



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Approval of an Ordinance  
Amending Title 16, Gaming  
Control, to allow Eligible  
Nonprofit Organizations to  
Conduct Fundraisers Using  
Controlled Games

**DATE:** August 30, 2007

## RECOMMENDATION

Approval of an ordinance adding a new Chapter 16.50 to Title 16 of the San José Municipal Code, Gaming Control, to authorize eligible nonprofit organizations to conduct fundraisers using controlled games, and amending various other sections of Title 16 to make technical, conforming and clarifying changes.

## OUTCOME

Approval of this ordinance will authorize eligible nonprofit organizations to conduct fundraisers using controlled games in the City of San José through a registration process that will be administered by the Administrator of the Division of Gaming Control, San José Police Department. The ordinance will also make several technical, conforming and clarifying amendments to Title 16.

## BACKGROUND

In California legal gaming is subject to the concurrent jurisdiction of the State and local governments. The State regulates legal gambling through The Gambling Control Act and provisions of the California Penal Code pertaining to gaming. The City of San José regulates legal gaming in the City through The Gaming Control Regulatory Program, Title 16 of the San José Municipal Code.

In 2006, the State legislature passed AB 839 (Torrico), which amends the California Gambling Control Act (Act) to authorize nonprofit organizations to hold fundraisers using controlled games as a funding mechanism to further the purposes and mission of the nonprofit organization. The law took effect on January 1, 2007. Until passage of AB 839 State law prohibited the use of controlled games outside of Cardrooms that were licensed by both the State and local jurisdiction. The amended Act requires eligible

nonprofit organizations that wish to hold fundraisers using controlled games to register annually with the Division of Gambling Control, California Department of Justice. The amended Act allows registered nonprofit organizations to have these fundraisers at locations other than Cardrooms. Although the City of San José has for many years allowed the use of controlled games for nonprofit fundraising at permitted Cardrooms, Title 16 does not currently allow controlled games to be played outside of the City's two permitted Cardrooms. A number of nonprofit organizations requested that the Council amend the Municipal Code to reflect this change in State law in order allow fundraisers with gaming themes.

At the April 24, 2007 City Council meeting, the Council directed the City Attorney to draft an ordinance amending Title 16 to use controlled games for fundraisers at locations in the City other than Permitted Cardrooms consistent with the provisions of the Gambling Control Act that authorize fundraisers by eligible nonprofit organizations.

### **ANALYSIS**

The ordinance creates a new Chapter 16.50 of Title 16 to authorize nonprofit organization fundraisers in the City of San José. Chapter 16.50 creates a registration procedure administered by the Administrator of the Division of Gaming Control. Eligible Nonprofit Organizations must apply to the Division at least 14 working days prior to the day the fundraiser is to be held. Only Eligible Nonprofit Organizations that have a current, valid registration with the California Department of Justice, Division of Gambling Control may apply for and be granted a Nonprofit Organization Fundraiser Registration by the Administrator. Under the ordinance, and in accordance with AB 839, an Eligible Nonprofit Organization is a nonprofit organization that is qualified to conduct business in California; has been in existence for at least three years; and is exempt from taxation under the specified sections of the California Revenue and Taxation Code.

Once registered with the City, an Eligible Nonprofit Organization may conduct the fundraiser at a location of its choosing or at a Permitted Cardroom, as long as the location meets the requirements of State law and Title 16. Separate and apart from the Nonprofit Organization Fundraisers authorized in the new Chapter 16.50, Title 16 currently authorizes Permitted Cardrooms to conduct charitable fundraising, most notably twice yearly "no bet limit" tournaments in accordance with SJMC Section 16.18.090. The ordinance does not change this provision.

Once an Eligible Nonprofit Organization has obtained its Registration with the City, it will be allowed to use any Permissible Game authorized for use by Permitted Cardrooms under Title 16. The games must be conducted in accordance with State law and Chapter 16.50. The use of slot machines or devices or gambling devices is prohibited. These limitations are consistent State law prohibitions and with the existing limitation on expansion of gambling by Cardrooms under Chapter 16.04 of Title 16. The

Administrator's determination on what constitutes a prohibited slot machine or device or gambling device is conclusive.

The ordinance also has a similar registration requirement and procedure for any "Person or Entity" [this is a State law term that was part of AB 839] that conducts a fundraiser on behalf of an eligible Nonprofit Organization. Under State law a "Person or Entity" is one who, directly or indirectly, manufactures, distributes, leases, or otherwise provides supplies, devices, or other equipment designed for use in the playing of controlled games by any registered nonprofit organization.

Chapter 16.50 sets out specific grounds for denial, revocation or suspension, and provides a hearing procedure before the Chief of Police for an Applicant or Registrant who wishes to have a hearing. These procedures are substantially the same as the ones that apply to Cardroom Work Permittees. The new chapter also authorizes the Administrator to set conditions on registration by an Eligible Nonprofit Organization or Person or Entity that the Administrator deems necessary consistent with the public interest and the policies of Title 16, and authorizes the Administrator to promulgate regulations needed in order to implement the requirements of the new chapter and to fulfill its purposes and policies. There is also an appropriate authorization for the Administrator to conduct administrative inspections for the purpose of determining compliance with Title 16 and State law.

The ordinance amends the statement of purpose provision at the beginning of Title 16 to clarify the regulatory purpose of Title 16 and to explicitly incorporate nonprofit organization fundraisers into Title 16's system of regulatory controls over legal gaming in the City. The ordinance creates or amends several definitions in Part 2 of Chapter 16.02 of Title 16 that are needed to effectuate the new Chapter 16.50.

The ordinance also makes several technical, clarifying and conforming changes to other sections of Title 16. In particular, the ordinance amends the work permit hearing procedure provisions to substitute the Chief of Police for the Administrator as the hearing official. This amendment conforms Title 16 to the City's actual practice since Title 16 was implemented and is consistent with the provision appointing the Chief of Police as the hearing officer for licensing hearings. The provision setting out the cooperation obligation was amended to clarify that persons subject to regulation under Title 16 are required to cooperate with the Administrator in the conduct of an inquiry or investigation and to provide assistance information, records or documentation required by the Administrator without delay, hindrance or reservation. The amendment is consistent with the existing inspection requirement provision that requires Cardroom Permittees to provide immediate, unhindered access to all areas of the Cardroom Premises for visits or inspections by the Administrator.

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### **POLICY ALTERNATIVES**

The alternative is to not adopt the ordinance and continue to prohibit the use of controlled games at fundraisers conducted by nonprofit organizations or to modify the ordinance to be more limited in its application.

### **PUBLIC OUTREACH/INTEREST**

The proposed ordinance was reviewed by the Division of Gambling Control, California Department of Justice, pursuant to a Gambling Control Act requirement that any amendment to a city or county ordinance relating to gambling establishments or the Gambling Control Act be submitted to the Division for review and comment before adoption by the city or county. The Division of Gambling Control found the amendments to be in compliance with the Gambling Control Act. This memorandum and the draft ordinance are to be posted on the City's website for the September 11, 2007 Council Agenda.

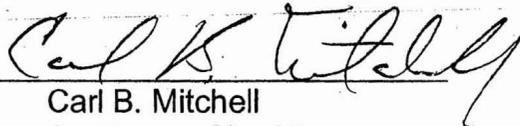
### **COORDINATION**

The drafting of the ordinance was coordinated with the San José Police Department.

### **CEQA**

Not a project.

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City Attorney

By   
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cc: Debra Figone

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