

ORDINANCE # 2013-05

AN ORDINANCE OF THE CITY OF AMERICAN CANYON AMENDING SECTIONS 5.12.230 THROUGH 5.12.380 (CARDROOM ADMISSION TAX PROVISIONS) OF CHAPTER 5.12 (CARDROOMS) OF THE AMERICAN CANYON MUNICIPAL CODE, CHANGING THE DESIGNATION OF THE CARDROOM ADMISSION TAX TO A GROSS RECEIPTS TAX IN ACCORDANCE WITH THE PROVISIONS OF THE SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT IN *BVK GAMING, INC. V. CITY OF AMERICAN CANYON, ET AL.* (NAPA COUNTY SUPERIOR COURT CASE NO. 26-57480)

WHEREAS, in November 2010, the voters of the City of American Canyon ("City") approved Measure F, which called for a two dollar, per patron, admissions tax for the right or privilege to enter, occupy, or use a seat or space in a cardroom establishment in the City ("Admissions Tax"); and

WHEREAS, the City implemented Measure F by adding Sections 5.12.230 through 5.12.380 to the City's Municipal Code ("Code"), effective January 1, 2011; and

WHEREAS, BVK Gaming, Inc. ("BVK") owns and operates Napa Valley Casino ("NVC"), which is the only cardroom in the City; and

WHEREAS, in 2011, the City filed a criminal action against BVK for its failure to comply with the Admissions Tax, and BVK subsequently filed a civil case against the City challenging the validity of the Admissions Tax; and

WHEREAS, in an effort to settle the aforementioned disputes, BVK and the City entered into a Settlement Agreement and Stipulation for Entry of Judgment ("Settlement Agreement"), whereby the parties agreed that the City would amend its Municipal Code to change the Admissions Tax to a Gross Receipts Tax. Under the provisions of the Gross Receipts Tax, cardrooms shall pay to the City, 2.5 percent of their gross table gaming revenue for each quarter, beginning in the first quarter of 2013; and

WHEREAS, pursuant to the terms of the Settlement Agreement, the Gross Receipts Tax shall increase to 3.0 percent effective upon the earlier of either of the following:

1. March 27, 2017; or
2. One year after the City authorizes cardroom operators to operate 16 card tables in the City; and

WHEREAS, pursuant to the terms of Section II of Measure F, the City Council is permitted to modify the Ordinance without a vote of the people, but not to increase the tax rate or expand the application of the cardroom tax; and

WHEREAS, the City has determined that the change from an Admission Tax to a Gross Receipts Tax maintains the intent of the City's electorate in generating revenue, through the passage of Measure F; and

WHEREAS, the purpose of the proposed ordinance is to establish a government funding mechanism for general City purposes, and the City is not committing to a course of action with respect to the tax revenue and therefore the ordinance is not a “project” subject to CEQA as defined in Section 15378, subdivision (b)(4) of the CEQA Guidelines. Full compliance with CEQA would occur prior to any approval of a project deemed subject to CEQA, funded in whole or in part from the tax revenue generated from this ordinance.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I

Sections 5.12.230 through 5.12.380 (Cardroom Admission Tax Provisions) of Chapter 5.12 (Cardrooms) of the American Canyon Municipal Code are hereby amended to read in their entirety as follows:

“5.12.230 Purpose and Intent.

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

5.12.240 Definitions.

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

“Cardroom establishment” means and includes any building, structure, place or location wherein cardroom activities take place pursuant to this chapter of the American Canyon Municipal Code.

“Cardroom event” means any card games, cardroom activities or cardroom tournaments permitted by this chapter and/or the California Business and Professions Code Section 19800 *et seq.*, and the State of California Department of Justice Division of Gambling Control.

“Gross receipts tax” or “tax” means a tax on a cardroom’s gross revenues for each quarter, beginning January 1, 2013.

“Gross revenues” means the definition of “gross table gaming revenue” as reported to the California Gambling Control Commission and the California Department of Justice Bureau of Gaming Control.

“Permittee” means a person who has been issued a cardroom permit under this chapter.

5.12.250 Payment of Tax.

A. Effective January 1, 2013, each cardroom establishment shall pay to the city, on a quarterly basis, a gross receipts tax of 2.5 percent of its quarterly gross revenues.

B. The gross receipts tax shall increase to 3.0 percent, effective upon the earlier of either of the following dates:

1. March 27, 2017; or
2. One year after the city authorizes cardroom operators in the city to operate 16 tables.

C. The tax imposed by the gross receipts 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.

D. All taxes, interest and penalties received pursuant to the gross receipts tax provisions shall be deposited in the general fund.

5.12.255 Statement of Revenues.

Before the 30th day following the end of each quarter, the licensee shall file with the city finance department, a statement, under oath, showing the true and correct amount of gross revenues for the preceding quarter. A signed declaration shall be attached to the statement included therein, which shall be in substantially the same form as: "I hereby declare under penalty of perjury that the foregoing is true and correct." Pursuant to Section 5.12.260 of this chapter, the city shall have the right to audit matters reported in the statement to determine the accuracy of the figures contained therein.

5.12.260 Audit of Reports.

A. The books, records, statements 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 gross receipts 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 Gross Receipts 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 gross receipts tax.

5.12.270 Payment – Time limits.

A. All taxes imposed by the gross receipts tax provisions of this chapter shall be due and payable within 30 days of the end of each quarter.

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 gross receipts 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 gross receipts 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 gross receipts 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 gross receipts 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 Penalty and interest for delinquency.

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 gross receipts tax provisions of this chapter on or before the due date shall pay, in addition to the tax, penalties and interest as follows:

A penalty equal to ten percent of the amount of the unpaid tax in addition to the amount of the tax, plus interest of one and one-half percent 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 gross receipts 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 gross receipts 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 gross receipts 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 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 gross receipts tax provisions of this chapter:

1. If the permittee has not paid any tax due under the gross receipts 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 gross receipts tax provisions of this chapter;

3. If the director of finance determines that the nonpayment of any tax due under the gross receipts tax provisions of this chapter is due to fraud, a penalty of twenty-five percent 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 gross receipts 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 this chapter 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 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 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 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 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 provisions of this Ordinance shall be severable. If any portion is found to be unconstitutional, illegal, or invalid, the remainder shall survive and remain effective and enforceable.

SECTION III

This Ordinance shall take effect immediately after its adoption.

SECTION IV

The City Council finds that this Ordinance is exempt from review under the California Environmental Quality Act ("CEQA") because the purpose of the proposed ordinance is to establish a government funding mechanism for general City purposes, and the City is not committing to a course of action with respect to the tax revenue and therefore the ordinance is not a "project" subject to CEQA as defined in Section 15378, subdivision (b)(4) of the CEQA Guidelines. Full compliance with CEQA would occur prior to any approval of a project deemed subject to CEQA, funded in whole or in part from the tax revenue generated from this ordinance.

SECTION V

The foregoing Ordinance was introduced and read at the regular meeting of the City Council of the City of American Canyon, State of California, held on the 21st day of May, 2013 and approved and adopted at a regular meeting on the 4th day of June, 2013.

MAYOR GARCIA:

yes

VICE MAYOR JOSEPH:

yes

COUNCIL MEMBER J. BENNETT:

yes

COUNCIL MEMBER B. BENNETT:

yes

COUNCIL MEMBER K. LEARY:

yes

Leon Garcia

Leon Garcia, Mayor

ATTEST:

Rebekah Barr

Rebekah Barr, MMC, City Clerk

APPROVED AS TO FORM:

William D. Ross

William D. Ross, City Attorney