



**CITY OF KIRKLAND**  
Department of Finance & Administration  
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100  
www.kirklandwa.gov

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## MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Robin Jenkinson, City Attorney  
Tracey Dunlap, Director of Finance & Administration  
Nancy Otterholt, Accountant

**Date:** March 19, 2014

**Subject:** ADOPT ORDINANCE O-4440 REVISING THE GAMBLING TAX COLLECTION  
PROCESS IN KMC 7.48

### **RECOMMENDATION:**

Adopt Ordinance O-4440 revising the gambling tax collection process in Kirkland Municipal Code (KMC) 7.48 to remove the property owner lien notification provision and change the frequency of gambling tax payment from every six months to quarterly payments.

### **BACKGROUND DISCUSSION:**

The City of Kirkland imposes a tax upon any gambling activity that is not prohibited by either state law or city ordinance (KMC 7.48). The tax rate varies based on the type of gambling activity, ranging from two percent on amusement games to eleven percent on social card games. Taxes are due semi-annually to coincide with the date that periodic financial reports are due to the State Gambling Commission.

On October 15, 2013, the City Council approved Ordinance O-4422, which required that those engaging in licensed gambling activity, using property owned by another, obtain the consent of the owner to allow the City's gambling lien to potentially attach to their property. This action was in response to the Superior Court ruling against the City on the challenge of the lien placed on the property used by Danny's Pub pursuant to RCW 9.46.110 (4). The staff report describing this action is included in Attachment A and provides detailed background for reference.

The purpose of Ordinance O-4422 was to assist the City in its gambling tax collection efforts. While most gambling establishments pay their taxes on time, there are businesses which accumulate significant delinquencies. In the past, the City attempted to use the lien authority granted in RCW 9.46.110 (4) and KMC 7.48.020 (c) as its primary collection mechanism. The amendment was intended to provide the ability to continue to use this method. However, based on feedback we have received from property owners, it is apparent that this amendment will not have its intended impact and may in fact complicate our collection efforts. In particular,

Attachment B contains a letter received from attorneys representing the owners of the property occupied by Casino Caribbean outlining their objections.

Given that the intent of Ordinance O-4422 was to improve collections and that does not appear to be the result, staff recommends that the changes to the lien section be removed and that the City establish administrative rules to strengthen the collection process. The portion of the lien language that remains would continue to apply in circumstances where the individual operating the gambling business is also the property owner. In addition, staff recommends modifying the frequency of payment to be consistent with the practices of surrounding communities.

One of the primary concerns with the current semi-annual frequency is that the tax liability accrued during a six month period can be significant, in many cases tens of thousands of dollars or more. Staff is recommending that the payment frequency be increased to quarterly. We hope this will increase the likelihood of compliance due to smaller, more frequent payments. In addition it also provides an earlier indication of delinquency to the City, which allows for more time to find collaborative solutions for the non-payment before deficits get too large. The next gambling tax payment is due July 31, 2014 and the ordinance contemplates that the quarterly payment requirement will take effect after that payment (next payment due October 31, 2014).

With this change to the KMC, staff will also put in place rules consistent with KMC 7.48.035 to strengthen the collections process, as defined in the current code. A draft of the collections process is included as Attachment C to this memorandum and includes immediate notification upon late payment, escalating to potential citation, and sending the debt to collections. After these steps are exhausted, the City could submit a request to the State Gambling Commission requesting revocation of the establishment's gambling license.

Upon approval of the code change, staff will notify the establishments of the new payment schedule and collections process and that the lien-related correspondence they received earlier this year is rescinded.

**CITY OF KIRKLAND**

City Attorney's Office

123 Fifth Avenue, Kirkland, WA 98033 425.587.3030

[www.kirklandwa.gov](http://www.kirklandwa.gov)**MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Tracey Dunlap, Director of Finance & Administration  
Robin S. Jenkinson, City Attorney

**Date:** October 3, 2013

**Subject:** Liens on Property Used in Gambling Activities

**RECOMMENDATION:**

Council adopts the attached ordinance, which would require that those engaging in licensed gambling activity, using property owned by another, obtain the consent of the owner to allow the City's gambling tax lien to potentially attach to their property.

**BACKGROUND DISCUSSION:**

Danny's Pub, a tavern and restaurant which operated under lease in the Totem Lake area of Kirkland also sold pull tabs, which is a gambling activity. Pursuant to Kirkland Municipal Code (KMC) 7.48.020(a)(4), the City imposed a five percent tax on these sales. At times, the owners of Danny's would neglect paying these taxes. Pursuant to KMC 7.48.020(c), an automatic lien would then arise against the property used in the gambling activity. In two instances in 2009 and 2011, the City actually recorded liens against the property owned by the landlord, Anas Property, LLC (Anas), which was property used by Danny's Pub in conducting the gambling activity.

Subsequently, Anas challenged the City's authority to impose the lien on its property because it was not involved in the gambling activity. Anas also argued that the lien was impermissible because it would violate its constitutional right to a hearing before the government could take its property. For these reasons, Anas requested that the City release the liens against its property. Because RCW 9.46.110(4) expressly authorizes a lien against any property "used" in gambling activity without qualification and without a hearing, the City refused to release the liens. The City reasoned that if liens for delinquent utility bills incurred by a tenant could arise against property owned by a landlord without the landlord being involved in the tenant's business and without a hearing, the gambling tax lien should be able to attach as well.

