

**STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: MARTIN D. KOCZANOWICZ, CITY ATTORNEY  
JIM COPSEY, CHIEF OF POLICE**

**SUBJECT: INTRODUCTION AND FIRST READING OF A PROPOSED ORDINANCE TO  
AMEND GROVER BEACH MUNICIPAL CODE ARTICLE X, CHAPTER 4,  
INCREASING THE NUMBER OF CARD TABLES, INCREASING HOURS OF  
OPERATION AND REMOVING THE LIQUOR LICENSE REQUIREMENT**

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**BACKGROUND**

The owner of Central Coast Casino submitted to the City a request for (i) an increase, by two, of the number of tables at its casino, (ii) an increase in hours of operation, allowing the casino to operate 24 hours per day, and (iii) the removal of the requirement that the casino be operated at a location with a license to serve hard alcohol. The City Attorney submitted proposed changes with regard to an increase in the number of gaming tables to the California Bureau of Gambling Control, who later advised City Attorney that those increases would not violate state law or require voter approval. At the Council meeting held Monday, March 4, 2014, after receiving public comment and considering the requests made by the owner of Central Coast Casino, Council directed staff to move forward with the amendments. Those changes require an amendment to the City Municipal Code, Card Table Licenses and Regulations, which are presented with this staff report.

**DISCUSSION**

Article X, Chapter 4, Section 10402 of the Grover Beach Municipal Code presently allows seven (7) tables to be licensed in the City, with a maximum limit of four (4) per establishment and per permittee. In accordance with the direction given by Council on March 4, 2013, the Municipal Code would be amended to (i) allow nine (9) tables to be licensed in the City, with a maximum of six (6) per establishment and per permittee, (ii) remove the requirement that a card table establishment be operated at a business premises holding a Department of Alcohol and Beverage Control ("ABC") license, and (iii) allow card table establishments to be operated 24 hours per day, 7 days per week. Title 10, Chapter 4, Card Table Licenses and Regulations, would require amendment to reflect these changes. A copy of said Chapter 4 with strikeout font (to reflect what amendments are being made) is included as Attachment 2. Draft Ordinance No. 13-XX for adoption of those amendments is also included as Attachment 1.

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**APPROVED FOR FORWARDING**



**ROBERT PERRAULT  
CITY MANAGER**

**Please Review for the Possibility of a  
Potential Conflict of Interest:**

- |  |                                   |
|--|-----------------------------------|
| <input checked="" type="checkbox"/> None Identified by Staff | <input type="checkbox"/> Lee      |
| <input type="checkbox"/> Peterson                            | <input type="checkbox"/> Marshall |
| <input type="checkbox"/> Bright                              | <input type="checkbox"/> Nicolls  |

Council also requested that staff evaluate the potential of an increase in the card table fee. Having researched the issue, any increase that would exceed the costs incurred by the City in issuing and monitoring the program would be considered a tax and require voter approval.

### **ALTERNATIVES**

The City Council has the following alternatives to consider.

1. Consider public testimony, introduce and conduct first reading of the Ordinance, by title only, and schedule second reading and adoption for the next regularly scheduled meeting.
2. Take no action and allow the existing Card Table Licenses and Regulations to remain.
3. Provide direction to staff.

### **RECOMMENDED ACTION**

It is recommended that the City Council consider public testimony, conduct the first reading of the Ordinance, by title only, and schedule the second reading and adoption for the next regular Council meeting.

### **FISCAL IMPACT**

None

### **PUBLIC NOTIFICATION**

The agenda was posted in accordance with the Brown Act.

