

San Diego Cardrooms



**Making San Diego Municipal Code
Consistent with California Law**

Saving Good Jobs for San Diegans

**Keeping Entertainment
Local and Safe**

January 2014

Why This Amendment Makes Sense

1. Making San Diego's Municipal Code consistent with California law will allow for uniform and consistent operation of facilities and enforcement of regulations.
2. Other cardrooms in Chula Vista and Oceanside are permitted to transfer ownership, so amending San Diego's cardroom regulations will allow local business to be competitive.
3. It is unfair for government to prohibit a business owner from leaving his or her business to heirs or selling to a third party.
4. City of San Diego residents would spend money in other cities if the cardroom owners are not allowed to transfer the business to heirs or sell to another owner.
5. If the owners of the cardrooms are permitted to leave their business to their heirs or sell it, then San Diego residents would be able to stay local and safe for this entertainment option.
6. The City receives close to \$100,000 annually from the two cardrooms and their employees for the fees assessed on the tables and employees' badges. In addition, the two cardrooms pay close to another \$100,000 in annual fees to the State of California.

Supporters of Amendment

- On May 18, 2011, the College Area Business Improvement District voted to support the proposed change to the San Diego Municipal Code.
- On June 6, 2013, the College Area Business Improvement District reaffirmed their support of the proposed change to the San Diego Municipal Code.
- On May 19, 2011, the El Cajon Boulevard Business Improvement Association also voted to support the proposed change to the San Diego Municipal Code.
- On October 14, 2013, the El Cajon Boulevard Business Improvement Association reaffirmed their support of the proposed change to the San Diego Municipal Code.
- Businesses surrounding these cardrooms are supporting this amendment because of the business they receive from more than 700 cardroom patrons every day.
- All of the vendors that San Diego cardrooms do business with support this amendment because of the hundreds of thousands of dollars spent every month by these cardrooms.
- The good paying jobs held by the staff, managers and owners of San Diego cardrooms are important to a number of families. Every staff member supports the proposed amendment to preserve these good jobs in the future.

Next Steps

1. City Attorney to review and prepare revisions to proposed amendment.
2. Public hearing on proposed amendment at Land Use & Housing Committee.
3. City Council hearing on proposed amendment.



What is a Cardroom?

Cardrooms have operated in the City of San Diego for several decades. They offer a variety of table games including Texas Hold 'Em, Blackjack, Baccarat, Pai Gow and others.

The current owners of the two remaining San Diego cardrooms are approaching their 80s and one of them is in poor health, yet City regulations do not allow them to transfer ownership to their families or sell their businesses to a third party.

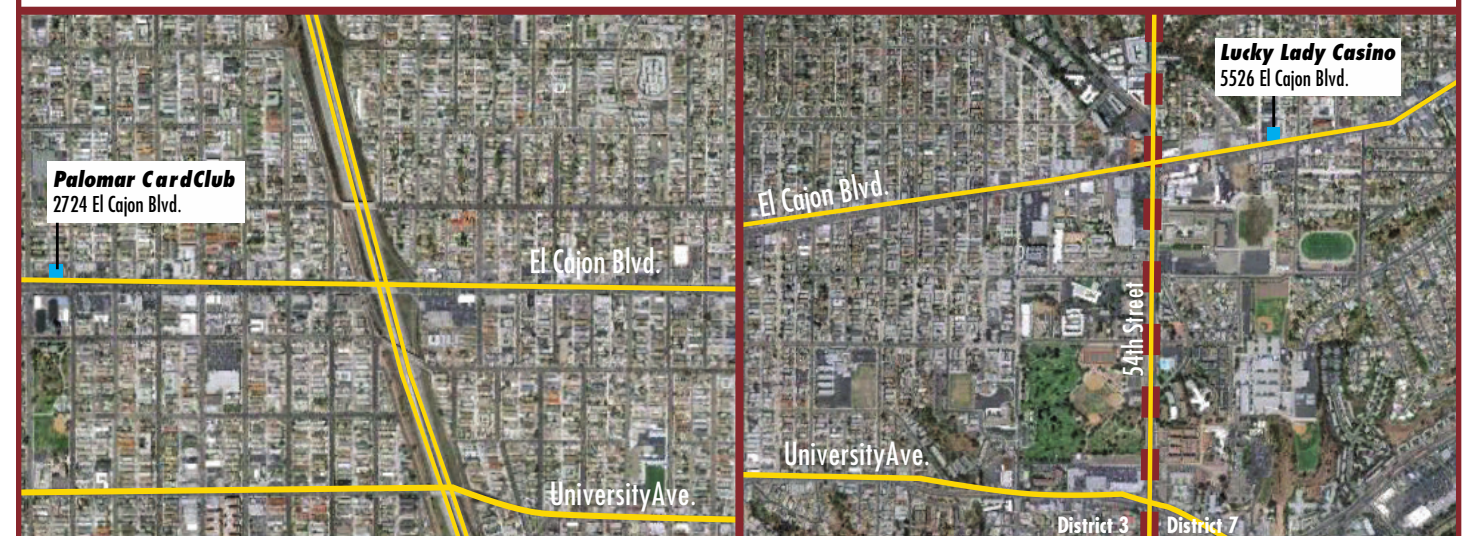
Even though San Diego cardrooms have operated for decades, the current owners are not permitted to leave these businesses for heirs to operate, or sell to a third party, so the future of these businesses and the good jobs they create are in danger of being terminated when the existing owners are no longer with us.

