



CITY OF KIRKLAND

City Attorney's Office

123 Fifth Avenue, Kirkland, WA 98033 425.587.3030

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



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MEMORANDUM

To: Kurt Triplett, City Manager

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

Date: October 3, 2013

Subject: Prohibiting Social Card Games Conducted as a Commercial Stimulant
Even if for a Charitable Purpose

RECOMMENDATION:

Council adopts the attached ordinance, which by amending Kirkland Municipal Code (KMC) 7.48.017(a), would clarify that social card games, conducted as a commercial stimulant, are prohibited in Kirkland, even if conducted for a charitable purpose.

BACKGROUND DISCUSSION:

Gambling is an activity that is generally controlled by state law. Cities are only authorized to: (1) tax certain gambling activities; (2) enact and enforce state gambling statutes as local ordinances punishable as misdemeanors or gross misdemeanors; and/or (3) prohibit any or all gambling activities for which state licenses are required. Kirkland has exercised each of these authorities. Since 1999, Kirkland has prohibited social card games conducted as a commercial stimulant. "Social card game" as used in the KMC and state law, means a card game that constitutes gambling and is licensed by the Washington State Gambling Commission. "Commercial stimulant" means businesses primarily engaged in selling food or drink for consumption on the premises.

Last year a Kirkland civic organization, with the participation of numerous sponsors, advertised that it was holding a social card game (Texas Hold'em) to raise funds for a charitable purpose. Unfortunately, this organization was not aware of the prohibition in KMC 7.48.017(a) against social card games in Kirkland. Because KMC 7.48.017(a) did not expressly ban social card games for a charitable purpose, staff felt it could not reasonably prohibit the game. The proposed amendment to KMC 7.48.017 clarifies that the prohibition against social card games applies even if the activity is conducted for a charitable purpose.

Staff feels the clarification ordinance is necessary because under RCW 9.46.295(1), the City has the authority to "absolutely prohibit" social card games. However, given the language of RCW 9.46.295(1), the City does not have the ability to allow some social card games and prohibit others with the exception of the one social card game business in the area that was annexed to the City in 2011 and grandfathered under RCW 9.46.295(2)(b). Allowing charitable social card games creates the possibility that additional social card game businesses would seek to open.

The prohibition of social card games by the City does not affect the ability of nonprofit organizations to offer unlicensed, members-only card games authorized by statute in RCW 9.46.0351 nor for bona fide charitable or nonprofit organizations to conduct bingo games, raffles, and fund-raising events authorized by RCW 9.46.0311. (The referenced RCW provisions are attached.)

ATTACHMENT A

RCW 9.46.0311

Charitable, nonprofit organizations — Authorized gambling activities.

The legislature hereby authorizes bona fide charitable or nonprofit organizations to conduct bingo games, raffles, amusement games, and fund-raising events, and to utilize punchboards and pull-tabs and to allow their premises and facilities to be used by only members, their guests, and members of a chapter or unit organized under the same state, regional, or national charter or constitution, to play social card games authorized by the commission, when licensed, conducted or operated pursuant to the provisions of this chapter and rules and regulations adopted pursuant thereto.

RCW 9.46.0351

Social card, dice games — Use of premises of charitable, nonprofit organizations

(1) The legislature hereby authorizes any bona fide charitable or nonprofit organization which is licensed pursuant to RCW [66.24.400](#), and its officers and employees, to allow the use of the premises, furnishings, and other facilities not gambling devices of such organization by members of the organization, and members of a chapter or unit organized under the same state, regional, or national charter or constitution, who engage as players in the following types of gambling activities only:

(a) Social card games; and

(b) Social dice games, which shall be limited to contests of chance, the outcome of which are determined by one or more rolls of dice.

(2) Bona fide charitable or nonprofit organizations shall not be required to be licensed by the commission in order to allow use of their premises in accordance with this section. However, the following conditions must be met:

(a) No organization, corporation, or person shall collect or obtain or charge any percentage of or shall collect or obtain any portion of the money or thing of value wagered or won by any of the players: PROVIDED, That a player may collect his or her winnings; and

(b) No organization, corporation, or person shall collect or obtain any money or thing of value from, or charge or impose any fee upon, any person which either enables him or her to play or results in or from his or her playing: PROVIDED, That this subsection shall not preclude collection of a membership fee which is unrelated to participation in gambling activities authorized under this section.

RCW 9.46.295

Licenses, scope of authority — Exception.

(1) Any license to engage in any of the gambling activities authorized by this chapter as now exists or as hereafter amended, and issued under the authority thereof shall be legal authority to engage in the gambling activities for which issued throughout the incorporated and unincorporated area of any county, except that a city located therein with respect to that city, or a county with respect to all areas within that county except for such cities, may absolutely prohibit, but may not change the scope of license, any or all of the gambling activities for which the license was issued.

(2)(a) A city or town with a prohibition on house-banked social card game licenses that annexes an area that is within a city, town, or county that permits house-banked social card games may allow a house-banked social card game business that was licensed by the commission as of July 26, 2009, to continue operating if the city or town is authorized to impose a tax under RCW [82.14.415](#) and can demonstrate that the continuation of the house-banked social card game business will reduce the credit against the state sales and use tax as provided in RCW [82.14.415\(7\)](#).

(b) A city or town that allowed a house-banked social card game business in an annexed area to continue operating under (a) of this subsection before July 15, 2010, shall allow all social card game businesses in the annexed area that were operating and licensed by the commission as of January 1, 2011, to continue operating.

(c) A city or town that allows a social card game business in an annexed area to continue operating is not required to allow additional social card game businesses.

ORDINANCE O-4423

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO GAMBLING AND AMENDING KIRKLAND MUNICIPAL CODE SECTION 7.48.017 TO CLARIFY THAT SOCIAL CARD GAMES CONDUCTED AS COMMERCIAL STIMULANTS ARE PROHIBITED IN THE CITY OF KIRKLAND, EVEN IF CONDUCTED FOR CHARITABLE PURPOSES.

WHEREAS, as the City Council adopted Ordinance 3687 in 1999 to prohibit social card games being conducted as a commercial stimulant within the City of Kirkland; and

WHEREAS, "social card games" as used in state law and the Kirkland Municipal Code (KMC) constitute gambling and require a license from the Washington State Gambling Commission; and

WHEREAS, the Council believes it is appropriate to clarify that this prohibition applies even if the game is being conducted for charitable purposes;

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

Section 1. Kirkland Municipal Code Section 7.48.017 is hereby amended to read as follows:

7.48.017 Prohibition of certain card rooms.

(a) Except as authorized in Section 7.48.018, the conduct of a social card game as a commercial stimulant is prohibited within the city of Kirkland. The term "commercial stimulant" means an activity operated in connection with an established business, with the purpose of increasing the volume of sales of food or drink for consumption on that business premises, whether for profit or charitable purposes, except as authorized in RCW 9.46.0351.

This section is an exercise of the city's authority under state law to prohibit gambling activities (see RCW 9.46.295). In turn, a license issued by the state to engage in gambling activities is not legal authority to engage in the conduct of social card games as a commercial stimulant anywhere within the city of Kirkland.

Should there be any change in the terminology used by the state in issuing a gambling license, this section should be liberally construed so as to prohibit that category of gambling activities which is most similar to what is presently licensed as a card game under RCW 9.46.070(2).

(b) Any person who engages in or carries on an activity in violation of this section shall be guilty of a gross misdemeanor. Each day of violation shall be considered a separate crime.

(c) If any provision of this section 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 2. 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 3. This Ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

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