### **Attachments**

1. Draft Ordinance No. 13-XX
2. Strikeout font version of Article X, Chapter 4, of the Grover Beach Municipal Code reflecting the amendments to the current Municipal Code for Card Tables and Licenses.
3. Correspondence dated April 9, 2013 from the law firm Ogden & Fricks (representing Gene Stroud, Gold Rush Casino) objecting to a proposed Ordinance change

ORDINANCE NO. 13-\_\_

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
GROVER BEACH, CALIFORNIA, AMENDING ARTICLE X, CHAPTER 4, OF  
THE GROVER BEACH MUNICIPAL CODE PERTAINING TO CARD TABLE  
LICENSES AND REGULATIONS**

**WHEREAS**, the City Council of the City of Grover Beach received requests for an increase in the number of tables to be allowed within the City, a removal of the limitation of four tables per operator or business location, the removal of the requirement that a card table room be operated in an establishment holding a Department of Alcohol and Beverage Control ("ABC") liquor license, and the removal of limits on hours of operation; and

**WHEREAS**, City staff has submitted to the Bureau of Gambling Control proposed changes to ensure compliance with applicable State laws and the Bureau; and in a letter dated January 28, 2013, opined that the proposed changes would not violate the Gambling Control Act and did not need voter approval; and

**WHEREAS**, the City Council of the City of Grover Beach, having received and considered the staff report and following a public hearing on this issue on June 17, 2013, finds that there are no adverse effects on public health and welfare from the proposed changes.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Grover Beach as follows:

**PART 1. Section 10402 – Standards for Issuance of Card Table Licenses** shall be amended to read as follows:

"Sec. 10402. Standards for issuance of Card Table Licenses.

(A) No more than a total of nine (9) card tables shall be licensed to operate within the City under the provisions of this Chapter.

(B) No one permittee shall be authorized to operate more than a total of six (6) card tables within the City.

(C) No more than six (6) card tables shall be operated or maintained within any single business premises within the City.

(D) No card table license shall be transferable to another location or permittee.

(E) No card table license shall be issued to any person who has been convicted of any felony, nor to any association, partnership, or corporation of which any owner thereof has been convicted of a felony.

**Sec. 10407. Hours of Operation** shall be deleted in its entirety."

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that all other sections, with the exceptions or amendments adopted in this Ordinance of Article X, Chapter 4, shall remain unchanged.

**PART 2.** If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

**PART 3.** This Ordinance shall become effective thirty (30) days after the date of its adoption, and within fifteen (15) days after its adoption, it shall be published once, together with the names of the Council Members voting thereon, in a newspaper of general circulation within the City.

**INTRODUCED** at a regular meeting of the City Council held June 17, 2013 and **PASSED, APPROVED, and ADOPTED** by the City Council on \_\_\_\_\_ on the following roll call vote, to wit:

AYES: Council Members -  
NOES: Council Members -  
ABSENT: Council Members -  
ABSTAIN: Council Members -

\_\_\_\_\_  
DEBBIE PETERSON, MAYOR

**DRAFT**

ATTEST:

\_\_\_\_\_  
DONNA L. McMAHON, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
MARTIN D. KOCZANOWICZ, CITY ATTORNEY

## CHAPTER 4 -- CARD TABLE LICENSES AND REGULATIONS

Sec. 10400. Card Table Defined. The term "card table," as used in this Chapter, shall mean a card table within a business premises where there is carried on any card game for hire or for compensation, which game is not unlawful under the provisions of California Penal Code §330, or any other provision of law.(Ord. 19; Amd. Ord. 79-6)

Sec. 10401. Card Table Licenses. It is unlawful for any person, firm, association, corporation or partnership to engage in or carry on the business of conducting or operating one or more card tables unless there is in effect a card table license covering each such card table, issued pursuant to the provisions of this Chapter. (Ord. 19; Amd. Ord. 79-6)

Sec. 10402. Standards for Issuance of Card Table Licenses. (A) No more than a total of nine (9) ~~seven (7)~~ card tables shall be licensed to operate within the City under the provisions of this chapter.

(B) No one permittee shall be authorized to operate more than a total of six (6) ~~four (4)~~ card tables within the City.

(C) No more than six (6) ~~four (4)~~ card tables shall be operated or maintained within any single business premises within the City.

~~(D) No card table license shall be issued unless that card table is at all times to be operated within the same premises as a business which is licensed and operating under an on-sale general license for the sale of beer, wine and distilled spirits under Business and Professions Code §23399.~~

(DE) No card table license shall be transferrable to another location or permittee.

