

AGENDA ITEM  
13C

Date: October 4, 2021

Council Action Date: October 25, 2021

**TO:** Honorable Mayor and City Council

**FROM:** Gregory G. Diaz, City Attorney

**SUBJECT:** Relocation of the Players Casino to the Derby Club at the Ventura County Fairgrounds.

**SUMMARY**

The Players Casino operates as a card room pursuant to the California Business and Professions Code. The Players Casino ceased operation late last year largely due to the impacts of the COVID-19 pandemic and thereafter filed for bankruptcy. It also terminated its lease with the property owner at its prior location in the Ventura Auto Center. The Players Casino seeks to relocate to the Ventura County Fairgrounds to the Derby Club and commence operations again. The City's Municipal Code requires the City Council authorize such relocation. In addition, because the fairgrounds are on Agricultural District property, which is an entity of the State of California, it is not generally subject to the City's Municipal Code—including the taxation of revenues. The Players Casino is a significant source of revenue for the City. Therefore, as a condition of the relocation, it is recommended that the City Council require an agreement to apply the Municipal Code to its operation, including the remittance of the tax authorized by Chapter 4.160 of the Municipal Code. The representatives of the Players Casino have indicated that this is a temporary location until they are able to find a permanent location within the City. Finally, the City Council is being asked to amend the Card Room Ordinance to eliminate the provision requiring that non-operation of a card room for more than one year functionally closes the business.

**RECOMMENDATION**

- a. Adopt an exemption from the provisions of the California Environmental Quality Act pursuant to the California Environmental Quality Act Guidelines Section 15323, (Class 23, Normal Operations of Facilities for Public Gatherings) and in the alternative that the exemption found in California Environmental Quality Act Guidelines Section 15061(b)(2) the commonsense exemption applies because the card room is simply relocating an existing facility to an existing facility.

- b. Adopt a Resolution authorizing the relocation of the Players Casino to the Derby Club at the Ventura County Fairgrounds, title as follows:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BUENAVENTURA, CALIFORNIA, APPROVING THE RELOCATION OF THE PLAYERS CASINO TO THE DERBY BUILDING LOCATED AT THE VENTURA COUNTY FAIRGROUNDS"

- c. Introduce and approve the first reading of the Ordinance, title as follows:

"AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BUENAVENTURA, CALIFORNIA, AMENDING SECTION 10.750.220, 'TERMINATION OF LEGAL NONCONFORMING USE,' OF THE SAN BUENAVENTURA MUNICIPAL CODE TO ELIMINATE THE PROHIBITION AGAINST A BREAK OF ONE-YEAR OR MORE IN OPERATIONS FOR ANNEXED CARD ROOMS IN ORDER FOR SUCH CARD ROOMS TO MAINTAIN NONCONFORMING STATUS"

- d. Approve and authorize the Mayor to execute on behalf of the City Council the Agreement for the Payment In Lieu of Taxes.
- e. Authorize the City Manager to take actions to accomplish the approvals above and to execute any additional documents to carry out this approval, subject to the City Attorney's approval as to form.
- f. Set the Second Reading and Adoption of the Ordinance at the City Council meeting of November 8, 2021.

### **DISCUSSION/ANALYSIS**

Since the early 1980's, the Players Casino has operated in the City following its annexation from unincorporated Ventura County territory. The original regulations allowed the non-conforming use of the Players Casino with provisions for terminating the use upon death of the owner or transfer of the property. At the time of annexation, the Players Casino operated four tables. In 1993, the ordinance was amended to extend the non-conforming use for an additional 10 years after the death of an owner and upon transfer of ownership to the owner's spouse. In the late 1990's, a comprehensive set of new state laws were enacted to supervise and control activities at card clubs within incorporated cities. These laws were to apply to all card clubs on a uniform basis and required that local ordinances be consistent with the requirements of state law and include certain mandated provisions. The City has amended the card club ordinance a number of times to allow additional tables, and to address other concerns of the state.

Initially, the Players Casino was not a significant source of revenue for the City. With time, the Players Casino has become a more significant source of local revenue which prior to the closure was approximately two million dollars per year. Most importantly, this was general fund revenue which can be spent for any public purpose and not restricted to only certain activities. As such, the City has sought to not only regulate the activities at the card club but to ensure that it is successful for purposes of municipal revenue raising.

The COVID-19 pandemic has posed challenges for local businesses, the Players Casino included. The periods of forced closure and the inability of the landlord and the tenant to reach an agreement on terms of a new lease ultimately forced the closure of the Players Casino at its location in the Ventura Auto Center. The ultimate closure of the card club resulted in the Players Casino filing for bankruptcy protection and the Players Casino is still in the bankruptcy.

