arriving by car, and that current parking is excessive. We do not believe that the permit should permanently lock Lucky Chances into a number of parking spaces which we believe will prove to be excessive and unnecessary.

(Parking 771)
No, but
consider reduction
if warranted
when use
permit comes
up for renewal

C. 2.3 CONDITIONS APPLICABLE DURING CONSTRUCTION

NO CHANGES RECOMMENDED

D. 2.4 CONDITIONS PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY

2.4.f--DELETE THIS PROVISION

Reason: This is micro managing and creates an unnecessary bureaucratic burden on the Lucky Chances Club. Sound management practices will be followed by Lucky Chances in this area.

(management)
No - rely on
consultant advice

2.4.h--DELETE THIS PROVISION

Reason: This issue has been discussed by the Council in the past. We believe that the Town of Colma should be responsible for its own actions, and that Lucky Chances should, in fairness, only be liable for actions brought against it. Liability on the part of the Town of Colma could

(Indemnity)

Roger Peters
August 9, 1995

arise from the granting of this permit for conduct which Lucky Chances has absolutely nothing to do with or has no control over.

2.4.i--DELETE THIS PROVISION

Reason: Lucky Chances does not believe that it should be required to provide this type of transportation unless it determines that it will assist in increasing the profitability of the Club. This is a management decision which has not yet been made.

(PART SHUMS)
NO - leave as is - CC may never make request.

B. 2.5 CONDITIONS APPLICABLE TO ONGOING OPERATIONS

2.5.a--Amend this provision to add the following after the last sentence:

" However, Permittee may immediately employ on a probationary basis any employee whose name has been submitted to the Colma Chief of Police for approval pending completion of the background investigation conducted by the Chief of Police, and notification of Permittee by the Chief of Police of approval or rejection of the employee."

(EMPLOYMENT)
NO
Club management should verify if prequalified writing staff.

Reason: Management needs to have the flexibility to quickly hire or replace personnel so as to ensure proper operation of the Club. Delays in conducting background investigations are to be expected, and the operation of the Club could be negatively impacted by such delays. This language provides for immediate probationary employment to meet operational needs, while ensuring that proper background checks will have been conducted on all permanent employees.

2.5.h--DELETE THIS PROVISION

Reason: staffing levels of the Lucky Chances Club is a management decision which can only be left to those responsible for operating the Club. This is micro managing at its worst.

(NO PERMITS)
NO
conditions are very reasonable
Keep first sentence - delete remainder.

2.5.i--DELETE REQUIREMENTS THAT PERMITTEE PAY FOR COST OF TOWN OF COLMA CPA.

Do
from BR
But add up to \$ - per year CPA on cost.

Roger Peters
August 9, 1995

Reason: The Lucky Chances Club will pay the highest card club tax in California it should not also pay for the CPA which the Town of Colma will retain. These costs should be included in the costs covered by that tax. In addition, there are no controls over costs.

Not relevant

2.5.a--Amend this provision to read:

"That permittees may not have more than sixty (60) gaming tables in the facility.: [DELETE REMAINDER OF PROVISION]"

Rewrite

Reason:

1. The recent enactment of SB 100 (Maddy) [Chapter 95-0387, Stats. 1995] prohibits the expansion of the number of tables authorized by a city ordinance after January 1, 1996 and maintains that moratorium until January 1, 1999. We believe that any provision limiting the number of tables at the Lucky Chances Club will, at the very least, provide the basis for third party legal actions claiming that any increase over the 50 tables proposed in the draft resolution violates that prohibition. We don't need further legal problems caused by disappointed or predatory competitors.

2. Depending upon the success of the Lucky Chances Club marketing plan the club may be able to utilize on a regular basis all 60 tables thus maximizing revenues to the Town of Colma.

3. This prohibition is based upon the concern of some that there is not adequate parking for sixty tables. Lucky Chances believes that its marketing plan is such that such problems do not exist.

4. Current parking is consistent with the EIR developed in regard to the club, and is fully adequate for a club of the size of the Lucky Chances Club.

2.5.r--Add to the list of permitted games:

"California Black Jack"

O.K.

Reason: This is a popular game which is played in other clubs and should be offered at the Lucky Chances Club.