(EF) No card table license shall be issued to any person who has been convicted of any felony, nor to any association, partnership, or corporation of which any owner thereof has been convicted of a felony.(Amd. Ord. 06-13)

Sec. 10403. Applications for Licenses. Any person desiring to obtain a card table license shall apply to the City Clerk and shall furnish such information as is requested by the City Clerk which pertains to the identification and background of the applicant and the owners thereof, and to the nature and location of the proposed business for which the application is made. The City Clerk shall deliver such application to the Chief of Police for his investigation and for a report to the City Council thereon. The Chief of Police shall have the power to require the applicant and/or any of the owners thereof to submit to fingerprinting and to furnish such additional information as he deems necessary to assist in such investigation. Upon receipt of the report of the Chief of Police the City Council shall grant a card table license or licenses to the applicant if the City Council determines the following:

(A) That the applicant and its members are of good moral character and otherwise qualified to carry on such business under the terms of this Chapter;

(B) That the carrying on of a card table at the location proposed is in compliance with all applicable zoning and building ordinances and regulations of the City;

(C) That the issuance of the permit is not contrary to the public health, safety or welfare.  
(Ord. 19; Amd. 79-6)

Sec. 10404. Revocation of Licenses. The City Council shall have the right to revoke any card table license when the possessor thereof has violated, or permitted the violation of, any of the terms of this chapter. The City Council may also revoke any card table license when the business being operated is not implementing the approved Security Plan for the protection of its patrons, or is not being conducted in accordance with the public health, safety or welfare or when, in the discretion of the City Council, it is found that the continued operation of said business will create or is creating a policing problem to the City. Prior to revoking any card table license, the City Council shall cause to be served on the applicant a notice of its intention to do so at least five (5) days prior to the date upon which it intends to consider the matter of such revocation, and also stating the right of the licensee to appear before the City Council and to show cause why such license should not be revoked. The decision of the City Council with respect to the revocation shall be final. (Ord. 19; Am. Ord. 79-6; Am. Ord. 04-05)

Sec. 10405. Card License Fee. There shall be an annual fee in the amount set forth in the Master Fee Schedule for each card table licensed pursuant to the terms of this Chapter. (Ord. 19; Amd. Ord. 79-6; Amd. Ord. 06-13)

Sec. 10406. Access to Premises. The City Council finds that it is necessary and in the public interest that law enforcement officers have access to any premises in which a card table is being operated under the terms of this Chapter, in order to insure that the terms of this Chapter are being complied with. Any premises for which a license has been issued under the provisions of this Chapter shall be deemed to constitute a public place, and all police officers and peace officers shall at all times have access thereto during business hours. (Ord. 19; Amd. Ord. 79-6)

Sec. 10407. Hours of Operation. ~~It is unlawful to operate a card table between 2:00 a.m. and 6:00 a.m. of the same day; provided, however, that this restriction may be waived by the City Council with respect to any license issued under this Chapter if the City Council finds good cause therefor and that such waiver is not contrary to the public health, safety and welfare. (Ord. 19; Amd. Ord. 79-6)~~

Sec. 10408. Attendance by Minors. No person under the age of twenty-one (21) shall be employed in or allowed to frequent, remain in or visit any room or premises wherein is conducted or operated any card table licensed under the provisions of this chapter. (Ord. 19; Amd. Ord. 79-6)

Sec. 10409. Conflict with Other Laws and Savings Clause. The City Council expressly finds and declares that it is not the intent of the Ordinance codified in this Chapter to authorize or permit any form of gaming which is contrary to any provisions of state law, and in the event of any such conflict state law shall control. The provisions of this Chapter shall control all matters pertaining to the licensing, control, and regulation of card games and card tables, regardless of the provisions of any other law of the City, and in the case of direct conflict shall supersede any other such law.

