

## ***Sacramento Card Room Expansion-Goes Beyond City Limits***

*By Cheryl Schmit*

*Stand Up For California*

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The City of Sacramento appears to be the testing ground for the expansion of its card room activity. Two clubs are proposing a “new business model” significantly expanding the scope of gambling in one location. Additionally, a new state regulation creates an opportunity to increase the number of card rooms in the city limits. These proposals generate an imbalance between the various vested gambling interests and the state’s current gambling policy that go far beyond the city limits of Sacramento.

Two Sacramento area card clubs, Casino Royale and The Limelight, are proposing the novel idea of combining card club licenses at one location. The proposal is stated as an effort to allow card room ownership to combine in order to achieve efficiency and become competitive within the region. However, there are many concerns that first must be considered, the least of which is the creation of a mega-casino contrary to the Sacramento City gambling ordinance, which states that its purpose is “limiting the gambling within this community to a level which will be a source of entertainment and recreation for the local citizens while preventing a casino-like atmosphere in this community.” Placing two clubs in one location creates a casino-like atmosphere and circumvents the right of the public to vote on the expansion of a gambling establishment’s size and scope.

In addition to the card club merger, a controversial regulation adopted by the California Gambling Control Commission (CGCC) permits the resurrection of abandoned and inactive licenses. A former Sacramento card room licensee, The Old Tavern, has taken notice and requested an amendment to the City Gambling Ordinance in order to open a card room downtown near the corner of 15<sup>th</sup> and L. Both proposals will require the city to amend its gambling ordinance.

Under these proposals the city would; (1) combine gambling licenses to one location, (2) increase the overall total of card rooms in the city, (3) amend the current gambling ordinance to increase the current limit 15 tables per card room and, (4) loosen regulatory standards. These proposals must be thoroughly vetted by city staff and reviewed by the Law and Legislation Committee. Taken together, the proposals would be a reversal of previous city gambling policies.

Policymakers must consider a number of caveats in determining how these proposal’s benefits measure against its costs? These questions include the shared state and local control over: (1) amending local gambling ordinance so that it is compliant with the Gambling Control Act of 1998, (2) the state moratorium on card room expansion and, (3) licensing of any new investors/partners, key employees.

Should city officials loosen local regulations and oversight to card room expansions? Staff must ensure that the ordinance protects the integrity of decision-makers who are the regulators and enforcers of the ordinance. Does the city want to start, a bit by bit, down the road to allowing urban casinos? Overall, these current proposals signal another step towards the legalization of full service casinos in California as card room owners and investors position themselves in marketable areas looking forward to future expansion.

Sacramento area clubs are not the first to suggest loosening of local ordinance requirements by advocating that state regulations are sufficient to regulate card clubs in the host cities. The following examples demonstrate an evolving trend towards card club expansion statewide despite the moratorium in the Gambling Control Act of 1998.

Last year the City of San Jose, responding to card room business pressure, put forward a local ballot measure permitting greater flexibility in its regulatory practices. The City of San Jose's regulations, fees and taxes were the most restrictive in the state and rightly so, as the card rooms have a colorful history. In 1987, the Garden City's former owners were indicted on tax-fraud charges. In 2000, dozens of club employee were indicted on felony charges including loan sharking, drugs and extortion. Nevertheless, city officials moved forward as the ballot measure would also raise the current 13% tax to 15% providing an additional \$5 million to the current \$13.6 million revenue already paid to the city by clubs. City leaders were willing to jeopardize the safety of the public in an effort to close a \$116 million operating shortfall. At least that was the view of the local police force San Jose Police Officers Association President George Beattie, who said, "Expanding the operations of these card rooms could jeopardize the safety of our streets, neighborhoods and police officers."

In the City of Ventura, the Players Casino expanded, renamed and relocated to a 7,000 square foot building formerly occupied by an automobile dealership. Unlike the card room's prior location, the new facility has access and visibility to Highway 101, with more than 180 parking spaces. The card room increased from a mom and pop operation of 6 tables to 18. This is permitted under current city gambling ordinance and state regulation without a vote of the public. The club currently pays the City of Ventura 15% tax generating approximately \$750,000.00 annually. With this expansion city officials anticipate that annual payment to exceed \$1 million.