The City has worked closely with the Players Casino to help establish a new or temporary location so they can operate again. The Players Casino has reached an agreement with the Ventura County Fairgrounds to operate at the Derby Club. It is represented to the City that this is a short-term location while the Players Casino finds a new permanent location within the City limits. The issue with operating at the fairgrounds is that it is state Agricultural Association property which is an instrumentality of the State of California and both exempt from municipal taxation and generally exempt from the application of the City's Municipal Code. This presents challenges both for the City and for the Players Casino in that they are required to have a City license. A condition of the license is that they pay a 15% tax for provisions of operating the card club. The City's Municipal Code generally does not apply to the fairgrounds property. As such, the City Attorney has suggested that the parties explore a "PILOT" Agreement (Payment in Lieu of Taxes) to bridge the gap. PILOT Agreements were utilized for certain affordable housing complexes that were otherwise exempt from property tax in recognition of the costs local government experienced in providing services without the revenue to support them. While not used frequently anymore for affordable housing projects, the concept makes sense in this unique situation. The Players Casino needs a local government who will be part of the supervision and regulatory process in order for them to keep the required City license and to be able to have their state license transferred to the new location. Under the City's Municipal Code, the City is required to license card club employees and to provide law enforcement services when necessary.

### City Council Authorization to Relocate

In addition to the PILOT Agreement, the City's Municipal Code in Section 10.750.410B requires that the City Council approve the relocation of any cardroom as a condition of retaining its City license and its legal non-conforming use status. To effectuate this relocation, staff has prepared a Resolution (Attachment A hereto) approving the relocation subject to three conditions:

1. The Players Casino, shall secure all required state authorizations to relocate and restart operations.
2. The Players Casino shall execute Payment in Lieu of Taxes Agreement.
3. The Players Casino must actually make the payments in lieu of taxes to the City under the PILOT Agreement

### CEQA Determination

In addition, the relocation may be subject to the provisions of the California Environmental Quality Act (CEQA). However, staff believes that the proposed relocation is exempt under CEQA Guidelines Section 15323 (Class 23, Normal Operations of Facilities for Public Gatherings). Because this is the simple relocation of an existing operation from one facility to another and the Derby Building has been conducting similar operations for years, we do not believe this represents a significant change in the operation of the facility. Staff is recommending that the Resolution be adopted by the City Council.

### PILOT Agreement – Financial Terms

The PILOT Agreement generally authorizes the payment of taxes the City would otherwise receive. The 15% tax on the cardroom was approved by the voters in 2005. The rate of taxation was set at 15% at that time. Because the tax would not otherwise be applicable City's Ordinances are generally inapplicable to State property, the owners and operators of the Players Casino have agreed to the financial terms set forth below in order to maintain their City license, which is also a requirement of their state license. While there is some flexibility in the proposed financial arrangements outlined below, it is important that at the end of the initial period that the amount of taxes approved by the voters ultimately be returned to the City for purposes of funding municipal operations. Therefore, the financial terms of the PILOT Agreement are as follows:

While the Players Casino has agreed to make the full 15% payment that would otherwise have been due as a tax as a fee, they have requested some relief in the first two years. In Section 2.a. of the Agreement, the total initially paid would be 10% of gross revenue per quarter with the remaining 5% deferred until December 31, 2024. After the first two years, the fee would be the full 15% of gross revenues per calendar quarter. In addition,

the Agreement contains a protection of City revenue by encouraging the Players Casino to return to an address in the City that is fully subject to the Municipal Code because the County fairgrounds is not. If the Players Casino returns to an address in the City that is fully subject to the Municipal Code and begins operations by December 31, 2025, the City has agreed to credit the Players Casino with any sums they have paid in City building and related fees or charges up to 20% of the deferred portion of the fee that is then outstanding. It is estimated that this would not exceed \$270,000. As a further condition on the credit, the Players Casino will need to have made all payments required under the Agreement, have paid in full the City's building and related fees and charges, and be open and operating in the City by December 31, 2025. The PILOT Agreement is Attachment B hereto.

