

California Gambling Control Commission

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**MINUTES OF NOVEMBER 20, 2013
REGULATION WORKSHOP**

OPEN SESSION

1. Call to Order and Pledge of Allegiance.

Chairman Richard Lopes called the hearing to order at 1:00 p.m., and asked everyone to stand for the Pledge of Allegiance.

2. Roll Call of Commissioners.

Roll Call of Commissioners was taken, with Chairman Richard Lopes and Commissioners Lauren Hammond, Tiffany Conklin and Richard Schuetz present.

3. Consideration of Approval to Commence the Formal Rulemaking Process: Ex Parte Communications; Application Abandonment; Application Withdrawal; and Hearing Procedures (Amend Title 4, CCR, Sections 12002, 12047, 12048 and 12050; Adopt Title 4, CCR, Sections 12006, 12012, 12015, 12017, 12035, 12052, 12054, 12056, 12058, 12060, 12062, 12064, 12066, and 12068; and, Repeal Title 4, CCR, Sections 12218.5, and 12234)

- Definitions (§ 12002)
- Service of Notices, Orders and Communications (§ 12006)
- *Ex Parte* Communications (§ 12012)
- Withdrawal of Applications (§ 12015)
- Abandonment of Applications (§ 12017)
- Hearing Procedures (§§ 12035, 12050, 12052, 12054, 12056, 12058, 12060, 12062, 12064, 12066, and 12068)
- Withdrawal of Request to Convert Registration to License (§§ 12218.5 and 12234)

Staff recommended that the Commission **approve** initiation of the formal rulemaking process for proposed amendment and adoption of regulations relating to Application

Withdrawals and Abandonments; and Hearing Procedures, as provided in the proposed regulation text draft dated October 16, 2013.

Written comments were received prior to the workshop from Alan Titus, representing Artichoke Joe's, David Fried, representing California Grand Casino and Oaks Card Club, Robert Mukai, representing the Indian and Gaming Law Section (IGLS) of the Department of Justice and Stacy Luna-Baxter, representing the Bureau of Gambling Control (Bureau) of the Department of Justice. During the ensuing discussion, oral comments were received from:

- Alan Titus, Artichoke Joe's
- Stacy Luna-Baxter, Department of Justice, Bureau
- Robert Mukai, Department of Justice, IGLS

During the discussions, the Commissioners considered staff's October 16, 2013 summary of the June 12, 2013 workshop comments with recommended changes in the proposed text that respond to many of the comments received at that workshop. Staff's recommended text changes were included in the October 16, 2013 draft of the specific language of the proposed regulations. As a result of the discussion and additional comments at this workshop, the Commission accepted further changes to staff's recommended text, as follows:

Section 12002

- The term "Primary Report" was replaced with the term "Bureau Report" with no change in the definition. Changes were made to other sections to reflect the change in term. Corresponding changes were made to reflect the change in the alphabetical order of the term.
- As part of the definition of "Conviction", the phrase "Any plea" was changed to "A plea of guilty."
- As part of the definition of "Temporary License," the phrase "case by case" was corrected to be "case-by-case."

Section 12012

- "For purposes of this section, 'ex parte communications' or" was added to the beginning of the first sentence of subsection (a). The second sentence and all subsequent paragraphs were moved, with the second sentence becoming subsection (d) and the paragraphs becoming paragraphs under subsection (d). Corresponding corrections were made to the later subsections to reflect the addition of a new subsection (d).
- The reference to "procedure and practice" in paragraph (1) of subsection (d) was revised to "undisputed issues of practice and procedure." In addition, the phrase "or those made on the record at a public meeting or hearing concerning a properly noticed matter" was deleted from this paragraph.

- A new paragraph (2) of subsection (d) was added to include “Communications made at a public hearing or meeting and which concern a properly noticed matter.”
- Paragraph (3) of subsection (d) [formally paragraph (2) of subsection (a)] was changed from “The applicant providing information or documents...” to “Information or documents provided by the applicant...”
- Paragraph (4) of subsection (d) [formally paragraph (3) of subsection (a)] was changed from “The Bureau providing information or documents...” to “Information or documents provided by the Bureau...”
- Paragraph (5) of subsection (d) [formally paragraph (4) of subsection (a)] was changed from “Any other interested person providing information...” to “Information or documents provided by any other interested person...”
- The second half of paragraph (6) of subsection (d) [formally paragraph (5) of subsection (a)] is revised from “If an employee or member of the Commission again requests the confidential information, the Bureau shall provide the unredacted information only to an employee or member of the Commission, but only after notice has been provided to the applicant, pursuant to Section 12006, with at least 14 days for the applicant to object and pursue any necessary judicial steps appropriate to challenge the request and see judicial in camera review of the information” to “If an employee or member of the Commission again requests the confidential information, they shall provide a notice to the applicant, pursuant to Section 12006, allowing at least 14 days for the applicant to object and pursue any necessary judicial remedies appropriate to challenge the request and seek a judicial in camera review of the information. The Bureau shall provide the unredacted information only to an employee or member of the Commission, and only after the time period specified to seek judicial review has elapsed, or the appropriate judicial remedies have been exhausted, whichever is later.”
- Paragraph (1) of subsection (f) is revised to include the requirement to include responses, as follows: “All information, documentation and responses...”

Alternative 1

This alternative would provide for the Commissioner disqualification process detailed in paragraph (2) of subsection (g), as modified, to instead allow time for an applicant to pursue judicial remedies.

