



# City of San Gabriel

## STAFF REPORT

---

DATE: September 18, 2018

TO: Honorable Mayor and City Council

FROM: Mark Lazzaretto, City Manager

BY: Keith Lemieux, City Attorney

**SUBJECT: INTRODUCTION AND FIRST READING OF ORDINANCE NO. 648 AMENDING PORTIONS OF TITLE XI (BUSINESS REGULATIONS), CHAPTER 116 (ENTERTAINMENT, AMUSEMENTS AND GAMES) OF THE SAN GABRIEL MUNICIPAL CODE REGARDING FIESTAS, FAIRS, CARNIVALS, NONPROFIT FUNDRAISERS AND OTHER SPECIAL EVENTS**

---

### SUMMARY

*The San Gabriel Municipal Code (SGMC) currently prohibits casino/poker nights under its broad prohibition of gambling, with no exemption for charitable fundraisers.*

*At June 5, 2018, City Council meeting, the City Council discussed the issues and directed the City Attorney to return with a Municipal Code Amendment ordinance to allow casino-type charitable fundraisers, consistent with State law, through consideration of a Temporary Use Permit (TUP), which is approved or denied by the Community Development Director.*

*Staff recommends that the City Council introduce and approve the First Reading of the Ordinance.*

---

### INTRODUCTION

Since 2007, the State Gambling Control Act allows a nonprofit organization to conduct a fundraiser using "controlled games." "Controlled Games" are defined as "any poker or Pai Gow game, and any other game played with cards or tiles, or both, and approved by the Department of Justice, and any game of chance, including any gambling device ...."

The SGMC broadly prohibits gambling under Section 116.001 (card rooms for poker, card game, or similar game) and Section 130.06 (wheel of fortune, ring or ball tossing, throwing, or pitching, or any other contrivance). Although the existing SGMC provides an exemption for charitable activities (§ 116.026) for certain games of skill, the exemption does not apply to either Section 116.001 or 130.06, which means that those types of activities remain prohibited even for fundraising events of nonprofit organizations.

This proposed Ordinance would allow casino-type charitable fundraisers (consistent with State law) with City approval of a TUP.

## **ANALYSIS**

Staff previously recommended at the June 5, 2018, Council meeting, that the City allow casino/poker nights using the process for TUPs. Currently, TUPs are mentioned in the SGM Chapter 153 (Zoning Code), but the Zoning Code provides few specifics on review and approval procedures.<sup>1</sup>

Event permits issued by the City Council are required by existing Code Section 116.026 (charitable activities) and Sections 116.040–.042 (fiesta, fair, carnival), which provides for review by Police and Fire Departments for recommended security and safety conditions.

The proposed Ordinance specifies procedures for application and approval of TUPs, and delegates the decision-making to the Community Development Director, with appeal of denials to the Planning Commission and City Council.

The attached proposed Ordinance accomplishes the following:

- (i) Allows charitable fundraiser gambling game nights in line with State law (*for-profit* gambling will continue to be prohibited).
- (ii) Consolidates the regulations of Fiestas, Fairs, Carnivals and Nonprofit Organization Fundraisers. TUPs are required *for all such* "Special Events"—not just for casino-type fundraisers.
- (iii) Establishes procedures for administrative approval of Temporary Use Permits.

### TUP Application Procedure in Brief:

- File application at least 60 days before the special event.
- Community Development Director consults with City Manager, Police, Fire and Finance Departments for recommended conditions of approval and to review for any conflict with other events in the City.
- Approval of a TUP is based on finding that the event as conditioned will be conducted lawfully with adequate protection of the public health, safety, convenience and general welfare.

## **TUP Application Fee**

The law allows cities to charge fees to recover the actual costs of processing applications. The City's existing Fee Schedule was adopted by resolution.

The Ordinance does not specify the actual TUP application fee, but rather provides that it will be set by separate resolution. The Ordinance also provides that the City may specify a lower fee for applications filed by nonprofit organizations. The current one-size-fits-all fee for TUPs is \$530.