### The Ordinance Revision

The City's existing Municipal Code in Section 10.750.220 provides for the termination of the "legal nonconforming use" status of the cardroom (the Players Casino is the only one) if certain events occur. This provision was specifically adopted when the Players Casino was annexed to the City because it was an existing facility that was not conforming to the City zoning at the time. At the point that it was annexed to the City, it was located on the west side of Ventura. After annexation to the City and as the Auto Center developed, the City Council took action to approve the relocation of the Players Casino to the Ventura Auto Center. The Players Casino retained its legal nonconforming use status at that point. What has become evident since the closure of the Players Casino is that a provision in the City's existing Municipal Code while well intended when enacted, no longer serves the purpose for which it was established. This is a requirement that the cardroom not have a break in its continuous operation of one year or more. That one year period is rapidly approaching. Staff has prepared an Ordinance (Attachment C hereto) that retains the enforcement provisions to end the card club's status, particularly for violations of City ordinance or state or federal law, but eliminates the one-year provision for non-continuous operation. Given the impacts of the worldwide pandemic and any other uncertainties that could occur in the future, this requirement no longer seems to serve the municipal purpose for which it was established when the ordinance was drafted. As such, staff is recommending that the draft Ordinance revisioning to Section 10.750.220 be introduced and approved on the first reading. A second reading will be required at a subsequent City Council meeting and then 30 days passage in order for it to be effective.

The City submitted the draft amendment to its cardroom Ordinance to the State Bureau of Gambling Control as required by California Business and Professions Code Section 19961.1. The City received the State's authorization to proceed on October 21, 2021. A copy of the State's letter is found in Attachment D hereto.

### Authority to Extend/Take Further Action

It is also recommended that the City Manager be authorized to execute similar documents subject to the approval as to form by the City Attorney should there be additional requirements in order to effectuate the relocation from the Auto Center site to the fairgrounds site. This ensures that the consistency between that which is approved by the City Council and that which may be authorized by the City Manager is assured. This ensures that the City can process these items promptly to assist the Players Casino in reopening so long as the same are consistent with the City Council's actions.

The City and the Players Casino have worked well together over the years. The Police Department has indicated that there have been relatively few incidents at the Players Casino given the nature of their business as compared to other operations in town.

### FINANCIAL IMPACT

The financial impact of this agenda item is generally positive. While it reduces the amount of funding the City would otherwise receive from the Players Casino as tax revenue, it recognizes that the City is currently not receiving any tax revenue from the Players Casino because it is not operating and does not have a location within the City. This agenda item establishes a process that will make the City whole over time and has measures to encourage the Players Casino to relocate to a site that is not exempt from City taxation. The Players Casino has generated approximately \$2,000,000 per year. During the first two years of the Agreement, the estimated amount of revenue the City would initially receive is reduced to just over \$1,333,333 per year with the balance deferred until December 31, 2027.

There are some risks associated with this Agreement including that the business could fold before payment in full is made. In addition, as a fee and not a tax, it is uncertain how it would be treated should the Players Casino need to file for bankruptcy protection again.

Prepared by: Gregory G. Diaz, City Attorney

### **ATTACHMENTS:**

- A Resolution Approving Relocation of Players Casino to the Derby Club.
- B PILOT Agreement
- C Ordinance Amendment Relating to the One Year Provision of Non-Usage
- D Authorization to Proceed from the State's Bureau of Gambling Control dated October 21, 2021.

# ATTACHMENT A

RESOLUTION NO. 2021-\_\_\_

## A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BUENAVENTURA , CALIFORNIA, APPROVING THE RELOCATION OF THE PLAYER'S CASINO TO THE DERBY BUILDING LOCATED AT THE VENTURA COUNTY FAIRGROUNDS

WHEREAS, The Player's Casino ("Casino"), formerly located at 6580 Auto Center Drive in Ventura, California, ceased operations during the COVID-19 pandemic; and,

WHEREAS, As a result of that closure, the Casino filed for bankruptcy and terminated its lease with the owner of 6580 Auto Center Drive; and,

WHEREAS, The Casino desires to relocate to the Derby Building located at the Ventura County Fairgrounds and restart operations; and,

WHEREAS, Section 10.750.410B of the San Buenaventura Municipal Code (SBMC) requires that a legally operating card room, like the Casino, secure City Council approval before relocating in order to maintain its ability to operate within the City; and,

WHEREAS, In addition to receiving the City Council's approval to relocate, the Casino must also secure permission from the State's Bureau of Gambling Control; and,

WHEREAS, The City exacts a tax pursuant to Chapter 4.160, "Cardroom Tax," of the SBMC from the Casino on the Casino's gross revenues received from its operations; and,

WHEREAS, Because the Derby Building is located on land owned by the State, the Casino is not subject to the City's card room tax; and,

WHEREAS, It is essential that the City continue to receive those tax proceeds from any continued operations of the Casino in a new location.

