



**CITY OF NEWPORT
COUNCIL WORKSHOP MEETING
NEWPORT CITY HALL
FEBRUARY 4, 2016
IMMEDIATELY FOLLOWING THE NEDA MEETING**

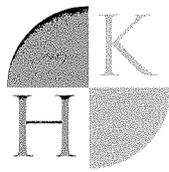
MAYOR: Tim Geraghty
COUNCIL: Tom Ingemann
Bill Sumner
Tracy Rahm
Dan Lund

City Administrator:
Supt. of Public Works:
Fire Chief:
Asst. to the City Admin:

Deb Hill
Bruce Hanson
Steven Wiley
Renee Eisenbeisz

AGENDA

1. ROLL CALL
2. DISCUSSION REGARDING GAMBLING REVENUE AND ORDINANCE
3. ADJOURNMENT



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MEMORANDUM

TO: STAFF AND COUNCIL, CITY OF NEWPORT
FROM: FRITZ KNAAK, CITY ATTORNEY
DATE: FEBRUARY 2, 2016

RE: **NEEDED MODIFICATIONS IN THE CITY'S LAWFUL GAMBLING
ORDINANCE**

Background and Analysis:

We were contacted by City staff when questions started being raised about accounting for revenues received by the City from entities licensed to do lawful gambling within the City. Specifically, when one non-profit organization requested a license from the City several years ago, an agreement was reached with the City that provided that a certain percentage of the revenues of the gambling would be directed to the City to be used for charitable purposes.

Current staff was not in place when the agreement was reached. There is no written agreement nor were they able to get guidance from the ordinance, which is quite old and hasn't been updated in many years. A copy of the current code provision related to lawful gambling, which is Section 450, is attached. It is quite minimalist and does not expressly address the issue how any fees or proceeds received by the City are to be used. It does expressly incorporate the provisions of Minnesota state law on lawful gambling.

Minnesota Statutes §349.213, a copy of which is attached, is the provision of Minnesota law that deals with the parameters in which a local unit of government, such as Newport, can regulate lawful gambling within its borders.

Minnesota state law allows the City to require, by ordinance, that an organization conducting lawful gambling in the City pay up to ten percent of its proceeds into a special fund maintained by the City which monies can be spent for certain public purposes. These proceeds may NOT be used solely within the City's general funds. (See: Minn.Stat. §249.213, subd. 1)

The creation of a requirement for the 10% dedication noted above must be made expressly by City ordinance.

In addition, the City may require an organization conducting lawful gambling within its jurisdiction to spend all or part of the profits of its gambling activity within the City's trade area, which would include the City and all immediately adjacent communities. (See: Minn.Stat. §349.213, subd. 1(b).)

The requirement of directing how or where funds may be spent for lawful gambling must, again, be made expressly by ordinance.

Newport's ordinances make no provision directing the use of gambling proceeds within the City. While there is nothing inherently illegal about directing some of those funds, or encouraging their use within the community, strict compliance with the law requires these matters to be addressed within the City Code.

Attached for reference is a copy of the City of Fridley's City Code lawful gambling provision, which I drafted several years ago. That City chose not to impose the ten percent provision, but you can note that it requires that at least 50% of the of their expenditures withing the City's trade area. (Newport could, if it chose, require ALL of the proceeds be spent in that manner.)

In addition, Fridley chose to impose a 3% tax on gambling revenue withing the City, which state law expressly permits. It should be noted, however, that receipts of this tax are for the purpose of regulating gaming within the City and any amounts not used for that purpose in any given year must be given back to the organizations conducting the gaming.

Recommendation:

The discovery by the staff of the ongoing practice of the City in directly, albeit with the full agreement of the participating organizations, influencing the expenditures of gambling proceeds within the City will require immediate action in adding language to the City Code. The current minimal code provisions are not sufficient now that an underlying problem has been identified.

The Council will need to affirmatively address four questions:

1. Should the City require a 10% payment into a City-managed fund to be spent for certain specific public purposes?
2. Should the City require any portion of the lawful gambling proceeds be directed to activities within the City's "trade area"?
3. Should the City impose a gambling-specific tax to reimburse it for any costs associated with gambling regulation in the City?
4. Should the City impose additional membership or other requirements of organizations conducting lawful gambling within the City.

We would suggest repealing the current Code provisions and substituting the more current language such as that utilized in the provisions of the Fridley Code as a template. Once the City Council has reached an agreement on the foregoing points, the matter can be drafted into an ordinance for passage. A proposed draft is attached for your consideration and review.

Section 450 - Gambling

450.01 Purpose. The purpose of this Section shall be to closely regulate and control the conduct of gambling.

450.02 Adoption by Reference. The provisions of Minn. Stat. 349 are adopted by reference and made a part of this Section as if set out here in full.