---

<sup>1</sup> Temporary Use Permits for sidewalk and parking lots sales/special events (§ 153.159); one-time-event open air markets and live musical and other performances (§ 153.162); Christmas tree, pumpkin sales (§ 153.220).

Staff recommends bringing a resolution to Council that amends the existing Fee Schedule by setting the fee at \$265 for any Special Event (e.g. circus, fair, carnival, festival, casino event) conducted by a nonprofit organization.

Staff plans to agendize the TUP fees at a future meeting, because it makes sense to adopt a new fee only if the Ordinance is passed at its Second Reading.

### **ENVIRONMENTAL REVIEW**

The Ordinance is exempt from CEQA based on two provisions: Per Section 15061(b)(3), there is no possibility that it may have a significant effect upon the environment; and per Section 15378, this Ordinance is not a project because it will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment because it does not authorize any specific activity.

### **FISCAL IMPACT**

Negligible. City staff time and resources to process TUP applications may be recovered by application fees.

### **STAFF RECOMMENDATION**

Staff recommends that the City Council:

1. Conduct the public hearing and discuss the proposed Ordinance.
2. Motion to waive full reading and introduce the attached Ordinance by title only. The City Clerk will read aloud the full title of the Ordinance.
3. Motion to approve the First Reading of the Ordinance and to waive future reading of the Ordinance.
4. Schedule the Second Reading and adoption of the Ordinance for the next regular Council meeting. The Second Reading will require a majority vote of the total membership of the Council.

### **ATTACHMENTS**

Attachment A: Proposed Ordinance No. 648

## ORDINANCE NO. 648

### AN ORDINANCE OF THE CITY COUNCIL OF SAN GABRIEL, CALIFORNIA AMENDING PORTIONS OF TITLE XI (BUSINESS REGULATIONS), CHAPTER 116 (ENTERTAINMENT, AMUSEMENTS AND GAMES) OF THE SAN GABRIEL MUNICIPAL CODE REGARDING FIESTAS, FAIRS, CARNIVALS, NONPROFIT FUNDRAISERS AND OTHER SPECIAL EVENTS

WHEREAS, the California Constitution (art. IV § 19) prohibits many forms of gambling. However, nonprofit organizations that meet certain eligibility requirements may conduct bingo, raffles, gambling game nights, and fundraiser carnivals, if done according to detailed rules; and

WHEREAS, California Business and Professions Code §§ 19985 et seq., passed in 2007 as part of the Gambling Control Act, allows a nonprofit organization to conduct a fundraiser using “controlled games.” California Penal Code § 337j(e) defines “**Controlled Games**” as “any poker or Pai Gow game, and any other game played with cards or tiles, or both, and approved by the Department of Justice, and any game of chance, including any gambling device ....”; and

WHEREAS, the Gambling Control Act defines “**Nonprofit Organization**” as “an organization that has been qualified to conduct business in California for at least three years prior to conducting controlled games and is exempt from taxation pursuant to [specified sections] of the Revenue and Taxation Code”; and

WHEREAS, the San Gabriel Municipal Code broadly prohibits gambling under Section 116.001 (card rooms for poker, card game, or similar game) and Section 130.06 (wheel of fortune, ring or ball tossing, throwing, or pitching, or any other contrivance); and

WHEREAS, the existing SGMC provides an exemption for charitable activities (§ 116.026) for certain games of skill, but the exemption does not apply to either Section 116.001 or 130.06, which means that those types of activities remain prohibited even for fundraising events of nonprofit organizations; and

WHEREAS, a City Council-issued permit is required for “any fiesta, fair, carnival, or public celebration,” but the existing SGMC provides few details of procedures; and

WHEREAS, the City Council desires to delegate its permitting authority in this regard to the Community Development Director in accordance with SGMC § 32.10, whose decision may be appealed to the Planning Commission and subsequent appeal to the Council; and

WHEREAS, at a regular meeting on June 5, 2018, the City Council discussed these issues and directed the City Attorney to prepare an ordinance; and

WHEREAS, the City Council desires to amend the San Gabriel Municipal Code to: (i) allow game components of charitable fundraisers and clarify the rules in line with the State Gambling Control Act; (ii) consolidate the regulations of Fiestas, Fairs, Carnivals and Nonprofit Organization Fundraisers; and (iii) establish approval procedures.