# ATTACHMENT A

NOW, THEREFORE, the City Council of the City of San Buenaventura does hereby resolve, find, determine and order as follows:

Section 1: The Casino may relocate its operations to the Derby Building located on the Ventura County Fairgrounds as long as the following conditions are satisfied:

1. The Casino must secure all required State authorizations to relocate to the Derby Building and restart operations before actually restarting operations; and,
2. The Casino must provide to the City a payment in lieu of taxes on all gross revenues from its operations as if the Casino were not operating on State-owned land and were subject to the card room tax; and
3. The Casino must execute an Agreement for Payment of Fees in Lieu of Taxes in substantially the form as set forth on Exhibit A, attached hereto and incorporated herein by this reference.

Section 2: California Environmental Quality Act. The proposed project is Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15323 (Class 23, **Normal Operations of Facilities for Public Gatherings**) since the Casino use is the same or similar kind of activity that has been occurring for at least three years at the Derby Building and there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility. The proposed project is also exempt from the provisions of CEQA under the “**Common Sense Exemption**” (CEQA Guidelines Section 15061(b)(2)) that CEQA applies only to projects that have a potential for causing a significant effect on the environment. CEQA Guidelines Section 15378 defines “project” as an action which has the potential to result in either a direct physical change to the environment, or a reasonably foreseeable indirect change. Since the Casino use of the Derby Building is consistent with how the Derby Building has been used before, there is no potential that the proposed project will cause a significant effect on the environment including a direct physical change or a foreseeable indirect change to the environment.



PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_,  
2021.

\_\_\_\_\_  
Sofia Rubalcava, Mayor

ATTEST:

\_\_\_\_\_  
Antoinette M. Mann, MMC, CRM  
City Clerk

APPROVED AS TO FORM  
GREGORY G. DIAZ, City Attorney

BY: Gregory G. Diaz 10/19/2021  
Gregory G. Diaz Date  
City Attorney

# ATTACHMENT B

## AGREEMENT FOR PAYMENT OF FEES IN LIEU OF TAXES

This Agreement for payment in lieu of taxes (“Agreement”) dated as of October \_\_\_\_\_, 2021 (“Effective Date”), is made and entered into by and between the CITY OF SAN BUENAVENTURA, a California municipal corporation (“City”), and PLAYER’S POKER CLUB INC., dba PLAYERS CASINO, a California corporation (“Club”). City and Club are referred to herein individually as a “Party” and collectively as the “Parties”.

### RECITALS

**WHEREAS**, the Club is licensed to operate a cardroom in the City pursuant to the City of San Buenaventura Municipal Code (“Code”).

**WHEREAS**, the Club pays the City a quarterly tax based on its gross revenue as further set forth in Code Section 4.160.010 *et seq.* (“Cardroom Tax”).

**WHEREAS**, the Club has entered into a lease agreement (“Lease”) with the Ventura County Fairgrounds to operate a cardroom at the site commonly referred to as the Derby Building and located at 10 W. Harbor Boulevard, Ventura, CA 93001 (“Property”).

**WHEREAS**, the City Council of the City (“City Council”) adopted Resolution No. \_\_\_\_\_ on October 11, 2021, (“Resolution”) approving the relocation of the Club to the Property.

**WHEREAS**, the Property is within the City boundaries and the City requires that the Club enter into this Agreement.

**WHEREAS**, this Agreement would require the Club to make fee payments to the City in lieu of the Cardroom Tax as set forth in this Agreement.

**WHEREAS**, the Parties agree that the annual payments would make up for the shortfall in the taxes that would otherwise have been received by the City for the Club’s right to hold a cardroom license in the City.

**NOW THEREFORE**, in exchange for the mutual commitments set forth herein and other good and valuable consideration, the Parties agree as follows:

### AGREEMENTS

1. **Term.** The term of this Agreement shall be from the Commencement Date (define herein) and shall continue in effect until December 31, 2025 (“Term”); provided, however, the Agreement shall terminate prior to the end of the Term (“Early Termination”) if the Club relocates from the Property and/or the Cardroom Tax applies to the Club. The Commencement Date is defined as the later of the following dates: (i) the Effective Date; or (ii) the date of start of operation at the Property as set forth in the Lease.