Anas subsequently filed a lawsuit against the City asking that the Court order the City to release the liens. Anas then filed for summary judgment to obtain an expedited release of the lien rather than wait until trial in the matter, which is not scheduled to occur until May 12, 2014. At the June 28, 2013, oral argument on the motion, the Judge ruled in favor of Anas and ordered that the City release the liens, which has occurred. The Judge based her decision on the fact that Anas was not involved in the gambling activity and that it would be unconstitutional to allow this deprivation of its property without due process. The Judge distinguished utility liens

on the grounds that everybody has to have utilities. Without explaining why this made a difference, the Judge held that while utility liens are allowed, gambling tax liens are not.

Despite this holding, the City believes it can still impose the lien for gambling taxes on the property owned by the landlord if the landlord or owner of personal property consents to the potential lien, in advance. The proposed amendments to KMC 7.48.020 and 7.02.110 will provide the authority for the City to require such consent before a tenant begins or continues to engage in gambling activity or has a business license issued or renewed.

ORDINANCE O-4422

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO GAMBLING AND AMENDING KIRKLAND MUNICIPAL CODE SECTION 7.48.020 TO REQUIRE THE WRITTEN CONSENT OF THE LANDLORD BEFORE GAMBLING ACTIVITIES MAY COMMENCE OR CONTINUE AND SECTION 7.02.110 TO REQUIRE COMPLIANCE WITH THIS REQUIREMENT BEFORE A BUSINESS LICENSE CAN BE ISSUED OR RENEWED.

WHEREAS, the lien authorized by Kirkland Municipal Code 7.48.020(c) for delinquent gambling taxes was intended to attach to any property used in gambling activities, whether owned by the person or entity conducting the gambling activities or not; and

WHEREAS, to insure this result, the Council believes the written consent that this lien could potentially attach to their property should be obtained from the owner(s) of such property; and

WHEREAS, the Council believes the business license under KMC Chapter 7.02 should be withheld until the person or entity engaged in the gambling activities has obtained such consent,

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Kirkland Municipal Code Section 7.48.020 is amended to read as follows:

**7.48.020 Tax rate imposed on gambling activities.**

(a) Tax Imposed. Pursuant to RCW 9.46.110, the city imposes a tax upon any gambling activity which activity is not prohibited by either state law or city ordinance. For the purposes of this section, a "charitable or nonprofit organization" shall mean an entity meeting the requirements of Chapter 9.46 RCW for a bona fide charitable or nonprofit organization. The gambling tax rate levied by the city of Kirkland is as follows:

(1) Bingo: ten percent of gross receipts less the amount awarded as cash or merchandise prizes; provided, that effective January 1, 2000, the tax rate for bingo shall be five percent of gross receipts less the amount awarded as cash or merchandise prizes.

(2) Raffles: ten percent of gross receipts less the amount awarded as cash or merchandise prizes; provided, that effective January 1, 2000, the tax rate for raffles shall be five percent of gross receipts less the amount awarded as cash or merchandise prizes.

(A) Special Rule. When a raffle is conducted by a charitable or nonprofit organization, no tax shall be imposed on the first ten

thousand dollars (per calendar year) of gross receipts less the amount awarded as cash or merchandise prizes.

(3) Amusement games: two percent of gross receipts less the amount awarded as prizes. The city shall use the revenue from such tax to pay the actual costs of enforcement of this chapter and Chapter 9.46 RCW by law enforcement.

(4) Punch boards and/or pull-tabs: five percent of gross receipts.

(A) Special Rule. When punch boards and/or pull-tabs are operated by a charitable or nonprofit organization, the tax shall be ten percent of gross receipts less the amount awarded as cash or merchandise prizes.

(5) Social card games, including but not limited to house banked social card games: eleven percent of gross revenue. The city of Kirkland prohibits social card games as a commercial stimulant except as allowed under Section 7.48.018.

(6) Contests of chance: seven percent of gross receipts. For purposes of this subsection, "contests of chance" shall mean gambling activities conducted at a "fund raising event" meeting the requirements of Chapter 9.46 RCW, other than the gambling activities listed above in this section. Bingo, raffles, amusement games, punch boards and/or pull-tabs, or social card games shall be taxed at the specific rates provided hereinabove, even if such activity was conducted as part of a fund raising event.

(b) Exemption for Certain Bingo or Amusement Games. A charitable or nonprofit organization, having no paid operating or management personnel, shall be exempt from the tax imposed under subsections (a)(1) and (a)(3) of this section so long as such organization receives no more than five thousand dollars per year in gross receipts from bingo or amusement games, or a combination thereof, less the amount awarded as cash or merchandise prizes.

(c) Lien. Taxes imposed under this chapter become a lien upon personal and real property used in the gambling activity in the same manner as provided for under RCW 84.60.010. If the personal or real property to be used is owned by any person or entity other than the person or entity conducting the gambling activities, the written consent to the potential attachment of the lien must be obtained from the person or entity owning the property before the gambling activities may commence or continue. In the event additional real or personal property is acquired after gambling activities have commenced, additional written consent must be obtained from the owners of that property before it can be used in the gambling activities. Both written consents required herein must be in a form acceptable to the City Attorney and must be provided to the city before the issuance or renewal of a business license under KMC 7.02 may occur. The lien shall attach on the date the tax becomes due and shall relate back and have priority against real and personal property to the same extent as ad valorem taxes.

Section 2. Kirkland Municipal Code Section 7.02.110 is amended to read as follows:

**7.02.110 Review of application.**

(a) The director, upon receipt of an application form, shall cause an investigation and review of the application to be made by the proper city officials, and shall issue or deny issuance of the license within thirty days after the city receives a complete application.

(b) The proposed use of premises shall not be in violation of any city building, safety, fire, health or land use regulations as determined by the city department charged with the enforcement of said regulations.

