

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 16.06.050 AND 16.06.060 OF CHAPTER 16.06 OF TITLE 16 OF THE SAN JOSE MUNICIPAL CODE TO PROVIDE FOR REVIEW AND APPROVAL OF ADMINISTRATIVE REGULATIONS BY THE CHIEF OF POLICE BEFORE THEY BECOME FINAL; AMENDING SECTION 16.32.020 OF CHAPTER 16.32 OF TITLE 16 TO REQUIRE THE CHIEF OF POLICE TO ISSUE A CITY KEY EMPLOYEE LICENSE FOR ALL KEY EMPLOYEE POSITIONS THAT ARE LICENSABLE BY THE CALIFORNIA GAMBLING CONTROL COMMISSION; AMENDING SECTION 16.30.060 OF CHAPTER 16.30 TO CREATE A CARDROOM REGULATION FEE IN PLACE OF THE CARDROOM TABLE FEE; AMENDING SECTION 16.32.110 OF CHAPTER 16.32 TO SPECIFY THAT IF INVESTIGATION OF A CARDROOM LICENSE TAKES LONGER THAN 180 DAYS THE ADMINISTRATOR SHALL PROVIDE A WRITTEN EXPLANATION OF THE REASONS FOR DELAY AND AN ESTIMATED DATE FOR COMPLETION OF THE INVESTIGATION, WHICH WILL BE UPDATED EVERY TWO MONTHS UNTIL THE APPLICATION IS GRANTED, WITHDRAWN OR DENIED; AMENDING SECTION 16.32.620 OF CHAPTER 16.32 TO REQUIRE THE ADMINISTRATOR TO ISSUE A TEMPORARY KEY EMPLOYEE LICENSE TO EACH APPLICANT FOR A KEY EMPLOYEE LICENSE WHO IS ISSUED AN INTERIM STATE KEY EMPLOYEE LICENSE BY THE CALIFORNIA GAMBLING CONTROL COMMISSION; ADDING A NEW SECTION 16.32.630 PROVIDING FOR NOTICE AND AN OPPORTUNITY FOR AN ADMINISTRATIVE REVIEW HEARING PRIOR TO REVOCATION OF A TEMPORARY KEY EMPLOYEE LICENSE; ADDING A NEW SECTION 16.32.640 TO MAKE CERTAIN CITY KEY EMPLOYEE LICENSES RETROACTIVE TO THE DATE THAT THE CALIFORNIA GAMBLING CONTROL COMMISSION ISSUED A STATE KEY EMPLOYEE LICENSE; MAKING TECHNICAL, AND CONFORMING AMENDMENTS REGARDING LICENSING TO SECTIONS 16.32.190 AND 16.32.610 OF CHAPTER

16.32; AND MAKING TECHNICAL CLARIFYING AND CONFORMING AMENDMENTS REGARDING MINOR VIOLATION PROCEDURE BY ADDING SECTIONS 16.33.020 AND 16.33.030 AND AMENDING SECTION 16.33.010 OF CHAPTER 16.33

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 16.06.050 of Chapter 16.30 of Title 16 of the San José Municipal Code is amended to read as follows:

16.06.050 Provisional Rule-Making Procedure

- A. Subject to review and approval by the Chief of Police. The Administrator shall be authorized to issue provisional Regulations to implement the requirements and fulfill the policies of this Title without recourse to the advance notice and comment requirements for final Regulations on an emergency basis for the following reasons:
1. When changes are made in State Gambling Law that the Administrator deems to require conforming changes in this Title; or
 2. In order to control practices or conduct at Cardroom Premises or by Cardroom Permittees, work permittees, Licensees, Registrants, or Applicants that the Administrator reasonably believes constitute an imminent danger to the public health, safety, or welfare; or
 3. In order to control practices or conduct at Cardroom Premises or by Cardroom Permittees, work permittees, Licensees, Registrants, or Applicants that the Administrator reasonably believes constitute an imminent danger to the Administrator's ability to effectively administer and enforce the requirements and policies of this Title.

