

ORDINANCE # 2010-11

AN ORDINANCE OF THE CITY OF AMERICAN CANYON AMENDING CHAPTER 5.12 ENTITLED "CARDROOMS" BY ADDING SECTIONS 5.12.230 THROUGH 5.12.380 OF THE AMERICAN CANYON MUNICIPAL CODE ESTABLISHING A NEW CARDROOM ADMISSION TAX OF \$2.00 PER PATRON

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15378(b)(4) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended ("CEQA"), because the submittal of a proposal to a vote of the people of the state or a particular community is not a "project" for purposes of the CEQA.

THE PEOPLE OF THE CITY OF AMERICAN DO ORDAIN AS FOLLOWS:

SECTION I

Chapter 5.12 of the American Canyon Municipal Code entitled "Cardrooms" is hereby amended by adding new Sections 5.12.230 through 5.12.380 to read as follows:

"5.12.230 Purpose and Intent.

Chapter 5.12, Sections 5.12.230 through 5.12.380 (hereinafter referred to as "Cardroom Admission Tax Provisions"), are enacted solely to raise revenue for municipal purposes and is not intended for regulation.

5.12.240 Definitions.

The words and phrases used in the Cardroom Admission Tax Provisions shall have the meaning prescribed to them in Chapter 5.12 unless they are specifically defined in these Cardroom Admission Tax Provisions or unless the context clearly requires to the contrary:

- A. "Cardroom Admission Tax" (or "tax") shall mean any charge, whether or not so designated, for the right or privilege to enter, occupy, or use a seat or space in a cardroom establishment as hereinafter defined, or to participate as a patron in any cardroom event.
- B. "Cardroom establishment" shall mean and include any building, structure, place or location wherein cardroom activities take place pursuant to Chapter 5.12 of the American Canyon Municipal Code.
- C. "Cardroom event" shall mean any card games, cardroom activities or cardroom tournaments permitted by Chapter 5.12 of the American Canyon Municipal Code and/or the California Business and Professions Code section 19800 *et seq.*, and the state of California Department of Justice Division of Gambling Control.

D. "Equipment" shall mean those devices approved by the City to account, monitor and calculate each and every patron being admitted to or to use any cardroom establishment, or to participate in any cardroom event.

E. "Patron" shall mean any person who pays or on account of whom is paid any admission tax, charge or admission price for the right or privilege of being admitted to or to use any cardroom establishment, or to participate in any cardroom event. The term "patron" shall not include (i) a bona fide employee of the operator when admission to the facility is incident to said employee's duties, and (ii) any employee or official of the state of California, or any agency, instrumentality or department thereof, the City, or United States Government, whose official duty makes it necessary to gain admission to any event.

F. "Permittee" shall mean a person who has been issued a cardroom permit under Chapter 5.12 of the American Canyon Municipal Code.

5.12.250 Payment of Tax.

A. Effective January 1, 2011, each patron entering into a cardroom establishment shall pay a Cardroom Admission Tax of two-dollars (\$2.00) per patron for the right or privilege of being admitted to or to use any cardroom establishment, or to participate in any cardroom event within a twelve (12) hour period.

B. The tax imposed by the Cardroom Admission Tax Provisions of this chapter is in addition to any other tax, license or permit fee that may be required of any person by the American Canyon Municipal Code or any other ordinance of the city.

C. All taxes, interest and penalties received pursuant to the Cardroom Admission Tax Provisions shall be deposited in the general fund.

5.12.260 Audit of Reports.

A. The books records and accounts of any permittee may be inspected and audited by the city.

B. Such an inspection and audit may be performed by the director of finance, city auditor or a qualified accountant or city official who shall be selected by the director of finance.

C. Any failure or refusal of any permittee to pay such sums by way of taxes when the same are due and payable in accordance with the Cardroom Admission Tax Provisions of this chapter, or to permit such inspection of such books, records and accounts of such permittee shall be and constitute full and sufficient grounds for suspension or revocation of any cardroom permit issued to the permittee pursuant to Section 5.12.090.

5.12.265 Cardroom Admission Tax Exemption.

Provided that the permittee has entered into a Development Agreement pursuant to Government Code section 65864 *et seq.* with the city, for any related expansion of the permittee's cardroom premises, or any increase in the number of cardroom tables allowed, or any intensification of use of the premises, the payment schedule of the Development Agreement shall apply and the city shall not impose the Cardroom Admission Tax.

5.12.270 Payment – Time limits.

A. All taxes imposed by the Cardroom Admission Tax Provisions of this chapter shall be due and payable on the first (1st) day of the calendar quarter in which the tax was first paid.

B. In the case of a cardroom which is discontinued, dissolved or otherwise terminated before the expiration of a tax period, the due date for any taxes accrued and owing to the city under the Cardroom Admission Tax Provisions of this chapter shall be the date of termination of the cardroom business.

5.12.280 Payments and communications made by mail.

A. Whenever any payment, statement, report, request or other communication received by the director of finance is received after the time prescribed by the Cardroom Admission Tax Provisions of this chapter for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed prior to the time prescribed in this chapter for the receipt thereof, the director of finance may regard such payment, statement, report, request or other communication as having been timely received.

B. If the due day falls on Saturday, Sunday or a holiday, the due day shall be the next regular business day on which city hall is open to the public.

5.12.290 When taxes deemed delinquent.

Unless otherwise specifically provided under other provisions of this chapter, all taxes required to be paid pursuant to the Cardroom Admission Tax Provisions of this chapter shall be deemed delinquent if not paid on or before the due date specified in Section 5.12.270.

