

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF GAMBLING CONTROL
P. O. Box 168024
Sacramento, CA 95816-8024

April 26, 2017

Jolie Houston
Interim City Attorney
City of Merced
678 West 18th Street
Merced, California 95340

SENT VIA U.S. MAIL/EMAIL

Re: City of Merced – Amendments to Municipal Code Section 9.08.020, Cardrooms

Dear Ms. Houston:

On April 26, 2016, the Bureau of Gambling Control (Bureau) received the City of Merced's (City) proposed amendments to Municipal Code section 9.08.020, Cardrooms, and the Administrative Report for the City Council meeting of April 18, 2016, pertaining to these proposed amendments. The proposed amendments were submitted to the Bureau in accordance with Business and Professions Code section 19961.1. Pursuant to Business and Professions Code section 19961.1, a local jurisdiction is required to submit any proposed amendments related to a gambling establishment to the Bureau for review and comment before the ordinance is adopted. On May 2, 2016, the City approved the amendments and adopted Ordinance Number 2457, prior to receiving the Bureau's comments. The City's adoption of Ordinance Number 2457 violated Business and Professions Code section 19962, subdivision (b), which resulted in expansion of gambling. Ordinance Number 2457 expanded the number of gambling tables within the jurisdiction and the gambling establishment as defined under Business and Professions Code section 19961, subdivisions (b)(1) and (b)(3). On May 25, 2016, Bureau staff advised the City of Business and Professions Code section 19961.1 and suggested that the City not place its new table limits in effect until it has received the Bureau's comments. The following is summary of the City's substantive amendments.

The amendment pertaining to the hours of operation added a new zoning area that would allow a gambling establishment to operate outside of the specified hours of operation cited in the City's ordinance pursuant to a conditional use permit. The amendments regarding the increases in the number of authorized tables were offered under the collective authority of Business and Professions Code sections 19961, subdivision (a)(2); 19965, subdivision (a); 19961.06, subdivisions (a) and (b). In addition, the amendments would repeal the wagering limits in the City's existing ordinance, declare that there shall be no such limits imposed by the City, and provide that gambling establishment operators may set their own limits on bets and wagers.

ATTACHMENT 2

After extensive review of the City's amendments to section 9.08.020 for compliance with the California Gambling Control Act (Act), the Bureau offers the following comments related to the City's adopted Ordinance Number 2457.

Maximum Hours of Operation

The City's provision governing the hours of operation, section 9.08.020, subdivision B, states that:

"It is unlawful and a misdemeanor, subject to punishment in accordance with Chapter 1.12 of this code, for any person, either as principal, agent, employee, or otherwise, to play, conduct, or deal any game of cards in any cardroom, or in any other public place or place resorted to generally by the public, between the hours of two a.m. and six a.m. of any day, with the exception of a duly licensed cardroom operating in a Commercial Thoroughfare (C-T) zone or Central Commercial (C-C) zone pursuant to a conditional use permit which regulates the hours of operation."

It is the Bureau's position that the provision governing the hours of operation fails to fully meet the requirements of Business and Professions Code section 19860, subdivision (a)(1). To properly govern the hours of operation, the City must specify the maximum hours that a gambling establishment may be allowed to operate.

Maximum Number of Tables

The Bureau offers the following comment regarding the City's amendments to section 9.08.020, which includes an increase in the maximum number of tables from eight to 16 pursuant to Business and Profession Code sections 19961, subdivision (a)(2); 19965, subdivision (a); and 19961.06, subdivisions (a) and (b).

Business and Professions Code section 19961 generally prohibits an amendment to a local ordinance that would result in an expansion of gambling, as defined, within the local jurisdiction unless the amendment is approved by the jurisdiction's voters. Notwithstanding this prohibition, Business and Professions Code section 19961, subdivision (a)(2) allows an ordinance to be amended without voter approval to expand gambling by an increase of less than 25 percent with respect to, among other things, the number of authorized tables in a local jurisdiction and the number of authorized tables that may be operated in a gambling establishment. On December 21, 1998, the City approved and adopted Ordinance No. 2005 to specify a maximum of four tables to be operated in a gambling establishment. There are a total of two gambling establishments operating within the local jurisdiction. On July 15, 2002, the City approved and adopted Ordinance Number 2087 that included, among other things, a maximum of eight tables in the local jurisdiction. Under the authorization of Business and Profession Code section 19961,

subdivision (a)(2), the City was then permitted to increase by one table, thereby increasing the maximum number of tables in the jurisdiction from eight to nine. Because any increase of tables in a gambling establishment would have increased the number of tables by at least 25 percent, no increase in the establishment table limit was possible.