- B. Provisional Regulations shall take effect upon service on the Cardroom Permittees and any other person who would be subject to the provisional Regulation.
- C. All provisional Regulations promulgated by the Administrator shall sunset one (1) year after they take effect if the Administrator has not acted to promulgate the provisional Regulation as a final Regulation pursuant to the procedures set out in this Chapter.

SECTION 2. Section 16.06.060 of Chapter 16.30 of Title 16 of the San José Municipal Code is amended to read as follows:

16.06.060 Final Regulations

- A. No Regulation shall be adopted by the Administrator as a final Regulation prior to meeting all of the following requirements:
 - 1. The Administrator shall make each proposed Regulation available for inspection and copying by the public at the Office of the Administrator during normal business hours.
 - 2. The Administrator shall mail a copy of each proposed Regulation to each Cardroom Permittee and any other person who would be subject to the proposed Regulation.
 - 3. The Administrator shall make a copy of each proposed Regulation available for inspection and copying by each person who has provided written notice to the Administrator that he or she wishes to be notified of the proposal of new Regulations.
 - 4. The Administrator shall provide a thirty (30) working day public comment period starting from the date of service on the Cardroom Permittees.

During this period, any person, including Cardroom Permittees and any other persons who would be subject to the proposed Regulation, may submit written comments to the Administrator.

- B. At the close of the public comment period, the Administrator shall consider all the public comments on the proposed Regulation and shall then finalize the Regulation. The finalized Regulation shall be accompanied by a brief written statement from the Administrator that references all the reasonable written comments on the proposed Regulation and explains why the comments were accepted, rejected, or modified by the Administrator.
- C. After review and approval by the Chief of Police, The proposed Regulation shall become final upon service by the Administrator on the Cardroom Permittees and such other persons subject to the Regulation.
- D. The Administrator may amend final Regulations by following the procedure for promulgating Regulations.

SECTION 3. Section 16.30.060 of Chapter 16.30 of Title 16 of the San José Municipal Code is amended to read as follows:

16.30.060 Cardroom Permit Fees and ~~Table Cardroom Regulation Fees~~

- A. The Cardroom Permit Fee as set forth in the Schedule of Fees established by resolution of the City Council shall be paid to the City of San José by the Cardroom Permittee on an annual basis.
- B. A Card ~~Table-room Regulation~~ Fee as set forth in the Schedule of Fees established by resolution of the City Council shall be paid to the City of San José by the Cardroom Permittee. The Cardroom Permittee shall have the option of paying the Cardroom Regulation Fee in annual or in semi-annual or ~~in~~ quarterly installments. The selection of the payment date shall be made by the fifteenth

day of the first quarter of the fiscal year and shall remain unchanged for the duration of the entire fiscal year. The Cardroom Regulation Fee shall be paid on or before the fifteenth day of the first month of the fiscal year if the annual payment term is selected; on or before the fifteenth day of the first month and the fifteenth day of the fourth month of the fiscal year if the semi-annual payment term is selected; and on the fifteenth day of the first, fourth, seventh, and tenth month of the fiscal year if the quarterly payment term is selected.

- C. In the event of denial, surrender, suspension, revocation or expiration of a Cardroom Permit, no portion of any Permit renewal or amendment fee or Cardroom ~~Table~~ Regulation Fee shall be refunded.

SECTION 4. Section 16.32.020 of Chapter 16.32 of Title 16 of the San José Municipal Code is amended to read as follows:

16.32.020 License Procedures

- A. All Licenses required by this Chapter shall be subject to the procedures of this Part.
- B. All applications for Licenses shall be accompanied by the applicable fees as set forth in the Schedule of Fees established by resolution of the City Council.
- C. Notwithstanding any contrary provision of this Chapter regarding licensing procedures, persons applying for Key Employee positions recognized under State Gambling Law as requiring a Key Employee License shall be investigated by the California Department of Justice and the California Gambling Control Commission. In the event that a person is required to have a Key Employee License pursuant to this Title and the position or person is not recognized as a Key Employee under State Gambling Law, that person shall be subject to all the licensing procedures of this Chapter.