Loosening of local regulations and oversight of card rooms is a serious cause of concern for civil corruption. Profits from local gambling enterprises have provided or promised to provide mouthwatering inducements to some local officials. In 2001, in the City of Huntington Park the mayor was solicited with a bribe, campaign contributions and \$5,000 to secure his vote on issues. The \$5,000.00 in cash was to send the Mayor Richard Loya and his wife on a cruise to Italy. Harry Hwang, president of L.A. Casino in Huntington Park, was taped during a series of meetings by a concealed microphone worn by Loya, who was working with the FBI. Hwang was indicted by a federal grand jury on six counts of bribery.

The proposed “business model” of combined licenses will increase gambling revenue. However, tying it to reduced local regulations and oversight presents the opportunity for the infiltration of organized crime. Two Bay Area card rooms were raided recently by the Federal Bureau of Investigation, which shuttered their operations for several days. In March 2011, Artichoke Joe’s a 105 year old card club operating 38 tables at a 20,000 square foot gambling facility and a smaller club, the Oaks, were swarmed by state, federal and local officers. Police arrested 15 employees in connection with racketeering, drugs and loan sharking.

Advocating that state regulations and oversight are sufficient does not appear to be an accurate statement as indicated above. Local government officials must protect their integrity. A number of local jurisdictions that host large gambling facilities supplement their budgets with the fees and taxes collected from card rooms. This raises questions in the eyes of the public as to the relationship of local government officials acting as the enforcer and regulator of card rooms, particularly when the host city/county directly benefits from card room revenues supporting local budgets. Without doubt, reduced regulatory oversight at the local level raises the incidents of increased public corruption and jeopardizes the safety of the public.

### **SACRAMENTO’S – “NEW BUSINESS MODEL”**

Reporter Peter Hecht broke the story of the proposed combined licenses in the Sacramento Bee on May 15, 2011. It appears this deal has been in the works for some time. It is rumored that the current location of the Casino Royale and the Limelight Card Club will move to a new more visible location on Business 80. This combining of licenses presents a new “business model” for card clubs elsewhere to emulate. Imagine the gambling floor of a Las Vegas Casino, slot machines and gambling tables in the center with the restaurants and gift shops situated on the outer edge. This new card room business model will be just the opposite. A restaurant would be in the center with the card clubs aligned on the outer edge, a sort of “card club mall”.

State regulations would require each club to have “separate security” and have their own “cage”. But how separate is separate - across a hall, a restaurant floor or a mile apart? A “cage” is the secured area in a gambling establishment where money, chips, and records of transactions are kept. Potential co-mingling of these funds raises concerns with compliance of the Bank Secrecy Act and other federal statutes. The Casino Royale and the Limelight are proposing that the two card clubs share a mutual location. And what is to prevent such a “model” from including more than two card room licensees?

It is questionable if this proposed “business model” complies with the language of state law and regulation. It certainly presents a model that was not previously considered in the development of the Gambling Control Act of 1998<sup>1</sup> nor the supporting state regulations. The statute intended

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<sup>1</sup> In 1998, in response to the growth of the card room industry and the expansion of tribal gambling as well as the belief that California would soon become a full service gambling state, Attorney General Daniel Lungren and Senate Pro Tem Bill Lockyer introduced and pass the California Gambling Control Act. (SB 8 - Business and Professions

to empower the public to vote on the expansion of gambling operations in their local communities. This new business model appears to disenfranchise the rights of the electorate.

In order to move forward with this “model,” the card rooms need the City of Sacramento to amend its current gambling ordinance. The proposed amendments:

- Change the language in the code that refers to the industry in what they view as a negative manner
- Dollar amount limits on individual betting are not consistent with surrounding jurisdictions
- Remove the restrictions of 15 tables per card room and let the states limit dictate the maximum
- Remove the restriction that requires the gambling activities be separate from other activities, such as restaurant and or bar.
- Remove the restriction of limiting the number of card rooms to four

The above list of suggested amendments includes a “tempting financial enticement” to city officials. Raising the bet limit immediately increases revenue to not only the card rooms but the annual revenues paid to the city. Likewise, additional tables increase the revenue to both parties. Increasing the number of tables in a card room can be accomplished without a vote of the public as long as the number of tables does not exceed 25% of the current number of tables. But in this situation, the combining of licensees, the number of tables in one location already exceeds the number allowable by the city ordinance for one card room.