That the permittee is authorized to operate up to 60 tables provided however that the City Council may require that the number of gaming tables be reduced if it finds that the amount of off-street parking is insufficient, evidenced by

08-10-1995 02:08PM

415 352 0785

P.08

~~insufficient~~ ~~condition~~ parking on City streets, ~~or at other structures~~ ~~or on other private property~~ in locations causing ~~inconvenience~~ or ~~inconvenience~~ to employees, other businesses and residents of Colma.

Roger Paters
August 9, 1995

F. 2.6 MISCELLANEOUS CONDITIONS

2.6.c-- This provision should be amended as follows:

"That this Permit shall be valid for a period of two (2) years following the first day of opening for business and is renewable for additional five (5) year periods [Delete "that may be established at the discretion of the City Council] upon written request by the Permittee prior to the expiration of each Permit period. Upon receipt of the request for renewal of this Permit the Council shall renew the permit [Delete "Renewal of this permit shall be subject to a finding] unless it finds that the cardroom facility has not been operated substantially in compliance with all conditions of the permit. Adjustments to the operating conditions may be made by the City Council at the time of Permit renewal. [Delete "During the first two (2) year Permit period, the Permittee shall provide, on the last day of each month a Parking Utilization Report which shall give the number of patrons on the premises and the number of utilized parking spaces at the time of maximum use on each Friday, Saturday, and Sunday.]

5 years D.K.

D.K.

leave in

Reasons:

1. An initial two year renewal period allows the Town to review the initial operations of the Club, ensure that the Club has been operated properly, and make adjustments to the Permit. However, once that has been done a longer period for the permit is justified because the Permittee has proven its ability to properly operate the Club, the longer period removes political pressure on the Council by third parties regarding renewal, and provides certainty to the operator that its substantial investment will be returned.

2. Renewal should be routine unless there is good reason not to renew. Given the large investment required of the Permittee fairness requires that the Permit not be renewed only if the Town demonstrates that the terms of the Permit have not been substantially complied with. Requiring the Permittee to prove that it has complied with the terms of the Permit opens the door to third parties and/or

Roger Peters
August 9, 1995

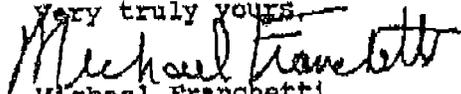
competitors challenging the adequacy of the Permittee's demonstration thus opening the door to further legal challenges, costs, and delays.

3. The parking report imposes an unnecessary burden on the Lucky Chances Club. It is unnecessary because if there is a parking problem it will be readily apparent from parking usage in the area, and the Lucky Chances Club will take appropriate action to remedy it.

We hope that this letter clearly outlines our recommendations and the reasons for them. We believe that if adopted our recommendations will be in the best interests of all parties, and will help to ensure that the Lucky Chances Club is successful to the benefit of the Town of Colma and its owners.

We are available to discuss these issues with you at your convenience. The only time that I will be personally unavailable prior to the Council meeting will be the afternoon of Tuesday, August 15, and the morning of Wednesday, August 16.