2. **Payment in Lieu of Cardroom Taxes.** The Club shall pay the City a quarterly fee (“Cardroom Fee”) in an amount equal to fifteen percent (15%) of the Club’s Gross Revenue for that quarter (“Quarterly Amount”).

a. Notwithstanding the foregoing, for the first two years of the Term, the Club shall have the option to delay paying a portion of the Quarterly Amount due without interest or

penalties (“Deferred Portion”) as follows:

- i. The Club can pay ten percent (10%) of the Club’s Gross Revenue for each quarter in 2022 by the Due Date. The total Deferred Portion equal to five percent (5%) of the Club’s Gross Revenue for each quarter in 2022 will be due to the City no later than December 31, 2027; and,
  - ii. The Club can pay ten percent (10%) of the Club’s Gross Revenue for each quarter in 2023 by the Due Date. The total Deferred Portion equal to five percent (5%) of the Club’s Gross Revenue for each quarter in 2023 will be due to the City no later than December 31, 2027.
- b. In the event of any Early Termination, the Club shall only be responsible for paying the Quarterly Amount for such full quarters of operation at the Site including any Deferred Portion. Regardless of the date of Early Termination, the total Deferred Portion owed to the City at the Early Termination shall be due in December 2027.
- c. The Quarterly Amount due, including any Deferred Portion, shall be calculated based on the Gross Revenue for such quarter. Gross Revenue shall be defined to include revenue received by the Club from per hand money collected, seat rental fees, tournament fees, and any and all other revenues generated from or as a result of card play, except fees charged to players that are returned to the players as tournament or jackpot bonuses.
- d. In the event that the normal operations of the Club are impacted by a governmental order, directive, rule, or regulation or by a crippling natural disaster such that the Club is not able to be open to the public or severely limited in its occupancy resulting in the Club’s total operating expenses exceeding gross revenues for the quarter (“Quarter Income Loss”), the Club shall notify City’s City Manager, with a copy to City’s City Attorney, of this occurrence and the Club shall request a meet and confer with the City Manager and City Attorney to review the facts, review the books and records, and work on a resolution that will avoid the inability of the Club to make the required payments and lead to a more profitable operation. In addition, at such earlier time that the Club has an indication that revenues are falling short of projections or that expenses have increased beyond revenues, the Club shall request a meet and confer with the City Manager and City Attorney to review the facts, review the books and records, and work on a resolution that will avoid the inability of the Club to make the required payments and lead to a more profitable operation. Such efforts could include, but are not limited to, lowering the payment rate, extending the payback term, reducing expenses and operational costs, and similar efforts; provided, however nothing in this Agreement shall impede the Club’s ability to lawfully operate in its sole and absolute discretion. The Club and City shall work in good faith and with immediacy and diligence to resolve the situation leading up to the Quarter Income Loss. A Quarter Income Loss shall be further defined as an operating loss as shown in the Club’s financial statements based on standard accounting procedures as reported by the Club. The Club shall inform the City of any Quarter Income Loss prior to the Due Date for such quarter and the Due Date shall be tolled and no penalties shall apply until such time the Club and

the City reach agreement on the Quarter Income Loss. All records demonstrating a Quarter Income Loss shall be made available to the City's Treasurer or to the authorized agent of City's Treasurer for audit in accordance with Section 5.

- e. In order to protect City tax revenues and as an inducement for the Club to relocate to an address within the City where the City's Ordinances fully apply ("City Address"), City is willing to credit the Club up to twenty percent ("20%") of Deferred Portion of the fee then outstanding so long as the same was used to pay City fees and charges related to such relocation. In order to qualify for this credit, the Club will:
  - a. Be in full compliance with this Agreement at the time the request for reimbursement is made--including having made all payments under this Agreement on time and in the proper amount and excluding any payment under review subject to Section 2(d); and,
  - b. Having paid City fees and charges related to relocating within the City at a City Address; and,
  - c. Be open and operating in the City at a City Address by December 31, 2025.
- f. The provisions of this Section shall extend beyond the termination of this Agreement.

3. Additional Fees. The Cardroom Fee shall be in addition to any business license taxes imposed by the City as may be applicable to the Club's cardroom operations at the Property ("Additional Fees"), limited to any normal City business license tax.

4. Remittance. The Cardroom Fee shall be paid within 15 days following the end of each quarter within every calendar year commencing January 1, 2022 ("Due Date"). The Payment shall be accompanied by (i) a tax statement in a form required by the City Treasurer ("Treasurer") setting forth the true and correct amount of gross revenues generated from or as a result of cardroom operations during the preceding quarter, and (ii) a declaration signed under penalty of perjury by the Club's management declaring that the information in the tax statement is true and correct. If the Due Date falls on a Saturday, a Sunday, or a state or national holiday, payment of the Cardroom Fee may be made without penalty on the first day thereafter. For purposes of this Agreement, postmarks shall be accepted as the date of payment provided the transmitting envelop contains the postmark of United States Postal Service indicating a date not later than the due date.