Business and Professions Code section 19965, subdivision (a), effective January 1, 2009, provides in part, "...a city, county, or city and county may amend an ordinance to increase the number of gambling tables that may be operated in a gambling establishment as follows: If the ordinance in effect on July 1, 2007, provided for five to eight tables, inclusive, the amended ordinance may allow an increase of three tables." A parallel provision in subdivision (b) of the same section permitted an increase of four tables in a gambling establishment if the ordinance in effect on July 1, 2007, provided for nine to 12 tables. The number of tables authorized in a gambling establishment pursuant to the City's ordinance, however, remained at four as of July 1, 2007. Thus neither of the increases authorized by Business and Professions Code section 19965 is available to the City.

Business and Professions Code section 19961.06, subdivision (a), effective January 1, 2011, states in pertinent part that, "...a city, county, or city and county may amend an ordinance to increase by two the number of gambling tables that may be operated in a gambling establishment in the city, county, or city and county, above the number of tables authorized in the ordinance that was in effect on January 1, 2010." On January 1, 2010, the City's ordinance authorized a maximum of four tables to be operated in a gambling establishment and eight tables in the jurisdiction, thus the increase of two tables for the gambling establishment tables would provide for a total of six tables to be operated in the gambling establishment. It should be noted that before the City could accommodate this increase for each of the two authorized gambling establishments within its jurisdiction, it would have had to increase the total number of tables permitted in the jurisdiction to 12. However, the City did not adopt an ordinance amendment to increase the authorization, and the number of tables authorized by the ordinance remained at four.

Business and Professions Code section 19961.06, subdivision (b), effective January 1, 2014, states in pertinent part that, "...in addition to the authorization granted by subdivision (a), a city, county, or city and county may amend an ordinance to increase by two the number of gambling tables that may be operated in a gambling establishment in the city, county, or city and county, above the number of tables authorized in the ordinance that was in effect on January 1, 2013." Since on January 1, 2013, the City's ordinance authorized a maximum of four tables to be operated in a gambling establishment under Business and Professions Code section 19961.06, subdivision (b), the City was permitted to authorize an increase in the number of establishment tables to six. However, the City did not adopt an ordinance amendment to increase the authorization, and the number of tables authorized by the ordinance remained at four.

Based upon the foregoing review, the City is currently permitted by Business and Professions Code section 19961.06, subdivision (a), to increase its authorization of tables in gambling establishments by two tables above the number authorized in the ordinance in effect on

January 1, 2010. The number so authorized having been four, the City may authorize six tables per establishment. The City is also permitted by Business and Professions Code section 19961.06, subdivision (b), to authorize an increase of two tables per establishment above the number authorized in the ordinance in effect on January 1, 2013. Since, as indicated, the ordinance in effect on that date authorized four tables per establishment, action by the City under Business and Professions Code section 19961.06, subdivision (b), is limited to authorization of an increase from four tables to six. It should be noted that a local jurisdiction may only amend its overall jurisdictional table limits as needed to accommodate the gambling establishment's table increase. As a result, the City's jurisdictional table limit may increase to a maximum of 12 tables.

The City is not permitted by Business and Professions Code section 19965, subdivision (a), to authorize an increase in the gambling establishment tables because the increase is only available where the tables authorized by the ordinance on July 1, 2007, was between five and 12. Finally, the City is permitted by Business and Professions Code section 19961, subdivision (a)(2), to authorize an increase from eight to no more than nine in the number of gambling tables within its territorial jurisdiction. Any increase of tables beyond nine would result in an expansion of gambling under Business and Professions Code section 19961, subdivision (a)(1), for which no statutory exception exists.

Repeal of Wagering Limits

In addition to the hours of operation and table increases, the City has amended its previous wagering provision in section 9.08.020, subdivision E, from \$300 (single bet) and \$200 (total sum anted) to specify the following in section 9.08.020, subdivision G, in pertinent part: "There shall be no City-imposed limits on bets and wagers in a cardroom located within the City. Individual cardroom operators may set their own limits on bets and wagers." It is the Bureau's position that such delegation does not meet the statutory requirements of Business and Professions Code section 19860, subdivision (a)(4), which states in pertinent part that:

"The commission shall deny a gambling license with respect to any gambling establishment that is located in a city, county, or city and county that does not have an ordinance governing... Wagering limits in gambling establishments." (emphasis added)

The Bureau considers the wagering limit to be a fundamental policy decision that must be made by the local government. Therefore, the wagering provision should be revised to specify that the City authorizes a no-limit wager amount for compliance with the Act.

The Bureau reviewed the other miscellaneous amendments and determined they comply with the applicable provisions of the Act.

Jolie Houston
April 26, 2017
Page 5

Please notify the Bureau by **May 12, 2017**, as to the action the City will be taking regarding the expansion of gambling related to the table limits. The Bureau will be expeditious in its review of the City's proposed ordinance amendment related to this matter. Thank you for your cooperation regarding this matter.

Sincerely,


YOLANDA MORROW
Assistant Director

For XAVIER BECERRA
Attorney General

cc: Jarhett Blonien, Designated Agent Merced Poker Room
Tawni Vargas, Designated Agent Poker Flats Casino