(c) If a person required by the terms and provisions of this chapter to pay a license fee for any period fails or refuses to do so, he/she/it shall not be granted a license for the current period until the delinquent license fee, together with penalties, has been paid in full. Neither the applicant nor the proposed business shall be in default under the provisions of this chapter or indebted or obligated in any manner to the city, except for current taxes and other obligations not past due.

(d) Qualifications of Applicants. The director may deny issuance (or renewal) of a business license or permit when the licensee, officer or partner thereof, or another person with a legal interest in the license:

(1) Knowingly causes, aids, abets, or conspires with another to cause any person to violate any of the laws or regulations of this state or the city which may affect or relate to the licensed business;

(2) Has obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake;

(3) Is convicted of, forfeits bond upon, or pleads guilty to any offenses related to the operation of the licensed business or had a license revoked or suspended by the city or another jurisdiction;

(4) Makes a misrepresentation or fails to disclose a material fact to the city related to any of the obligations set forth in this chapter;

(5) Violates any building, safety, fire or health regulation on the premises in which the business is located after receiving warning from the city to refrain from such violations; or

(6) Is in violation of a zoning regulation or any other regulation of the city.

(e) If an application is denied, any person aggrieved may request director review as provided in this chapter.

Section 3. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this Section, or the application of the provision to other persons or circumstances is not affected.

Section 4. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication

pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2013.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

PUBLICATION SUMMARY  
OF ORDINANCE O-4422

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO GAMBLING AND AMENDING KIRKLAND MUNICIPAL CODE SECTION 7.48.020 TO REQUIRE THE WRITTEN CONSENT OF THE LANDLORD BEFORE GAMBLING ACTIVITIES MAY COMMENCE OR CONTINUE AND SECTION 7.02.110 TO REQUIRE COMPLIANCE WITH THIS REQUIREMENT BEFORE A BUSINESS LICENSE CAN BE ISSUED OR RENEWED.

SECTION 1. Amends Kirkland Municipal Code Section 7.48.020 relating to the tax rate imposed on gambling activities requiring the written consent of the landlord before gambling activities may commence or continue.

SECTION 2. Amends Kirkland Municipal Code Section 7.02.110 relating to the review of applications for compliance with the Kirkland Municipal Code, which would include the requirements of 7.48.020, before a business license can be issued or renewed.

SECTION 3. Provides a severability clause for the ordinance.

SECTION 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

I certify that the foregoing is a summary of Ordinance \_\_\_\_\_ approved by the Kirkland City Council for summary publication.

\_\_\_\_\_  
City Clerk

Attachment B

**OSERAN, HAHN, SPRING, STRAIGHT & WATTS, P.S.**

James H. Clark  
Gerald M. Hahn  
Thomas M. Hansen  
William C. Hsu  
Laura S. LeMaster  
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David M. Barron  
Michel P. Stern

February 19, 2014

Michael Olson  
Deputy Director  
Finance and Administration Dept.  
City of Kirkland  
123 Fifth Avenue  
Kirkland, WA 98033-6189

**Via Email and U.S. Mail Certified and Return Receipt Requested**

RE: *Your Letter to Silvernale Properties, LLC dated January 30, 2014 / KMC §7.48.020*

Dear Mr. Olson:

This firm has been retained by Tjossem Properties VII, LLC and Silvernale Properties I, LLC, the owners (“Owners”) of the property located in the City of Kirkland upon which the “Kingsgate Casino” is located. A copy of your January 30, 2014 letter to Silvernale Properties I, LLC is attached for reference. The Owners leased the property to Sno-King Amateur Hockey Association, Inc. (“Tenant”), who in turn subleased the property to Casino Caribbean, LLC (“Sub-Tenant”). We note also that on the same date, you wrote on behalf of the City of Kirkland a letter to Mr. Michael Marquess of Casino Caribbean, LLC. In this letter, you threatened the ability of the Sub-Tenant to continue in business on the owners’ property without compliance by demanding that our client, the Landlord/Property Owner, agree to subordinate the ownership interest in the property to secure payment of any future delinquent gambling taxes that might become owing by the Sub-Tenant/ Licensee.

We have carefully reviewed the demand of the City of Kirkland made in your January 30, 2014 letter, together with the citations of authority upon which the demand is based, and have advised the client to reject the demand. The client has accepted our advice and therefore we are authorized to notify the City of Kirkland that its demand that the Landlord/Owner “insure collection” of taxes that might become owing in the future by a Sub-Tenant on the property is rejected.

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The cited ordinance, KMC §7.48.020, apparently recently amended, nowhere makes clear the intention of the City of Kirkland to impose a lien on an entirely passive Landlord under a fixed-payment Lease (without percentage participation in the Tenant or the Sub-Tenant's business activity). Instead, the ordinance cites for its authority RCW 84.60.010. That statute, effective July 28, 2013, limits itself to only those "taxes and levies which may hereafter be lawfully imposed or assessed." It is the position of the Owners here that that threshold requirement is not and cannot be met by the efforts of the City of Kirkland to impose a guarantee of a Tenant's tax obligation by the property of a Landlord. The statute further imposes the lien for taxes and levies only "upon the real and personal property upon which they may hereafter be imposed or assessed, ..." The City of Kirkland is not proposing to assess a tax on the property of the Landlord, the tax only being measured by the revenue of the Sub-Tenant with the Landlord as an involuntary "guarantor." On its very face, the statute upon which the City of Kirkland ordinance cited in your letter relies provides no support for the demand in your January 30, 2014 letter.

Further research demonstrates that the Department of Revenue in WAC 458-20-217 ("Lien for Taxes") specifically excludes imposition of any lien for "unpaid and overdue tax liabilities" from being asserted against a Landlord/Property Owner not having a "beneficial interest in the operation of the business." (WAC 458-20-217(3)) This is made clear by the cited subsection which reads, in part:

A party whose only interest in the business is securing the payment of debt by receiving regular rental payments on equipment does not have a beneficial interest.... Rather, a party who owns property used by a delinquent taxpayer must also have a beneficial interest in the operation of that business before the lien will attach to the party's property.

