

ORDINANCE 2017 - 3

 ORIGINAL

**AN ORDINANCE OF THE CITY OF SUNNYSIDE, WASHINGTON,
REPEALING SUNNYSIDE MUNICIPAL CODE CHAPTER 5.16 "CERTAIN
GAMBLING ACTIVITIES PROHIBITED" AND CREATING NEW SECTIONS IN
SUNNYSIDE MUNICIPAL CODE CHAPTER 5.62 "GAMBLING BUSINESS
LICENSES" AND CHAPTER 9.94 "GAMBLING"**

WHEREAS, the City of Sunnyside has had a prohibition on certain gambling activities for a number of years; and

WHEREAS, the City of Sunnyside has come to the conclusion that the City of Sunnyside is no longer served well by the prohibition on gambling activities and wishes to adopt new regulations allowing certain gambling activities under certain conditions; and

WHEREAS, the City of Sunnyside seeks a public benefit to allowing such gambling activities by receiving the tax revenues created by the establishment of businesses who engage in such gambling activities; and

WHEREAS, any additional expense on the City of Sunnyside in enforcing these regulations will be offset by the public benefit; and

WHEREAS, it is in the best interest of the City of Sunnyside to adopt the processes and acquire the powers authorized by the Legislature at RCW 9.46; NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, DO
ORDAIN AS FOLLOWS:**

Section 1. That Chapter 5.16 of the Sunnyside Municipal Code entitled "Certain Gambling Activities Prohibited" shall be and hereby is repealed in its entirety.

Section 2. That Chapter 5.62 of the Sunnyside Municipal Code entitled "Gambling Business Licenses" shall be created and hereby is enacted and shall read as follows:

**Chapter 5.62
GAMBLING BUSINESS LICENSES**

Sections:

- 5.62.010 Definitions.
- 5.62.020 License required.
- 5.62.030 Gambling business license.
- 5.62.040 Gambling business license fees.
- 5.62.050 Appeal.
- 5.62.060 License term – Assignment – Renewals.

- 5.62.070 License suspension and revocation – Hearing.
- 5.62.080 Violation a misdemeanor.
- 5.62.090 Nuisance declared.
- 5.62.100 Additional enforcement.
- 5.62.110 Severability.

5.62.010 Definitions.

For the purposes of this chapter, the words and terms used shall have the same meaning as each has under Chapter 218, Laws of 1973, 1st Ex. Sess. and RCW 9.46, each as amended, and under the rules of the Washington State Gambling Commission, Chapter 230 WAC, unless otherwise specifically provided herein, or the context in which they are used herein clearly indicates that they be given some other meaning.

5.62.020 License required.

- A. It is unlawful for any person to conduct or operate a gambling business unless such person has been issued a valid and current gambling license from the State of Washington and a valid and current gambling business license from the City of Sunnyside to do so, obtained in the manner provided in this chapter.
- B. Each license shall be subject to annual renewal upon payment of the applicable fee in accordance with SMC 5.52.040, subject to the City's review for compliance with the provisions of this chapter.

5.62.030 Gambling business license.

- A. Gambling Business Operator's License.
 - 1. All applications for a gambling business operator's license shall be submitted to the Clerk in the name of the person or entity proposing to conduct a gambling business on the business premises and shall be signed by such person and certified as true under penalty of perjury. All applications shall be submitted on a form supplied by the City, and shall be complete when the following information and submittals are provided:
 - a. For each applicant: names; any aliases or previous names; driver's license number, if any; Social Security number, if any; business, mailing, and residential address; and business and residential telephone number.
 - b. If a corporation, date and place of incorporation, evidence that it is in good standing under the laws of Washington, and name and address of any registered agent for service of process.