5.12.300 Notice not required by city.

The director of finance is not required to send a delinquency or other notice or bill to any permittee subject to the Cardroom Admission Tax Provisions of this chapter, and failure to send such notice or bill shall not affect the validity of any tax, interest or penalty due under the provisions of this chapter.

5.12.310 Delinquency, penalties and interest.

In addition to any other penalties or fines, civil or criminal, any permittee who fails or refuses to pay any tax required to be paid pursuant to the Cardroom Admission Tax Provisions of this chapter on or before the due date shall pay, in addition to the tax, penalties and interest as follows:

A. A penalty equal to ten percent (10%) of the amount of the unpaid tax in addition to the amount of the tax, plus interest of one and one-half percent (1 ½%) per month or fraction thereof on the amount of tax, exclusive of penalties, on the unpaid tax calculated from the due date of the tax until the date of payment.

5.12.320 Rules and regulations; apportionment.

For purposes of apportionment of the tax as may be required by law and for purposes of administration and enforcement of the Cardroom Admission Tax Provisions of this chapter generally, the director of finance may from time to time promulgate administrative rules and regulations.

5.12.330 Tax deemed debt to city.

The amount of any tax, penalties and interest imposed by the Cardroom Admission Tax Provisions of this chapter shall be deemed a debt to the city, and any permittee carrying on any business without having paid the tax under the Cardroom Admission Tax Provisions of this chapter to the city shall be liable to an action in the name of the city and in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such business.

5.12.340 Deficiency determinations.

A. If the director of finance is not satisfied that the amount of tax is correctly computed, the director may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in the director's possession or that may come into the director's possession.

B. One or more deficiency determinations of the amount of tax due for period or periods may be made.

C. When a permittee discontinues engaging in a cardroom business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due.

D. Whenever a deficiency determination is made, a notice shall be given to the permittee concerned in the same manner as notices of assessment are given under Section 5.12.360.

5.12.350 Tax assessment; nonpayment; fraud.

A. Under any of the following circumstances, the director of finance may make and give notice of an assessment of the amount of tax owed by a permittee under the Cardroom Admission Tax Provisions of this chapter:

1. If the permittee has not paid any tax due under the Cardroom Admission Tax Provisions of this chapter;

2. If the permittee has not, after demand by the director of finance, paid any additional amount of tax due under the Cardroom Admission Tax Provisions of this chapter;

3. If the director of finance determines that the nonpayment of any tax due under the Cardroom Admission Tax Provisions of this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto from the date the tax is due in addition to penalties and interest otherwise stated in the Cardroom Admission Tax Provisions of this chapter.

B. The notice of assessment shall separately set forth the amount of any tax known or estimated by the director of finance to be due, after full consideration of all information within his or her knowledge concerning the cardroom business and activities of the permittee assessed and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

5.12.360 Tax assessment; notice requirements.

The notice of assessment shall be served upon the permittee either by handing it to the permittee personally, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the permittee at the address of the location of the business appearing on the face of the permit issued under Chapter 5.12 to the permittee or to such other address as he or she shall register with the director of finance for the purpose of receiving notices provided under this chapter. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

5.12.370 Tax assessment; hearing.

A. Within ten (10) days after the date of service, the permittee may apply in writing to the director of finance for a hearing on the assessment.

B. If application for a hearing before the director of finance is not made within the time herein prescribed, the tax assessed by the director of finance shall become final and conclusive.

C. Within thirty (30) days of the receipt of any such application for hearing, the director of finance shall cause the matter to be set for hearing before him or her not later than thirty (30) days after the date of application, unless a later date is agreed to by the director of finance and the permittee requesting the hearing.

D. Notice of such hearing shall be given by the director of finance to the permittee requesting such hearing not later than five (5) days prior to such hearing. At such hearing said permittee may appear and offer evidence why the assessment as made by the director of finance should not be confirmed and fixed as a tax.

E. After such hearing the director of finance shall determine and reassess the proper tax to be charged and shall give written notice thereof to the permittee in the manner prescribed in Section 5.12.350 for giving notice of assessment.

5.12.380 Conviction for chapter violation; taxes not waived.

A. The conviction and punishment of any permittee for failure to pay the required tax shall not excuse or exempt such permittee from any civil action for the tax debt unpaid at the time of such conviction.

B. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.”

SECTION II

The qualified voters of the City of American Canyon reserve the right to change the general tax herein enacted and imposed by this Ordinance. The City Council may modify this Ordinance without a vote of the people but not to increase the tax rate or to expand the application of said tax.

SECTION III

This Ordinance, being for the imposition of a new general tax, shall be submitted to a vote of the people at the City’s general municipal election scheduled for November 2, 2010. This Ordinance shall become valid and binding if a majority of the voters voting thereon vote in its favor at said election and shall be effective on the date that the City Council certifies the results of said election. If the provisions of Government Code Sections 53720 *et seq.* or Article XIIC of the California Constitution are duly repealed or amended, or interpreted by the courts so that a vote of the people is not required for enactment of this Ordinance, then this Ordinance shall take effect as provided for all other City ordinances and may be amended in the same manner as all other City ordinances.

SECTION IV

If any section, subsection, part, clause, sentence or phrase of this Ordinance or the application thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, the validity of the remaining portions of this Ordinance, the application thereof, and the general taxes imposed shall not be affected thereby but shall remain in full force and effect, it being the intention of the voters to adopt each and every section, subsection, part, clause, sentence or phrase regardless of whether any other section, subsection, part, clause, sentence or phrase or the application thereof is held to be invalid or unconstitutional.

SECTION V

This Ordinance shall be in full force and shall take effect as provided by law on December 17, 2010.

SECTION VI

This Ordinance is enacted by the electorate at the general municipal election on November 2, 2010 and accepted by the City Council on December 7, 2010 and is effective December 17, 2010.