Issue

The State of California allows the transfer of ownership of cardrooms, but the San Diego Municipal Code does not.

Proposed Amendment to Municipal Code

Allow San Diego cardroom owners to transfer ownership to family members or sell to a third party, making the Municipal Code consistent with California law.



More than 100 Cardrooms in the 1980s

About three decades ago, there were more than 100 cardrooms in the City of San Diego. At a time when the San Diego Police Department and the City had an unfavorable opinion of these businesses, the City approved regulations that gradually eliminated every cardroom except for the two that now remain - the Palomar Card Club and the Lucky Lady Casino.

Cardrooms were phased out in the City when regulations were approved to prohibit cardrooms from being passed along to heirs or being sold to third parties. Whenever a cardroom owner passed away, the business closed down.

Only Two Left

Today, the owners of the Palomar Card Club and Lucky Lady Casino are both approaching their 80s, and the Palomar owner is in poor health. Even with a family of more than 24 children, grandchildren and great-grandchildren, the Palomar owner is not permitted to leave his business to family members.



Popularity of Poker

Poker has now evolved into a popular social game that is featured on television shows and coverage by ESPN (www.espn.go.com/poker). Many books have also been written to improve people's playing skills. Poker has become a thriving industry employing thousands of people and generating a considerable amount of revenue to municipalities, charities and community organizations. This is quite a different image than when cardrooms were perceived as gambling halls that hosted illegal activity.

State Regulations – Strong Oversight With Fairness

In 1997, the state of California adopted the Gambling Control Act, which established an overall umbrella of state regulation for cardrooms and created two oversight agencies.

California Gambling Control Commission

The California Gambling Control Commission promotes integrity in California's gambling environment, and takes appropriate action to foster honest, competitive gambling that is free of criminal and corruptive elements.

Bureau of Gambling Control, California Department of Justice

The Bureau of Gambling Control operates within the Office of the Attorney General and works to ensure the integrity of gambling within California. This Bureau coordinates closely with the California Gambling Control Commission, and it is recognized as the leading authority in gambling regulation and enforcement in the world.

A vigorous background check is required for every owner, general manager, floor manager, key employee and dealer who works in any cardroom or other gambling establishment in California. Native American casinos operate under different regulations.

Making City Regulations Consistent with State Law

Since 1983, the City has made a number of changes to accommodate these businesses to help them succeed. The following timeline summarizes the amendments to regulations.

- 1999** In December 1999, the City Council approved changes to the Municipal Code that adjusted the hours of operation in addition to a variety of other changes to the way cardrooms operate in the City.
- 2000** In November 2000, the City Council adopted clarifying language for the Municipal Code sections related to police regulated businesses - including cardrooms.
- 2001** In January 2001, the City Council approved changes to the Municipal Code allowing cardrooms to adopt and clearly post a schedule of charges for each of the permitted games.
- 2002** In April 2002, the City Council approved changes to the Municipal Code to allow the types of games played and number of tables in each cardroom to be consistent with state law.
- 2008** In May 2008, the City Council approved changes to the Municipal Code increasing the number of tables allowed at each remaining card club from seven to nine. This change updated the City's regulations to become consistent with state regulations.
- 2011** In October 2011, the City Council approved changes to the Municipal Code increasing the number of tables allowed at each remaining card club from nine to 11. This change updated the City's regulations to become consistent with state regulations.