450.03 Licensing.

Subd. 1 Licensing Required. No gambling shall be conducted except by an organization which has been issued a gambling license by the State.

450.04 Eligibility. Gambling licenses may shall be issued only to a non-profit organization which has been in existence for at least three years and has at least 30 members.

450.05 Requirements.

Subd. 1 Conduct. All gambling shall be conducted in accordance with Minn. Stat. Chapter.

Subd. 2 Records and Reports. All organizations conducting gambling shall keep such records and submit such reports as shall be required by Minn. Stat..

Subd. 3 Bond. The gambling manager shall give a fidelity bond of \$10,000 in favor of the organization conditioned on faithful performance of his or her duties, provided the Council may by unanimous vote waive the bond requirement.

Section 455 - Peddlers, Solicitors, Transient Merchants & Wagon Peddlers

455.01 Definitions and Interpretation. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and the neuter, and vice-versa. The term "shall" means mandatory and the term "may" is permissive. The following terms shall have the definitions given to them:

Subd. 1 Person. "Person" shall mean any natural individual, group, organization, corporation, partnership, or association. As applied to groups, organizations, corporations, partnerships, and associations, the term shall include each member, officer, partner, associate, agent, or employee.

Subd. 2 Peddler. "Peddler" shall mean a person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise, or other personnel property,

349.213 LOCAL AUTHORITY.

Subdivision 1. **Local regulation.** (a) A statutory or home rule city or county has the authority to adopt more stringent regulation of lawful gambling within its jurisdiction, including the prohibition of lawful gambling.

(b) A statutory or home rule city or county may require a permit for the conduct of gambling exempt from licensing under section 349.166. The fee for a permit issued under section 349.166 may not exceed \$100.

(c) The authority granted by this subdivision does not include the authority to require a license or fee for a license or permit to conduct gambling by organizations, gambling managers, gambling employees, or sales by distributors or linked bingo game providers licensed by or registered with the board.

(d) The authority granted by this subdivision does not include the authority to require an organization to make specific expenditures of more than ten percent per year from its net profits derived from lawful gambling.

(e) For the purposes of this subdivision, net profits are gross profits less amounts expended for allowable expenses and paid in taxes assessed on lawful gambling.

(f) A statutory or home rule charter city or a county may not require an organization conducting lawful gambling within its jurisdiction to make an expenditure to the city or county as a condition to operate within that city or county, except:

(1) as authorized under section 349.16, subdivision 8, or 297E.02; or

(2) by an ordinance requirement that such organizations must contribute ten percent per year of their net profits derived from lawful gambling conducted at premises within the city's or county's jurisdiction to a fund administered and regulated by the responsible local unit of government without cost to such fund. The funds must be disbursed by the local unit of government for (i) charitable contributions as defined in section 349.12, subdivision 7a, or (ii) police, fire, and other emergency or public safety-related services, equipment, and training, excluding pension obligations. A contribution made by an organization is not considered an expenditure to the city or county nor a tax under section 297E.02, and is valid and lawful. A city or county receiving and making expenditures authorized under this clause must by March 15 of each year file a report with the board, on a form the board prescribes, that lists all such revenues collected, interest received on fund balances, and expenditures for the previous calendar year.

(g) A statutory or home rule city or county may by ordinance require that a licensed organization conducting lawful gambling within its jurisdiction expend all or a portion of its expenditures for lawful purposes on lawful purposes conducted or located within the city's or county's trade area. Such an ordinance must be limited to lawful purpose expenditures of gross profits derived from lawful gambling conducted at premises within the city's or county's jurisdiction, must define the city's or county's trade area, and must specify the percentage of lawful purpose expenditures which must be expended within the trade area. A trade area defined by a city under this subdivision must include each city and township contiguous to the defining city.

(h) A more stringent regulation or prohibition of lawful gambling adopted by a political subdivision under this subdivision must apply equally to all forms of lawful gambling within the jurisdiction of the political subdivision, except a political subdivision may prohibit the use of paddlewheels.

Subd. 2. **Local approval.** The board may not issue an initial premises permit unless approval is received from:

- (1) the city council of the statutory or home rule city in which the organization's premises is located; or
- (2) the county board of the county where the premises is located.

The organization must submit a resolution from the city council or county board approving the premises permit. The resolution must have been adopted within 90 days of the date of application for the new permit.