D. Notwithstanding any contrary provision of this Chapter regarding licensing procedures, within ten (10) working days after the Gaming Administrator receives written notice from the California Gambling Control Commission that the Commission has issued a State Key Employee License to an Applicant, the Gaming Administrator shall submit a final written report and recommendation to the Chief of Police recommending granting a City issued Key Employee License, with or without limitations and conditions. The Administrator's final report and recommendation shall become a final decision effective twenty-one (21) calendar days after the service of the final report and recommendation unless the Applicant files a written request for a licensing hearing with the Administrator before the close of business on the twentieth day in order to contest the limitations and conditions recommended by the Administrator which are not on the State Key Employee License issued by the California Gambling Control Commission. The Applicant shall have no right to contest limitations and conditions imposed by the California Gambling Control Commission on the State Key Employee License.

E. Notwithstanding the California Gambling Control Commission's issuance of a State Key Employee License, the Chief of Police retains the authority to place limitations and conditions on the City License pursuant to Section 16.32.160.

F. When the Chief of Police issues a City Key Employee License based upon the issuance of a State Key Employee License by the California Gambling Control Commission, the term of the City License shall be the same as the term of the State License.

SECTION 5. Section 16.32.110 of Chapter 16.32 of Title 16 of the San José Municipal Code is amended to read as follows:

16.32.110 License Application

- A. Each Applicant shall file an application with the Administrator on forms prescribed by the Administrator.
- B. Within a reasonable time after the filing of a completed application and any supplemental information the Administrator may require together with the deposit of any fee required under this Chapter, the Administrator shall commence an investigation and conduct any proceedings it deems necessary.
- C. To the extent practicable, the Administrator shall act on all applications within one hundred and eighty (180) calendar days of the date of receipt of a completed application and applicable fees except as extended pursuant to Subsection D hereof.
- D. If an investigation cannot be concluded within one hundred eighty (180) days after the date of receipt of a completed application and applicable fees, the Administrator shall inform the applicant in writing of the status of the investigation and the reasons for delay in completing the investigation, and shall also provide the Applicant with ~~the~~ an estimated date on which the investigation may reasonably be expected to be concluded. Thereafter, at two (2) month intervals, the Administrator shall provide the Applicant with a written status update until the License has been granted, withdrawn or denied.

SECTION 6. Section 16.32.190 of Chapter 16.32 of the San José Municipal Code is amended to read as follows:

16.32.190 License Renewal

- A. All Licenses, except ~~those set out in Section 16.32.400 (Landowner's Licenses), and 16.32.500 (Financial Source Licenses),~~ and Key Employee Licenses issued by the City based upon the issuance of a State Key Employee License by the

California Gambling Control Commission, shall expire three (3) years after the date of the issuance.

- B. Not less than one hundred twenty (120) calendar days prior to the expiration of the License, the Licensee shall provide written notice to the Division of Gaming Control of the Licensee's intent to apply for renewal. The Administrator will provide the Licensee with a renewal application. If, after submission of an application for renewal, the Administrator determines that further investigation is needed, based upon the public interest and consistent with the requirements and policies of this Title, the Administrator shall notify the Applicant in writing that further investigation is needed.
- C. No License shall be renewed except upon proper application for renewal and payment of applicable License application fees.
- D. An application for renewal of a License shall be filed and the applicable License application fees shall be deposited by the Licensee with the Administrator not later than eighty (80) calendar days prior to the expiration of the current License, unless the time for filing is extended by the Administrator. If the application for renewal is timely filed as required by this Section, then the License shall continue in effect unless revoked or suspended until such time as a decision is made to renew or deny the renewal application.
- E. Upon renewal of any License, the Administrator shall issue an appropriate renewal certificate, validating device or sticker, or identification card.
- F. Any Licensee who does not timely deposit the License fee shall be liable for the License fee and a late penalty set forth in the Schedule of Fees established by resolution of the City Council.