- c. Whether the applicant is operating a licensed business within the City primarily engaged in the selling of food or drink for consumption on the premises.
3. The gambling business license, if granted, shall state on its face the name of the person or persons to whom it is issued, the expiration date, the doing-business-as name and the address of the licensed gambling business. The permit shall be posted in a conspicuous place at or near the entrance to the gambling business premises so that it can be easily read at any time the business is open.
4. No person granted a gambling business license pursuant to this chapter shall operate the gambling business under a name not specified on the license, nor shall any person operate a gambling business under any designation or at any location not specified on the license.
5. Upon receipt of any complete application and fee, the Director of Finance or designee shall provide copies to the Police Department, and to other appropriate City departments or contractors, for a full investigation and review to determine compliance of the proposed gambling business with this chapter and other applicable laws. Each gambling business operator's license shall be issued with a notification that it shall be subject to revocation for noncompliance of the premises with building and zoning codes and this chapter.
6. In the event the premises are not yet constructed the departments shall base their recommendation as to premises compliance on their review of the drawings submitted with the application. Any gambling business license approved prior to premises construction shall contain a condition that the premises must be inspected prior to occupancy, and determined to be in substantial conformance with the drawings submitted with the application and other applicable building and development regulations.
7. A gambling business operator's license shall be issued or the application denied by the Director of Finance or designee within 14 days of the date of filing a complete license application and fee, unless it is determined that the applicant has failed to meet any of the requirements of this chapter or provide any information required under this subsection, or that the applicant has made a false, misleading or fraudulent statement of material fact on the application for a license. Upon request of the applicant, the Director of Finance or designee shall grant an extension of time, up to but not to exceed 20 additional days, in which to provide all information required for license application. The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application. If the Director of Finance or designee finds that the applicant has failed to meet any of the requirements for issuance of a

gambling business operator's license, they shall issue a notice of non-issuance in writing, and shall cite the specific reasons therefore.

5.62.040 Gambling business license fees.

The license fees are set forth in Chapter 2.02 SMC.

5.62.050 Appeal.

- A. Any person aggrieved by the action of the Director of Finance or designee in refusing to issue or renew any license under this chapter or in temporarily suspending or permanently revoking any license under this chapter shall have the right to appeal such action to the City of Sunnyside Hearing Examiner, by filing an appeal statement with the City Clerk within 14 days of issuance and mailing notice of the action from which appeal is taken. The filing of such appeal shall stay the action of the Director of Finance or designee.
- B. The Hearing Examiner, upon receipt of a timely notice of appeal, shall set a date for a hearing of such appeal within 30 days from the date of such receipt, unless extended by mutual agreement or for good cause shown. The hearing shall be de novo. The hearing shall be conducted under the City rules of procedure for administrative hearings; provided, however, the burden of proof shall be on the City.
- C. The decision of the Hearing Examiner on an appeal from a decision of the Director of Finance or designee shall be based upon a preponderance of the evidence.
- D. Any person aggrieved by the decision of the Hearing Examiner or other designated hearing body shall have the right to appeal the decision to the superior court by filing an application or complaint upon the City within 20 calendar days after the date the Hearing Examiner's decision is issued and mailed to the parties.

5.62.060 License term – Assignment – Renewals.

- A. Licenses shall expire one year from the date of issue.
- B. Application for renewal of licenses issued hereunder shall be made to the Director of Finance or designee no later than 30 days prior to the expiration of gambling business licenses. The renewal license shall be issued in the same manner and on payment of the same fees as for an original application under this chapter. There shall be assessed and collected by the Director of Finance or designee an additional charge, computed as a percentage of the license fee, on applications not made on or before said date, as set forth in the business license fee schedule in SMC 2.02.020.

- C. The Director of Finance or designee shall renew a license upon receipt of a complete application and fee, and subject to compliance with the provisions of SMC 5.54.030 regarding original licenses.