5. Reserved.

6. Penalty. If the Club fails to make any payment by the Due Date or as a result of an Audit, then a late fee of three (3) percent of the month due for each month or portion therefore that the Cardroom Fee remains due and unpaid. Such penalty shall be added by the Treasurer to the Cardroom Fee due on the first day immediately following the Due Date and the first day of each month thereafter that the Cardroom Fee remains due and unpaid. However, the total amount of such penalty shall not exceed 100 percent of the Cardroom Fee that was due but not paid in a timely manner.

7. Application of City’s Regulatory Ordinances to the Club. It is understood and agreed by the Parties hereto, except as modified herein, that the provisions of Chapter 4.160, “Cardroom Tax,” and Chapter 10.750, “Card Rooms,” of the San Buenaventura Municipal Code continue to apply to the Club in all respects.

8. Future Taxes and Assessments. Nothing herein shall be deemed to limit the ability of the City to establish and impose upon the Property in accordance with applicable law any new or increased special taxes or assessments (“Future Assessments”) provided that this Agreement should control in the event of any conflict between this Agreement and such Future Assessments.

9. Statement of Good Faith. The Parties acknowledge and agree the payment obligations established by this Agreement were negotiated in good faith in recognition of and with due consideration of the cyclical nature of the real estate development business. Each Party was represented by counsel in negotiation and preparation of this Agreement and has entered into this Agreement after full and due consideration and with the advice of its counsel and its independent consultants. The Parties further acknowledge this Agreement is fair and mutually beneficial to them because it fixes and maintains mutually acceptable, reasonable, and accurate payments in lieu of taxes that are appropriate and serve their respective interests.

10. Additional Documentation and Actions. Each Party will, from time-to-time hereafter, execute and deliver or cause to be executed and delivered, such additional instruments, certificates, and documents, and take all such actions, as the other Party reasonably requests for the purpose of implementing or effectuating the provisions of this Agreement including, without limitation, such actions and documentation that may be required the Lease or by California Gambling Control Commission. The Parties further acknowledge that the relocation of the Club to the Property shall not be considered an abandonment of its nonconforming use status.

11. Invalidity. If, for any reason, it is ever determined by the State of California or the County or by any court of competent jurisdiction that any material provision of this Agreement is unlawful, invalid or unenforceable, then the Parties shall (i) undertake reasonable efforts to amend and or reauthorize this Agreement so as to render all material provisions lawful, valid and enforceable, and (ii) if such efforts are unsuccessful, undertake reasonable efforts, including without limitation, seeking all necessary approvals, to replicate the benefits and burdens of this Agreement in the form of an amended agreement.

12. Notices. All notices, consents, requests, or other communications provided for or permitted to be given hereunder by a Party must be in writing and will be deemed to have been properly given or served upon the personal delivery thereof, via courier delivery service or otherwise. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

To the Club:                      Player’s Poker Club, Inc., dba, The Players Casino  
   1056 E. Meta Street  
   Suite 201  
   City of Ventura, CA 93001  
   Attn: Patrick Berry  
   pberry@pventura.com

With a copy to: Sheppard Mullin Richter & Hampton LLP  
333 South Hope Street  
Los Angeles CA, 90071  
Attn: Alfred Fraijo Jr.  
afraijo@sheppardmullin.com

To the City: City of San Buenaventura  
501 Poli Street  
Ventura, CA 93001  
Attn: City Manager

With a copy to: City of San Buenaventura  
501 Poli Street  
Ventura, CA 93001  
Attn: City Attorney

Delivery of the Cardroom Fee to the City:

501 Poli Street  
Room 107  
Ventura, CA 93001  
Attn. Treasury  
Telephone: (805) 654-7857

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other Party. Notice given by counsel to a Party shall be effective as notice from such Party.

13. Representations of City. City represents and warrants to Club (i) it has secured all approvals necessary to duly authorize the execution, delivery and performance of this Agreement and its obligations hereunder, and (ii) it is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of any law, any order of any court or other agency or authority of government, or any agreement or instrument to which the City is a party or by which the City is bound, and (iii) this Agreement is a legal, valid and binding obligation of the City and is enforceable in accordance with its terms.

14. Representations and Covenants of Club. The Club represents and warrants to City (i) it is duly organized and is authorized to conduct business in the State of California and (ii) it is authorized and has the power under the laws of the State of California to enter into this Agreement and the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement, and (iii) the performance of its obligations hereunder will not violate, result in a breach of, or constitute a default under, any agreement or instrument to which the Club is a party including without

limitation the Lease, and this Agreement is a legal, valid and binding obligation of such Owner enforceable in accordance with its terms.