PALOMAR CARD CLUB

2724 El Cajon Boulevard, San Diego, CA 92104
619-280-5828

January 6, 2014

Honorable Lorie Zapf
Chair, Smart Growth and Land Use Committee
City of San Diego
202 C Street, 10th Floor
San Diego, CA 92101

Dear Councilmember Zapf:

We have owned the Palomar Card Club in San Diego for 33 years. I appreciate you, your staff and the rest of the City Council for taking the time to meet with my representative, Mr. Arkan Somo, regarding possible changes to the way San Diego regulates card rooms. This is an issue that is important to our family since we have invested so much to make this business a success.

I worked in the postal service for many years, and it was only a short time ago that Palomar Card Club became successful enough for me to retire. I am 78 years old and Susan is 76 and our health is declining. Being able to compete with other card rooms in the county and transfer ownership of this business is very important to the future of our family.

Susan and I have four children, 10 grandchildren, and 10 great-grandchildren. I was diagnosed with lung cancer about 12 years ago, and have lost half of my left lung. We worked very hard to build this business over the years and would like to leave something behind to help our family's current and future generations.

Based on the legal opinion from the office of City Attorney, Mr. Jan Goldsmith, and our contacts with surrounding businesses and the community, there is tremendous support to have the San Diego Municipal Code amended to allow us to transfer ownership of this successful business to my children or a third party.

We are appealing to your sense of fairness to act on this opportunity. We appreciate your consideration of this issue and hope to earn your support.

Sincerely,

Donald Staats
Owner, Palomar Card Club

Lucky Lady Casino

5526 EL CAJON BOULEVARD
SAN DIEGO, CA 92115
619-287-6690

January 6, 2014

Honorable Lorie Zapf
Chair, Smart Growth and Land Use Committee
City of San Diego
202 C Street, 10th Floor
San Diego, CA 92101

Dear Chairwoman Zapf:

I am writing this letter to seek your support and that of your fellow Councilmembers for allowing my business, Lucky Lady Casino, to continue operating after I am gone. As you are no doubt aware, current San Diego city law prohibits the sale or transfer of a cardroom license to a third party or a family member, thereby forcing a cardroom establishment to close upon the passage of its owner.

I have owned and operated Lucky Lady for more than 40 years, and I am proud of the business I have built. Our cardroom provides entertainment options for San Diegans, quality jobs for our staff and tax revenue for the city. Throughout my tenure as owner, I have strived to operate within the bounds of state and city regulations, and I stand by the reputation the Lucky Lady has established as a responsible local business.

I am now approaching 80 years of age, and my health is not what I would hope. I want to pass my business onto my family who has worked with me for years in its management. Sadly, this is not currently an option. I am unable to retire without feeling as though I'm turning my back on my customers and employees who would lose their places of work and refuge.

I respectfully request that you approve revisions to the San Diego Municipal Code that would permit cardroom owners to sell or transfer our licenses so that our businesses may continue to serve San Diegans even when we are gone.

Thank you for your consideration, and please do not hesitate to contact me if I can provide any further details regarding the Lucky Lady's operations.

Sincerely,

A handwritten signature in black ink, appearing to read "Stanley Penn". The signature is fluid and cursive, with the first name "Stanley" written in a larger, more prominent script than the last name "Penn".

Stanley Penn

San Diego Cardrooms

Owners, card players and employees – all part of the family



Three generations of the Staats family



Susan and Donald Staats,
Palomar Card Club owners



Three generations of the Penn family,
including LuckyLady owner Stanley Penn



Two examples from hundreds of cards gathered in support of ordinance changes

Yes!

I support amending the City of San Diego's Municipal Code to allow cardroom owners to transfer their licenses to family members or a third party. Let's make San Diego consistent with California law!

Name JAMES T. BOMBARDO
Address 4226 DELLWOOD ST
City SAN DIEGO State CA Zip 92111
Phone: (658) 560-1499
E-mail _____

Signature James T. Bombarde

Comments: I enjoy going to both Palomar and Lucky Play card rooms. The staff at both places are very friendly!

