

XAVIER BECERRA
Attorney General

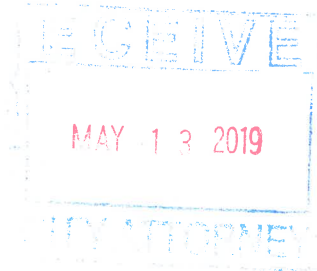
State of California
DEPARTMENT OF JUSTICE



BUREAU OF GAMBLING CONTROL
2420 DEL PASO ROAD, SUITE 100
SACRAMENTO, CA 95834

May 6, 2019

City Attorney
Phaedra Norton
City of Merced
678 West 18th Street
Merced, California 95340



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

Dear Ms. Norton:

On March 11, 2019, the Bureau of Gambling Control (Bureau) received via email the City of Merced's (City) proposed amendments to Municipal Code section 9.08.020, Cardrooms. The proposed amendments were submitted to the Bureau in accordance with Business and Professions Code section 19961.1. The Bureau reviewed the City's proposed amendments for compliance with the Gambling Control Act (Act) and offers the following comments.

On April 26, 2016, the Bureau received proposed amendments to the City's Municipal Code section 9.08.020 and the Administrative Report for the City Council meeting on April 18, 2016, pertaining to those proposed amendments. 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 an expansion of gambling. Ordinance Number 2457 expanded the number of gambling tables within the jurisdiction and in 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.

On April 26, 2017, the Bureau sent a letter to the City providing its comments regarding the proposed amendments to Municipal Code section 9.08.020. The Bureau noted the proposed amendments to the provisions governing maximum hours of operations, maximum number of tables, and the repeal of wagering limits were not in compliance with the Act (Enclosure). Subsequently, on March 11, 2019, the Bureau received new proposed amendments to the City's Municipal Code section 9.08.020.

Maximum Hours of Operation

Currently, Municipal Code 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.”

The City’s proposed amendments to 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, except that any duly licensed cardroom operating in a Commercial Thoroughfare (C-T) zone or Central Commercial (C-C) zone is permitted to operate 24 hours per day.”

The proposed amendments provides that cardrooms located in specified zoning areas will be allowed to operate a maximum of 24 hours per day. This change is authorized by Business and Professions Code section 19961.05, and is in compliance with the Act.

Maximum Number of Tables

The City’s current provisions governing the maximum number of tables was adopted on May 2, 2016, and was an expansion of gambling in violation of Business and Profession Code section 19961, subdivision (a)(1).

The City’s proposed amendments to section 9.08.020, subdivisions D through H states:

“D. As of April 18, 2016, there are two cardrooms authorized to operate within the City of Merced, each of which may operate four (4) card tables. There shall be no increase in the existing number of cardrooms without the approval of a majority of the voters of the City.

E. The City of Merced hereby increases the number of authorized card tables to be operated within the City from eight (8) card tables to twelve (12) card tables. There shall be no increase in the number of card tables to be operated beyond twelve (12) card tables without the approval of a majority of the voters of the City.

F. In order for a cardroom to increase the number of card tables to be operated from the four (4) card tables that existed as of April 18, 2016, the operator must first obtain a conditional use permit to operate additional card tables. A cardroom operator may apply for up to two (2) additional card tables subject to the overall limit of twelve (12) card tables to be operated within the City; provided, however, that under no circumstances shall a cardroom have more than six (6) card tables in operation at any one time. All card tables not in operation shall be completely covered and shall display a sign on the table, with not less than six (6") inch lettering, stating that 'This table is not in operation.' The cover and sign shall be approved in advance by the City.

G. As of the date of the final adoption of this Ordinance No. ____, Conditional Use Permit #1216 approved by Resolution #3077 on February 22, 2017 related to the 'Merced Poker Room,' and Conditional use Permit #1219, approved by Resolution #3079 on February 22, 2017, related to the 'Poker Flats Casino,' are hereby amended to allow a maximum of six (6) card tables to be operated per cardroom in accordance with this Ordinance and State law. All other conditions of Conditional Use Permits #3077 and #3079 remain in full force and effect, except that if there are any conflict between said Conditional Use Permits and this Ordinance, the provisions of this Ordinance control.

H. If a cardroom operator obtains a conditional use permit to operate additional card tables, the new card tables must be added within one (1) year from the date of approval of the conditional use permit. Otherwise, the right to add the additional card tables shall automatically expire and the number of card tables allowed in that cardroom shall revert back to the number of card tables

that existed prior to the approval of the conditional use permit.”

The proposed amendments provide that the total number of tables within the City will increase from eight to twelve. The ordinance in effect prior to May 2, 2016, provides that the two cardrooms located within the City (Merced Poker Room and Poker Flats Casino) each operate four tables each, and the previous limit of eight tables in the City has been permitted by ordinance since Ordinance No. 2087 was approved on July 15, 2002. The proposed ordinance will allow each of those two cardrooms to increase their tables by two, for a total of six each, should they choose to do so, pursuant to Business and Professions Code section 19961.06, subdivision (b).

Business and Professions Code section 19961.06, subdivision (b) permits a city to increase by two the number of tables allowed in a gambling establishment above the number that was authorized in the ordinance that was in effect on January 1, 2013. As stated above, the ordinance permitted each of the two cardrooms to operate four tables, with a City-wide limit of eight. An increase of two tables per cardroom is allowed by Business and Professions Code section 19961.06, subdivision (b). As a result, the City’s jurisdictional table limit would increase to twelve. As such, this proposed ordinance amendment appears to be in compliance with the Act.

Wagering Limits

The City’s provision governing wagering limits, section 9.08.020, subdivision G, states that:

“G. 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. The rules of each game and wagering limits shall be clearly posted at the gaming tables where the games are offered to provide the patrons adequate notice of such rules and limits.”

The City’s proposed amendment to section 9.08.020, subdivision G includes a renumbering of the subdivision to I and, states that:

“I. There shall be a no-limits wager amount in a cardroom located within the City. The rules of each game and wagering limits shall be clearly posted at the gaming tables where the games are offered to provide the patrons adequate notice of such rules and limits.”

The proposed amendments appear to be in compliance with the Act.

The Bureau reviewed the other miscellaneous amendments and determined they comply with the applicable provisions of the Act. In addition, it should be noted that Poker Flats Casino

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changed its name to Golden Valley Casino. The City's ordinance governing cardrooms should be amended to reflect the name change.

Upon approval and adoption of the proposed amendments, please provide the Bureau with a signed certified copy of the amendments. In addition, please provide the Bureau with a complete copy of the City's Code section 9.08.020.

If you have any questions, please contact Analyst Victor Calderon at (916) 621-1578. Thank you for your cooperation regarding this matter.

Sincerely,


YOLANDA MORROW
Assistant Director

For XAVIER BECERRA
Attorney General

Enclosure