15. Bankruptcy Court Approval. Upon the execution hereof by the Parties, the Club shall, seek and obtain approval by the Bankruptcy Court necessary to effectuate this Agreement (“Approval Order”). For purposes of this Agreement, an Approval Order means an order, the operation or effect of which has not been stayed, reversed, or amended and as to which the time to appeal or move for review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending. If this Agreement is not approved by the Bankruptcy Court or, where applicable, an appellate court, the Agreement shall be deemed null and void and the relocation facilitated by it automatically disapproved or revoked by the City.

16. Miscellaneous.

a. Relationship. Nothing contained herein, shall be construed as creating a relationship of principal and agent, employer or employee, partnership, joint venture, or other relationship between City and Club.

b. Reserved.

c. Non-Waiver. The failure of any Party to exercise any of its rights under this Agreement or to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any such right or of any subsequent default of the same or a similar nature.

d. Severability. Invalidation of any one of the provisions of this Agreement shall in no way affect any other provision each of which shall remain in full force and effect.

e. Entire Agreement. This Agreement is fully integrated and contains the entire agreement between the Parties as to the subject matter hereof. There are no representations, inducements or promises of any kind other than expressly stated herein. This Agreement may not be modified except by a writing signed by all Parties.

f. Construction and Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of California, without reference to choice of laws principles, and, unless otherwise required by applicable law, the Parties agree that any action brought by either Party under or in relation to this Agreement, including without limitation to interpret or enforce any provision of this Agreement, shall be brought in, and each Party agrees to and does hereby submit to the jurisdiction and venue of, any state court located in the County if there is federal jurisdiction, the United States District Court (Central District of California). This Agreement is deemed to be joint work product of the Parties, and shall not be construed against any particular Party as the drafter.

g. Captions. The captions in this Agreement are for convenience and ease of reference only, and in no way define or limit the intent of this Agreement.

h. Incorporation of Recitals and Exhibit. The recitals of this Agreement and the attachments and exhibits hereto are hereby incorporated into the body of this Agreement as though fully set forth herein.

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-6-

i. Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement.

j. Authority to Execute. Each party hereto expressly warrants and represents that he/she/ they has/have the authority to execute this Agreement on behalf of his/her/their corporation, partnership, business entity, or governmental entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

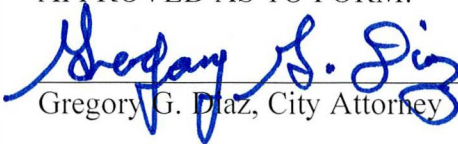
CITY:  
City of San Buenaventura, a California  
municipal corporation

By: \_\_\_\_\_  
Sofia Rubalcava  
Mayor  
[Signature must be notarized]

ATTEST:

\_\_\_\_\_  
Antoinette M. Mann, City Clerk

APPROVED AS TO FORM:

 10/22/2021  
\_\_\_\_\_  
Gregory G. Diaz, City Attorney



CLUB:  
Player's Poker Club, Inc., dba The Players  
Casino, a California corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_  
[Signature must be notarized]

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_  
[Signature must be notarized]

# ATTACHMENT C

ORDINANCE NO. 2021-\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF SAN BUENAVENTURA, CALIFORNIA,  
AMENDING SECTION 10.750.220,  
"TERMINATION OF LEGAL NONCONFORMING  
USE," OF THE SAN BUENAVENTURA  
MUNICIPAL CODE TO ELIMINATE THE  
PROHIBITION AGAINST A BREAK OF ONE-  
YEAR OR MORE IN OPERATIONS FOR  
ANNEXED CARD ROOMS IN ORDER FOR SUCH  
CARD ROOMS TO MAINTAIN NONCON-  
FORMING STATUS**

The City Council of the City of San Buenaventura does ordain as follows:

Section 1. AMENDMENT TO CODE. Section 10.750.220, "Termination of Legal Nonconforming Use," of the San Buenaventura Municipal Code is hereby amended to read as follows:

"The legal nonconforming use of an annexed card room will immediately terminate if any of the following occurs:

1. The card room transfers or changes ownership without the prior approval of the City Council; or,
2. The City Council finds, following due notice and hearing, that the operation of the card room repeatedly or continuously violated federal, state, or local laws and regulations."

Section 2. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether

F:\SPECIAL PROJECTS\2021\Card Club Issues\Card Room Ordinance Amendment\Amendment Eliminating 1 Year or Longer Operational Break as Terminating Nonconforming Use Status.v2.docx

any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 3. CEQA FINDINGS. EXEMPTION FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT.