If any section, subsection, clause, or portion of this Chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. (Ord. 19; Amd. Ord. 79-6)

Sec. 10410. Wagering Limits. No card table permittee, owner, or employee may allow any player to make a single wager exceeding Five Hundred Dollars (\$500) or allow any player to wager more than One Thousand Dollars (\$1,000) on any single hand played within the licensed premises. (Ord. 99-7)

Sec. 10411. Patron Security and Safety. Any holder of a card table licenses shall submit a Security Plan for the premise where a card table or tables are operated. Said Security Plan must be reviewed and approved by the Chief of Police prior to issuance or renewal of a Business Tax Certificate. The holder of a card table license must pay a full cost recovery fee for the review and approval of a Security Plan as may be established by the City Council in the Master Fee Schedule. (Ord. 04-05)

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APR 11 2013

April 9, 2013

**RECEIVED**

File No. 7525-01

To the Honorable Members of the  
 Grover Beach City Council  
 Grover Beach City Hall  
 154 S. 8th Street  
 Grover Beach, California 93433

✓ Police Chief James Copsey  
 Grover Beach Police Dept.  
 Grover Beach City Hall  
 154 S. 8th Street  
 Grover Beach, California 93433

Martin D. Koczanowicz, Esq  
 City Attorney  
 Grover Beach City Hall  
 154 S. 8th Street  
 Grover Beach, California 93433

**Re: *Objection to Proposed Law Change Concerning Card Rooms  
 Item No. 4 on March 4, 2013 Agenda***

Dear Sirs and Mesdames:

This office continues to represent Gene Stroud, the holder of two City card room licenses and the party who has been in legal limbo preventing his opening of the Gold Rush Casino at 1750-A El Camino Real, Grover Beach, California (the "Premises"). As it appears that no decision has yet been made, Mr. Stroud strongly objects to the application of David Stearns dba Central Coast Casino to eliminate the City's requirement, per City Ordinance 10402 et seq., that card rooms be required to maintain a current liquor license as a condition of operation. Given the lengthy history of the relationship between Mr. Stroud and Mr. Stearn and the City's own involvement therein, Mr. Stearn's request is outrageous and more than a little ironic.

Mr. Stroud is, and has been since 1999, a holder of a "key employee" gambling license issued by the California Gambling Control Commission (the "Gambling Commission"). Before the State-wide moratorium on card room licenses that has been continuously in effect in 1999, Mr. Stroud applied for a card room license with the City and, after satisfying the City, he applied to the Gambling Commission. Although the Gambling Commission did not, and does not, require a liquor license, the Gambling Commission's rules required Mr. Stroud to satisfy all local rules -- and the City required a liquor license.<sup>1</sup> As part of the application to the City, Mr. Stroud had to have use of a liquor license at the Premises, which license was provided by Stroud's landlord at the Premises, the now-deceased John Nichols and certain of his family members.

<sup>1</sup> This is the first of many ironies. Mr. Stroud had no desire to serve alcohol at the Gold Rush. Indeed, the City ordinance was passed before State regulation of card rooms existed (and constituted a way to have the State, through the ABC, maintain some control over the card rooms). After the establishment of the Commission and its enforcement agency, the Division of Gambling Control (now a Bureau), State oversight was present and the City's requirement for a liquor license arguably was made unnecessary.

Unfortunately, for reasons known only to himself, Mr. Nichols sold the liquor license to a third party and sent Mr. Stroud on a 12-year (and counting) legal odyssey.

When he lost use of the Nichols' liquor license, and given that he didn't really want to sell alcohol anyway, Mr. Stroud and the undersigned approached the City Council three (3) times at Council meetings in 2001 and 2002 (at least once as a matter on agenda) seeking the very same ordinance change that Mr. Stearns now seeks. Moreover, Mr. Stearns basis' for changing the ordinance is virtually identical to the reasons that were proffered by Mr. Stroud back in 2001 and 2002. When Mr. Stroud requested the ordinance change at two of the meetings in 2001 and 2002, **Mr. Stearns and his attorney, David Weilbacher, appeared at the City Council meeting opposing the very same ordinance change that Mr. Stearns is now requesting.** Mr. Stearns and his attorney complained aggressively that since Central Coast Casino had to meet the requirements of the ordinance to get a license, it was not "fair" that Mr. Stroud would get a pass on compliance. Though not a logically-compelling argument,<sup>2</sup> the City Council was swayed and opted not to change the ordinance.