5.62.070 License suspension and revocation – Hearing.

- A. The City Manager or designee may suspend or revoke any license issued under the provisions of this chapter at any time where the same was procured by fraud or false representations of fact, or for the violation of, or failure to comply with, the provisions of this chapter or the provisions of any applicable fire, building or zoning code.
- B. The Director of Finance or designee shall issue and mail to the licensee the decision to suspend or revoke the license at least 14 days prior to the effective date of the action. Such notice shall inform the licensee of the right to appeal the decision to the Hearing Examiner or other designated hearing body, pursuant to SMC 5.54.060, and shall state the effective date of such revocation or suspension and the grounds for revocation or suspension. The decision of the City Manager or designee to suspend or revoke the license shall be stayed during the pendency of any appeal to the Hearing Examiner or Superior Court.

5.62.080 Violation a misdemeanor.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor in addition to other remedies provided in this chapter.

5.62.090 Nuisance declared.

- A. Public Nuisance. Any gambling business operated, conducted, or maintained in violation of this chapter or any law of the City of Sunnyside or the State of Washington shall be, and the same is, declared to be unlawful and a public nuisance. The City Attorney may, in addition to or in lieu of any other remedies set forth in this chapter, commence an action to enjoin, remove or abate such nuisance in the manner provided by law and shall take such other steps and apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such public nuisance, and restrain and enjoin any person from operating, conducting or maintaining a gambling business contrary to the provisions of this chapter.

5.62.100 Additional enforcement.

The remedies found in this chapter are not exclusive, and the City may seek any other legal or equitable relief, including but not limited to enjoining any acts or practices which constitute or will constitute a violation of any business license ordinance or other regulations herein adopted.

5.62.110 Severability.

If any portion of this chapter, or its application to any person or circumstances, is held invalid, the validity of the chapter as a whole, or any other portion thereof, and its application to other persons or circumstances, shall not be affected.

Section 3. That Chapter 9.94 of the Sunnyside Municipal Code entitled "Gambling" shall be created and hereby is enacted and shall read as follows:

Chapter 9.94 GAMBLING

Sections:

- 9.94.010 Definitions.
- 9.94.020 Permitted gambling activities.
- 9.94.030 Tax levies.
- 9.94.040 Tax to be computed and paid quarterly. Exceptions.
- 9.94.050 Administration and collection of tax.
- 9.94.060 Method of payment.
- 9.94.070 Failure to make timely payment of tax or fee.
- 9.94.080 Notice of intention to engage in activity to be filed.
- 9.94.090 Records required.
- 9.94.100 Overpayment or underpayment of tax.
- 9.94.110 Failure to make return.
- 9.94.120 Tax additional to others.
- 9.94.130 City Manager to make rules.
- 9.94.140 Taxes, penalties and fees constitute debt to municipality.
- 9.94.150 Lien authorization.
- 9.94.160 Limitation on right to recovery.
- 9.94.170 Violation – Penalties.
- 9.94.180 Severability.

9.94.010 Definitions.

For the purposes of this chapter, the words and terms used shall have the same meaning as each has under Chapter 218, Laws of 1973, 1st Ex. Sess. and RCW 9.46, each as amended, and under the rules of the Washington State Gambling Commission, Chapter 230 WAC, unless otherwise specifically provided herein, or the context in which they are used herein clearly indicates that they be given some other meaning.

9.94.020 Permitted gambling activities.

The City Council authorizes in the City those gambling activities now permitted or hereafter authorized under the laws of the State of Washington, including, but not limited to bingo, raffles, punchboards and pull-tabs, social card games, amusement games and

fishing derbies, so long as said activities are licensed, conducted, or operated pursuant to the laws of the State of Washington.

9.94.030 Tax levies.

There is levied upon all persons, associations, and organizations conducting or operating within this jurisdiction any of the activities listed below a tax in the following amounts to be paid to the City;

- A. Commercial stimulant operators and all those other than bona fide charitable or nonprofit organizations as defined by RCW 9.46.110, taxation shall be as follows:
 - 1. Punchboards and pull tabs shall be zero percent (0%) of the net receipts from the operation of the games; and
 - 2. Bingo and raffles shall be zero percent (0%) of the net receipts of a bingo game or raffle less the amount awarded as cash or merchandise prizes; and
 - 3. Taxation on social card games shall be five percent (5%) of the gross revenue from such games.