Subsection (b) of the same regulation identifies when a lessor has a "beneficial interest" in the taxpayer's business. None of the examples given by the regulation apply in the present case where the only interest of the Landlord/Property Owner is receipt of fixed monthly rentals determined without regard to business success of the Tenant or Sub-Tenant.

The challenge to the legality of the demand of the City of Kirkland in its January 30, 2014 letter is further confirmed by the unpublished Court of Appeals decision by the respected Judge Marlin Appelwick in *Barnett & Lim Assoc. v. City of Federal Way*, found at 135 Wn. App. 1038 (Div. I) Cause 56889-2-I. This 2006 decision found illegal and invalid a nearly identical effort by the City of Federal Way to impose a lien for unpaid Tenant gambling taxes on a Landlord/Property Owner. In that case, the City recorded its lien, without any notice to the Property Owner, and the lien was discovered only during the finalization of a sale of the property to third-parties. The lien interfered with the sale of the property as a cloud on the title. The Court of Appeals found that cloud to be illegal, citing as support for its decision, the Supreme

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Court decision in *State v. Lawton*, 25 Wn.2d 750, 172 P.2d 465 (1946). Judge Appelwick, with two judges concurring, found Lawton to be indistinguishable from the effort of the City of Federal Way in the case before it regarding a claimed right to lien a Property Owner/Landlord for unpaid gambling taxes owing by a Tenant. The decision in *Barnett & Lim Assoc.* reads in part:

Strict application of the statute [RCW 4.96.270] excluded Barnett & Lim from the underlying gambling taxes because they were not the party permitted to conduct the activity.... As in *Lawton*, holding Barnett & Lim liable for the tax liability of a tenant would deprive them of their property without hearing or due process of law.

The *Lawton* decision of 1926 is now 88 years old and the *Barnett & Lim Assoc.* decision relies on the well-established proposition that a legislature in adopting legislation is presumed to know the status of existing law (as decided in *Lawton*). The decision rejected the legality of the claim of imposition of a lien on a Landlord/Property Owner for the liability of a Tenant for gambling taxes with the following language:

Considering the similarity of facts between the case at hand and *Lawton*, and the presumption that the legislature is aware of the existing state of the case law in those areas in which it is legislating, to conclude that the legislature again tried to impose a lien on a third-party for the tax liability of another would be to presume the legislature knowingly enacted an unconstitutional statute. The logical and constitutional conclusion would be that RCW 9.46.110(4), properly construed, was not applied to Barnett & Lim. The City cannot impose a lien on the real property of a third-party landlord that has no beneficial interest or involvement in the underlying taxable activity. (*Emphasis added*)

In its footnote 3, the Court of Appeals in *Barnett & Lim Assoc.* notes that state law prohibits a tenant from having a beneficial interest in the proceeds of the gambling operation – a strong basis for the determination under the Department of Revenue regulation that a Landlord/Property Owner of a gambling Tenant cannot have a “beneficial interest” in the property. (Citing RCW 9.46.120(2))

Apparently not being willing to accept the outcome of the *Barnett & Lim Assoc.* decision, the City of Kirkland attempted to assert a lien on the interest of a Landlord/Property Owner of a gambling establishment Tenant in the case of *Anas Property, LLC v. City of Kirkland*, King County Superior Court Cause No. 13-2-02873-5 SEA. The Landlord/Property Owner directly challenged the authority of the City of Kirkland to impose a lien for unpaid gambling taxes under

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the ordinance upon which the City now relies. The King County Superior Court, on June 28, 2013, concluded that the law prohibited the City of Kirkland from imposing the tax upon the Landlord/Property Owner and vacated the liens already recorded by the City of Kirkland pursuant to its claim of lien. The Honorable Catherine Schaffer, in her Summary Judgment Order of Dismissal, held that:

The title to plaintiff's real property legally described in Exhibit A to this order is hereby cleared of all claims and liens by the City of Kirkland for gambling taxes.

The Court also reserved to the Property Owner future claims for slander of title and attorneys' fees against the City of Kirkland. We understand that the case was subsequently settled on the remaining claims between the City of Kirkland and the Owners and that no appeal was taken of the underlying decision in validating the lien claims.

For the City of Kirkland to be pursuing a lien claim in the present case violates all sense of decency and violates established Court of Appeals and King County Superior Court decisional law. The position of the City of Kirkland is neither supported by its own ordinance, nor is it supported by Department of Revenue interpretations of the authority of state agencies to enforce liens for unpaid Tenant taxes against a Landlord (limited only to cases of a Landlord holding a "beneficial interest"). There are simply no facts and no legal authority for the position of the City of Kirkland in its January 30, 2014 letter to our client and, therefore, the demand is properly rejected. Our client has notified the Tenant and Sub-Tenant of the Kirkland demand, recognizing that the Sub-Tenant has also received a similar direct threat of gambling license impairment if the Owners do not provide the requested guarantee/lien.

If the City of Kirkland pursues this matter further, or jeopardizes the license status of the Sub-Tenant on the property of our client, the City of Kirkland will be almost certainly found guilty of tortiously interfering with the contract/lease relationship between our client and the Tenant and Sub-Tenant on the property to the huge monetary loss of our client. In addition to the tortious interference claims, the Landlord/Property Owner preserves the right to bring claims under 42 U.S.C. §1983 against the City of Kirkland. Both of these claims are discussed, without limitation to their assertion against the City of Kirkland, in the case of *Citoli v. City of Seattle*, 115 Wn. App. 459, 486-7, 61 P.3d 1165 (2002). For the City of Kirkland to proceed in the face of clear judicial precedent rejecting its position, and in the face of a clear absence of legislative support and regulatory support for its position, would certainly expose it to both the tort claim and the civil rights claims outlined in the *Citoli* decision.