Yes!

I support amending the City of San Diego's Municipal Code to allow cardroom owners to transfer their licenses to family members or a third party. Let's make San Diego consistent with California law!

Name CHARLIE McNEELY
Address 3047 MURRAY RIDGE RD
City SAN DIEGO State CA Zip 92101
Phone: (619) 518-8434
E-mail CHARLES.MCNEELY@YAHOO.COM Signature Charlie McNeely

Comments: SAN DIEGO'S HISTORY WITH CARDROOMS GOES BACK TOO FAR TO SEE THEM GO. KEEP THE TRADITION ALIVE!



College Area Business District

Representing the College Area Economic Development Corporation

June 6, 2013

The Honorable Marti Emerald
Councilmember, District Nine
City of San Diego
202 C Street, 10th Floor
San Diego, CA 92101

RE: Municipal Code Amendments Related to State Law Governing Card Rooms

Dear Councilmember Emerald:

We thank you for supporting the College Area Economic Development Corporation, the non-profit Business Improvement District (BID) in the College Area and the administrators of the College Heights Maintenance Assessment District. We represent 400 business owners and 350 property owners within the College Area. A presentation on the proposed card room municipal code amendments was given on April 20, 2011, and readdressed on May 18, 2011 at our Board of Director's meeting.

After many questions and much debate we came to a conclusion to support the proposed amendments to the San Diego Municipal Code:

- Allow San Diego card room owners to transfer ownership to family members or sell to a Third party, making the Municipal Code consistent with California law.
- Increase the number of tables at San Diego card rooms from 9 to 11, making the Municipal Code consistent with California law.

As with any business in our district and throughout San Diego, we believe that competition and open market principles should be promoted to help businesses succeed. Government can play a role in helping our members succeed by providing a fair environment and a level playing field for businesses within the same industry or area.

Thank you for your consideration of our support of amending card room regulations to promote fair competition.

Sincerely,

Jennifer R. Finnegan
Executive Director

the
BOULEVARD

EL CAJON BOULEVARD BUSINESS IMPROVEMENT ASSOCIATION

October 14, 2013

The Honorable Marti Emerald
Councilmember, District Seven
City of San Diego
202 C Street
San Diego CA 92101

RE: Amendments to San Diego Municipal Code regarding regulations of card rooms

Dear Council Member Emerald:

The El Cajon Boulevard Business Improvement Association represents 900 member businesses. This includes the Palomar Card Room, one of the two remaining card rooms in the city. Our association advocates for fair competition and regulations that create a level playing field for small business owners within our district and throughout San Diego.

With this in mind, the El Cajon Boulevard BIA is in favor of amending the San Diego Municipal Code to allow the two card rooms in the city to compete fairly with other card rooms in San Diego County and around California. The amendments that are being proposed include adding two playing tables and allowing the transfer of ownership.

Currently, state law allows for things that San Diego does not allow: 1) the addition of playing tables (in this case two) and 2) for current owners to sell or transfer ownership of the card rooms. Other business owners in San Diego County can make their own decisions on how they run their businesses, and the same opportunity should be provided to card room owners in the City of San Diego.

Card rooms provide jobs for dozens of employees, they support neighborhood businesses, and the owners make a significant amount of personal investment to create successful enterprises. Owners should be given the opportunity to realize the benefits of their hard work and investment, and sell their businesses as any other business owner can do.

Thank you for your consideration of our support and for amending card room regulations to promote fair competition.

Sincerely,



Cuong Nguyen
President

cc: The Honorable Interim Mayor/Council President Todd Gloria - District 3
The Honorable Councilperson Lorie Zapf – District 6
The Honorable Councilperson David Alvarez – District 8



**City Of San Diego
COUNCILMEMBER MARTI EMERALD
COUNCILMEMBER TODD GLORIA**

M E M O R A N D U M

DATE: October 12, 2011

Reference: M-11-10-04-J

TO: City Attorney Jan Goldsmith

FROM: Councilmembers Marti Emerald and Todd Gloria

SUBJECT: Sunset Provision for San Diego Card Rooms

In 1983, the City Council adopted a new division to the Municipal Code in order to regulate Cardrooms within the City of San Diego. The Council restricted the number of Cardrooms to the three that existed at that time and further prohibited the transfer of Cardroom licenses after 1985, effectively sun setting the industry after the deaths of the current owners.