NOW, THEREFORE, THE SAN GABRIEL CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 1.** The above recitals are true and correct and incorporated herein by reference.

**SECTION 2.** Chapter 116 (ENTERTAINMENT, AMUSEMENTS AND GAMES) of Title XI (BUSINESS REGULATIONS) of the San Gabriel Municipal Code is amended to add the following terms to § 116.010 DEFINITIONS:

***CASINO EVENT.*** A fundraising event conducted by a nonprofit organization which includes controlled games, as that term is defined in California Penal Code section 337j (e).

***NONPROFIT ORGANIZATION.*** This phrase shall have the same meaning as defined in California Business and Professions Code section 19986(h).

***SPECIAL EVENT.*** A circus, fair, carnival, festival, casino event, or other type of gathering that is intended to or likely to be of substantial size, and is unlike the activities usually associated with the subject property.

**SECTION 3.** Chapter 116 (ENTERTAINMENT, AMUSEMENTS AND GAMES) of Title XI (BUSINESS REGULATIONS) of the San Gabriel Municipal Code is amended as follows (underlining denotes additions; strikethrough denotes deletions):

~~§ 116.026 EXEMPTION FOR CHARITABLE ACTIVITIES.~~

~~The provisions of §§ 116.012 through 116.028 of this subchapter shall not apply to games installed or operated by any charitable organization operating pursuant to a permit issued pursuant to the provisions of §§ 124.060 through 124.077 of this title, but only if such games are so operated by such charitable organizations for an accumulative period of time of less than 72 hours in any calendar year.~~

**FIESTAS, FAIRS, AND CARNIVALS, NONPROFIT FUNDRAISERS AND OTHER SPECIAL EVENTS**

**§ 116.039 EXEMPTION FOR NONPROFIT ORGANIZATION CASINO EVENTS**

The prohibition of games by the provisions of this chapter 116 and § 130.06 of this code shall not apply to casino events that comply with state law and the permit requirements of this subchapter.

**§ 116.040 PERMIT REQUIRED.**

It shall be unlawful for any person to conduct or carry on any ~~fiesta, fair, carnival,~~ special event or public celebration in the city without first securing a temporary use permit from the Council so to do in accordance with this subchapter.

**§ 116.041 TEMPORARY USE PERMIT APPLICATION.**

~~Any person desiring to conduct or carry on any fiesta, fair, carnival, or public celebration shall file, at least 60 days prior to such event, a written application therefore, stating the name and address of the applicant, the proposed location, time and purpose of the event and the disposition of the proceeds from the event. The City Clerk shall refer the application to the Police and Fire Departments for review and recommended conditions regarding security and safety.~~

(A) The Community Development Director shall prescribe the items to submit and information to provide in the temporary use permit application, and may promulgate policies, guidelines, and procedures that are consistent with this subchapter.

(B) A complete permit application shall be filed no later than 60 days before the planned special event.

(C) Applications for casino events shall include a copy of any agreement with a supplier of gaming equipment and services, and shall demonstrate compliance with applicable state law, including, without limitation, approval by the Bureau of Gambling Control and registration with the Registry of Charitable Trusts. A temporary use permit shall not be issued if it will result in more than three days in which the applicant has conducted casino events in any calendar year.

(D) Application fees shall be set by resolution of the City Council. The fee schedule may specify a lower fee for applications that are properly and timely filed by nonprofit organizations.