- B. For bona fide charitable or nonprofit organizations, as defined by Chapter 9.46 of the Revised Code of Washington, a tax in the following amounts shall be paid to the City:
 - 1. No tax shall be imposed upon bingo or amusement games when such activities or any combination thereof are conducted by any bona fide charitable or nonprofit organization, which organization has no paid operating or management personnel and has net receipts from bingo or amusement games, or a combination thereof, not exceeding \$25,000.00 per year, less the amount awarded as cash or merchandise prizes. All bona fide charitable or nonprofit organizations not meeting the restrictions above, shall pay tax on bingo in the amount of zero percent (0%) of the gross receipts from a bingo game less the amount awarded as cash or merchandise prizes;
 - 2. For raffles, no tax shall be imposed on the first \$25,000.00 of net receipts less the amount awarded as cash or merchandise prizes, and zero percent (0%) of the gross receipts in excess of the first \$25,000.00 of net receipts less the amount awarded as cash or merchandise prizes;
 - 3. Punchboards and pull tabs shall be in an amount equal to zero percent (0%) of the net receipts from the operation of the games less the amount awarded as cash or merchandise prizes; and

4. Taxation on social card games shall be five percent (5%) of the gross revenue from such games.
- C. The operation of punchboards and pull tabs shall be subject to the limitations and conditions imposed by RCW 9.46.110.

9.94.040 Tax to be computed and paid quarterly. Exceptions.

Each of the various taxes imposed by this chapter shall be computed on the basis of activity during each calendar quarter year, shall be due and payable in quarterly installments, and remittance therefore, together with return forms, shall be made to the City on or before the last day of the month next succeeding the quarterly period in which the tax accrued, that is, on January 31st, April 30th, July 31st, and October 31st, of each year; provided, that the following exceptions to this payment schedule shall be allowed, or required:

- A. Whenever any person, association or organization taxable hereunder conducting or operating a taxable activity on a regular basis discontinues operation of that taxable activity for a period of more than two consecutive months, or quits business, sells out, or otherwise disposes of its business, or terminates the business, any tax due hereunder shall become due and payable, and such taxpayer shall, within ten days thereafter, make a return and pay the tax due.
- B. Whenever it appears to the City Finance Manager that the collection of taxes from any person, association or organization may be in jeopardy, the City Finance Manager, after not less than ten days' notice to the taxpayer, is authorized to require that taxpayer to remit taxes and returns at such shorter intervals than quarterly or annually, as the City Finance Manager shall deem appropriate under the circumstances.

9.94.050 Administration and collection of tax.

Administration and collection of the various taxes imposed by this chapter shall be the responsibility of the City Treasurer. Remittance of the amount due shall be accompanied by a completed return form prescribed and provided by the City Treasurer. The taxpayer shall be required to swear and affirm that the information given in the return is true, accurate and complete. The City Treasurer is authorized, but not required, to mail to taxpayers forms for returns. Failure of the taxpayer to receive such a form shall not excuse a taxpayer from making the return and timely paying all taxes due. The City Treasurer shall make forms available to the public in reasonable numbers in the office of the City Treasurer during regular business hours. In addition to the return form, a copy of the taxpayer's quarterly report to the Washington State Gambling Commission required by WAC 230-08 for the period in which the tax accrued, shall accompany remittance of the tax amount due.

9.94.060 Method of payment.

Taxes payable hereunder shall be remitted to the City Treasurer on or before the time required by bank draft, certified check, cashier's check, personal check, money order, or in cash. If payment is made by draft or check, the tax shall not be deemed paid until the draft or check is honored in the usual course of business, nor shall the acceptance of any sum by the City Treasurer be an acquittance or discharge of the tax unless the amount paid is the full amount due. The return, and copy of quarterly report to the Washington State Gambling Commission, shall be filed in the office of the City Finance Director after notation by the City Treasurer upon the return of the amount actually received from the taxpayer.