Very truly yours,


Michael Franchetti

cc. Rene Medina
Richard Kuramoto
Buzz Garcia

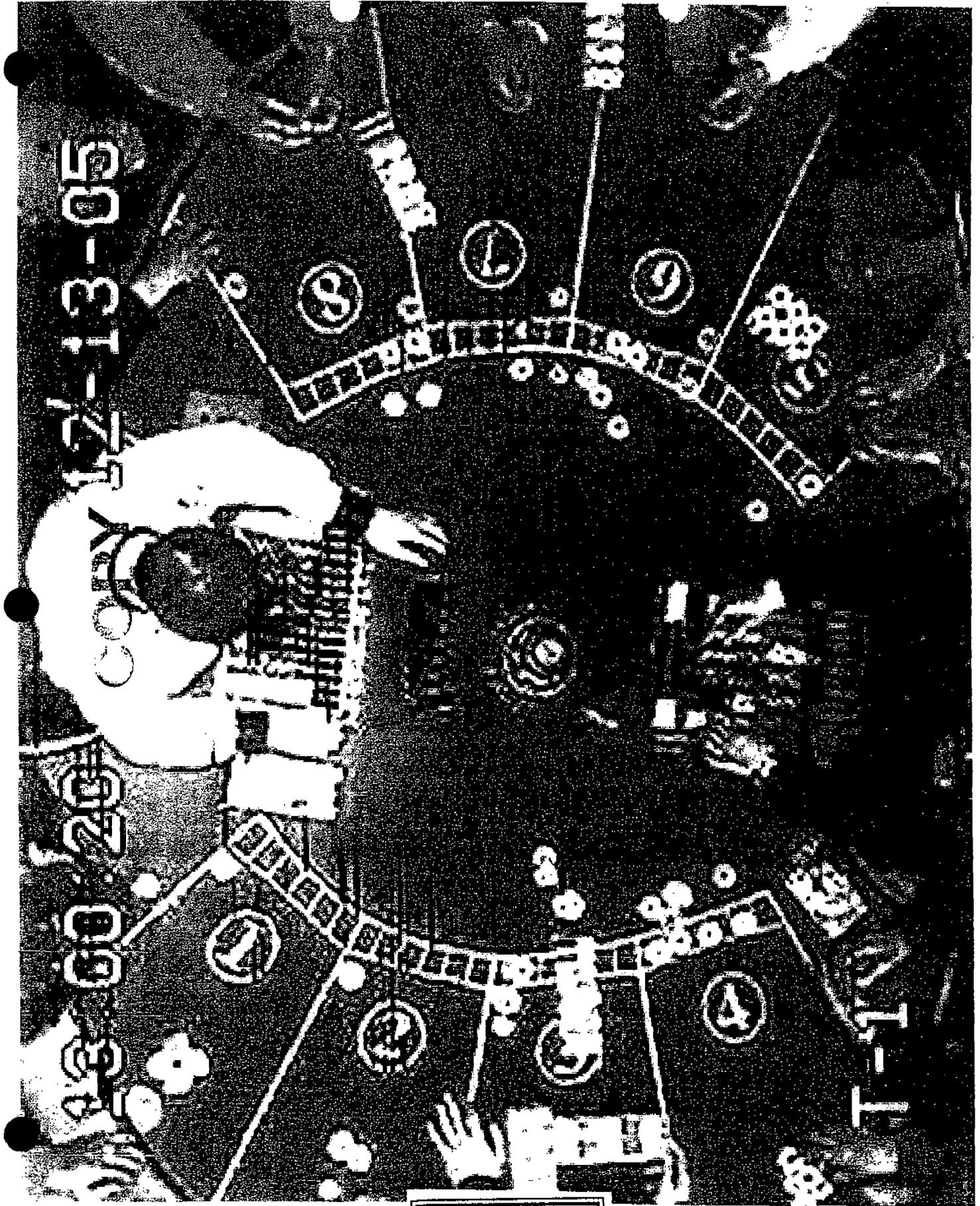
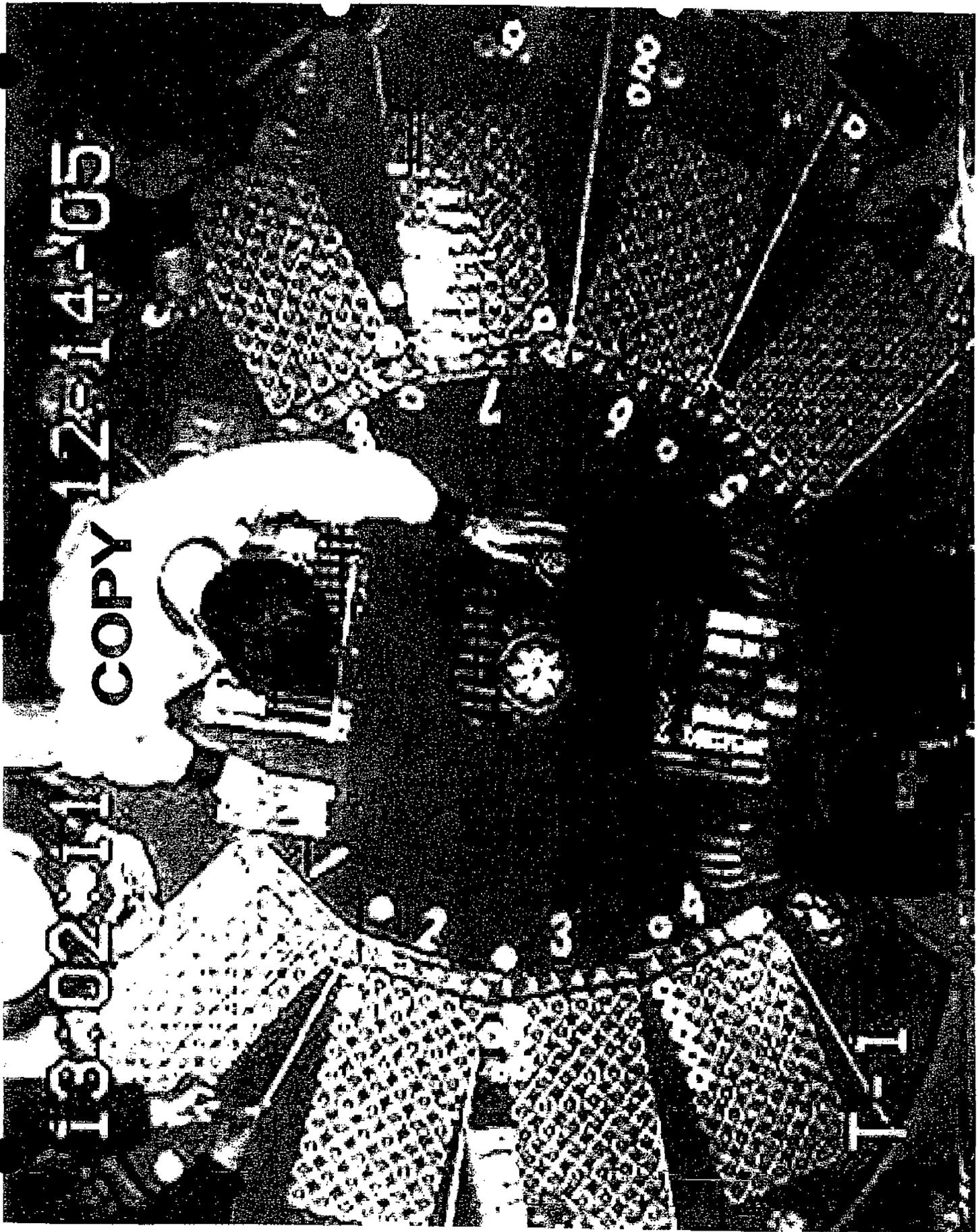