- G. If a Stock Ownership Licensee fails to apply for a renewal of the License within the time set out in this Section, the Administrator may order the immediate closure of the Cardroom Premises and a cessation of all Gaming activity therein until the Stock Ownership License Renewal Application is filed. The Administrator shall provide notice to the Stock Ownership Licensee not less than ten (10) working days prior to issuing an order for closure pursuant to this Section.
- H. Persons who are granted Licenses as Landowners pursuant to Section 16.32.400, and Financial Sources pursuant to Section 16.32.500 shall be automatically renewed unless called forward by the Administrator for a re-application process. Such notification shall be provided by the Administrator one hundred twenty (120) days before the expiration of the License.

SECTION 7. Section 16.32.610 of Chapter 16.32 of Title 16 of the San José Municipal Code is amended to read as follows:

16.32.610 Key Employee License

- A. No person shall hold a Key Employee position in any permitted Cardroom without a valid Key Employee License, except for persons allowed to receive a Provisional Key Employee License or a temporary Key Employee License under the provisions of this Chapter.
- B. Every Key Employee shall apply for and obtain a Key Employee License prior to beginning employment as a Key Employee for a Cardroom Permittee.
- C. Licenses issued to Key Employees shall be for specified positions only.
- D. A Key Employee Licensee may be employed in the identical position for which the License was issued at another permitted Cardroom, provided the Key Employee terminates employment with the permitted Cardroom for which the

license issued before commencing employment with the other. Ten (10) working days prior to commencing employment with the new establishment, the Key Employee shall file a statement on a form prescribed by the Administrator with the Division of Gaming Control setting forth the last date of employment with the former employer and the anticipated commencement of employment with the new employer. The License shall continue with the terms and conditions as originally issued.

- E. No person may be issued a Key Employee License unless the person would qualify for a Stock Ownership License.

SECTION 8. Section 16.32.620 of Chapter 16.32 of Title 16 of the San José Municipal Code is hereby amended to read as follows:

16.32.620 Temporary Key Employee License

- A. ~~Notwithstanding any contrary provision of this Chapter regarding licensing procedure, t~~The Administrator may issue to an Applicant for a Key Employee License a temporary Key Employee License after the Applicant has submitted a completed application to the Administrator and the required fee or deposit has been paid. The Administrator shall provide an initial decision whether or not to issue a temporary Key Employee License no later than fifteen (15) working days after the Administrator receives a signed application, payment of any required fee or deposit, and the criminal history return from the California Department of Justice.
- B. Notwithstanding subsection A, the Administrator shall issue an Applicant for a Key Employee License a temporary Key Employee License within five (5) working days after receiving written notice that the California Gambling Control Commission has issued an interim State Key Employee License.

B.C. The Administrator may place such conditions and limitations on the temporary Key Employee License as the Administrator may deem necessary, consistent with the public interest and the policies of this Title, including but not limited to placing time limits on the term of the temporary Key Employee License. The temporary Key Employee License shall automatically terminate in the event that the application is withdrawn, either with or without prejudice, or if the interim State Key Employee License expires, is withdrawn or revoked, or if the Administrator recommends denial of the application to the Chief of Police, or if the Chief of Police denies the application, whichever comes first.

G.D. The temporary Key Employee License is a temporary privilege and creates no continuing right. The ~~Administrator-Chief of Police~~ shall have the discretion to revoke the temporary Key Employee License at any time. If the ~~without cause or advance notice~~ Administrator ~~recommends that the Chief of Police should revoke the temporary Key Employee License, the Administrator shall provide advance notice and an opportunity for an informal administrative review for the holder of the temporary Key Employee License as set out in Section 16.32.630,~~ without any further right of administrative ~~or judicial~~ appeal as to the revocation of such temporary Key Employee License.

D.E. Each recipient of a temporary Key Employee License shall provide a written acknowledgment on a form prescribed by the Administrator that no procedural or substantive rights or privileges are conferred by a temporary Key Employee License, without prejudice to his or her procedural rights under this Title for the denial of the application for the License and for the revocation of a temporary License. Any processes under this Section are voluntary and do not confer any legal rights or other legal interest to the holder of a temporary Key Employee License. Without such acknowledgement, the Administrator has no discretion to issue a temporary Key Employee License.