At various times, the Council has revisited the Cardroom regulations in order to stay in compliance with state law and also to allow the Cardrooms to operate and compete freely in a market that has changed greatly over the past twenty years.

- 1999 – amendments expanding hours and number of players per table
- 2000 – general divisions update of police regulated businesses
- 2001 – posting the permitted games and charges
- 2002 – allowing all games permitted by the State
- 2008 – amended wagering limits to be in compliance with state law
- 2008 – added two tables per card room

In 2010, passage of AB 441 allowed cities and counties to amend their Cardroom regulations to increase the number of tables allowed per card room by two. Currently the City Council is considering amending the Municipal Code to provide for the two additional tables per card room as allowed by AB 441.

The owners of one of the two remaining San Diego card rooms (the Palomar Club) have requested that the City Council docket discussion regarding the abolition of the sun-set requirement for Cardroom operations in San Diego. While the decision to change a long standing policy initiative to sunset the card room industry in San Diego will lay with

Page 2
Councilmember Marti Emerald
October 12, 2011

the City Council, there are legal, liability and ethical questions that need to be reviewed and opined on by the City Attorney prior to consideration of the policy question by the Council.

With that said, we respectfully request the City Attorney review and opine on the following questions and supply any additional information, legal review and opinion that the City Attorney feels would be helpful to the policy discussion.

1. Does the City Council have the authority to eliminate the sunset provision on card room operations?
2. Would the elimination of the sunset provision create a government sponsored monopoly for the two remaining card room owners?
3. Would the City be liable for damages from any card room operators or heirs of those operators whose business was closed or suspended due to the current card room ordinance if the sunset provision was now eliminated?
4. Are there any laws that would prevent, hinder or affect the elimination of the sunset provision solely by Council action?
5. Would the elimination of the sunset provision constitute, allow for, or necessitate an expansion of gambling in San Diego.

If you have any questions please feel free to contact Drew Ector, Consultant to the PS&NS Committee (67038). Thank you for your assistance with this matter.

ME/TG: de

cc: Honorable Mayor Jerry Sanders
Honorable City Council Members
Office of the Independent Budget Analyst

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: June 29, 2012
TO: Councilmembers Marti Emerald and Todd Gloria
FROM: City Attorney
SUBJECT: Cardroom Licenses

INTRODUCTION

The San Diego Municipal Code (SDMC) regulates local cardrooms pursuant to the California Gambling Control Act (California Business and Professions Code sections 19800 – 19987) (Act). A license issued by the Chief of Police is required to operate a cardroom. SDMC § 33.3902. However, no new licenses are issued; only renewals of existing licenses are permitted.¹ SDMC § 33.3904. Additionally, licenses may not be transferred from a licensee to any other person and issued licenses terminate with the death of the licensee. SDMC § 33.3908(a). The eventual result of these regulations will be the elimination of all cardrooms in the City.

This memorandum addresses your inquiry regarding the legal implications of amending the SDMC to permit the issuance of a new license upon sale or transfer of a cardroom business. The practical result of such an amendment would be to permit existing cardrooms to continue operating indefinitely.

¹ There are two cardrooms in the City of San Diego. Lucky Lady and the Palomar Club.

QUESTIONS PRESENTED²

1. May the City amend the SDMC to permit the issuance of a new license upon the sale or transfer of a cardroom business?
2. Would such an amendment violate anti-trust statutes or the equal protection clause of the state or federal constitutions?
3. Is an amendment that provides for new licenses considered an "expansion of gambling" under the Act?
4. Will the City be liable if it amends the SDMC to allow the issuance of a new license upon the sale or transfer of a cardroom business?

SHORT ANSWERS

1. Yes. Pursuant to the Act, the City may amend the ordinance regulating cardrooms, so long as such amendment is consistent with the Act. However, any amendment of an ordinance relating to cardrooms must be submitted to the Department of Justice Division of Gambling Control for review and comment before it is enacted by the City.
2. No. Permitting the issuance of a new cardroom license upon the sale or transfer of a cardroom business, effectively granting a monopoly to the two existing businesses, would not violate equal protection clauses of the federal or California constitutions. The U.S. Supreme Court has rejected equal protection challenges to the legitimate exercise of police power even where it results in the granting of a monopoly.