EXHIBIT B

LUCKY CHANCES TABLE FELT 12/13/05

i3-02-i1
12-14-05

COPY



LUCKY CHANCES CHANGED TABLE FELT 12/14/05

TOWN OF COLMA
CITY COUNCIL MEETING

December 14, 2005

EXCERPTS FROM UNOFFICIAL TRANSCRIPT

EXHIBIT C

DUSTIN CHASE, Lucky Chances Lead Shift Manager [at pp. 23-24]: As you may be aware for instance, casinos in Las Vegas, they have their high limit areas. And when it comes to table games which is all we have the ability to offer – unfortunately we don't have the ability to offer slots – in table games a high percentage of the income derived from table games comes from your high limit customers. And that's why you will see casinos in Las Vegas and elsewhere really cater to the high limit players. This game was our signature high limit game. As I stated before, we had the ability to have up to five thousand dollar wagers in each of those slots. **With the advent of implementing \$200 wagering limit, we had to come up with a system that could still allow our clients to make a decent size, a decent amount of bets in order to keep that game going.** If all they could place is one \$200 wager, we obviously, we don't have a high limit game. We don't have a type of game that those customers are looking for. **So our efforts are to allow the players to make up to ten \$200 wagers per betting square.** And that is why ... above you have the green page that's how.

ORDINANCE NO. 450

ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF COLMA
ADOPTING A CARDROOM ORDINANCE, CHAPTER 4, SUBCHAPTER 9
OF THE COLMA MUNICIPAL CODE,
TO CREATE A CARDROOM ORDINANCE REGULATING THE ESTABLISHMENT
AND CONDUCT OF CARDROOMS IN THE CITY

The City Council of the Town of Colma does hereby ordain as follows:

SECTION 1. Subchapter 9 of Chapter 4 of the Colma Municipal Code is hereby adopted, to read as follows:

Subchapter Nine: Cardrooms

4.901. Findings and Purpose

The City Council finds that the public health, safety and welfare require the establishment of regulations pursuant to, and in conformity with, the State Gaming Registration Act. The City council finds it necessary to regulate:

- (1) The persons who will own, operate or be employed in card rooms;
- (2) The number and location of cardrooms in the City;
- (3) The operation of cardrooms in the City;
- (4) The issuance of permits and licenses, including limitations on transfer and assignment, for cardrooms.