Finally, it should be noted that the Sub-Tenant gambling establishment is NOT presently in default in its taxes. For the City of Kirkland to impose the obligation on the Landlord/Property Owner to guarantee payment of future tax obligations, where the Landlord has not obligated itself to do so in the Lease and Sub-Lease of the property, and where the Landlord has

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not retained any sort of "business interest" in the gambling operation, makes no sense practically, and is completely unsupportable legally. Were the position of the City of Kirkland to be legally effective, it would require the careful monitoring and supervision by a Landlord of the day-to-day operations of the gambling establishment and its receipts and disbursements, a level of control which state law clearly proscribes.

For the foregoing reasons and upon the foregoing authorities, the Landlord/Property Owner to whom your January 30, 2014 letter is addressed declines the request made therein.

Very truly yours,  
OSERAN HAHN SPRING STRAIGHT & WATTS, PS



Charles E. Watts  
Laura S. LeMaster  
Attorneys at Law

cc: Clients  
Bob and Linda Tjossem  
Grant and Nancy Silvernale  
Amy Walen, City Mayor  
Robin Jenkinson, City Attorney  
Kurt Triplett, City Manager  
Tracey Dunlap, Director of Finance & Administration



January 30, 2014

Michael Marquess  
Caribbean Cardroom, LLC  
Casino Caribbean, LLC  
12526 NE 144<sup>th</sup> St.  
Kirkland, WA 98034

Dear Mr. Marquess:

Kirkland Municipal Code Section 7.48.020 was recently amended and now requires that those engaging in licensed gambling activities using property owned by another, obtain written consent of the property owner acknowledging the potential attachment of a lien on their personal or real property used in the gambling activity as provided in State Law (RCW 9.46.110(4)). This consent is required before the gambling activities may commence or continue.

Please ask Silvernale Properties 1 LLC to sign the enclosed letter requesting their consent.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me at (425) 587-3146.

Sincerely,

A handwritten signature in cursive script that reads "Michael Olson".

Michael Olson  
Deputy Director  
Finance and Administration  
City of Kirkland  
molson@kirklandwa.gov



January 30, 2014

Silvernale Properties LLC  
129 3<sup>rd</sup> Avenue #P703  
Kirkland, WA 98033

Dear Silvernale Properties 1 LLC Representative:

Kirkland Municipal Code Section 7.48.020 was recently amended and now requires that those engaging in licensed gambling activities using property owned by another, obtain written consent of the property owner acknowledging the potential attachment of a lien on their personal or real property used in the gambling activity as provided in State Law (RCW 9.46.110(4)) cited below.

If the operators of the Caribbean Cardroom, LLC and Casino Caribbean, LLC do not pay gambling taxes due to the City of Kirkland in a timely manner, the City can place a lien on your property in the amount of the taxes and penalties due plus the lien fees, to insure collection. RCW 9.46.110(4) authorizes such a lien against any property "used" in gambling activity as noted above. Currently, there are no gambling taxes past due. Their business license will not be renewed until your consent is provided.

Please sign below and return to:

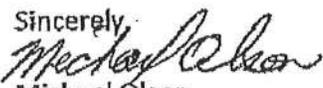
City of Kirkland  
Finance Department  
123 5<sup>th</sup> Avenue  
Kirkland, WA 98033-6189

I consent to the potential attachment of a lien on property I own where gambling activities are being conducted if gambling taxes due to the City of Kirkland become delinquent.

Signed \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

Thank you for your attention to this matter. If you have any questions, please feel free to contact me at (425) 587-3146.

Sincerely,  
  
Michael Olson  
Deputy Director  
Finance and Administration Department  
molson@kirklandwa.gov

## Attachment C

### **Administrative Procedures – Gambling Tax Collections**

**DRAFT**

**3/20/14**

Gambling taxes are due on or before the last day of April, July, October and January. Gambling taxes become delinquent on the seventh day following the due date. When taxpayers become delinquent the following procedures will be followed.

**Letter 1** – First notice of delinquent taxes to be sent 2 weeks after the account becomes delinquent. Notify the business owner that we have not received a tax return or payment and remind them of the due date.

**Letter 2** – Second notice of delinquent taxes. Send 2 weeks after Letter 1.

**Phone call** – At the end of the 15 day deadline given in Letter 2, call the business owner giving them a last chance to pay before we refer the account to the City Attorney's Office and the WA State Gambling Commission.

**Gambling Commission Assistance** – Request the WA State Gambling Commission to send the licensee a letter, putting them on notice that failure to pay required gambling taxes can jeopardize their gambling license. Provide the Commission with the latest letter we have sent the licensee, include total taxes due and for which quarters.

**Letter 3** – Signed by the City Attorney's Office informing the business owner that if they fail to pay, a criminal citation will be issued by the Kirkland Police Department, and may result in a fine and imprisonment. In addition the debt may be turned over to collection. Send 15 days after Letter 2.

**Letter 4** – Signed by the Police Department informing the business owner that if they fail to pay, a misdemeanor will be issued to them in person by a member of the Kirkland Police Department. Send no earlier than 60 days after the due date.

**Gambling Commission** – Request a second letter be sent.

**Collection Agency** – If taxes are still delinquent after a second letter from the Gambling Commission the debt will go to collection.