The City Council further finds that the enactment of regulations pursuant to this Ordinance is determined to be exempt under Section 15061(b)3 of the of Title 14 of the California Code of Regulations (the "State CEQA Guidelines") in that the adoption of these regulations merely implements a regulatory process that will not foreseeably result in construction activities or other physical activities, either directly or indirectly. It can therefore be foreseen that the enactment of this ordinance does not have the potential to result in significant effects on the environment."

PASSED and ADOPTED this \_\_\_ day of \_\_\_\_\_ 2021.

\_\_\_\_\_  
SOFIA RUBALCAVA  
MAYOR

ATTEST:

\_\_\_\_\_  
ANTOINETTE M. MANN, MMC, CRM  
CITY CLERK

APPROVED AS TO FORM  
Gregory G. Diaz, City Attorney

By:  \_\_\_\_\_  
GREGORY G. DIAZ  
City Attorney

10/19/2021  
Date

# ATTACHMENT D

ROB BONTA  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



BUREAU OF GAMBLING CONTROL  
2450 DEL PASO ROAD, SUITE 100  
SACRAMENTO, CA 95834

Telephone: (916) 559-6093  
E-Mail: ileana.butu@doj.ca.gov

October 21, 2021

Gregory G. Diaz  
City Attorney  
City of San Buenaventura  
501 Poli Street  
Ventura, CA 93001-2697  
[gdiuz@ci.ventura.ca.us](mailto:gdiuz@ci.ventura.ca.us)

Via E-mail

Re: Proposed Amendment to Card Room Ordinance

Dear Mr. Diaz:

On or about October 13, 2021<sup>1</sup>, the Bureau of Gambling Control (Bureau) received your e-mail submitting proposed amendments to the City of San Buenaventura's (City) Card Room ordinance set forth in Article 2 of Chapter 10.750 of Division 10 of the City's Municipal Code. The City's proposed amendments were submitted to the Bureau for review and comment in conformance with Business and Professions Code section 19961.1.<sup>2</sup>

The City proposes to amend its municipal code to eliminate the provision that immediately terminates the legal nonconforming use of an annexed card room that has ceased operating for a continuous period of one year. The Bureau offers the following comments regarding the proposed amendments.

### Legal Nonconforming Use of Annexed Card Rooms

The City proposes to amend Section<sup>3</sup> 10.750.220, which currently provides that the legal nonconforming use of an annexed card room<sup>4</sup> will immediately terminate if the operation of the card room is suspended for a continuous period of one year, among other things. (City of San

<sup>1</sup> All years are 2021, unless otherwise indicated.

<sup>2</sup> Business and Professions Code section 19961.1 requires any amendment to a city or county ordinance relating to gambling establishments or the Gambling Control Act to be submitted for review and comment before the ordinance is adopted.

<sup>3</sup> All section references are to the City of San Buenaventura's Municipal Code, unless otherwise indicated.

<sup>4</sup> An "annexed card room" is a "card room that legally operated in the County of Ventura prior to being annexed to the City," which "may continue to operate in the City as a legal nonconforming use" subject to the provisions of Chapter 10.750 of Division 10 of the City's Municipal Code. (City of San Buenaventura Municipal Code, Ordinance No. 2006-006, § 10.750.210.)

Gregory G. Diaz, City Attorney  
October 21, 2021  
Page 2 of 2

Buenaventura Municipal Code, Ordinance No. 2006-006, § 10.750.220(1).) The City proposes to amend this section to eliminate this provision.

Business and Professions Code section 19801, subdivision (e), provides in relevant part that, “[i]t is the policy of this state that gambling activities that are not expressly prohibited or regulated by state law may be prohibited or regulated by local government.” Legal nonconforming use of card rooms within a jurisdiction is not addressed by the Gambling Control Act or its regulations. Accordingly, it appears that the City’s proposal to eliminate the provision that immediately terminates the legal nonconforming use of an annexed card room that has ceased operating for a continuous period of one year is not inconsistent with the Gambling Control Act.

Please be advised that while the Bureau is required to provide comments on proposed amendments to ordinances relating to gambling establishments or the Act, the California Gambling Control Commission is vested with the sole authority to issue state gambling licenses. (See Bus. & Prof. Code, §§ 19824, 19850.)

If you have any questions, please contact Analyst Kenneth Larsen at (916) 559-6103 or kenneth.larsen@doj.ca.gov. Thank you for your cooperation regarding this matter.

Sincerely,

Ileana Butu

Digitally signed by  
Ileana Butu  
Date: 2021.10.21  
13:48:48 -07'00'

ILEANA BUTU  
Deputy Attorney General III

For ROB BONTA  
Attorney General