It also would not implicate federal or California anti-trust statutes. The City is not subject to California's anti-trust statutes. Additionally, the City may limit trade in this instance because municipalities may replace competition with regulation for gambling establishments (cardrooms).

3. No. Permitting the issuance of a new cardroom license upon the sale or transfer of a cardroom business, and forestalling the elimination of cardrooms in the City, would likely not be considered an expansion of gambling under the Act since the number of cardrooms, card tables, or hours of operation would not be increased, or authorization of other forms of gambling, as compared to January 1, 1996.

² This Office has restated the questions posted by Districts 3 and 7 in order to more directly address the relevant legal issues.

4. Based on the limited information available, no. So long as the legislation is lawful, a change in legislative policy does not generally create liability.

ANALYSIS

I. The City Is Authorized To Amend the SDMC To Permit the Issuance of a New Cardroom License Upon the Sale or Transfer of a Cardroom Business Consistent With the Requirements of the Act.

The City may enact or amend any ordinance relating to licensed gambling establishments consistent with the requirements of the Act. Cal. Bus. & Prof. Code § 19960. The City may issue a gambling license to a gambling establishment (cardroom) if “prior to January 1, 1984, there was in effect an ordinance that expressly authorized the operation of one or more cardrooms.” Cal. Bus. & Prof. Code § 19960(b). Any amendment of the City’s ordinance relating to gambling establishments must be submitted to the Department of Justice for review and comment before it is enacted. Cal. Bus. & Prof. Code § 19961.1. Expansion of gambling in the City, discussed further below, is permissible under limited circumstances. *See* Cal. Bus. & Prof. Code §§ 19961, 19962. However, the intent of the current SDMC is to eliminate cardrooms altogether. Any change to this posture could be seen as an expansion of gambling, beyond what is permitted under the Act. We are unaware of any similar request being made to the Department of Justice (DOJ). Thus, there is no guarantee that the DOJ will approve such an amendment.

Additionally, while a state gambling license may not be sold or transferred (Cal. Bus. & Prof. Code § 19873), an ownership interest in a gambling establishment may be sold or transferred with the prior approval of the California Gambling Control Commission (Cal. Bus. & Prof. Code § 19892; Cal. Code Regs. title 4, §§ 12220.6, 12220.15). The Municipal Code mirrors the state statutes in that a cardroom license may not be sold or transferred. SDMC § 33.3908(a). However, the City effectively prohibits the sale or transfer of a cardroom establishment by limiting cardroom licenses to renewals only. SDMC § 33.3904. New licenses are not permitted. *Id.*

Any proposed amendment must necessarily maintain the prohibition on the sale or transfer of cardroom *licenses*, consistent with state law. However, new licenses may be permitted for cardroom *businesses* operating at the existing two locations. Therefore, an existing cardroom business could be sold or transferred and the new owner would be permitted to apply for a new cardroom license for the same location. Cardroom operations would continue to be limited to the two existing locations. SDMC §§ 33.3903, 33.3904, Cal. Bus. & Prof. Code § 19962(b).

II. Permitting the Issuance of a New Cardroom License Upon the Sale or Transfer of a Cardroom Business Would Not Be a Violation of the Equal Protection Clause or Anti-Trust Statutes.

A. Equal Protection

Article I, section 7³ and Article IV, section 16⁴ of the California Constitution have been construed by the courts as “substantially the equivalent” to the equal protection clause of the Fourteenth Amendment⁵ and evoking “substantially the same standards as those prescribed by the federal Constitution.” *Russell v. Carleson*, 36 Cal. App. 3d 334, 342 (1973). In reviewing legislative classifications under the equal protection clause, courts follow a two-tier approach: a strict scrutiny test is applied where suspect classifications or a fundamental constitutional right is involved; the rational basis test is applied in all other cases. *Graham v. Kirkwood Meadows Public Util. Dist.*, 21 Cal. App. 4th 1631, 1642 (1994). “The rational basis standard applies to equal protection challenges of economic and social welfare legislation under both the federal and state constitutions.” *Sneed v. Saenz*, 120 Cal. App. 4th 1220, 1249 (2004). Rational basis scrutiny only requires that the legislation furthers a legitimate purpose. *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 313-314 (1993).