**Gambling Commission** – Submit affidavit formally requesting the Commission revoke or suspend the organization's license. The Gambling Commission website provides a list of information that should be included with the affidavit (see attached Gambling Commission memorandum).

**Letter 1**

Date

Business  
Kirkland, WA 98034

Re: Gambling License Number

Dear \_\_\_\_\_ Representative:

We have not received your quarterly gambling tax return and payment for the period ended June 30, 20XX. Taxes were due by July 31, 20XX and are now delinquent. Interest of 1% per month is being added to your account.

Your prompt attention to this matter is appreciated. I have enclosed a tax return form for your use. Please contact me at 425-587-XXXX if you have any questions.

Sincerely,

Finance and Administration Dept.

**Letter 2**

Date

Business  
Kirkland, WA 98034

Re: Gambling License Number

Dear \_\_\_\_\_ Representative:

We have not heard from you since sending a delinquency letter and tax return form for gambling taxes due for the period ended June 30, 20XX. These taxes continue to accrue added charges. (Add the amount of estimated taxes and interest due if numbers are available from the WA State Gambling Commission).

If we do not receive payment within fifteen days we will refer your account to the City Attorney's Office. Violation of Chapter 7.48 of the Kirkland Municipal Code is a gross misdemeanor. Your business license will not be renewed until taxes are paid in full.

A blank tax return form is enclosed for your use. Please contact me at 425-587-XXXX if you have any questions.

Sincerely,

Finance and Administration Dept.

Attachment C

**Letter 3**

DATE

Business  
Kirkland, WA 98034

RE: Gambling Tax Return and Payment  
License Number

Dear \_\_\_\_\_:

This account has been forwarded to our office. At this time you owe the City of Kirkland \$XX, which includes unpaid gambling taxes in the amount of \$XX and accrued interest in the amount of \$XX. (Assuming we have amounts from the WA State Gambling Commission).

Failure to pay gambling tax receipts is a violation of Chapter 7.48 of the Kirkland Municipal Code. Pursuant to KMC Sections 7.48.015, 7.48.030 and 7.48.040, this violation is a criminal gross misdemeanor each and every day the violation continues as well as a civil violation.

The amount of \$XX and your City of Kirkland return must be received no later than 4:30 p.m., Tuesday, (needs to be 60 days following due date) at Kirkland City Hall, 123 5<sup>th</sup> Avenue, Kirkland, WA 98033.

**In the event you fail to comply with the above demand, a criminal citation shall be issued by the Kirkland Police Department, which may result in a fine of up to \$5,000, imprisonment for up to one year or both, KMC 1.04.010. In addition, the debt will be turned over to collection at which time the amount owed will increase by X% to \$XX as allowed by Revised Code of Washington Section 19.16.500.**

Sincerely,

\_\_\_\_\_  
, Assistant City Attorney

Cc: Detective \_\_\_\_\_, Kirkland Police Department  
Michael Olson, Deputy Director of Finance and Administration

**Letter 4**

DATE

Business Name

Dear Business Owner:

RE: (License Number)

Several attempts have been made by the City of Kirkland to get your past due gambling taxes current. Correspondence, phone calls, letters from the City Attorney's Office have received no response from your establishment.

Your gambling taxes have been delinquent since (date). Delinquent fees have been added to your taxes and \$XX is currently due no later than (10 days notice).

If your business is not in compliance with the Gambling Tax Ordinance you may be found guilty of a gross misdemeanor and fined \$5,000 and one year imprisonment or both per KMC 1.04.010. All owners, officers, and partners of the business will be cited with this misdemeanor.

Please respond to the Finance Department at (425) 587-XXXX within the next 10 days following the date of this letter in an effort to bring your business into compliance. If no response is received in the Finance Department by (date) a misdemeanor will be issued to you in person by a member of the Kirkland Police Department. All court fees regarding this misdemeanor will be added to any fees that are currently due.

Your prompt attention to this matter is appreciated.

Sincerely,

Eric Olsen  
Chief of Police  
Kirkland Police Department

cc: Finance Department

**MEMORANDUM**

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**February 28, 2012**

**TO:** Local Taxing Authorities

**FROM:** Jennifer Stretch, Paralegal, Communications & Legal Division

**RE:** Getting the Gambling Commission's Assistance When Licensees Fail to Pay Gambling Taxes

Hopefully the information below will answer some of your questions about what the Gambling Commission can do to assist your office when you have licensees who are delinquent in paying their gambling taxes. If you have additional questions, please contact the following:

Jennifer Stretch, Paralegal  
Communications & Legal Division  
Washington State Gambling Commission  
P.O. Box 42400  
Olympia, WA 98504-2400  
(360) 486-3440  
FAX: (360) 486-3625

**I. Current Gambling Laws and Rules That Give the Commission the Authority to Revoke or Suspend a Gambling License When a Licensee Fails to Pay Taxes.**

There is one law and one rule that give the Commission the authority to revoke or suspend a gambling license when a licensee fails to pay taxes. Which one we will use, and whether the city/county first needs a judgment, depends on when the taxes were originally due.

WAC 230-03-085(3) and (4) state the Commission may suspend or revoke a license when the licensee has demonstrated a willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level, or has failed to pay gambling taxes to local taxing authorities and the local taxing authority has petitioned us to take action.

RCW 9.46.075(4) states the Commission may suspend or revoke a license when the licensee has been convicted of, or pleaded guilty to, willful failure to make required payments to a governmental agency.

**II. Steps the Local Taxing Authority Should Take to Get Commission Staff's Assistance.**

1. Send a copy of the latest letter you sent the licensee regarding the delinquent taxes. This letter should state the total taxes due and for which quarters. We will then send the

## Attachment C

Memorandum to Local Taxing Authorities  
February 28, 2012  
Page 2

licensee a letter, putting them on notice that failure to pay required gambling taxes can jeopardize their gambling license. Your office will be copied on the letter, so you will know when it was sent to the licensee.