Mr. Stroud then had to sue Nichols, his landlord, for breach of the provision in their lease requiring the landlord to provide use of a liquor license at the Premises. As part of the ensuing settlement agreement between them, Nichols was required to fund Mr. Stroud's acquisition of a liquor license. Eventually, Mr. Stroud located an available license, negotiated its acquisition, and Mr. Nicholls prepared to pay for it. As required, Mr. Stroud completed the necessary application to the Alcoholic Beverage Control (ABC). He and the Premises were investigated and, with the City's approval, were approved by the ABC investigator unconditionally for a license subject to public comment. Before the ABC license could be issued, notice of the pending transfer had to be provided to certain neighbors and other parties. In this instance, several protesters opposed the license issuance. Incredibly, **after arguing to the City Council that it was unfair that Mr. Stroud did not have to get a license, Mr. Stearns objected to Mr. Stroud's liquor license application.**<sup>3</sup> In fact, the lead protesters were Mr. Stearns and his attorney, Mr. Weilbacher. In addition to the objections submitted by himself and his attorney, Mr. Stearns also worked to obtain signatures from neighbors on a protest form that he or his attorney drafted.<sup>4</sup> In an attempt to quell the protesters, the ABC then added severe restrictions on Mr. Stroud's sale of alcohol and required him to have uniformed security personnel at the card room at all times -- requirements that were not imposed on any other liquor license in the City, including Central Coast Casino. Regardless, Mr. Stroud appeased the ABC and agreed to the stringent restrictions.

The multiple protests of Mr. Stroud's liquor license application resulted in an administrative law hearing before an administrative law judge (ALJ) that was, in effect, a one-day trial. (ABC File No. 48-379062.) When the ALJ affirmed the ABC's decision to grant Mr. Stroud's application, Mr. Stearns and his attorney did not stop there as they became the sole

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<sup>2</sup> If this was the standard for any ordinance change, then virtually no ordinance would be modified, updated, or approved.

<sup>3</sup> When Mr. Stroud learned of Mr. Stearns' protest, the undersigned went back before the City Council in 2002 to report Mr. Stearns' activities but it did not result in an ordinance change.

<sup>4</sup> Adding yet another irony to this situation is the fact that Stearns had earlier attempted to lease the Premises from Mr. Nicholls in 1999 to be used as a card room. Then, in 2002, Stearns objected to the liquor license primarily on the grounds that the Premises was not suitable for a card room or any business requiring a liquor license.

protesters who appealed the ALJ's ruling to the ABC Appeals Board in Los Angeles (ABC Appeals No. AB-7982). The appeal to the ABC Appeals Board was denied but Mr. Stearns' 2011 protest and subsequent appeal cost Mr. Stroud approximately 2 years' delay (during which Mr. Stroud paid monthly rent of \$3,000 for an unused Premises) and tens of thousands of dollars in attorneys' fees.

Once Mr. Stroud had his ABC license, Mr. Stearns then used his influence with the Gambling Commission, as a member of the Gambling Control Advisory Council, to ensure that Grover Beach would only have one card room: *his* Central Coast Casino. While hard proof of Mr. Stearns' involvement has been difficult to obtain, it is curious that Mr. Stearns now employs Robert Lytle at Central Coast Casino. Mr. Lytle was formerly the Director of the California Gambling Control Division -- the agency responsible for investigation of licensees and applicants and the enforcement arm of the Gambling Commission. Given all of the foregoing ironies, perhaps it is not surprising that Mr. Lytle personally recommended to the Gambling Commission denial of Mr. Stroud's card room license application while Director of the Division, which the Gambling Control Commission dutifully denied.

Mr. Stroud has filed a still-pending petition for writ of mandamus in Sacramento County Superior Court. He has paid over 10 years of rent on the Premises that has never opened for business. Surely, the City Council, the Chief of Police, and the City Attorney can see how Mr. Stearn's latest request would rankle Mr. Stroud. Further, granting Mr. Stearn's request would seem to evidence discriminatory practices by the City and a failure to provide all parties with equal protection under the law. Mr. Stroud has been a victim of Mr. Stearns' anti-competitive actions for more than 10 years with out-of-pocket damages exceeding \$500,000, not including lost profits.

Mr. Stroud strongly objects to Mr. Stearns' request to amend the Grover Beach Code relating to card rooms.

Very truly yours,



John W. Fricks

JWF/lf

cc: Client