Subd. 3. **Local gambling tax.** A statutory or home rule charter city that has one or more licensed organizations operating lawful gambling, and a county that has one or more licensed organizations outside incorporated areas operating lawful gambling, may impose a local gambling tax on each licensed organization within the city's or county's jurisdiction. The tax may be imposed only if the amount to be received by the city or county is necessary to cover the costs incurred by the city or county to regulate lawful gambling. The tax imposed by this subdivision may not exceed three percent per year of the gross receipts of a licensed organization from all lawful gambling less prizes actually paid out by the organization. A city or county may not use money collected under this subdivision for any purpose other than to regulate lawful gambling. All documents pertaining to site inspections, fines, penalties, or other corrective action involving local lawful gambling regulation must be shared with the board within 30 days of filing at the city or county of jurisdiction. A tax imposed under this subdivision is in lieu of all other local taxes and local investigation fees on lawful gambling. A city or county that imposes a tax under this subdivision shall annually, by March 15, file a report with the board in a form prescribed by the board showing (1) the amount of revenue produced by the tax during the preceding calendar year, and (2) the use of the proceeds of the tax.

History: 1984 c 502 art 12 s 18; 1986 c 467 s 25; 1987 c 327 s 21; 1988 c 705 s 1; 1989 c 209 art 1 s 35; 1989 c 334 art 2 s 44,45; 1989 c 335 art 1 s 220; 1990 c 590 art 1 s 37; 1991 c 199 art 2 s 1; 1991 c 336 art 2 s 34; 1994 c 633 art 2 s 19; art 5 s 96; 1994 c 633 art 2 s 2; 1995 c 264 art 17 s 11; 1998 c 322 s 6; 2000 c 300 s 8; 2001 c 96 s 13; 2005 c 166 art 1 s 36; 2006 c 205 s 28; 2009 c 124 s 58,59

FRIDLEY CITY CODE
CHAPTER 30. LAWFUL GAMBLING
(Ref. 881, 898, 964, 1200, 1270)

30.01. STATEMENT OF POLICY

The City of Fridley deems it desirable to regulate lawful gambling within its jurisdiction as authorized by Minnesota Statutes, Section 349.213. The City finds that, for the purposes of greater supervision and access of information, a more restrictive requirement for the location of licensed organizations to those located within the City is in the interest of the health and safety of the citizens of the City of Fridley.

30.02. DEFINITIONS

The definitions in Minnesota State Statutes Chapter 349 are adopted by reference in this chapter. Licensed organizations in the City of Fridley may be permitted to conduct lawful gambling or use any gambling device allowable by Chapter 349. (Ref 1200)

1. Licensed Organizations

In order to be eligible for a premises permit, an organization must meet the following requirements:

- A. The activities of the organization directly or primarily benefit the citizens of Fridley.
- B. One-third of the organization's members reside in the City of Fridley. The organization must file a list containing the names and addresses of all current members with each new application for a premises permit; and annually thereafter with the city clerk; or the organization must have had a principal business or operations location in the City of Fridley for a continuous period of at least one year immediately preceding the permit request and must maintain such a location to conduct business as long as the organization operates lawful gambling activities in the city. Organizations that meet one of these conditions shall be considered a qualifying organization.

30.03. REGULATIONS

1. Licensed organizations conducting lawful gambling within the City of Fridley shall expend fifty percent (50%) of its expenditures for lawful purposes conducted or located within the City of Fridley trade area. The Fridley trade area is limited to the City of Fridley and each city contiguous to the City of Fridley.

2. Licensed organizations conducting lawful gambling within the City of Fridley must file a copy of monthly gambling board financial reports to the Fridley City Clerk.

3. Licensed organizations conducting lawful gambling within the City of Fridley in an establishment licensed under Chapter 603 Entitled "Intoxicating Liquor" or Chapter 606 Entitled "Intoxicating Liquor On-Sale Club" of the Fridley City Code may sell pull-tabs from a booth used solely by the licensed lawful gambling organization, or conduct such other forms of lawful gambling with lawful gambling devices as may be permitted by state law and authorized by the City. Lawful gambling shall neither be conducted by employees of the liquor establishment or conducted from the bar area. (Ref 1200)
4. Licensed organizations conducting lawful gambling in the City of Fridley shall be responsible for booths and other equipment used in lawful gambling.
5. No bingo hall license holder or lawful gambling license holder shall permit bingo to be conducted on the premises more than 4 days in any week, or permit more than 12 bingo occasions in any week. (Ref. 964)

30.04. LOCAL GAMBLING TAX

A local gambling tax of three percent (3%) of the gross receipts from lawful gambling, lawful gambling, less prizes actually paid by the organization, shall be paid to the City for the purpose of regulating said gambling. Any tax not utilized in conjunction with regulating said gambling shall be returned to the contributing organizations annually. Organizations operating under a State and City approved lawful gambling exemption certificate are exempt from the local gambling tax. (Ref. 964)

30.05. STATE LICENSE EXEMPTIONS - CITY PERMIT REQUIRED

1. Lawful gambling exempt from a license under Minnesota Statute, section 349.214, shall require a City permit. Application for a permit shall be made to the City Clerk with payment of the specified fee in Chapter 11 of the City Code.
2. To qualify for a City permit an organization must be in existence for at least three years and have at least 15 active members.