Several taxing authorities have reported that licensees have paid their taxes after receiving these letters. These letters are most effective if sent before the licensee has accrued a substantial debt to the city. Therefore, if you have a licensee that is a few quarters behind, feel free to notify me of this.

2. If the licensee does not contact the local jurisdiction within a reasonable amount of time, notify us and we will send a follow-up letter. We will not automatically send a second letter. We need to hear from you.

3. If, after the second letter is sent, the licensee still does not respond, you may submit an affidavit (sworn statement, under penalty of perjury). In your affidavit, you should formally request that the Commission revoke or suspend the organization's license and include the following:

- a) The total gambling taxes due.
- b) The time period(s) for which the taxes are due.
- c) The collection efforts your office has made.
- d) The licensee's response to your efforts.
- e) A copy of the law or ordinance that authorizes the city to tax gambling activities.
- f) Copies of any citations or complaints the city may have already issued to the licensee for its failure to pay taxes.
- g) Copies of any police reports the city may have written regarding the delinquent taxes (In those cases where the city has already filed civil or criminal charges against the licensee, the city will likely have a police report or some other type of report).
- h) Information concerning whether the city has taken action against the licensee's business license. Commission staff has been told that this is an option for most cities because they typically issue the business a separate license.

### **III. What Happens After the City or County Submits a Sworn Affidavit?**

After the local jurisdiction submits the sworn affidavit described above, we will contact the licensee, and warn them of pending charges to revoke their license(s). We will encourage the licensee to immediately contact the city or county to make arrangements to bring their taxes current. If this is not successful, administrative charges will be prepared, and submitted to the Director.

**IV. Criteria the Director Will Consider When Deciding Whether to Issue Charges.**

The primary criteria the Director will consider when deciding whether to issue administrative charges against a licensee will be the items in your affidavit.

The Director probably will not issue administrative charges under the following circumstances:

- a) The amount of gambling taxes due is relatively small (under \$3,000.00); or
- b) The licensee is only one quarter late; or
- c) The licensee has made some effort to pay the delinquent taxes; or
- d) The licensee has paid the taxes due, but not the associated penalties and interest.

Of course, there are exceptions to these generalities. Therefore, if your office is unsure whether a case is worth referring, you are welcome to call the Communications and Legal Division.

**V. What Happens After Charges Are Issued?**

After the Director issues charges, the licensee has 20 days to request a hearing. After we receive the request for hearing, we will proceed with settlement negotiations. In most cases, we will agree to defer revocation or suspension of the business' gambling license if the licensee will agree to a payment plan. Most cities also prefer this option because their goal is to collect the taxes.

However, if this is not an option, we will proceed to an administrative hearing. At the hearing, we will be asking the Administrative Law Judge (ALJ) to revoke or suspend the business's gambling license(s). ALJ's usually issue their Initial Orders 45 to 60 days after the hearing. The licensee then has 20 days to submit a Petition for Review (an appeal) to the Commissioners. Appeals before the Commissioners usually take an additional 120 days. Although licensees may appeal the Commission's Final Order to Superior Court, most licensees do not choose to do this.

**VI. What Is Commission Staff's General Response When a Licensee Has a Dispute With the Taxing Authority Regarding Whether Gambling Taxes Are Due?**

On occasion, licensees call and explain that they have a dispute with the city over their gambling taxes. Commission staff will usually tell the licensee that these disputes are between them and their taxing authority; therefore, the Commission will not get involved.

However, if the licensee has a genuine dispute with the city/county regarding their gambling taxes, the Director would consider this factor when deciding whether to issue

## Attachment C

Memorandum to Local Taxing Authorities  
February 28, 2012  
Page 4

administrative charges against the licensee for failure to pay taxes. For example, a few cities and counties recently found that they have licensees in their jurisdictions, of which they were not previously aware, who should have been paying gambling taxes. In some cases, the taxing authorities are now asserting the licensees owe back taxes, penalties, and interest. We would consider this a genuine dispute. Furthermore, the Director would probably only take administrative action if the licensee was delinquent with taxes that were due after the time that it was notified that the city or county had a gambling tax.

ORDINANCE O-4440

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO GAMBLING AND AMENDING KIRKLAND MUNICIPAL CODE 7.48.020 TO ELIMINATE THE REQUIREMENT THAT THE WRITTEN CONSENT OF THE LANDLORD BE SECURED BEFORE GAMBLING ACTIVITIES MAY COMMENCE OR CONTINUE AND AMENDING 7.48.030 TO CHANGE THE FREQUENCY OF GAMBLING TAX COLLECTION FROM SEMI-ANNUALLY TO QUARTERLY.

WHEREAS, RCW 9.46.110 AND KMC 7.48.020 authorize the attachment of a lien for unpaid gambling taxes to the personal and real property used in the gambling activity; and

WHEREAS, Ordinance 4422, passed October 15, 2013, required an individual operating a gambling business as a tenant to obtain the written consent of the landlord to the potential attachment of the gambling tax lien; and

WHEREAS, staff anticipated that requiring landlords whose property is to be used for gambling activities to consent to the potential attachment of a tax lien would aid in efforts to collect delinquent gambling taxes; and

WHEREAS, it has become apparent this requirement will have the opposite effect and, instead, complicate the collection process for delinquent gambling taxes; and

WHEREAS, staff has determined there are other means by which collection of delinquent gambling taxes can be improved, including more frequent collection periods and enhanced administrative procedures,

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Kirkland Municipal Code Section 7.48.020 is amended to read as follows:

7.48.020 Tax rate imposed on gambling activities.

(a) Tax Imposed. Pursuant to RCW 9.46.110, the city imposes a tax upon any gambling activity which activity is not prohibited by either state law or city ordinance. For the purposes of this section, a "charitable or nonprofit organization" shall mean an entity meeting the requirements of Chapter 9.46 RCW for a bona fide charitable or nonprofit organization. The gambling tax rate levied by the city of Kirkland is as follows:

(1) Bingo: ten percent of gross receipts less the amount awarded as cash or merchandise prizes; provided, that effective January 1, 2000, the tax rate for bingo shall be five percent of gross receipts less the amount awarded as cash or merchandise prizes.