4.902. Definitions

The following definitions shall apply for the purposes of this chapter:

- (1) Applicant means every person who applies for a permit, renewal, or amendment.
- (2) Card game means all games played with cards for money or any other thing of value, or for checks, credits or any

EXHIBIT D

4.928. Permitting Intoxicated Persons on Premises Prohibited

No cardroom permittee, owner or employee shall permit any person to enter a cardroom while such person appears to be obviously under the influence of intoxicating beverage, narcotic or drug.

4.929. Bets or Wagers Prohibited

(a) No cardroom permittee, owner or employee shall allow any person playing in any poker game to make any single bet or wager in excess of two hundred dollars (\$200.00) or at any time during any poker game to permit an ante in excess of two hundred dollars (\$200.00) total sum anted by players participating in the game.

(b) No cardroom permittee, owner, or employee shall allow any person playing in any Asian game to make any single bet or wager per betting slot in excess of two hundred dollars (\$200).

(c) Nothing herein shall prohibit a cardroom permittee from establishing lower betting limits.

(d) Each permittee shall be allowed to conduct "no limit" tournament play two times per year provided, however, that the permittee shall provide the Colma Police Department and City Manager with thirty (30) days advance notice of its intention to allow "no limit" tournament play.

4.930. Identification Card Display

(a) It shall be unlawful for any cardroom owner or employee to be physically present at any time upon said premises without having prominently displayed his or her own personal identification card issued by the Colma Police Department pursuant to sections 4.915 and 4.916 identifying such person with the cardroom.

(b) The identification card shall be prominently displayed on the outermost garment at approximately chest height. Such identification card shall at all times be in good and readable condition.

4.931. Permittee, Owner or Employees Not to Play Cards - Exceptions

It shall be unlawful for any cardroom permittee, owner or employee to play cards or purport to play cards in or upon the cardroom premises except that an employee may play cards in or upon the premises in which he or she is employed if he or she plays with his or her own personal money. The employee shall not play as the house or use house money when playing.

4.932. Employment of Persons to Stimulate Play Prohibited

(a) It shall be unlawful for any cardroom permittee, owner or employee to engage or persuade any person to play cards for the purpose of stimulating play where such person is to receive any reward, whether financial or otherwise, present or promised; or where such reward or revenue is to be diverted to the cardroom permittee or owner except as allowed under subsection (b) of this section.

(b) The permittee may utilize proposition players. A proposition player must wear a badge at all times identifying the player as an employee of the permittee. Other than compensation for the time spent in acting in such activities as an employee of the permittee, no gifts, rewards or any other thing of value shall be given to the proposition player by the permittee or any owner or employee.

4.933. Lending Money or Tokens of Value Prohibited

It is unlawful for any cardroom permittee, owner or employee to engage in the lending of money, chips, tokens or anything of value, either real or promised, to any person for the purpose of allowing that person to eat, drink or play cards.

4.934. Use of Blank Personal Checks Prohibited

It is unlawful for the cardroom permittee, owner or employee to cash any personal check which does not state the amount on the face of the check.

4.935. Operation of House Deposit or Credit System Prohibited

(a) It shall be unlawful for any cardroom permittee, owner or employee to operate, maintain or purport to maintain any house, player or employee deposit or credit system or any system similar thereto, whereby a person may deposit, draw or maintain any account or credit of money, checks or any other item or representation of value, except as authorized pursuant to subsections (b) and (c) of this section.

(b) The permittee shall be allowed to provide chips or other representations of value paid for in advance by the patron in cash or by personal check.

(c) The permittee shall be allowed to accept a patron's chips or other winnings and provide the patron with a check drawn on the permittee's account for the amount of the patron's chips or other winnings.

(d) The dollar equivalent of any such chips or other representations should be posted in the same manner as the game rules pursuant to section 4.938.

(e) Notwithstanding the foregoing, the permittee is expressly permitted to have installed on the premises ATM/Credit Card machines of an outside financial institution.