The Supreme Court has rejected “equal protection challenges to legislative classifications aimed at reducing specific harms associated with vice activity.” *Artichoke Joe's California Grand Casino v. Norton*, 353 F.3d 712, 737-38 (9th Cir. 2003) (citing *United States v. Edge Broad, Co.*, 509 U.S. 418, 426 (1993)). With respect to “vice activities,” a “state is free to enact legislation that accords different treatment to different localities, and even to different establishments within the same locality, so long as that differentiation is tied to a legitimate interest in the health, safety, or welfare of its citizens.” *Artichoke Joe's*, 353 F.3d at 740. “Where there exists an appropriate connection to the state's police power, even the grant of a monopoly does not, in itself, offend equal protection principles.” *Id.* at 736-37.

Equal protection challenges to the creation of monopolies as a result of reasonable regulation of gambling establishments have been rejected by numerous courts. See *City of New Orleans v. Dukes*, 427 U.S. 297, 300 (1976) (grandfather clause exception to the city ban on pushcart vendors selling food in the French Quarter survived equal protection scrutiny even though it effectively created a monopoly of only two vendors); *Artichoke Joe's*, 353 F.3d at 740 (California law that gave tribes an undisputed monopoly on Class III casino-style gambling on tribal lands was reasonably designed to further the government's legitimate interest in preventing criminal infiltration of gaming operations); *Helton v. Hunt*, 330 F.3d 242, 245-46 (4th Cir. 2003) (grandfather clause exception to statute banning the operation of video gaming

³ Article I, section 7(a) states, in part, that a “person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws;” and section 7(b) states “A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens.”

⁴ “All laws of a general nature have uniform operation.”

⁵ “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

machines was held to not violate equal protection principles; while the classification “seem[ed] unfair,” it was not unconstitutional); *Rodriguez v. Jones*, 64 So.2d 278, 280 (Fla.1953) (restriction requiring operators of certain gambling activity to be more than twenty miles from an existing licensed operator’s withstood equal protection challenge despite creating a monopoly for the existing operator in Dade County).

B. Federal and California Anti-Trust Statutes

The City is not subject to the Cartwright Act, California’s anti-trust statute, because the legislature did not intend it to apply to state or local governments. *Widdows v. Koch*, 263 Cal. App. 2d 228, 235 (1968). See also *People ex rel. Freitas v. City and County of San Francisco*, 92 Cal. App. 3d 913, 921 (1979) (“since San Francisco is a political subdivision of the state, the Legislature did not intend for it to be subject to the Cartwright Act”); *Penn v. City of San Diego*, 188 Cal. App. 3d 636, 644 (1987). Additionally, the City’s regulation of cardrooms is not subject to the Sherman Act, the federal anti-trust statute. Although the Sherman Act applies to local governments, under “the state action immunity doctrine, a local government may restrict trade without violating the antitrust laws if the state has ‘clearly articulated’ and affirmatively expressed its intention to allow the municipality to replace competition with regulation or monopoly power.” *Redwood Empire Life Support v. County of Sonoma*, 190 F.3d 949, 953 (9th Cir. 1999) (citing *City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365, 372 (1991)). A municipality’s restriction of competition is considered an authorized implementation of state policy. *Id.* at 370. To satisfy the requirement for a clear articulation of a state policy to authorize anticompetitive conduct, “[i]t is enough, we have held, if suppression of competition is the ‘foreseeable result’ of what the statute authorizes.” *Id.* at 373. In California, the Act clearly articulates the Legislature’s intention to permit municipalities to regulate cardroom operations. The Act specifically provides for the suppression of competition by limiting new entrants in the market. Cal. Bus. & Prof. Code §§ 19960, 19961, 19962, 19963.

III. Permitting the Issuance of a New Cardroom License Upon the Sale or Transfer of a Cardroom Business Would Not be an Expansion of Gambling Under the Act.