Allowing two card clubs to operate jointly in one location without the requirement of a minimum distance between them is a special request to the city to authorize the “new business model” of two card rooms sharing a mutual location. This business model has positives and negatives. Locating two card clubs in one location might allow the city to reduce the cost of regulatory oversight and law enforcement. But on the downside, the proposal is inconsistent with the intent of the city gambling ordinance which prevents card clubs from becoming a major industry in the city. Further, citizens experience a loss of community control over the size and scope of a gambling facility in their neighborhood. Approval by city officials would give the appearance of political favoritism by making a choice of one industry entity over another, basically picking winners and losers among the currently established operations.

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Code: 19800 – 19887) The Act provided a regulatory framework by which the State could provide uniform minimum standards for gambling licenses and key employee background investigations. The Act also developed the California Gambling Control Commission (CGCC) and the Bureau of Gambling Control (BGC- previously the Department of Gambling Control) within the California Department of Justice. The Commission and the Bureau are responsible for the development of policy, regulatory oversight and enforcement of the States gambling laws in California card clubs.

There is also the rumor of a mystery investor who is a 3<sup>rd</sup> party provider. 3<sup>rd</sup> party provider companies offer proposition player services to card clubs. These are companies hired by card rooms to provide professional players who bankroll the game. Gamblers like action and proposition players help increase the amount of gambling activity happening in a casino. The potential involvement in the card club ownership with a proposition player company raises serious concerns over the relationships. The Gambling Control Act prohibits banked games for card clubs. Nevertheless, the CGCC has allowed card club owners to own and operate proposition player companies as long as the company does not bank games in their clubs. The obvious question is how the public is assured that there is no collusion among card club owners and proposition player companies.

There has been a prohibition on banked card games since 1860. Banked games allow players to bet against the gambling establishment. California allows players to bet against each other and pay the card club a fee per hand or hour for the table. But what was the intent of the 1860 prohibition. Does it mean just the house (the card room) is prohibited from conducting banked games in their own establishments? Or does the prohibition apply more broadly to “all banked games,” including those banked by third party proposition player companies? Was the intent to allow round or pari-mutuel games, such as poker, but not banked games like blackjack, which is also statutorily banned? In June of 1999, the California Supreme Court ruled on the *HERE v. Davis* case. This was the successful challenge to the Proposition 5, a statutory ballot measure that included banked or house banked games for federally recognized California Indian tribes on established Indian lands. The Supreme Court held that:

A banking game is one in which any person or entity takes on all comers, paying all winners and collecting from all losers.

Under the Supreme Court’s analysis, Penal Code Section 330’s prohibition against banking games applies even if the house does not own the bank.

Further the Supreme Court held that:

Article 4 Section 19 (e) of the California Constitution elevated the Penal Code Section 330 to a constitutional level. **Accordingly the Legislature may not authorize any game that would constitute casino gambling.**

In 2001, AB 54 was introduced as a technical “clean up legislation.” This clean up legislation allowed for banked games by proposition player companies acting as the bank for card rooms. No one has challenged the constitutionality of this statutory legislation.

### **CITY OF SACRAMENTO'S GAMBLING ORDINANCE**

Sacramento's current ordinance provides for the operation of four card rooms with 15 tables each. Indeed, the ordinance section 5.32.070 specifically states:

No card room licenses shall be granted when the number of card room licenses in the city exceeds the ratio of one card room for every one hundred thousand (100,000) population of the city according to the latest population figures from the California Department of Finance, provided, however, that the maximum number of card room licenses which may be issued shall not exceed four. (Emphasis added)

The stated purpose of this limitation of 4 card rooms within the city limits is intended to allow for a level of recreation for local citizens but specifically to prevent a casino like atmosphere. The city gambling ordinance states that "A casino-like atmosphere, where gambling becomes a major industry or attraction and the community a center for gamblers from other jurisdictions, is detrimental to the development of this community." Yet the "model" of two card clubs in one location creates that casino like atmosphere and establishes gambling enterprises as a major industry in Sacramento.