4.936. Gamblers Anonymous Literature

All cardroom permittees shall make literature published by Gamblers Anonymous easily available in a visible location in the cardroom. If literature published by Gamblers Anonymous is available in English, Spanish, Tagalog, Vietnamese, Mandarin and/or Cantonese-Chinese, then the permittee shall be required to make such literature easily available.

4.937. Inspection of Premises

(a) All cardrooms shall be open for inspection during normal business hours to the Chief of Police, the City Manager, or their duly authorized representatives, without search warrant.

(b) All cardroom records, including but not limited to papers, books of account, ledgers, audits, reports, personnel records, information stored in computers and on computer tape or disks, video tape, microfilm or microfiche, shall be available for inspection and copying during normal business hours to the Chief of Police, the City Manager or their duly authorized representatives without search warrant.

4.938. Game Rules

(a) The rules describing how each game conducted on the premises is to be played shall be posted on the premises of the cardroom in a conspicuous place. Printed copies of the rules shall also be easily available to the public.

(b) The rules which are posted and made available to the public shall be identical to the rules provided to the Colma Police Department pursuant to section 4.926(d) of this Subchapter.

federal income tax returns, which returns shall be kept confidential and shall not be disclosed other than is necessary to carry out the purposes of this section.

SECTION 2. Effective Date. This ordinance shall be posted as required by law, to wit, upon the three (3) official bulletin boards of the Town of Colma, and is to take force and effect thirty (30) days after its passage.

I certify that the foregoing Ordinance No. 430 was duly introduced at a regular meeting of the City Council of the Town of Colma held on January 13, 1993, and duly adopted at a regular meeting of said City Council held on February 10, 1993 by the following vote:

AYES: Council members Boudewyn, Gerrans, Kirschner,
Mayor Lum
NOES: None
ABSTENTIONS: None
ABSENT: Fisicaro

Philip Lum
Mayor

ATTEST:

Frances Liston
City Clerk

14887.004

Nº 423

(This number to be torn off by
Election Official)

Nº 423

BALLOTS MAY BE MARKED
WITH PEN AND INK OR PENCIL

TOWN OF COLMA

OFFICIAL BALLOT

SPECIAL MUNICIPAL ELECTION
(Combined Official and Sample Ballot)

TUESDAY, FEBRUARY 9, 1993

TOWN OF COLMA

INSTRUCTION TO VOTERS

To vote on the proposition, mark a cross (+) with pen or pencil in the voting square after the word "YES" or after the word "NO."

All distinguishing marks or erasures are forbidden and make the ballot void.

If you wrongly mark, tear, or deface this ballot return it to the City Clerk, and obtain another.

PROPOSITION A

Shall card clubs in which any games permitted by law, such as draw poker, low-ball poker, and Languingue (pan) are played, be allowed in the Town of Colma?

YES

NO

EXHIBIT E

TOWN OF COLMA

PROPOSITION A

Shall card clubs in which any games permitted by law, such as draw poker, low-ball poker, and tanguingui (pan) are played, be allowed in the Town of Colma?

ARGUMENT IN FAVOR OF CARDROOM PROPOSITION A

Colma has been heavily dependent on sales tax revenue as a major source of income. There have been proposals that sales tax be reallocated based on population. Accordingly, the City Council feels it is in the best interests of the City to develop alternate sources of income that will not unduly burden the property owners and residents of the town.

There has been interest in establishing cardroom operations in the Town of Colma. Cardroom businesses in other communities have been a substantial source of revenue. However, before cardrooms can be allowed in Colma, it is the state law that the voters of the city must first give their approval.

Proposition A gives the Town of Colma the opportunity to accept applications for cardroom operations, and to increase city revenues in the future, if future applicants are willing to pay the cost of operating within the Town of Colma, and meet the stringent state and city requirements required for a permit.

The City Council feels that it is in the best interests of the City to make the possibility of a cardroom operation available and urges your yes vote.

The undersigned authors of the primary argument in favor of ballot Proposition A at the Special Election of the Town of Colma to be held on February 9, 1993, hereby state that such argument is true and correct to the best of their knowledge and belief.