30.06. SEVERABILITY

Every section, provision or part of this Chapter is declared separable from every other section, provision or part to the extent that if any section, provision, or part of this Chapter shall be held invalid, such holding shall not invade any other section, provision or part thereof.

30.07. PENALTIES

Any violation of this Chapter is a misdemeanor and is subject to all penalties provided for such violations under the provisions of Chapter 901 of this Code.

A RESOLUTION OF THE CITY OF NEWPORT, MINNESOTA, AMENDING ITS CITY CODE BY DELETING CURRENT LANGUAGE RELATED TO LAWFUL GAMBLING IN THE CITY AND SUBSTITUTING THEREFORE FOR A NEW SECTION 550.

Whereas the City of Newport, Minnesota, acting through its City Council, has determined that it is necessary to substantially update the provisions of Section 450 of the City Code related to the regulation of lawful gambling in the City as authorized under Minnesota Statutes Section 349.213.

IT IS HEREBY ORDAINED:

That Section 450 of the Newport City Code is hereby REPEALED and in its place is substituted the following:

450.01. STATEMENT OF POLICY

The City of Newport deems it desirable to regulate lawful gambling within its jurisdiction as authorized by Minnesota Statutes, Section 349.213. The City finds that, for the purposes of greater supervision and access of information, a more restrictive requirement for the location of licensed organizations to those located within the City is in the interest of the health and safety of the citizens of the City of Newport

450.02 DEFINITIONS

The definitions in Minnesota State Statutes Chapter 349 are adopted by reference in this chapter. Licensed organizations in the City of Newport may be permitted to conduct lawful gambling or use any gambling device allowable by Chapter 349.

1. Licensed Organizations
In order to be eligible for a premises permit, an organization must meet the following requirements:
 - A. The activities of the organization directly or primarily benefit the citizens of Newport.
 - B. One-third of the organization's members reside in the City of Newport. The organization must file a list containing the names and addresses of all current members with each new application for a premises permit; and annually thereafter with the city clerk; or the organization must have had a

principal business or operations location in the City of Newport for a continuous period of at least one year immediately preceding the permit request and must maintain such a location to conduct business as long as the organization operates lawful gambling activities in the city. Organizations that meet one of these conditions shall be considered a qualifying organization.

450.03 REGULATIONS

1. Licensed organizations conducting lawful gambling within the City of Newport shall expend fifty percent (50%) of its expenditures for lawful purposes conducted or located within the City of Newport trade area. The Newport trade area is limited to the City of Newport and each city contiguous to the City of Newport.
2. Licensed organizations conducting lawful gambling within the City of Newport must file a copy of monthly gambling board financial reports to the Newport City Administrator.
3. Licensed organizations conducting lawful gambling within the City of Newport in an establishment licensed under the City's intoxicating liquor licensure provisions may sell pull-tabs from a booth used solely by the licensed lawful gambling organization, or conduct such other forms of lawful gambling with lawful gambling devices as may be permitted by state law and authorized by the City. Lawful gambling shall neither be conducted by employees of the liquor establishment or conducted from the bar area.
4. Licensed organizations conducting lawful gambling in the City of Newport shall be responsible for booths and other equipment used in lawful gambling.
5. Licensed organizations conducting lawful gambling within the City of Newport shall pay to the City an amount equal to 10% of all receipts from said gambling which shall be deposited by the City into a separate account to be expended for public purposes within the City as authorized under State law.

450.04 LOCAL GAMBLING TAX

A local gambling tax of three percent (3%) of the gross receipts from lawful gambling, lawful gambling, less prizes actually paid by the organization, shall be paid to the City for the purpose of regulating said gambling. Any tax not utilized in conjunction with regulating said gambling shall be returned to the contributing organizations annually. Organizations operating under a State and City approved lawful gambling exemption certificate are exempt from the local gambling tax.

450.05 STATE LICENSE EXEMPTIONS – CITY PERMIT REQUIRED

1. Lawful gambling exempt from a license under Minnesota Statute, section 349.214, shall require a City permit. Application for a permit shall be made to the City Clerk with payment of the specified fee in Chapter 11 of the City Code.

2. To qualify for a City permit an organization must be in existence for at least three years and have at least 15 active members.

450.06 SEVERABILITY

Every section, provision or part of this Chapter is declared separable from every other section, provision or part to the extent that if any section, provision, or part of this Chapter shall be held invalid, such holding shall not invade any other section, provision or part thereof.

450.07 PENALTIES

Any violation of this Chapter is a misdemeanor.

Adopted this _____ day of February, 2016.

Timothy Geraghty, Mayor

Attest: Deb Hill, City Administrator