9.94.070 Failure to make timely payment of tax or fee.

If full payment of any tax or fee due under this chapter is not received by the City Treasurer on or before the date due, there shall be added to the amount due a penalty fee as follows:

- A. 10-20 days late - 2% of tax due;
- B. 21-31 days late - 3% of tax due;
- C. 32-60 days late - 5% of tax due;

but in no event shall the penalty amount be less than fifteen dollars. In addition to this penalty, the City Treasurer may charge the taxpayer interest of eight percent of all taxes and fees due for each thirty-day period, or portion thereof, that said amount are past due. Failure to make payment in full of all tax amounts, and penalties, within sixty days following the day the tax amount initially became due shall be both a civil and a criminal violation of this section.

9.94.080 Notice of intention to engage in activity to be filed.

In order that the City may identify those persons who are subject to taxation under this chapter, each person, association or organization shall file with the City Finance Director a sworn declaration of intent to conduct an activity taxable under this chapter upon a form to be prescribed by the City Finance Director, together with a copy of the license issued therefor by the Washington State Gambling Commission. The filing shall be made not later than seven days prior to conducting or operating the taxable activity. No fee shall be charged for such filing, which is not for the purpose of regulation of this activity but for the purposes of administration of the taxing ordinance codified herein. Failure to timely file shall not excuse any person, association or organization from any tax liability.

9.94.090 Records required.

Each person, association, or organization engaging in an activity taxable under this chapter shall maintain records respecting that activity which truly, completely and

accurately disclose all information necessary to determine the taxpayer's tax liability hereunder during each base tax period. Such records shall be kept and maintained for a period of not less than three years. In addition, all information and items required by the Washington State Gambling Commission under WAC 230-08, and the United States Internal Revenue Service respecting taxation, shall be kept and maintained for the periods required by those agencies.

All books, records, and other items required to be kept and maintained under this section shall be subject to, and immediately made available for, inspection and audit at any time, with or without notice, at the place where such records are kept, upon demand by the City Manager, or his designees, for the purpose of enforcing the provisions of the taxing ordinance codified herein. Where a taxpayer does not keep all of the books, records or items required to be kept or maintained under this section in this jurisdiction so that the City Manager or his designee may examine them conveniently, the taxpayer shall either:

- A. Produce all of the required books, records or items within this jurisdiction for such inspection within three days following a request of the local official that he do so; or
- B. Bear the actual cost of inspection by the City Manager or his designee, at the location at which such books, records or items are located, provided that a taxpayer choosing to bear these costs shall pay in advance to the City Manager or his designee the estimated cost thereof, including, but not limited to round-trip fare by the most rapid means, lodging, meals, and incidental expenses. The actual amount due, or to be refunded, for expenses shall be determined following said examination of the records. A taxpayer who fails, neglects or refuses to produce such books and records either within or without this jurisdiction, in addition to being subject to other civil and criminal penalties provided by this chapter, shall be subject to a jeopardy fee or tax assessment by the City Manager or his designee.

This penalty fee or jeopardy assessment shall be deemed prima facie correct and shall be the amount of fee or tax owing the City Treasurer by the taxpayer unless he can prove otherwise by competent evidence. The taxpayer shall be notified by mail by the City Treasurer of the amount of tax so determined by jeopardy assessment, together with any penalty and/or interest, and the total of such amounts shall thereupon become immediately due and payable.