(2) Raffles: ten percent of gross receipts less the amount awarded as cash or merchandise prizes; provided, that effective January 1, 2000, the tax rate for raffles shall be five percent of gross receipts less the amount awarded as cash or merchandise prizes.

(A) Special Rule. When a raffle is conducted by a charitable or nonprofit organization, no tax shall be imposed on the first ten thousand dollars (per calendar year) of gross receipts less the amount awarded as cash or merchandise prizes.

(3) Amusement games: two percent of gross receipts less the amount awarded as prizes. The city shall use the revenue from such tax to pay the actual costs of enforcement of this chapter and Chapter 9.46 RCW by law enforcement.

(4) Punch boards and/or pull-tabs: five percent of gross receipts.

(A) Special Rule. When punch boards and/or pull-tabs are operated by a charitable or nonprofit organization, the tax shall be ten percent of gross receipts less the amount awarded as cash or merchandise prizes.

(5) Social card games, including but not limited to house banked social card games: eleven percent of gross revenue. The city of Kirkland prohibits social card games as a commercial stimulant except as allowed under Section 7.48.018.

(6) Contests of chance: seven percent of gross receipts. For purposes of this subsection, "contests of chance" shall mean gambling activities conducted at a "fund raising event" meeting the requirements of Chapter 9.46 RCW, other than the gambling activities listed above in this section. Bingo, raffles, amusement games, punch boards and/or pull-tabs, or social card games shall be taxed at the specific rates provided hereinabove, even if such activity was conducted as part of a fund raising event.

(b) Exemption for Certain Bingo or Amusement Games. A charitable or nonprofit organization, having no paid operating or management personnel, shall be exempt from the tax imposed under subsections (a)(1) and (a)(3) of this section so long as such organization receives no more than five thousand dollars per year in gross receipts from bingo or amusement games, or a combination thereof, less the amount awarded as cash or merchandise prizes.

(c) Lien. Taxes imposed under this chapter become a lien upon personal and real property used in the gambling activity in the same manner as provided for under RCW 84.60.010. ~~If the personal or real property to be used is owned by any person or entity other than the person or entity conducting the gambling activities, their written consent to the potential attachment of the lien must be obtained before the gambling activities may commence. In the event additional real or personal property is acquired after gambling activities have commenced, further written consent must be obtained from the owners of that property before it can be used in the gambling activities. Both written consents required herein must be in a form acceptable to the City Attorney.~~ The lien shall attach on the date the tax becomes due and shall relate back and have priority against real and personal property to the same extent as ad valorem taxes.

Section 2. Kirkland Municipal Code Section 7.48.030 is amended to read as follows:

7.48.030 Method of payment of gambling tax.

(a) Every holder of a gambling license from the State Gambling Commission who carries on all or any part of the gambling activity within the city shall:

(1) Beginning in October of 2014, on or before the last day of each April, July, October and January which follows the end of the quarterly period in which the tax accrued, that being March 31, June 30, September 30 and December 31, file with the director of finance a sworn statement on a form to be provided by the finance director, reporting the gross revenue received for the purpose of ascertaining the tax due for the preceding quarterly period. Upon the same date that the periodic financial report is required to be filed with the Washington State Gambling Commission, file a copy thereof in the office of the director of administration and finance for the city; and

(2) Pay over to the city, at the same time, the amount of gambling tax due for that the periodic report period.

(b) Gambling taxes shall become delinquent on the seventh day following the due date and shall be subject to interest from the due date until paid at the rate of one percent per month.

(c) Failure to make payment in full of all tax amounts and accrued interest within sixty days following the due date shall be both a civil and a criminal violation of this section.

(d) Any tax, including interest due and unpaid under this section, shall constitute a debt to the city, and may be collected by civil court proceedings in the same manner as any other debt in like amount, which shall be in addition to all other existing remedies.

Section 3. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this Section, or the application of the provision to other persons or circumstances is not affected.

Section 4. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

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City Attorney

PUBLICATION SUMMARY  
OF ORDINANCE O-4440

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO GAMBLING AND AMENDING KIRKLAND MUNICIPAL CODE 7.48.020 TO ELIMINATE THE REQUIRMENT THAT THE WRITTEN CONSENT OF THE LANDLORD BE SECURED BEFORE GAMBLING ACTIVITIES MAY COMMENCE OR CONTINUE AND AMENDING 7.48.030 TO CHANGE THE FREQUENCY OF GAMBLING TAX COLLECTION FROM SEMI-ANNUALLY TO QUARTERLY.

SECTION 1. Amends Kirkland Muncicipal Code Section 7.48.020 related to the tax rate imposed on gambling activities.

SECTION 2. Amends Kirkland Municipal Code Section 7.48.030 related to the method of payment of gambling tax.

SECTION 3. Provides a severability clause for the ordinance.

SECTION 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

I certify that the foregoing is a summary of Ordinance \_\_\_\_\_ approved by the Kirkland City Council for summary publication.

\_\_\_\_\_  
City Clerk