Permitting the issuance of a new cardroom license upon the sale or transfer of a cardroom business would not be considered an expansion of gambling under the Act since the number of cardrooms, card tables, or hours of operation would not be increased, or an authorization of other forms of gambling, as compared to January 1, 1996. The Act provides that an “ordinance in effect on January 1, 1996, that authorizes legal gaming within a city . . . may not be amended to expand gaming in that jurisdiction beyond that permitted on January 1, 1996.” Cal. Bus. & Prof. Code § 19962(b). However, notwithstanding that section, an amendment that would expand gambling is permitted so long as it would result in an increase of less than 25 percent in (1) the

number of gambling tables in the City, (2) the number of licensed cardrooms in the City, (3) the number of gambling tables in a particular establishment, or (4) the hours of operation of an establishment. Cal. Bus. & Prof. Code § 19961(a)(2).⁶ To determine the percentage change in the gambling tables, cardrooms, or hours of operation, the proposed change is “compared to that authorized on January 1, 1996, or under an ordinance adopted pursuant to subdivision (a) of section 19960, whichever is the lesser number.” Cal. Bus. & Prof. Code § 19961(b). *See also* Cal. Bus. & Prof. Code §§ 19961.06, 19965.

Under the Act’s plain language, amendments to the City’s current structure of “future elimination” of cardrooms would not be considered an “expansion of gambling.” Additionally, permitting the issuance of a new cardroom license upon the sale or transfer of a cardroom business would not be contrary to the Legislature’s intent in enacting the Act. The Legislature sought to maintain strict and comprehensive regulation of gambling businesses in order to address its concern about the deleterious effects of unregulated gambling enterprises. Cal. Bus. & Prof. Code § 19801. Its intent was “to provide uniform, minimum standards of regulation of permissible gambling activities and the operation of lawful gambling establishments.” Cal. Bus. & Prof. Code § 19803(a). It permitted the City to impose more stringent local controls on conditions (Cal. Bus. & Prof. Code § 19803(b)) but did not express any intent that gambling operations should be eliminated altogether (*see* Cal. Bus. & Prof. Code § 19801(b)).

IV. The City is Generally Immune from Damage Claims When Enacting Legislation

In general, under California law, public entities are immune against a claim for damages for adopting legislation. Cal. Gov’t Code § 818.2. Various immunities and defenses may be available against constitutional claims. *See e.g. Amberger-Warren v. City of Piedmont*, 143 Cal. App. 4th 1074; 49 Cal. Rptr. 3d 631 (2006) (city immune from section 1983 suit based upon personal injuries to plaintiff on a trail because California Government Code section 831.4(a) precludes liability arising from use of recreational trails).

CONCLUSION

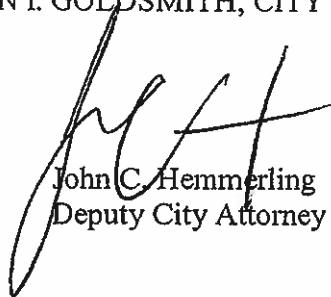
The City may amend the SDMC to permit the issuance of a new cardroom license, contingent upon Department of Justice approval. There is no current restriction on the sale or transfer of a cardroom business. Changes that prevent the eventual elimination of all cardrooms in the City

⁶ Additionally, any amendment that would result in an “expansion of gambling” in the City must be approved by the voters. Cal. Bus. & Prof. Code § 19961(a)(1). For purposes of the Gambling Control Act, “expansion of gambling” is defined as a change that results in an increase of 25 percent or more in (1) the number of gambling tables in the City, (2) the number of licensed cardrooms in the City, (3) the number of gambling tables in a particular establishment, (4) the hours of operation of an establishment, or (5) the authorization of an additional form of gambling. Cal. Bus. & Prof. Code § 19961(b).

are not inconsistent with the Act or violative of state and federal anti-trust statutes or constitutional provisions. Additionally, such an amendment would not be considered an expansion of gambling nor would it result in an expansion or proliferation of cardrooms beyond the two establishments that currently exist.

JAN I. GOLDSMITH, CITY ATTORNEY

By

A handwritten signature in black ink, appearing to read "John C. Hemmerling". The signature is stylized and overlaps the printed name below it.

John C. Hemmerling
Deputy City Attorney

JCH:amt

cc: Councilmember David Alvarez
Councilmember Lorie Zapf
Independent Budget Analyst Andrea Tevlin
Chief Operating Officer Jay Goldstone