Alternative 2

This alternative removes any method for disqualification besides voluntary withdrawal.

Section 12015

- The fourth sentence of subsection (a) is revised from “The Bureau shall stay its background investigation pursuant to...” to “The Bureau shall stay any investigation of the applicant being conducted under...”
- Subsection (f) is added to state “An applicant who withdraws their application shall not have the right to an evidentiary hearing pursuant to Section 12056.”

Section 12017

- Paragraph (2) of subsection (a) is revised from “...abandoned, notice shall be sent to the applicant, pursuant to Section 12006, with a...” to “...abandoned, a notice of abandonment shall be sent to the applicant, with a...”
- Paragraph (3) of subsection (a) is removed.
- Paragraph (2) of subsection (b) is moved to subsection (c) with corresponding changes to other paragraphs of subsection (b) and later subsections. In addition it is revised from “...discretion, taking into...under subsection (a).” to “discretion, pursuant to Section 12054 after taking into...under subparagraphs (A) through (C), inclusive, of paragraph (1) of subsection (b).”
- Subsection (e) is added to state “An applicant who withdraws their application shall not have the right to an evidentiary hearing pursuant to Section 12056.”

Section 12050

- Paragraph (1) of subsection (a) has been revised with the addition of the phrase “...as relevant to the application” at the end of the paragraph.
- Paragraphs (2) of subsection (a) with revised for the removal of the words “that are” from the sentence.

Section 12052

- Paragraph (1) of subsection (c) is revised from “If the application is scheduled as an agenda item...” to “If the application is scheduled at a non-evidentiary hearing meeting...”
- Subparagraph (C) of paragraph (1) of subsection (c) is revised from “Any testimony may be required to be sworn” to “Any individual making an oral statement may be required to be placed under oath.”
- Subsection (e) is revised from “Individuals who provide testimony at a Commission meeting may be sworn in by a member of the Commission or the Executive Director” to “Testimony provided at a Commission meeting may be taken upon oath or affirmation.”

Section 12054

- The title of the section is revised from “Approval; Commission Elected Hearings” to “Consideration at Regular Commission Meeting.”

Section 12056

- Subsection (a) is revised to include the word “to” prior to each section reference.

Alternative 3

This alternative provides that in Section 12056, the Administrative Procedures Act (APA) process can only be utilized when the Bureau has recommended denial.

Section 12058

- Subsection (b) is modified to remove “at all times” as its exclusion does not change the requirement.

Section 12060

- The first sentence of subsection (a) is revised from “The Executive Director shall give notice...and to the Office of Attorney General and Bureau no later...” to “The Executive Director shall give notice...to the Office of Attorney General, and to the Bureau no later...” The second sentence is revised from “The Executive Director’s decision will be based...” to “The Executive Director’s determination will be based...”
- Subsection (b) is revised to “When the Commission has elected to hold a GCA hearing, the Executive Director shall give notice to the applicant, pursuant to paragraph (2) of subsection (c) of Section 12052, to the Office of the Attorney General, and to the Bureau no later than 60 days in advance of the GCA hearing.”
- Subsection (c) has the following sentence added to the beginning, “The presiding officer shall have no communication with the Commission or Commission staff on the merits and information or documents related to the application prior to the evidentiary hearing.”
- Subsection (e) is replaced with “The Bureau shall provide to the applicant, at least 45 calendar days prior to the GCA hearing, and the applicant shall provide to the Bureau, at least 30 calendar days prior to the GCA hearing, the following items:”
- Current subsection (f) is renumber as paragraph (1) of subsection (f) and the former paragraphs of subsection (f) are renumber as subparagraphs of paragraph (1) of subsection (f). Subsection (f) is replaced with the last sentence of subsection (l) with a second sentence added to read “A ruling by the presiding officer shall be final.” The remaining part of subsection (l) is moved to paragraph (2) of subsection (f) with corresponding renumbering of the remaining subsections.

Section 12062

- Subsection (a) is revised to require “Commission legal staff” instead of the “presiding officer” to prepare and submit a proposed decision.

Section 12064

- The last sentence of subsection (a) is revised to end with “later” instead of “sooner.”

Section 12066

- A new subsection (a) is added with corresponding changes to the other subsections being made. Subsection (a) provides, “A withdrawal or abandonment decision is final: (1) 30 days after the date of notice of abandonment if pursuant to either paragraph (2) of subsection (a) or paragraph (2) of subsection (b) of Section 12017 if not repealed by the issuing agency. (2) Upon approval by the Commission pursuant to paragraph (5) of subsection (a) of Section 12054 or the making of a finding of abandonment pursuant to paragraph (6) of subsection (a) of Section 12054.

Alternative 4

This alternative provides for a revision to the role of Commission staff to allow for, in some cases, staff to serve as the complainant during the APA process. This is done by defining the roles of advocates and advisors to the Commission in Section 12002 and providing for their separation in the *ex parte* rules of Section 12012. In addition, the separation of the roles of advocates for the Commission and the Bureau will be added to Sections 12056 and 12058.

Action:

Commissioner Schuetz moved to approve staff’s recommendation to commence the formal Administrative Procedures Act Rulemaking Process, with the agreed upon modifications and addition of alternatives to the October 16, 2013 text draft. The motion was seconded by Commissioner Conklin and unanimously passed on a roll call vote with Chairman Lopes and Commissioners Hammond, Conklin and Schuetz voting yes.

PUBLIC COMMENT

None

ADJOURNMENT

Chairman Lopes adjourned the workshop at 4:45 p.m.