9.94.100 Overpayment or underpayment of tax.

If, upon application by a taxpayer for a refund or for an audit of his records, or upon any examination of the returns or records of any taxpayer, it is determined by the City Manager that within three years immediately preceding receipt by the City Treasurer of the application by the taxpayer for a refund, or an audit, or, in the absence of such an application, within the three years immediately preceding the commencement by the City Finance Manager of such examination:

- A. A tax or other fee has been paid in excess of that properly due, the total excess paid over all amounts due to the City within such period of three years shall be credited to the taxpayer's account or shall be credited to the taxpayer at the taxpayer's option. No refund or credit shall be allowed with respect to any excess tax or fee paid to the City Treasurer more than three years before the date of such application or examination.
- B. A tax or other fee has been paid which is less than that properly due, or no tax or other fee has been paid, the City Treasurer shall mail a statement to the taxpayer showing the balance due, including the tax amount or penalty assessments and fees, and it shall be a separate, additional violation of this chapter, both civil and criminal, if the taxpayer fails to make payment in full within ten calendar days of such mailing.

9.94.110 Failure to make return.

If any taxpayer fails, neglects, or refuses to make and file his return as and when required under this chapter, the City Finance Director is authorized to determine the amount of tax payable, together with any penalty and/or interest assessed under the provisions of this chapter, and by mail to notify such taxpayer of the amount so determined, which amount shall thereupon become the tax and penalty and/or interest and shall become immediately due and payable.

9.94.120 Tax additional to others.

The tax herein levied shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of Sunnyside, Washington, except as herein otherwise expressly provided.

9.94.130 City Manager to make rules.

The City Manager shall have the power, and it shall be his duty, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this chapter or with superior law, for the purpose of carrying out the provisions hereof, and it shall be unlawful to violate or fail to comply with any such rule or regulation.

9.94.140 Taxes, penalties and fees constitute debt to municipality.

Any tax due and unpaid under this chapter and all penalties or fees shall constitute a debt to the City, a municipal corporation, and may be collected by court proceedings the same as any other debt in like amount which shall be in addition to all other existing remedies.

9.94.150 Lien authorization.

Taxes imposed under this chapter shall become a lien upon personal and real property used in the gambling activity in the same manner as provided for under RCW 84.60.010.

The lien shall attach on the date the tax becomes due and shall relate back and have priority against real and personal property to the same extent as ad valorem taxes.

9.94.160 Limitation on right to recovery.

The right of recovery by the City from the taxpayer for any tax provided hereunder shall be outlawed after the expiration of three calendar years from the date said tax became due. The right of recovery against the City because of overpayment of tax by any taxpayer shall be outlawed after the expiration of three calendar years from the date such payment was made.

9.94.170 Violation – Penalties.

Any person violating or failing to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the City Manager pursuant thereto, upon conviction thereof, shall be punished by a fine in any sum not to exceed five hundred dollars, or by imprisonment for a term not exceeding ninety days, or by both such fine and imprisonment. Any taxpayer who engages in, or carries on, any gambling activity subject to a tax hereunder without having complied with the provisions of this chapter is guilty of a violation of this chapter for each day during which the gambling activity is carried on.

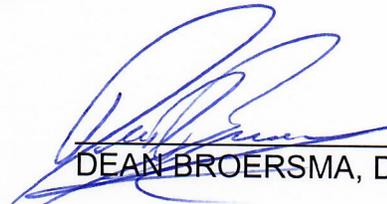
9.94.180 Severability.

If any provision or section of this chapter shall be held void or unconstitutional, all other parts, provisions and sections of this chapter not expressly so held to be void or unconstitutional shall continue in full force and effect.

Section 4. Except as amended herein, Title 5 of the Sunnyside Municipal Code and Title 9 of the Sunnyside Municipal Code shall remain unchanged.

Section 5. This Ordinance shall be effective five days after its passage, approval and publication as required by law.

PASSED this 8th day of May, 2017.



DEAN BROERSMA, DEPUTY MAYOR

ATTEST:



DEBORAH ESTRADA, CITY CLERK

APPROVED AS TO FORM:



KERR LAW GROUP
Attorneys for the City of Sunnyside