/s/ Philip Lum, Mayor	December 28, 1992
/s/ Ray Boudewyn, Vice Mayor	December 28, 1992
/s/ Dennis Fislcaru, Councilman	December 28, 1992
/s/ Charles Gerrans, Councilman	December 28, 1992
/s/ Theodore Kirschner, Councilman	December 28, 1992

NO ARGUMENT SUBMITTED AGAINST PROPOSITION A

SENATE GOVERNMENTAL ORGANIZATION COMMITTEE HEARING

SACRAMENTO, CALIFORNIA

AUGUST 29, 2005

* * *

CHAIRMAN FLOREZ: We have established a quorum, and we have one bill before us members, Assembly Bill 635 by Mr. Bermudez. Assemblymember would you like to present?

BERMUDEZ [8:30]: Thank you Chairman Florez and Senators. On August 24th of this year, I amended Assembly Bill 635 to provide relief for both the cities of Colma and Citrus Heights, which had previously adopted amendments to their card club ordinance of seven years ago, seven years ago. And recently, on July 29, the Gambling Control Board Division had informed them that they were no longer in compliance with the Business and Professions Code Section 19961. This bill will grandfather the amendments made to those ordinances in 1998 and 2001 in order to avoid any hardships to these cities. The type of hardships that I'm talking about is, and I'll use Colma as an example, they financed over 24 million dollars in certificates of participation to provide for infrastructure and police department and other needed resources in their city. The revenues from the card club, from the games that would be impacted by this change in ordinance, were

and she said it will lose money if not amended. How's it going at the present time? Are they losing it? What are they doing now? Are they making money now?

MR. BLONIEN [22:16]: Senator Vincent. Rod Blonien, behalf of the City of Colma. Yes they are making money. They are paying approximately 3.9 million dollars a year to the city of Colma and that's 10% of their gross gaming revenues. So I would take from that that their gross gaming revenues are about 39 million a year. It is a profitable club. They are making money.

SENATOR VINCENT: Yeah but someone said that if this is not amended they're losing money. But in other words, they don't lose it. If it's not amended, they just keep what their getting. If they're going to lose money, that is if this is amended, they may make some money. Is that correct?

MR. BLONIEN: No Senator, they would lose money because the wagering limit would be changed from being able to play no limit games to not having any wager in excess of \$200, which means they would lose all of their no limit Texas Hold'Em games and their other games. No one could bet more than \$200 and there are now people betting a \$1000, 2000, etc.

QUESTION: [unintelligible]

MR. BLONIEN: It will maintain the status quo, Senator

CHAIRMAN FLOREZ: Senator Chesbro and Senator.

Analysis of Betting Limits in Local Jurisdiction

City	Betting Limit	Betting limit	Asian	Multiple	Limit applies to
	By	by Resolution	Games	squares	Asian Games
	Ordinance 1		played 2	first used	
				after 1995	
Emeryville	No	Allowed			
Livermore	Yes \$20		No		
Clovis	Yes \$200		Yes	Yes	No
Fresno	Yes \$200		Yes	No	
El Centro	Yes \$249		No		
Delano	No		(No)		
Lemoore	Yes \$300		(No)		
Gardena	No	Allowed			
Madera			(No)		
Citrus Heights	Yes \$40		Yes	Yes	No
Folsom	Yes \$300		Yes	Yes	No
Isleton			No		
Sacramento	Yes \$49		Yes	Yes	No
Colma	Yes \$200		Yes	Yes	Yes
Oakdale	Yes \$30		No		
Santa Cruz	No	Allowed	No		
Atascadero	Yes \$500		No		
Grover Beach	Yes \$500		(No)		
Paso Robles	\$200/Hand		No		
Guadalupe	No		(No)		
San Jose	Yes \$200		Yes	No	
Watsonville	Yes \$200		(No)		
Sierra County	Yes \$54		No		
Turlock	Yes \$200		No		
Tulane County	Yes \$200		No		
Ventura	No	Allowed			
Marysville	Yes \$100		No		
Gilroy	Yes \$200		No		
San Luis Obispo Cty	Yes \$1,000		No		
Rancho Cordova	Yes \$50		Yes	Yes	No

1. The information here sometimes differs from that provided by the Division. Notable differences are Emeryville and Gardena which do not have betting limits set by ordinance, and San Pablo which has only an Indian Casino. Limits in two cities were not confirmed.