(E) If an application is withdrawn, the city may authorize a partial refund of fees based on the processing costs incurred to date.

(F) The Community Development Director shall refer the application to relevant departments, including the City Manager, Police, Fire and Finance for review and recommended conditions. Conflict with another event in the city may justify denial of a permit for a specific date.

(G) Submitted applications shall become part of the administrative record which shall include copies of correspondence, notices and actions in connection with the application.

#### **§ 116.042 ISSUANCE.**

~~The City Council shall receive and shall cause the City Clerk to issue a permit via authorization letter, subject to conditions it deems appropriate, if the Council is satisfied that the event will be conducted in a lawful manner, and the public welfare will not be injured thereby.~~

(A) Decisions by the Community Development Director to grant or deny an application for temporary use permit shall be in the form of a written determination letter. The decision, including any conditions of approval, shall be supported by written findings that the event will be conducted in a lawful manner with adequate protection of the public health, safety, convenience and general welfare.

(B) The temporary use permit may require as conditions of approval that the applicant provide a surety bond and liability insurance based on the proposed event and the nature of the subject property and surrounding properties. Conditions of approval may provide for recovery of actual costs incurred for services provided by the city related to the event, including, without limitation, costs of law enforcement, traffic control, and cleanup. An advance deposit of the estimated amount of cost recovery may be required.

#### **§ 116.043 DENIAL AND REVOCATION OF PERMIT.**

(A) Within ten days after a permit is denied, the applicant may appeal the decision of the Community Development Director to the Planning Commission, and may subsequently appeal the decision of the Planning Commission to the City Council by filing an appeal with the City Clerk using the city's appeal form together with the required processing fee. Appeals shall be heard in the same manner as provided for in § 30.10 et seq., except that a public hearing shall not be required.

(B) Upon finding that a permitted temporary use has become detrimental to the public health, safety or welfare, the Community Development Director may revoke a temporary use permit. The decision of the Community Development Director shall be final, subject only to judicial review as provided by law.

**SECTION 4.** Any provision of the San Gabriel Municipal Code or appendix thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistency and no further, is hereby repealed or modified to the extent necessary to effect the provisions of this Ordinance.

**SECTION 5.** This Ordinance is consistent with the City's General Plan.

**SECTION 6.** CEQA. This Ordinance is exempt from the California Environmental Quality Act (CEQA) under the following provisions of the CEQA Guidelines: Section 15061(b)(3) because there is no possibility that it may have a significant effect upon the environment; and under Section 15378, this Ordinance is not a project under CEQA because it will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment because it does not authorize any specific activity.

**SECTION 7.** Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

**SECTION 8.** The City Clerk shall attest to the adoption of this ordinance and shall cause the same to be published in a newspaper of general circulation within 15 days after its passage in accordance with Government Code section 36933. This ordinance shall take effect 30 days after its passage pursuant to Government Code section 36937.

PASSED, APPROVED, AND ADOPTED by the San Gabriel City Council at its regular meeting on this 2<sup>nd</sup> day of October, 2018.

---

John R. Harrington, Mayor

ATTEST:

---

Julie Nguyen, City Clerk

APPROVED AS TO FORM:

---

Keith Lemieux, City Attorney

STATE OF CALIFORNIA                    )  
COUNTY OF LOS ANGELES            )  
CITY OF SAN GABRIEL                )

I, Julie Nguyen, City Clerk of the City of San Gabriel DO HEREBY CERTIFY that foregoing Ordinance No. 648 was duly passed and adopted by the City Council of the City of San Gabriel at their regular meeting held on \_\_\_\_\_ by the following roll call vote, to wit:

\_\_\_\_\_  
Julie Nguyen, City Clerk

The foregoing is the original of Ordinance No. 648 duly passed and adopted by the San Gabriel City Council at their regular meeting held on \_\_\_\_\_.

\_\_\_\_\_  
Julie Nguyen, City Clerk