SECTION 9. Chapter 16.32 of Title 6 of the San José Municipal Code is amended by adding a new section to be numbered, entitled and to read as follows:

16.32.630 Notice and Opportunity for Administrative Review Hearing on Revocation of Temporary Key Employee License

- A. In the event the Administrator determines to revoke a Temporary Key Employee License, the Administrator shall serve upon the Licensee a notice of revocation stating the reasons for the revocation. The Employee shall be given five (5) working days from the date of mailing of the notice of revocation to request an informal administrative review hearing with a Hearing Officer designated by the Chief of Police in order to give the Licensee the opportunity to clear his or her name prior to imposition of the revocation. The Employee shall be deemed to have waived the administrative review proceeding if the Administrator does not receive the Employee's written request for an administrative review hearing within five (5) working days of the date of service of the notice of revocation. If the Administrator does not receive the Employee's written request for an administrative review hearing within five (5) working days of the date of service of the notice of revocation, the notice shall become the final decision of the Chief of Police and the License shall terminate automatically.
- B. The Administrator shall schedule the administrative review hearing within a reasonable period of time after receipt of the written request from the Employee.
- C. At the administrative review hearing, the Employee may be represented by legal counsel and shall have a reasonable opportunity to respond to the charges in order to clear his or her name and to seek to have the revocation reversed or modified. Although the attorney representing the Employee may be present at the administrative review meeting, there shall be no right to discovery or to cross-examine witnesses.

- D. Technical rules relating to evidence and witnesses shall not apply. Any relevant evidence which is not unduly repetitious, including hearsay evidence, may be admitted into the record and considered, and is sufficient in itself to support a finding, if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of that evidence over objection in a civil action.
- E. The Hearing Officer shall have the authority to control the conduct of the proceeding, including the ability to limit testimony and the admissibility of evidence that is unduly repetitious and make any other rulings or place other limitations on the administrative hearing consistent with the informal nature of the proceeding.
- F. The written decision of the Hearing Officer upholding, reversing or modifying the revocation shall be served upon the Employee within a reasonable period of time after the close of the administrative review hearing.
- G. A modification of the termination decision may include any or all of the following: a suspension of the Temporary Key Employee License for a period of time; the addition of restrictive limitations and conditions on the Temporary Key Employee License; issuance of a letter of reprimand or other disciplinary penalty.
- H. The written decision of the Hearing Officer shall be final and shall contain a notice setting out Section 1.16.010 of this Code.

SECTION 10. Chapter 16.32 of Title 6 of the San José Municipal Code is amended by adding a new section to be numbered, entitled and to read as follows:

16.32.640 Retroactivity Provision

- A. The Chief of Police shall issue a Key Employee License, with or without conditions, limitations, and restrictions, to each person to whom the California Gambling Control Commission issued a State Key Employee License prior to the date that the ordinance with this provision takes effect.
- B. The City Key Employee License of the persons referenced in subsection A above shall be retroactive to the effective date of the person's State Key Employee License.

SECTION 11. Section 16.33.010 of Chapter 16.32 of Title 6 of the San José Municipal Code is amended to read as follows:

16.33.010 Notice of Minor Violation; Imposition of Monetary Fines

- A. Conduct, action, or failure to act by a Cardroom Permittee, Licensee or Employee may be treated as an Minor Violation if the Administrator determines that:
1. The conduct, act, or failure to act was not of a nature, quality, or extent that it affected the integrity of any Controlled Game conducted on the Cardroom Premises;
 2. The conduct, act, or failure to act was not willful or intentional; or
 3. The conduct, act, or failure to act was not part of a continuing pattern or practice of the Cardroom Permittee or Licensee.