The city's gambling ordinance has additional issues when we consider the state limitations of Gambling Control Act, which established a moratorium on the issuance of new licenses. The current moratorium is to 2015 and regulates the growth of this industry. Additional limits have been established to regulate the expansion of established operations. To expand the number of licenses or the number of tables per license, a city or county must amend its ordinance legislatively. Additionally, the amending of the ordinance for licenses or tables may not exceed 25% of the number of licenses established in the host city/county's ordinance of 1996. If the proposed action exceeds the 25%, the Act requires the host city/county to sponsor a vote of the public to determine support or opposition of card club expansion. (*Business and Professions Code 19961*)

Thus, the new "model" without amending the city gambling ordinance limit of 15 tables could increase to 18 tables per club with a total of 36 tables in one location. To expand further requires a public vote. (*Business and Professions Code 19961(5) (c)*)

### **"DORMANT LICENSE" – STATEWIDE MORATORIUM**

In what appears to be a response to pressure from card room owners and gambling investors, the CGCC in January of this year approved a regulation to guide the Commission in the resurrection of card room licenses that were denied, surrendered or have been inactive since December 1999. This list now referred to as "dormant licenses" sports approximately 48 former card room businesses. Currently, 11 dormant licensees have notified the CGCC of their intent to re-establish their card room interests. This regulation, even in the view of industry attorneys and at least one city manager, appears to be contrary if not in direct conflict with the moratorium

established in the California Gambling Control Act of 1998. Nevertheless, the CGCC has interpreted the statute and taken the position that it is authorized to issue licenses to operators if the establishment was licensed to operate as of December 31, 1999.

The limitation of “*shall not exceed four*” is not stopping Attorney George Mull, who recently sent a memo to the City Councilman Steve Cohn, chairman of the Law and Legislation Committee. Attorney Mull is requesting specific language to allow a fifth card club. Moreover, Attorney Mull is requesting that the City Council bypass the Law and Legislation Committee and put his request before the full City Council as soon as possible. Attorney Mull is no stranger to making bold requests. Attorney Mull, president of the California Cannabis Association, is well known for representing Timothy Kruppe, the previous owner of a Lodi sex store and proprietor of Lockford bikini bar. Attorney Mull’s latest client is a pot dispensary in Galt.

It should be noted that a moratorium on the issuance of licenses for card club expansion is an impermanent policy. The legislative record of the last decade demonstrates it can be amended by the State Legislature at any time. Moratoriums are usually put in place because government has not developed a “big picture” on how to proceed in specific issues. The moratorium is in place and yet the CGCC has developed new regulations for the resurrection of dormant licenses inactive since December of 1999. Clearly, it is time for the state to begin to consider other criteria and uniform standards in lieu of an impermanent moratorium for the management of the location and scope of the growth of California card club industry.

## **CONCLUSION**

California card rooms have been transitioning from mom and pop shops of one or two tables to clubs with 10 to 20 tables on average. In Los Angeles County, there are seven large clubs with 45 to 243 tables. These large clubs are casino-like in appearance and attract gamblers from other jurisdictions. Two have attached hotels and offer rooms for convention services. The transformation of California card rooms to casinos began in the 1980’s when gambling began to gain popularity with the public.

However, this transformation of card rooms to clubs to casinos and their ability to bring in revenue to host city governments also brought about concerns by law enforcement over illicit activities associated with some forms of legalized gambling.

In 1984, an a Orange County businessman who had ties to the Milwaukee organized crime boss and three former City of Commerce officials were indicted and convicted for fraud, racketeering, interstate travel to aid racketeering and operating an illegal card room. In the City of Bell Gardens, seven individuals were linked to the Chicago crime syndicate and were indicted by a federal grand jury for racketeering, extortion, and conspiracy.

In the mid 1980s, card rooms experienced another transition from traditional games of poker to Asian games. It should be noted that the increased Asian population of the Sacramento region is

an incentive for card club expansion. These games are extremely popular, profitable and reflective of the states growing Asian population. The clubs now offer games such as pai gow, pai gow poker, super domino, and Asian stud. By 1988, California law enforcement agencies became aware of Asian organized crime infiltrating the card room industry in California.

Today, the proposed “business model” and the resurrection of the “dormant license” regulation demonstrate savvy gambling operators and investors positioning for future expansion. This expansion is driven by a growing imbalance in the states gambling policy. Piecemeal amendments to the Gambling Control Act have allowed for proposition player companies to “bank” card games at card clubs and new regulations to re-activate dormant licenses from a decade ago. The Sacramento card room proposals affect state gambling policy beyond the city limits.

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