2. Question is whether Asian Games are ever played. Where answer is in parentheses, it has not been confirmed.

EXHIBIT G

STATE CAPITOL
SACRAMENTO CALIFORNIA 95814
(916) 445-9600

2503 WEST SHAW AVENUE #101
FRESNO CALIFORNIA 93711
(209) 445-3567

841 MOHAWK STREET #190
BAKERSFIELD CALIFORNIA 93309
(805) 324-6188

California State Senate



KENNETH L. MADDY
SENATOR, FOURTEENTH DISTRICT
REPUBLICAN FLOOR LEADER

July 29, 1995

COMMITTEES:
CONSTITUTIONAL AMENDMENTS
GOVERNMENTAL ORGANIZATION
(VICE CHAIRMAN)
HEALTH & HUMAN SERVICES
LEGISLATIVE ETHICS

JOINT COMMITTEES:
ARTS
FAIRS ALLOCATION
AND CLASSIFICATION
LEGISLATIVE AUDIT
(VICE CHAIRMAN)
OVERSIGHT OF THE
STATE LIBRARY

SELECT COMMITTEES:
BUSINESS DEVELOPMENT
CALIFORNIA'S WINE INDUSTRY

Governor Pete Wilson
State of California
State Capitol
Sacramento, California 95814

Dear Governor Wilson:

In the strongest terms possible, I urge you to sign SB 100.

The measure limits gaming in the state by imposing a moratorium on new gaming or expansion of existing gaming for the next three years. In addition, the measure regularizes the operation of card rooms currently existing at race tracks by allowing publicly traded corporations that are racing associations to operate one card room on the premises of a racetrack. While the measure is not as comprehensive as some of those initially proposed, it provides the Attorney General far more control of card rooms at race tracks than he currently has over any currently operating card rooms. In addition, it halts the expansion of these less regulated card rooms for three years or until more comprehensive legislation is passed by the Legislature.

The measure contains the following provisions:

- Intent language that states racing associations have operated for 50 years in California as a totally regulated industry; that they should be able to compete with existing card clubs; and that the Attorney General should have the resources to review, investigate, and monitor the activities of racing associations that operate card clubs. **PLEASE NOTE: The bill would allow Racing Associations to operate a card club on their premises if authorized by a local referendum. In addition, the Attorney General will have greater ability to monitor and review the activities of Racing Associations operating card clubs than they have over any local card club.**

- The bill restricts further card club expansion by placing a moratorium on any further card club licenses and expansion of existing ordinances for a period of three years unless

EXHIBIT H

comprehensive legislation regulating card clubs is passed. NOTE: Following is actual language of the bill that imposes the moratorium:

SEC. 9. Section 19819.5 is added to the Business and Professions Code, to read: 19819.5. (a) On and after January 1, 1996, neither the governing body nor the electors of a county, city, or city and county that has not authorized legal gaming within its boundaries prior to January 1, 1996, shall authorize legal gaming.

(b) No ordinance in effect on January 1, 1996, that authorizes legal gaming within a county, city, or city and county may be amended to expand gaming in that jurisdiction beyond that permitted on January 1, 1996.

(c) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, enacts a comprehensive scheme for the regulation of gaming pursuant to this chapter under the jurisdiction of a gaming or gambling control commission.

The Attorney General assisted in drafting all of the regulatory and monitoring sections of the bill and has indicated he does not oppose the legislation. The Reverend Lou Sheldon supports the bill because of the moratorium on new gambling activities.

In my opinion passage of this measure will assist in enactment of a comprehensive regulatory and enforcement law desired by the Attorney General. The moratorium will make it clear that the Legislature and your administration are serious about stopping the proliferation of unregulated card clubs. I believe that the moratorium will provide the necessary pressure to force statewide regulation.

This measure is an improvement on existing law. It gives the Attorney General the resources to conduct investigations and grant a license for racetracks who want to operate card clubs on their premises. It gives the Attorney General monitoring authority, which means they will have Attorney General representatives actually reviewing the daily activities of the card clubs. This is a forerunner to what the Attorney General wants in his statewide regulatory and enforcement bill.

Again, I urge your signature on this bill. It is a stop-gap measure, but it does restrict for three years any further expansion of gaming in California.

Sincerely,



KENNETH L. MADDY

KLM:fms