- B. For each Minor Violation, the Administrator may assess a monetary penalty against the Cardroom Permittee in an amount up to, but not to exceed, two thousand dollars (\$2,000) per incident.
- C. The aggregate of all monetary penalties assessed pursuant to Subsection B, above, shall not exceed one hundred thousand dollars (\$100,000) per calendar year with respect to any one Cardroom Permittee.
- D. A decision of the Administrator to impose a monetary penalty under this Section shall be final upon written notice to the Cardroom Permittee, and shall not be subject to challenge, appeal, or review save and except, and only to the extent that the decision is arbitrary or capricious. If the Cardroom Permittee files a request for a hearing pursuant to Subsection F, the Cardroom Permittee shall make an advance deposit of the monetary penalty the Administrator within ten (10) calendar days of the Notice of Monetary Penalty. If the Cardroom Permittee does not contest the Notice of Monetary Penalty, the monetary penalty shall be paid to the City within thirty (30) calendar days from the date of the Notice of Minor Violation.
- E. If the Administrator finds that a Minor Violation has occurred, and imposes monetary penalties under this Section, the facts and circumstances constituting the Minor Violation shall not be the subject of any other Regulatory Action, nor shall they be used or considered in connection with any future Regulatory Action, or enforcement proceedings against the Cardroom Permittee. A Minor Violation shall not constitute a violation of the terms of any permit or License held or enjoyed by a Cardroom Permittee and/or Licensee.
- F. If the Cardroom Permittee contends that the imposition of the Minor Violation is arbitrary or capricious or lacking in substantial evidentiary support, the Cardroom Permittee shall file written request for hearing to the Administrator within ten (10)

calendar days of the Notice of Minor Violation. Upon a timely request for hearing, the Chief of Police shall designate a Hearing Officer, who will set a hearing for such determination. The Minor Violation shall be upheld if the Hearing Officer determines that the imposition of the Minor Violation was not arbitrary or capricious or lacking in substantial evidentiary support.

G. The Notice of Minor Violation and any additional report submitted by the Administrator shall constitute prima facie evidence of the respective facts contained in those documents. Discovery is not permitted; however, within a reasonable time prior to the hearing, the parties shall exchange any reports or documents that the party intends to rely upon at the hearing. The Cardroom Permittee shall have the burden of proving its challenge. The hearing will be informal, with the Cardroom Permittee and the City having the opportunity to present evidence, documents and testimony regarding the Minor Violation. Technical rules relating to evidence and witnesses shall not apply, nor will cross-examination be authorized without express permission by the Hearing Officer. Any relevant evidence which is not unduly repetitious, including hearsay evidence, may be admitted into the record and considered, and is sufficient in itself to support a finding, if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of that evidence over objection in a civil action. The hearing will be scheduled by the Hearing Officer in a reasonable time period after written notice of request for hearing is filed with the Administrator. The Hearing Officer shall have the authority to control the conduct of the proceeding, including the ability to limit testimony and the admissibility of evidence that is unduly repetitious or make any other rulings or place other limitations on the administrative hearing consistent with the informal nature of the proceeding. The written decision of the hearing officer shall be served upon the Cardroom Permittee within a reasonable

period of time after the close of the hearing. The written decision of the hearing officer will be final and shall contain a notice setting out Section 1.16.010 of this Code.

SECTION 12. Chapter 16.33 of Title 6 of the San José Municipal Code is amended by adding a new section to be numbered, entitled and to read as follows:

16.33.020 Late Payment of Monetary Penalty

Failure by the Cardroom Permittee to pay the Monetary Penalty imposed pursuant to the provisions of this Chapter on or before the date that the Monetary Penalty is due also shall be liable for the payment of any applicable late payment charges set in the Schedule of Administrative Fines established by resolution of the City Council.

SECTION 13. Chapter 16.33 of Title 6 of the San José Municipal Code is amended by adding a new section to be numbered, entitled and to read as follows:

16.33.030 Recovery of Monetary Penalty and Costs

The City may collect any past due Monetary Penalty or late payment charge by use of all available legal means.

PASSED FOR PUBLICATION of title this _____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk