RESOLUTION NO. 8392

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS CALLING AND GIVING NOTICE OF, ON ITS OWN MOTION, THE SUBMISSION TO THE ELECTORS OF THE CITY OF MILPITAS AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2014, A BALLOT MEASURE PROPOSAL TO ADD CHAPTER 8 TO TITLE III OF THE MUNICIPAL CODE REGARDING ISSUANCE OF A LICENSE TO OPERATE A CARDROOM IN COMPLIANCE WITH STATE LAW AND IMPOSING A CARDROOM TAX AT THE RATE OF TEN AND ONE-HALF PERCENT (10.5%) OF GROSS REVENUE

WHEREAS, the City of Milpitas ("City") is in the midst of an unprecedented fiscal crisis caused by the recent recession and cuts in federal and State spending to support local governments; and

WHEREAS, since 2009, the City has laid off a total of fifty-four (54) employees including four (4) firefighters, the total number of funded employee positions have decreased by approximately twenty-five percent (25%) including ten (10) police officer positions, and another thirty-eight (38) employees have either been demoted or "bumped" into other positions; and

WHEREAS, cuts in police and firefighter budgets have threatened public safety and impacted the quality of life for Milpitas residents, businesses, and visitors, and the reduction in revenue and non-public safety employees have directly impacted services provided to the community, including street maintenance and recreation and after-school programs; and

WHEREAS, the City lacks the funds to undertake essential capital improvements and maintenance, and the annual shortfall to maintain the recommended Pavement Condition Index goal of 70 is four million five hundred thousand dollars ($4,500,000) per year; and

WHEREAS, the City Council adopted an Entertainment Overlay to its Zoning Code on April 6, 2010 that would allow for entertainment uses including operation of a licensed gambling establishment in specific areas in the City; and

WHEREAS, many of the existing ninety-six (96) State-licensed cardrooms listed on the Department of Justice's Bureau of Gambling Control's webpage are significant sources of local tax revenue that can fund staffing, economic development, and public infrastructure projects, such as those that have suffered in the City of Milpitas as a result of cuts in the City's budget; and

WHEREAS, the State's Gambling Control Act, provisions in the State's Penal Code, the State's regulations and local gambling ordinances provide comprehensive regulatory frameworks so that the Gambling Control Commission, State Department of Justice's Bureau of Gambling Control and local jurisdictions can ensure that legalized gambling in cardrooms is highly regulated and problem gambling is controlled; and

WHEREAS, among other regulatory roles, the Gambling Control Commission licenses cardrooms, key employees and employees on a periodic basis, and the Bureau of Gambling Control performs background checks as part of the Commission's licensing process and authorizes games for play in cardrooms only if they are legal under California law; and

WHEREAS, the revenue to the City from a single cardroom license could generate approximately ten million dollars ($10,000,000) in general and other taxes and pay for additional police officers, firefighters, street maintenance, recreational programs, and other general governmental services and programs; and

WHEREAS, Business and Professions Code Section 19960(c) and Article XIII C, Section 2 of the California Constitution require that the voters of a city must be asked to approve any measure that both permits controlled gambling within the city and imposes a general tax on gaming revenue to be paid by the cardroom operator; and

WHEREAS, the City Council has called a General Municipal Election to be consolidated with the statewide General Election on Tuesday, November 4, 2014; and

WHEREAS, the City Council desires to submit to the electors of the City of Milpitas at the General Municipal Election on Tuesday, November 4, 2014, a ballot measure proposal to add Chapter 8 to Title III of the Municipal Code to allow the City to issue a single license to operate a cardroom within the City in compliance with State law and impose a cardroom tax at the rate of ten and one-half percent (10.5%) of gross revenue.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. **Record**. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. **CEQA**. The proposed City Council action is not a "project" under the California Environmental Quality Act of 1970 ("CEQA"), as amended, and any implementing local or State guidelines. Specifically, the proposed City Council action is not a "project" under CEQA Guidelines Section 15378 because it does not have the potential to result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. The possibility of any indirect physical change in the environment resulting from the City Council's action is too speculative to require environmental review under CEQA because of (a) the need for State legislation; (b) the need for voter approval; and (c) the need for future environmental discretionary permits to be approved by the City Council. Even if all three (3) of these speculative and necessary prerequisites were to occur, any potential physical changes in the environment would still be subject to CEQA review in connection with the City Council's consideration of the required discretionary permits.

   The proposed City Council action is also exempt from CEQA under CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (for the reasons described in the preceding paragraph).

   The proposed City Council action is also exempt from CEQA under CEQA Guidelines Section 15273 (Rates, Tolls, Fares and Charges) because the City Council action is to raise revenue for the City of Milpitas to assist in funding for public safety, capital improvements, recreational programs, and other general governmental services.

3. **Voter Approval**. In order to provide revenue for police and fire protection, street improvements, recreational programs, and other general governmental services and programs, a ballot measure to approve an ordinance to add Chapter 8 to Title III of the Municipal Code to allow the City to issue a single license to operate a cardroom within the City in compliance with State law shall be presented to the voters at the General Municipal Election on Tuesday, November 4, 2014. The proposed Ordinance No. 285 is attached to this Resolution as Exhibit A. The vote requirement for passage of the ballot measure is a majority of the votes cast (50% plus 1).

   a. **Ballot Measure**. The ballot measure will be placed on the ballot for the November 4, 2014, election in the following form:

Shall one licensed gambling establishment in which any controlled games permitted by law, such as draw poker, low-ball poker, panguine (pan), seven-card stud, or other lawful card games or tile games, are played, be allowed in the City of Milpitas and shall that cardroom establishment pay a tax of 10.5% on gaming revenues?	YES NO

   b. **Implementing Ordinance**. The proposed Ordinance No. 285 attached as Exhibit A to this Resolution shall appear in full in the sample ballot pamphlet in accordance with California Business and Professions Code Section 19960(c)(2).

4. **Election Official**. Pursuant to California Elections Code Section 12111 and California Government Code Section 6061, the City Council hereby directs the City Clerk to (a) cause a notice and synopsis of the proposed measure to be published in the Milpitas Post, a newspaper of general circulation within the City of Milpitas; and (b) do all other things required by law to submit the specified measure to the electors of the City of Milpitas at the General Municipal Election scheduled for November 4, 2014, including causing the full text of the proposed ordinance to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.

5. **Consolidated Election**. Pursuant to the requirements of California Elections Code Section 10403, the Board of Supervisors of the County of Santa Clara County is hereby requested to consent and agree to the consolidation of a General Municipal Election with the statewide General Election to be held on Tuesday, November 4, 2014, for the purpose of submitting the ballot measure to the voters of the City of Milpitas. The City of Milpitas requests the services of the Board of Supervisors of the County of Santa Clara and the Registrar of Voters of the County of Santa Clara to conduct said General Municipal Election and to consolidate such election. The Registrar of Voters is requested to provide all necessary election services and to canvass the returns of the General Municipal Election. The City of Milpitas shall reimburse the County of Santa Clara for services performed when the election is completed and upon presentation to the City of Milpitas of a properly approved bill.

6. **Impartial Analysis**. The City Council hereby directs the City Attorney to prepare an impartial analysis of the ballot measure not to exceed five hundred (500) words in accordance with California Elections Code Section 9280.

7. **Arguments in Favor**. Pursuant to California Elections Code Sections 9282-9287, the City Council hereby approves the Mayor and/or designee to prepare and submit a written argument in favor of the proposed ballot measure, not to exceed three hundred (300) words in length, on behalf of the City Council. Such written argument in favor of the proposed measure may include up to five (5) signatures in accordance with California Elections Code Section 9283.

8. **Arguments For and Against; Rebuttals**. The City Council hereby authorizes arguments for and against the ballot measure and rebuttal arguments to be filed in accordance with California Elections Code Section 9282-9287 and establishes August 12, 2014, at 5:00 p.m. (PST) as the deadline to file arguments for and against the ballot measure, and August 19, 2014, at 5:00 p.m. (PST) as the deadline to file rebuttal arguments. The City Council hereby approves the submittal of rebuttal arguments in response to arguments for and against the ballot measure and authorizes any member or members of the City Council to author and submit a rebuttal, if any.

9. **Public Examination Periods**. The City Council hereby establishes August 13, 2014, through August 22, 2014, as the ten (10) calendar day examination period required by California Elections Code Section 9295 with respect to arguments for and against the ballot measure and the impartial analysis. Voters may examine the ballot measure, the impartial analysis, the argument for the ballot measure and the argument against the ballot measure in the Office of the City Clerk at 455 E. Calaveras Blvd, Third Floor, Milpitas, CA 95035, between the hours of 8:00 a.m. and 5:00 p.m. (PST), Monday through Friday during such period.

   The City Council hereby establishes August 20, 2014, through August 29, 2014, as the ten (10) calendar day examination period required by California Elections Code Section 9295 with respect to any rebuttal arguments. Voters may examine the ballot measure, the impartial analysis, the argument for the ballot measure, the argument against the ballot measure, and any rebuttal arguments in the Office of the City Clerk at 455 E. Calaveras Blvd, Third Floor, Milpitas, CA 95035, between the hours of 8:00 a.m. and 5:00 p.m. (PST), Monday through Friday during such period.

10. **Compliance with Law**. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

11. **Certified Copy**. The City Council also directs the City Clerk to forward without delay to the Board of Supervisors of the County of Santa Clara and County Elections Official, each, a certified copy of this Resolution.

12. **Effective**. This Resolution shall take effect upon its adoption.

PASSED AND ADOPTED this 5th day of August, 2014, by the following vote:

AYES:	(5)	Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano, Gomez, and Montano
NOES:	(0)	None
ABSENT:	(0)	None
ABSTAIN:	(0)	None

ATTEST:

Mary Lavelle, City Clerk

APPROVED:

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

EXHIBIT A

ORDINANCE NO. 285

AN ORDINANCE OF THE PEOPLE OF THE CITY OF MILPITAS APPROVING A LICENSED GAMBLING ESTABLISHMENT IN THE CITY OF MILPITAS IN ACCORDANCE WITH BUSINESS AND PROFESSIONS CODE SECTION 19960(C) AND IMPOSING A CARD ROOM TAX AT THE RATE OF TEN AND ONE-HALF PERCENT (10.5%) OF GROSS REVENUE

The People of the City of Milpitas do ordain as follows:

SECTION 1. TITLE

This Act shall be known as "The Milpitas Economic Sustainability and Stabilization Act."

SECTION 2. RECITALS AND FINDINGS

The City of Milpitas is in the midst of an unprecedented fiscal crisis caused by the recent recession and cuts in federal and State spending to support local governments; and

Recent losses in funding have significantly impacted the City of Milpitas and its ability to provide public safety, street maintenance, recreational programs, and other general public services, and has degraded the quality of life of Milpitas residents; and

Since 2009, the City has laid off a total of fifty-four (54) employees including four (4) firefighters, the total number of funded employee positions has decreased by approximately twenty-five percent (25%) including ten (10) police officer positions, and another thirty-eight (38) employees have either been demoted or "bumped" into other positions; and

A lack of local funding, inability to generate revenues, and minimal economic development tools have led to the inability of the City of Milpitas to invest in critical public infrastructure in the amount of approximately Two Hundred and Twenty Million Dollars ($220,000,000), consisting of road, water, sewer, and other public improvements; and

The Milpitas City Council adopted an Entertainment Overlay to its Zoning Code on April 6, 2010, that would allow for entertainment uses in the Entertainment Overlay areas including the operation of licensed Gambling Establishments; and

Many of the existing ninety-six (96) State-licensed card rooms listed on the Department of Justice's Bureau of Gambling Control's webpage are significant sources of local tax revenues that can fund staffing, economic development, and public infrastructure projects, such as those that have suffered in the City of Milpitas as a result of cuts in the City's budget; and

The State's Gambling Control Act, provisions in the State's Penal Code, the State's regulations and local gambling ordinances provide comprehensive regulatory frameworks so that the Gambling Control Commission, State Department of Justice's Bureau of Gambling Control and local jurisdictions can ensure that legalized gambling in card rooms is highly regulated and problem gambling is controlled; and

A licensed Gambling Establishment located in the City of Milpitas will generate significant sources of tax revenue, potentially up to Ten Million Dollars ($10,000,000) annually, that will directly benefit its residents, businesses, and visitors by providing additional public safety services, street maintenance, recreational programs, and other general public services; and

California Business and Professions Code Section 19960(c) and Article XIII C, Section 2 of the California Constitution require that the voters of a city must be asked to approve any measure that both permits controlled gambling within the city and imposes a general tax on gambling revenues to be paid by the card room operator; and

It is the purpose and intent of the People of Milpitas that this Act go into effect when State law permits legal gambling in the City of Milpitas; and

Based on the foregoing, the People of the City of Milpitas find it is in the best interest of the City of Milpitas to approve a ballot measure to add Chapter 8 to Title III of the Municipal Code regarding issuance of a License to operate a Card Room in compliance with State law and imposing a Card Room tax at the rate of ten and one-half percent (10.5%) of Gross Revenue.

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed approval of Ordinance No. 285 by the People of the City of Milpitas is not a "project" under the California Environmental Quality Act of 1970 ("CEQA"), as amended, and any implementing local or State guidelines. Specifically, the proposed action is not a "project" under CEQA Guidelines Section 15378 because it does not have the potential to result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. The possibility of any indirect physical change in the environment resulting from the approval of the ordinance is too speculative to require environmental review under CEQA because of (a) the need for State legislation; (b) the need for voter approval; and (c) the need for future environmental discretionary permits to be approved by the City Council. Even if all three of these speculative and necessary prerequisites were to occur, any potential physical changes in the environment would still be subject to CEQA review in connection with the City Council's consideration of the required discretionary permits.

The proposed action is also exempt from CEQA under CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (for the reasons described in the preceding paragraph).

The proposed action is also exempt from CEQA under CEQA Guidelines Section 15273 (Rates, Tolls, Fares and Charges) because approval of the ordinance is to raise revenues for the City of Milpitas to assist in funding for public safety, capital improvements, recreational programs, and other general governmental services.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE III, CHAPTER 8

The Milpitas Municipal Code is hereby amended to add a new Chapter 8 to Title III of the Milpitas Municipal Code and shall read as follows:

Chapter 8 Gambling Control Regulatory Program

Section 1 – Authority.

A. Nothing herein contained is intended or shall be construed to be in conflict with or as a limitation upon any of the provisions of the Gambling Control Act (Bus. & Prof. Code § 19800 et seq.) or any other provision of State or federal law.

B. The provisions of this Chapter shall not be construed so as to authorize legal gambling within the City's boundaries unless and until:

1. A majority of the electors of the City voting thereon, and in a manner that complies with Business & Professions Code § 19960(c), affirmatively approves a measure permitting controlled gambling within the City; and

2. California Business & Professions Code § 19962(a):

   a. expires; or

   b. is repealed; or

   c. is amended or partially repealed in a manner that would permit the City to authorize legal gambling within its boundaries; or

d. is superseded by any State or federal law that permits the City to authorize legal gambling within its boundaries; and

3. The requirements of this Chapter pertaining to the issuance of License have been satisfied.

C. In no event shall this Chapter be effective until January 1, 2015.

Section 2 – Declaration of Intent and Purposes.

The people of the City of Milpitas find and declare that the regulations of a Gambling Establishment located in the City of Milpitas are necessary for the protection of the public health, safety and welfare. The provisions of this Title shall be broadly construed for the purposes of authorizing strict regulatory controls and oversight of a Gambling Establishment, funding sources, and the practices, activities, Persons and places associated with or involved in gambling in the City of Milpitas. Any License, permit, or approval issued pursuant to the provisions of this Title is a revocable privilege and no holder acquires any right in the license, permit, or approval other than the procedural rights granted under this Title or as required by the United States or California Constitution.

Section 3 – Definitions.

For the purposes of this Chapter, the words and phrases hereinafter set forth shall have the following meanings ascribed to them unless the context clearly requires a different meaning:

(a) "Bureau" means the Bureau of Gambling Control of the State Department of Justice.

(b) "Card Room" means a business or enterprise licensed under the provisions of this Chapter for the playing of "Games" as defined in this Section.

(c) "Card Room Administrator" means the Person identified by the City Manager to administer the City's regulation of any Licensee.

(d) "Card Room Business" means the conduct of "Games" as defined in this Section and shall not include any "Related Business" as defined in this Section.

(e) "Chapter" means Chapter 8 of Title III of this Code.

(f) "Chief of Police" means the designated representative of the Milpitas Police Department.

(g) "City" means the City of Milpitas.

(h) "City Council" means the Milpitas City Council.

(i) "City Manager" means the City Manager of Milpitas.

(j) "Clerk" means the City Clerk of Milpitas.

(k) "Commission" shall mean the California Gambling Control Commission as detailed in Business and Professions Code Section 19811 or any successor agency.

(l) "Employee Applicant" means any Person who has applied for a work permit or renewal of a work permit for employment in a Card Room.

(m) "Financier" means any Person who offers or provides a loan, credit, or any other form of financing to the Licensee Applicant or Licensee in any way related to the Card Room, provided "Financier" shall not be construed to include any Person with whom License Applicant or Licensee has an agreement for the lease of equipment or other personal property.

(n) "Gambling Establishment" is defined as set forth in California Business and Professions Code Section 19805(o) and without reference to California Business and Professions Code Section 19812.

(o) "Gambling Table" means a table upon which a Game is played and to which a drop box is attached for the purpose of collecting fees for the play of the Game.

(p) "Game" or "Games" means all games (whether or not involving the use of cards) that are lawful in the State of California.

(q) "Gross Revenue" means all revenue, including table fees, directly derived from the play of Games by Licensee with the exception of revenue directly derived from Games played on a tournament table as part of an official tournament conducted at the Card Room.

(r) "License" means a license for the operation of a Card Room.

(s) "License Applicant" means any Person who has applied for a License or renewal of a License to operate a Card Room in the City.

(t) "Licensee" means the Person or entity to whom a License has been issued for the operation of a Card Room pursuant to this Chapter.

(u) "Municipal Code" means the Municipal Code of Milpitas.

(v) "Owner" means every Person, firm, association, corporation, partnership, or other entity having any interest, whether legal, equitable, financial, or of any other kind or character, in any Card Room or License.

(w) "Person" means and includes a natural person, association, organization, partnership, business trust, company, corporation, or any other entity.

(x) "Permittee" means the Person to whom an employee work permit has been issued for employment in a Card Room pursuant to this Chapter.

(y) "Related Business" means business activities occurring at a Card Room other than the playing of the Games, such as entertainment, dancing, events, fundraising by non-profits, the sale of food, beverages (including alcoholic beverages for consumption on the premises), sundries and other items and the provision of services such as barber shop services.

(z) "State" means the State of California.

Section 4 – Maximum Number of Gambling Establishments.

The maximum number of Card Rooms permitted in the City shall be one (1), unless and until otherwise authorized by a vote of the people in accordance with State law.

Section 5 – License Required.

It is unlawful for any Person to establish, commence, conduct, operate or otherwise allow or permit within the City any business, activity, or enterprise of any Games for which a fee, commission, or other compensation is directly or indirectly charged, accepted, or received from players or participants until such Person shall have first obtained a License in full compliance with the provisions of this Chapter.

Section 6 – Filing an Application for a Card Room License.

A. Filing of Application. Any Person desiring to operate a Card Room shall file with the Card Room Administrator an application for a License. The filed application shall be executed under penalty of

perjury and shall contain, in addition to all other information that the Card Room Administrator may require, the following information and material:

1. A copy of all licenses required by the State of California under State Gambling Law;

2. An official receipt from the City treasurer, indicating receipt of payment in full of the application fee as required by Section 6.H of this Chapter;

3. The date of the application;

4. The true name of the License Applicant, any aliases of the License Applicant, and any fictitious business name or names under which the License Applicant currently operates a business;

5. The status of the License Applicant as being an individual (or two or more individuals), firm, association, corporation, partnership, joint venture or other entity;

6. The status of the License Applicant as being eligible for a License pursuant to any requirements under State law;

7. The residence and business address of each individual License Applicant;

8. The name, residence, and business address of each of the partners, shareholders, and principal officers and directors of any non-individual License Applicant, including each of the partners, shareholders, and principal officers and directors of any parent company, holding company, subsidiary or otherwise that may in any way be affiliated with the License Applicant for the License application, License, or Card Room, except for any publicly held entity;

9. The business and employment history of the License Applicant(s) and of each proposed individual listed in Section 6.A.8, including a list of all places of previous residence;

10. The proposed location for the Card Room, although nothing in this Section shall require that the premises in which the Card Room Business will take place be designed, constructed, or completed prior to the issuance of a License;

11. A list of the Games proposed to be played initially upon opening of the Card Room and a statement that those Games comply with State law;

12. The number of Game tables proposed to be used in the Card Room;

13. A description of any Related Businesses proposed to be conducted at the same location;

14. In the event the proposed location is partly or wholly owned by Persons or entities other than the License Applicant, the names and addresses of such other Persons or entities and complete information pertaining to the nature and percentage of ownership;

15. A one-year detailed cash flow projection, a pro forma financial statement, a statement of pre-opening cash, a financing plan and copies of all loan agreements of the License Applicant;

16. A full and complete financial statement and most recent annual income tax return of the License Applicant, and a full and complete financial and invested capital statement of each Person who is a limited partner, general partner, officer or director of the License Applicant;

17. A full and complete patron safety and security plan designed to protect patrons and other Persons who are lawfully on the Card Room premises;

18. A full and complete accounting and internal control plan for card table funds, collection of fees, drop box and transportation and storage, counting of fees, cashiers cage operation, internal audit, security and monitoring, records retention, financial reports, tips, and signature authority;

19. A statement that the License Applicant understands and agrees that the application shall be considered by the City Council only after full investigations and reports have been made by all applicable City staff;

20. A complete listing of all criminal arrests and convictions of the License Applicant and each partner, shareholder, officer and director of the License Applicant, if any, not including traffic offenses, with explanations therefor;

21. A statement that the License Applicant understands and agrees that any business or activity conducted or operated under any License shall be operated in full conformity with all the laws of the State and the laws and regulations of the City applicable thereto, and that any violation of any such laws and regulations in such place of business, or in connection therewith, shall render any License subject to immediate suspension or revocation;

22. A statement that the License Applicant has read the provisions of this Chapter, understands the same and agrees to abide by all requirements contained in this Chapter; and

23. A statement by the License Applicant agreeing that the sole and exclusive discretion as to the granting or denial of any such License shall be vested in the City Council.

B. Filing of Business Records. The City will permit License Applicant to file proprietary business information confidentially. The confidential portions of the License application shall remain confidential and shall not be disclosed to any Person, unless otherwise required by law. In the event a request is made by a third party for any information set forth in this Section, the City will provide the License Applicant or the Licensee with reasonable and adequate notice to seek a protection from disclosure by a court of competent jurisdiction.

C. Burden of Proof. The burden of proving its qualifications to receive a License is at all times on the License Applicant by preponderance of the evidence. By filing the application, the License Applicant accepts any risk of adverse public notice, embarrassment, criticism, or other action or financial loss which may result from action with respect to the application and expressly waives any claim for damages or otherwise as a result thereof.

D. Obligation to Provide Information. A License Applicant may claim any privilege afforded by the Constitution of the United States in refusing to answer questions by the City Council, provided any such claim of privilege with respect to an application shall constitute sufficient grounds for denial of the application.

E. Identity of Owners. The License Applicant shall also file with the Card Room Administrator a list of the names and addresses of all of the Owners. The Chief of Police shall determine whether or not an investigation of any Owner should be made by a teletype search of the records of the State Criminal Investigation and Identification Unit in Sacramento, California, or otherwise, and forthwith conduct said search or investigation as appropriate.

F. Statements Confidential. All personally identifiable information, including but not limited to financial information, telephone numbers and addresses, required to be submitted as part of an application pursuant to this Chapter shall be confidential and not available for public inspection, unless otherwise authorized or required by law.

G. Fingerprints - Photographs. Concurrently with filing the application, the License Applicant, each Owner and officer shall be fingerprinted and photographed by the Chief of Police.

H. Control by Landlord or Financier. The Card Room Administrator may require the landlord of the Card Room site or Financier of the Card Room to submit a full application in compliance with this Chapter.

I. Application Fee. The application fee is for regulation purposes and is levied pursuant to the authority of applicable laws. An application for a License shall be accompanied by deposit, payable to the City in cash, cashier's check, or other immediately available funds approved by the City, as follows:

1. An application fee deposit of Five Thousand Dollars ($5,000), which shall be retained by the City as a deposit for the costs and expenses of the investigation of the License Applicant and processing of the License application. License Applicant shall pay the City the full costs and expenses of the investigation based on the fully-loaded hourly rate of the applicable employee or individual performing the investigative services and processing of the License application.

Section 7 – Investigation of Application and Determination if License Application is Full and Complete.

A. Whenever an application for a License has been filed with the Card Room Administrator, the Card Room Administrator shall determine whether the filed application is complete pursuant to this Section 7 of this Chapter. If the Card Room Administrator determines that the filed application is complete, the Card Room Administrator shall promptly refer such application or a copy thereof to the City Manager's office and other departments of the City, and promptly and diligently conduct an investigation to determine if the application is full and complete. Such matters subject to investigation include:

1. A full and complete investigation as to the identity, character, and background of the License Applicant and the License Applicant's partners, officers, directors, management and staff including any partners, officers, directors, management and staff of any parent company, holding company, subsidiary or otherwise that may in any way be affiliated with the License Applicant for the License application, License or Card Room;

2. A full and complete evaluation of the security and law enforcement requirements of the proposed Card Room;

3. A comprehensive evaluation of the License Applicant's financial ability to adequately protect the patrons of the Card Room and the citizens of the community; and

4. A comprehensive evaluation of all public health, welfare and safety matters concerning the proposed Card Room.

B. The Card Room Administrator should determine if the filed application is full and complete or if the City needs to supplement the filed application with additional material within ninety (90) days of receiving the filed application. Within that time period, the Card Room Administrator or any other staff delegated an investigative responsibility by the City Manager may request in writing that the License Applicant provide additional relevant information or data not included in the application. The License Applicant shall submit such requested information within thirty (30) days after such request. Once all of the requested and required documents, records, information, data, or otherwise have been adequately provided, the City shall inform the License Applicant that the application is full and complete and will be considered by the City Council.

Section 8 – Report and Recommendation to City Council on the Full and Complete License Application and Investigation.

A. The City Manager shall prepare and submit a report and recommendation concerning the full and complete application and the results of the investigation conducted pursuant to Section 7.A of this Chapter.

B. The report and recommendation shall be submitted to the City Council no later than sixty (60) days from the date upon which the City Manager has certified the application is full and complete pursuant to Section 7.B of this Chapter.

C. Submission of the report and recommendation by the City Manager shall trigger the notice requirement in Section 9 of this Chapter.

D. In the event that the City Manager does not file the report and recommendation within the time specified in Section 8.B of this Chapter, the City Council may either proceed further without the City Manager's report and recommendation or may extend one (1) time by an additional forty-five (45) days the deadline for the City Manager to submit the report and recommendation to the City Council.

Section 9 – Notice to the Public and Applicant of a Hearing by City Council to Consider Whether to Issue a License.

A. Whenever the City Manager submits a report and recommendation to the City Council on a full and complete License application and investigation pursuant to Section 8 of this Chapter, or in the event the City Manager does not file a report and recommendation and the City Council intends to act upon the application pursuant to Section 8.D of this Chapter, the City shall publish notice of a public hearing concerning its intent to consider whether the License application should be issued at least fifteen (15) days prior to the hearing date in accordance with California Government Code Section 6061. The City shall also provide the License Applicant with notice at least five (5) days prior to the hearing date. Both the notice to the public and to the License Applicant will set forth the time and place of the hearing.

B. At the hearing, the City Council shall take public testimony.

C. At the hearing, the City Council shall vote either to:

1. Approve the application and grant the License applied for therein;
2. Approve the application and grant the License applied for therein with the recommended conditions from the City Manager;
3. Conditionally approve the application and grant the License applied for therein subject to specific conditions in addition to those conditions set forth in the application or recommended by the City Manager; or
4. Deny the application and refuse to grant the License applied for therein pursuant to the grounds set forth in Section 11.A of this Chapter.

D. The decision of the City Council shall be final and conclusive.

Section 10 – Approval of a License Application.

A. If the City Council approves the application, the License Applicant will be required to comply with all of the terms, conditions, and obligations in the application, the License, the provisions of this Chapter, and all other State and federal laws.

B. If the City Council approves the application with conditions not set forth in the application, the License Applicant will be required to comply with the conditions the City Council imposed as an express condition of approval of the application, all of the terms, conditions, and obligations in the application, the License, the provisions of this Chapter and all other State and federal laws.

C. Within ten (10) days of approval of the application, the Card Room Administrator shall provide to the License Applicant a copy of the City's acceptance form, which shall contain any additional conditions imposed by the City Council and which shall state that the License Applicant is aware of and will abide by all conditions imposed by the City Council. Within ten (10) days of receipt of the City's acceptance form, the Card Room Administrator must receive the acceptance form signed by the License Applicant. Upon receipt of the acceptance form signed by the License Applicant, the Card Room Administrator shall issue the License.

Section 11 – Grounds for Denial of an Application.

A. The City Council may deny a License application based on any one or more of the following reasons:

1. The proposed business or activity to be operated violates any federal, State or City law or regulation.

2. The License Applicant, including any shareholder or officer, has been convicted of any crime punishable as a felony (including a plea of no contest) or of any crime of violence, any crime involving fraud, gambling, loan sharking, bookmaking, thievery, bunco, moral turpitude, or any crime involving evasion of taxes, or any other crime of moral turpitude indicating a lack of business integrity or business honesty, whether committed in the State of California or elsewhere, whether denominated as a felony or as a misdemeanor and notwithstanding the passage of time since the conviction.

3. The License Applicant has been credibly identified by any law enforcement agency, legislative body or crime commission as a member of, or an associate of, organized criminal elements.

4. The License Applicant knowingly made any false statement in the filed application or in presenting any other information as part of the application process or investigation.

5. The License Applicant failed to satisfy the City Council as to the source of funds to be invested in the Card Room.

6. The License Applicant does not have the financial capability or business experience to operate a Card Room in a manner that would adequately protect the patrons of the Card Room and the citizens of the community.

7. The License Applicant is presently under indictment or the subject of a criminal complaint for any of the crimes described in Section 11.A.2 of this Chapter.

8. The application failed to present reasonable evidence that there is adequate financing available to pay potential current obligations and provide adequate working capital to finance opening of the proposed Card Room.

9. The failure of any Person named in the application to appear before the City Council after having been requested by the City Council to appear and provide information or answer questions before it.

10. The failure to include in the application an adequate plan for maintaining the security of the Card Room to ensure that all cash reserves and deposits in the Card Room, as well as the employees and patrons of the Card Room, are reasonably safe from theft, robbery, burglary or other crimes.

11. The proposed location of the Card Room in an area other than in the Recreation & Entertainment Overlay District as set forth in Section XI-10-12.07 of the Municipal Code.

12. The Commission has revoked or suspended the License Applicant's State gambling license or has denied the License Applicant's application therefor or denied the application of a shareholder or officer of the License Applicant.

13. Approving the License application is contrary to public interest and the policies of this Chapter.

B. In the resolution denying the application pursuant to Section 11.A of this Chapter, the City Council shall set forth the ground or grounds for its action.

Section 12 – Term, Transfer and Renewal of a Card Room License.

A. The term of a Card Room License shall be twenty-five (25) years from the date on which it was issued.

B. No Card Room License may be transferred except in accordance with this Chapter. Any proposed transfer or assignment of any License, including changes in new shareholder, partners, or ownership interest of the Licensee, shall be considered for all purposes as a new application for a License, and all the provisions of this Chapter applicable to new and original applications shall apply.

C. Not more than one (1) year nor less than six (6) months prior to the expiration of a License, Licensee may file with the Card Room Administrator an application for renewal of the License and pay the applicable renewal fee. In addition to the information and materials required in Section 6 of this Chapter, the Licensee shall provide a statement about its historical compliance with this Chapter, the License, and State or federal laws. In order to deny an application for renewal, the City Council must find that the Licensee is in violation of the terms, conditions, or obligations of its License or in violation of this Chapter or State or federal laws when it considers the application for renewal. In the event that the City Council grants the application for renewal, the process for acceptance of the new License described in Section 10.C of this Chapter shall be complied with.

Section 13 – Surrender, Suspension, Revocation or Divestiture of a Card Room License.

A. A Licensee may surrender its License by written notice to the City Manager.

B. Any License issued under this Chapter may be suspended or revoked by the City Council for violation of any of the provisions of the License, this Chapter, or any provisions of this Municipal Code or of a federal or State law. The holder of a License shall be given prompt notice of revocation or suspension of said License. Said notice shall fix a time and place, not less than five (5) nor more than thirty (30) days after service thereof, at which time the holder of said License may appear before the City Council and be granted a hearing upon the merits of said suspension or revocation.

C. Any Licensee or Owner, including shareholders and officers, who is convicted (or pled no contest) of a misdemeanor involving moral turpitude or a felony shall immediately notify the Card Room Administrator and divest himself/herself of such ownership interest within thirty (30) days after the service of a notice of divestiture by the City. Upon receipt of a notice of divestiture, the Licensee or Owner may request in writing a hearing before the City Council to appeal the notice and request a waiver of the divestiture requirement. A hearing shall be scheduled before the City Council within thirty (30) days after the receipt of such request. Upon the conclusion of the hearing, the City Council may disregard the conviction or take other action if it is determined by the City Council that mitigating circumstances exist and that the public interest will be adequately protected. The decision of the City Council shall be final and conclusive. Failure to comply with the provisions of this Section 13 shall constitute a misdemeanor, punishable by a fine or imprisonment. Each day of noncompliance shall constitute a separate and complete offense. In addition, the City Attorney may invoke any appropriate civil remedies available to enforce compliance. No Person required pursuant hereto to divest his/her interest in a Card Room may transfer the same to his/her spouse, children, siblings, or parents or to his/her spouse's children, siblings or parents, or any other Person.

Section 14 – Where a Card Room May be Located.

A Card Room may only be located in the Recreation & Entertainment Overlay District as set forth in Section XI-10-12.07 of the Municipal Code. The location of the Card Room License shall be site specific and any changes to the approved location specified in the License shall require an amendment to the License approved by the City Council.

Section 15 – Hours of Operation.

A Card Room is permitted to operate twenty-four (24) hours each day of the year at the specific location authorized in the License. Licensee shall have their business hours clearly posted at all entrances to give law enforcement and patrons notice of the hours during which the licensed Card Room will remain open for business.

Section 16 – Legal Games.

Any Game permitted by law in the State of California may be played in a Card Room licensed under this Chapter.

Section 17 – Wagering Limits.

There shall be no limit on the size of any bet except as may be determined by the Licensee and as permitted under State law.

Section 18 – Maximum Number of Tables.

A. There shall be no more than one hundred and fifteen (115) licensed Gambling Tables in the City.

B. The maximum number of Gambling Tables permitted in any one (1) Card Room shall be one hundred and fifteen (115).

Section 19 – Removal of Persons and Exclusion of Undesirable Persons from Card Room Premises.

A. Removal

1. A Licensee may remove any Person from, in, on or about any Licensed Card Room premises if that Person:

a. Appears to or otherwise engages or has engaged in disorderly conduct, as defined in Section 647 of the California Penal Code;

b. Appears to or otherwise interferes or has interfered with a lawful gambling operation;

c. Appears to or otherwise solicits or has solicited or engages or has engaged in any act of prostitution;

d. Appears to or otherwise is or has been under the influence of any intoxicating liquor or drug;

e. Appears to or otherwise has been mentally incapacitated to the extent that such Person cannot care for himself/herself or control his/her actions;

f. Appears to or otherwise is or has been overly loud, panhandles, is boisterous, or is otherwise disturbing or offensive to other Persons in, on or about the Card Room;

g. Appears to or otherwise commits or has committed any public offense;

h. Is, was or appears to be a Person whose presence is inimical to the interests of the Licensee or the business of the Card Room, as determined by Licensee in its reasonable discretion;

i. Is a Person, whose name appears on the list of Persons the Commission has determined are to be excluded or ejected from any gaming establishment pursuant to Business and Professions Code Section 19844 and any regulation adopted pursuant thereto;

j. Has requested, pursuant to Section 12464 of Title IV of the California Code of Regulations, to be self-excluded from the Card Room; or

k. Has requested, pursuant to Section 12463 of Title IV of the California Code of Regulations, that their access to the Card Room be self-limited and the Licensee, in its reasonable discretion, determines that removal of the Person is required to comply with that request.

2. Except as provided in Section 19.B of this Chapter, removal of a Person from the premises of a Card Room pursuant to Section 19 of this Chapter carries no presumption that the Person is within the class of Persons defined as "undesirable persons" in Section 19.B.1 of this Chapter.

B. Exclusion

1. A Licensee may exclude from all or any portion of the premises of a Card Room Premises any Person who is determined to be "undesirable" within the meaning of this Section. For the purposes of this Section, the following Persons shall be deemed to be "undesirable:"

   a. Persons who have engaged in any act of, or who have been convicted of bookmaking or illegal wagering;

   b. Persons who appeared to or otherwise have engaged in any act prohibited in Section 19.A of this Chapter;

   c. Persons who have been convicted of or pled no contest to any violation of Section 337a of the California Penal Code or any other felony, misdemeanor or violation relating to the act of cheating in, on or about the premises of a Card Room whether or not convicted within or without the State;

   d. Persons whose presence is inimical to the interests of the Licensee or the business of the Card Room, as determined by Licensee in its reasonable discretion; or

   e. Persons who have requested, pursuant to Section 12463 of Title IV of the California Code of Regulations, that their access to the Card Room be self-limited and whom the Licensee, in its reasonable discretion, determines must be excluded in order to comply with that request.

2. For purposes of this Section:

   a. "Bookmaking" means and includes, but is not limited to, any act prohibited by Section 337a of the California Penal Code, or by Section 19595 of the California Business and Professions Code;

   b. "Illegal wagering" includes, but is not limited to, any act prohibited by Sections 319 through 336, inclusive, of the California Penal Code.

3. Licensee shall inform any Person excluded from the premises of a Card Room of the reason for the exclusion and shall notify such Person of the provisions of Section 19 of this Chapter. Notification of an order of exclusion issued by a Licensee shall be made by personal delivery to the Person excluded. A copy of Section 19 of this Chapter shall be attached to such notification.

4. Licensee shall immediately notify the Milpitas Police Department of the name of the Person so excluded and the reason for the exclusion, and provide such other information required by the Milpitas Police department.

5. No Person named in an order of exclusion shall fail to comply with the terms of such order. An order of exclusion shall be enforceable by Licensee by any lawful means, including a civil injunction proceeding or other appropriate remedy, in the Santa Clara County Superior Court or other court of competent jurisdiction, or by local law enforcement.

6. A Licensee may also exclude from all or any portion of the licensed Card Room premises any Person who:

a. Is a Person, whose name appears on the list of Persons the Commission has determined are to be excluded or ejected from any gaming establishment pursuant to Business and Professions Code Section 19844 and any regulation adopted pursuant thereto; or

b. Has requested, pursuant to Section 12464 of Title IV of the California Code of Regulations, to be self-excluded from the Card Room.

c. Sections 19.B.3, 19.B.4 and 19.B.5 of this Chapter shall not apply to the exclusion of any Person pursuant to this Section 19.B.6 of this Chapter.

C. Indemnification

Licensee shall protect, indemnify, defend and hold City, its City Council members, officers, employees, and agents harmless from and against any and all liability, loss, cost, demand, and obligation arising out of or relating from any injury or loss caused directly or indirectly by any cause whatsoever in connection with or incidental to Licensee removal or exclusion of any Person pursuant to this Section 19 of this Chapter.

Section 20 – Protection of Minors.

No Licensee or holder of an employee work permit shall knowingly or willingly permit or allow any Person under the age of eighteen (18) years to enter upon the premises of a Card Room premises, or any part thereof, nor shall any Licensee knowingly or willingly permit or allow any Person under the age of twenty-one (21) to play any of the Games authorized by the License. Notwithstanding, Persons under the age of twenty-one (21) shall be permitted in the following areas:

A. An area, physically separated from any gambling area, for the exclusive purpose of dining. For purposes of this Section, any place where food or beverages are dispensed primarily by vending machines shall not constitute a place for dining.

B. Restrooms.

C. A supervised room that is physically separated from any gambling area and used exclusively for the purpose of entertainment or recreation.

Section 21 – Reporting of Criminal Activity and 911 Calls

A. Owner, Licensee or employee shall immediately make a report to the Milpitas Police Department upon discovery of any conduct which raises a reasonable suspicion that a misdemeanor or felony crime has been committed on the Card Room premises. In addition, Owner, Licensee or employee shall report any conduct which raises a reasonable suspicion of a violation of this Chapter to the Card Room Administrator within four (4) hours of its discovery.

B. Licensee shall maintain a chronological criminal activity log and such other reports as the Card Room Administrator may determine are needed in order to effectively assist the Milpitas Police Department to carry out its law enforcement function and protect the public health, safety and welfare.

Section 22 – Employee Work Permits.

A. A Person who desires to be employed by a Card Room in the City shall obtain an employee work permit. It is unlawful for any licensed Card Room to employ any Person who does not have an employee work permit issued by the Chief of Police. The Chief of Police shall maintain a list of all current and past possessors of an employee work permit.

B. Each and every independent contractor, vendor, or other third Person who performs work or services at the Card Room premises shall be approved by the Chief of Police prior to commencing any work or services at the Card Room premises. The Chief of Police, in his/her reasonable discretion, may require

the independent contractor, vendor, or other third Person to submit an employee work permit application and follow the process set forth in this Section 22 of this Chapter and such Person or Persons together with Persons identified in Section 22.A above, shall be designated Employee Applicants for purposes of this Section.

C. Employee work permits may not be transferred or assigned in any manner.

D. Any Person wishing to obtain an employee work permit from the City shall file an application with the Chief of Police. The Chief of Police shall process and review all applications for employee work permits in accordance with such rules and regulations as may be promulgated by the City in accordance with this Chapter. The application shall be completed and the Employee Applicant will be required to provide photographs and fingerprints, in addition to such other information as the application may require. The investigation and permitting fee for each prospective employee shall be determined and approved by the City Council as part of the City's Schedule of Fees. The Licensee may reimburse any employee work permit holder for the amount of the investigation and permitting fee.

E. The Chief of Police shall immediately notify the Employee Applicant, in writing, if the application for an employee work permit is approved or denied. For a minimum of one (1) year from the revocation or denial of an employee work permit, the Employee Applicant or former Permittee shall not reapply for an employee work permit absent a change in facts showing good cause.

F. The Chief of Police shall, on behalf of the City, promptly upon receipt of such application, submit the completed application to the California State Department of Justice. The State Department of Justice shall provide summary criminal history information to the Chief of Police for the purpose of issuing work permits. Upon the receipt by the Chief of Police of such criminal history information, provided the criminal history information does not reveal any grounds set forth in Section 22.G of this Chapter for denial of an application and the application does not require any additional investigation as determined by the Chief of Police, the Chief of Police shall approve the application within thirty (30) days.

G. The Chief of Police may deny, suspend, or revoke an employee work permit, provided that such action is based on one or more of the following reasons:

1. The Employee Applicant has made any false statements in the application or any other information presented as part of the application, or the Employee Applicant has failed to disclose, misstated or otherwise misled the City with respect to any fact contained in any application for a work permit;

2. The Employee Applicant is less than twenty-one (21) years of age;

3. The Employee Applicant has been convicted of, or failed to disclose a prior conviction of or pled no contest to, a felony or, in the case of a conviction by a federal court or a court in another state, a crime that would constitute a felony if committed in California;

4. The Employee Applicant has been convicted of or pled no contest to, or failed to disclose a prior conviction of any misdemeanor involving dishonesty or moral turpitude within the ten-year period immediately preceding the submission of an application, unless the Employee Applicant has been granted relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code; provided, however, that the granting of relief pursuant to these sections shall not constitute a limitation on the discretion of the City;

5. Association of the Employee Applicant or employee with criminal profiteering activity or organized crimes, as defined by Section 186.2 of the Penal Code;

6. The Employee Applicant has committed, attempted, or conspired to do any acts prohibited under the Gambling Control Act;

7. The Employee Applicant has committed, attempted, or conspired to commit, any embezzlement or larceny against a gambling Licensee or upon the premises of a Gambling Establishment;

8. The Employee Applicant has been convicted in any jurisdiction of, or failed to disclose a prior conviction of, any offense involving or relating to gambling;

9. The Employee Applicant has been refused, or failed to disclose the prior refusal of, the issuance of any license, permit, or approval to engage in or be involved with gambling or pari-mutuel wagering in any jurisdiction, or had the license, permit, or approval revoked or suspended;

10. The Employee Applicant has been prohibited under color of governmental authority, or failed to disclose a prior prohibition, from being present upon the premises of any licensed Gambling Establishment where pari-mutuel wagering is conducted, for any reason relating to improper gambling activities or any illegal act; or

11. Any applicable federal, State or City law or regulation requires that the application be denied.

H. The Chief of Police is authorized to issue temporary or conditional work permit pending a full investigation and processing of an employee work permit application, provided such temporary or conditional work permit may be revoked at any time based on any of the factors set forth in Section 22.G of this Chapter. A revocation of the temporary or conditional work permit shall be considered a denial of the employee work permit application and the Employee Applicant may appeal such decision as provided in Section 22 of this Chapter.

I. If an application is denied by the Chief of Police, the Employee Applicant may appeal such denial by written notice to the Card Room Administrator within ten (10) calendar days of the denial decision. The Card Room Administrator shall cause a hearing to be held before a hearing officer within thirty (30) calendar days of receipt of such written notice requesting an appeal. A reasonable fee may be charged for the filing of a request for an appeal in accordance with the City's Schedule of Fees approved by the City Council. The hearing officer may be an employee of the City provided the employee was not involved in the decision to deny the work permit application and will serve as an independent, neutral hearing officer. The hearing officer shall schedule and conduct such hearing in accordance with the rules and regulations promulgated in Chapter 20 of Title I of the Municipal Code. At the conclusion of such hearing, the hearing officer shall issue a decision in writing within fifteen (15) calendar days which shall reflect either the hearing officer's approval, conditional approval, or denial of the application. The hearing officer's decision shall be final and conclusive.

J. The Chief of Police may issue an order summarily suspending or revoking a Person's work permit upon a finding that the suspension is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The order is effective when served upon the holder of the permit. An order of summary suspension or revocation shall state the specific facts upon which the finding of necessity for the suspension or revocation is based. An order of summary suspension or revocation shall remain in effect for no more than thirty (30) calendar days, or until a final decision is rendered by a hearing officer appointed by the Card Room Administrator, whichever occurs last.

K. In the event that a work permit is suspended or revoked, the holder of the permit may appeal the determination by submitting a written request to the Card Room Administrator no later than ten (10) calendar days from the date the notice was served upon the holder of the permit. A reasonable fee may be charged for the filing of a request for an appeal in accordance with the City's Schedule of Fees approved by the City Council. Upon receipt of the written request, the Card Room Administrator shall cause a hearing to be held before a hearing officer within thirty (30) calendar days in accordance with the procedures set forth in Section 22.I of this Chapter. Failure to submit a written request for a hearing within the ten (10) calendar days shall be deemed a waiver of the right of appeal. Except for an order summarily suspending or revoking a Person's work permit as described in Section 22.J of this Chapter, during the time period following the date the notice of suspension or revocation was issued and any time period prior to the scheduled appeal hearing date, any proposed action, including termination of the

employee or any reduction in employee compensation shall be stayed pending final determination of the hearing officer. Upon the final decision or order of the hearing officer suspending or revoking the permit, the holder of the permit may petition the Superior Court for the County of Santa Clara for judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

L. When the application for an employee work permit is approved or conditionally approved, whether by the Chief of Police or the hearing officer, the City shall promptly issue an employee work permit to such employee and shall promptly so advise the Card Room employer in writing. Once issued, the employee work permit shall remain valid for a period of up to five (5) years or until it is revoked, suspended, or surrendered. The employee shall apply with the Chief of Police for a renewal of the employee work permit at least sixty (60) days prior to expiration of the employee work permit and pay the applicable renewal fee as approved by the City Council as part of the City's Schedule of Fees.

M. The employee shall be required to visibly carry the employee work permit on his or her Person at all times while working on the licensed Card Room premises. The employee work permit, or such other evidence of employment of each employee by the Card Room, shall be displayed on the Person of such employee in accordance with the rules established by the Card Room employer.

N. When a Licensee terminates the employment of an employee for any reason whatsoever, the holder of the employee work permit shall immediately surrender his or her employee work permit to the Licensee who shall then promptly remit the same to the City.

O. When all appeals of the denial, suspension, or revocation of an employee work permit have concluded, upon final and conclusive action by the hearing officer, or in the absence of any appeal, the holder of the employee work permit shall immediately surrender his or her employee work permit to the Licensee who shall then remit the same to the City. Upon the Licensee being advised in writing of the conclusion of such appeals upon such final and conclusive action of the hearing officer, or in the absence of any appeal, the Licensee shall immediately cease to employ the Employee Applicant at the Card Room.

P. All information received by the City by means of an application for an employee work permit shall be treated as confidential and shall be accessible only to the Card Room Administrator and/or designee, the Police Department, the City Attorney, and, if determined appropriate by the Chief of Police or City Attorney, to the Permittee or Employee Applicant, or their attorney, unless otherwise authorized by law.

Q. Licensee shall keep on file with the Milpitas Police Department and on the Card Room premises, as to each employee of the Card Room, a comprehensive employee list and the following current information:

1. Residence address;
2. Current occupation and employment;
3. Age, date of birth, height, weight, color of hair and eyes;
4. Driver's license and social security numbers;
5. A current full face photo of each Owner, officer, employee, or agent of the Card Room.

The information kept on file at the Card Room Premises shall be made available on demand for viewing and copying by the Card Room Administrator or Milpitas Police Department.

Section 23 – Designation of Agent.

A Licensee shall designate an agent or agents who shall be authorized to act for Licensee with the City.

Section 24 – Administration by the City.

A. The City Manager shall designate a Card Room Administrator who will manage, coordinate, implement, and enforce all of the functions, powers and duties as set forth in this Chapter. The Card Room Administrator shall report to the City Manager or Police Chief, as the City Manager deems appropriate.

B. In conjunction with the City's departments, the Card Room Administrator shall:

1. Coordinate the interaction of all of the City's department administrators with the Licensee, including but not limited to the City Manager, the City Attorney, the head of the Department of Finance and the Chief of Police.

2. Investigate the qualifications of License Applicants and prescribed all forms to be used for the investigation of the qualifications of License Applicants.

3. Conduct investigations to:

   a. Determine whether there has been any violation of this Chapter or of State law.

   b. Determine any facts, conditions, practices, or matters necessary to the enforcement of this Chapter.

   c. Aid in promulgating regulations.

4. Conduct audits and reviews of Card Room operations as described in this Chapter to assure compliance with the requirements of this Chapter and conduct financial audits and reviews to assure that revenues are accurately recorded.

5. In conjunction with the Chief of Police, investigate and take any actions authorized under this Chapter regarding all work permit cases affecting the granting, renewal, suspension, revocation, and addition of limitations and conditions to any work permit.

6. Investigate and take any actions authorized under this Chapter concerning regulatory action against Card Room Licensees and work Permittees.

7. Collect all fees imposed by this Chapter.

8. Perform such other functions and duties and hold such powers as are specifically conferred elsewhere in this Chapter.

9. Perform such other functions related to the administration of this Chapter as he or she finds necessary or appropriate.

C. Notwithstanding the provisions of Section 24.B of this Chapter, the Card Room Administrator is not authorized to conduct criminal investigations. Criminal investigations shall be conducted separately by the Police Department and not by the Card Room Administrator.

Section 25 – Regulations.

A. The Card Room Administrator is authorized to promulgate all regulations necessary to implement the requirements and fulfill the policies of this Chapter, including, but not limited to the following subjects:

1. Prescribe License and work permit application and renewal application forms and the scope of information required for licensing and permitting, including, but not limited to fingerprints, photographs, releases for criminal arrest, conviction, and other criminal history information, releases for financial, credit, business, and employment history, and certification of applicant responses under penalty of perjury.

2. Procedures for investigating all applicants for Licenses and work permits.

3. Procedures for Card Rooms to accept negotiable instruments from patrons.

4. Procedures for regulatory action on Licenses and permits, and for suspension, revocation, renewal and setting of limitations and conditions on work permits.

5. Procedures for amendments to Licenses and permits.

6. Minimum security and surveillance controls by Card Rooms.

7. Minimum internal controls for the effective control of internal Card Room fiscal and operational matters including, but not limited to the safeguarding of assets and revenues and maintenance of reliable records, accounts, and operations.

8. Periodic financial and compliance reporting to the Card Room Administrator, including, but not limited to an annual audit prepared by an independent certified public accountant or firm, attesting to the financial condition of the Licensee, to the compliance of the Licensee with the requirements of this Chapter, and to the compliance of the Licensee with the requirements of the Card Room tax under this Chapter and its ability to accurately record and calculate the Card Room tax.

9. Methods to assess and collect fees, late penalties, and interest.

10. Criteria and procedures for reporting criminal or potential illegal activity on Card Room premises or connected with the operation of a Card Room to the police department.

11. Define and limit areas of operation of the Card Room and the rules of the controlled Games that Card Rooms are permitted to play under this Chapter.

B. All the regulations promulgated by the Card Room Administrator, provisional or final, shall have the force and effect of law.

Section 26 – Visibility and Inspection of Premises.

All rooms in which Games are played shall be accessible and visible to all patrons. Licensee shall permit the Card Room Administrator or any City official authorized by the Card Room Administrator to inspect the entire premises of the Card Room, including but not limited to Game areas, administrative areas, security areas, security and surveillance equipment, cash counting rooms and vaults at any time without a search warrant.

Section 27 – Access to Records.

The Licensee shall allow the Card Room Administrator or his/her designee unrestricted access to inspect, copy, or otherwise remove all books, records, or security and surveillance equipment, video or photographs of the Card Room. Certain books and records are confidential and the contents thereof shall not become known except to the Persons charged by law with the administration of the provisions of this Chapter or pursuant to the order of any court of competent jurisdiction. All information obtained pursuant to this Chapter, or any statement or other information filed by Licensee, shall be treated as confidential and shall not be subject to public inspection, unless otherwise authorized or required by law. Notwithstanding, such information may be used in connection with the enforcement of this Chapter.

Section 28 – Patron Safety and Security Plan.

Licensee shall provide and maintain security on the Card Room premises including the parking area. Licensee shall employ a professional security staff to monitor the activities on the Card Room premises and take all reasonable steps necessary to assure that employees, patrons, and visitors are not involved in criminal activity or victims of criminal activity.

The Card Room Administrator and/or Chief of Police shall have the right to require amendments to the patron safety and security plan approved as part of the License application at any time that are, in his or her reasonable judgment, necessary to protect the public peace, health, safety, and welfare.

Section 29 – Card Room Tax.

A. Card Room Tax.

1. This Section 29.A is enacted solely to raise revenue for municipal purposes and is not intended for regulation. Each Licensee shall pay to the City on a monthly basis a Card Room tax, which shall be at the rate of ten and one-half percent (10.5%) of the total monthly Gross Revenue for the preceding month.

2. Each Licensee shall file with Card Room Administrator before the tenth day of each calendar month a report, on a form approved by the Card Room Administrator, under oath, showing the true and correct amount of Gross Revenue for the preceding calendar month. The monthly Card Room tax required under this Section 29.A, shall be due and payable on the tenth day of each and every month following the calculation of the total monthly Gross Revenue for the previous month. For example, and by way of illustration only, the Card Room tax calculated from the monthly Gross Revenue for the month of June would be due and payable on July 10th and delinquent on July 31st.

3. The Card Room Administrator may audit the Licensee's Gross Revenue as provided in Section 30 of this Chapter to determine whether the Licensee has accurately reported its Gross Revenue in accordance with generally accepted accounting standards and otherwise complied with the provisions of this subsection. If the Card Room Administrator determines that the Licensee has underpaid the Card Room tax imposed by this Section 29.A.3, she/he shall make a demand for the amount of the underpayment together with penalty of two percent (2%) and interest at the underpayment rate for the period from the date the tax was required to be paid to the date on which the underpaid amount was paid. In the case of an underpayment of greater than ten percent (10%), there shall also be imposed and added to the amount demanded a penalty in an amount equal to five percent (5%) of the underpayment, unless it is shown that such underpayment is due to reasonable cause as solely determined by the Card Room Administrator. The Card Room Administrator shall make any demand under this Section 29.A.3 within three (3) years of the date the Card Room tax was required to be paid. For the purposes of this paragraph, the "underpayment rate" shall mean one-month LIBOR (London Interbank Offered Rate) as reported by the Wall Street Journal.

Section 30 – Audits.

A. The Licensee shall submit to the Card Room Administrator a weekly report of the Gross Revenue of the Card Room. The weekly report outlining the Gross Revenue for the prior week shall be submitted to the Card Room Administrator before 5:00 p.m. of every Monday.

B. The Licensee shall submit to the Card Room Administrator an annual financial statement audit. The financial statement shall be conducted by an independent certified public accountant licensed to practice in the State of California and shall be acceptable to the Card Room Administrator. The financial statement shall be submitted to the Card Room Administrator within seventy-five (75) days of the end of every calendar year.

C. The Card Room Administrator may perform such financial compliance reviews and oversight of each Licensee as the Card Room Administrator considers necessary in order to assure that each Licensee is in full compliance with the requirements of this Chapter. The Card Room Administrator is authorized to contract for certified public accountants or other professionals that the Card Room Administrator considers necessary in order to conduct any independent audit or review or any compliance audit or review of Licensee.

D. The Card Room Administrator has the right to review and approve any changes to the Licensee accounting and internal control plan approved with the License application before such changes are implemented. The Card Room Administrator shall have the right to require amendments to the accounting and internal control plan at any time that are, in his or her reasonable judgment, necessary to protect the public peace, health, safety, and welfare.

E. All weekly reports, annual financial statements, or documents submitted, provided to or obtained by the Card Room Administrator or City pursuant to this Section 30 of this Chapter are proprietary information and shall remain confidential and not to be disclosed to any Person, unless otherwise required by law. In the event a request is made from a third party for any information set forth in this Section or for any other information provided on a confidential basis to the City by the Licensee, the City will provide Licensee with reasonable and adequate notice to seek a protection from disclosure by a court of competent jurisdiction.

Section 31 – Nondiscrimination—Compliance with Laws and Regulations.

A. The Licensee shall not unlawfully discriminate nor permit any unlawful discrimination in connection with the operation of the Card Room, including, but not limited to any unlawful discrimination based upon race, sex, marital status, age, color, creed, religion, national origin or ancestry.

B. The Licensee shall use its best efforts to employ as many Persons as reasonably possible who live within the City, who reflect the demographic makeup of the City, and who otherwise satisfy the employment requirements of the Card Room. The Licensee may request the City to use City facilities to obtain employees and shall advertise in publications that are circulated in the general area of the Licensee's location.

C. The Licensee will from time to time, upon request by the City, furnish to the City reasonable data concerning the nature of the efforts by the Licensee to otherwise comply with this Section 31.

Section 32 – Amendments.

A. The People of the City reserve the right and power to amend any and all provisions of this Chapter. Any amendment to this Chapter may not violate any provision of State law or the final judgment of a court of competent jurisdiction.

B. Subject to the exceptions in this Section 32.B, the City Council may, without a vote of the electorate, amend any of the provisions of this Chapter.

1. The City Council may not limit without the vote of the electorate:

   a. The types of Games in Section 16 of this Chapter, or

   b. The limits on wagers in Section 17 of this Chapter.

2. The City Council may without the vote of the electorate:

   a. Increase the number of tables that may be offered in a Card Room or throughout the City as set forth in Section 18 of this Chapter. Any increase in the number of tables must be consistent with State law. The City Council has no authority to decrease the number of tables under that Section without the vote of the electorate.

Section 33 – Prohibited Gambling.

A. Except as provided in this Chapter, no Person shall deal, play, carry on, open, cause to be opened, or conduct any Game prohibited by State or federal law.

B. It is unlawful for any Person, firm, corporation or association, owning, leasing, managing, controlling or having any interest in any property or premises lying within the City to allow the operation of any Game prohibited by State or federal law on such property or premises.

Section 34 – Responsible Gambling Program for Employees.

A. Each Licensee shall provide to its employees a responsible gambling program that will include, at a minimum, the following elements:

1. An employee assistance program;

2. Mandatory referral of employees who appear to be at risk for compulsive gambling; and

3. Provision of literature to employees on problem gambling and a list of referrals to agencies in the San Francisco Bay Area with programs for problem gamblers.

B. Each Licensee shall provide the Card Room Administrator with an annual plan for a responsible gambling program that includes the program elements listed in this Section 34 of this Chapter.

C. No employee of a Card Room Licensee, with the exception of a proposition player, shall play any permissible Game during the employee's work hours, including any paid or unpaid breaks in the employee's work hours.

D. No Licensee shall allow, permit, or suffer any employee of the Licensee, with the exception of proposition player, to play any permissible Game during the employee's work hours, including any paid or unpaid breaks in the employee's work hours.

E. Each Licensee is encouraged to undertake further efforts beyond the minimum responsible gambling program required by this Chapter.

Section 35 – Responsible Gambling Program for Patrons.

A. Each Licensee shall make literature on problem or compulsive gambling easily available in locations visible to patrons in the Card Room.

B. If literature on problem or compulsive gambling is reasonably available in English, Spanish, Vietnamese, Tagalog, Mandarin and/or Cantonese-Chinese, then the Licensee shall be required to make such literature easily available.

C. Each Licensee shall participate in any State-required responsible gambling program for patrons and make all required payments to the State to support such programs.

Section 36 – Patron Deposit Accounts and Credit

A. No Licensee, employee, funded player or otherwise shall:

1. Provide any loan or credit to any patron including offering any loan or credit involving currency, checks or other negotiable instruments, or any other thing of value or any representation of value.

Section 37 – Enforcement.

Violation of any provision of this Chapter may be enforced in any manner authorized by this Chapter, the Municipal Code, or in law or equity.

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE

This Chapter, and all of the provisions thereof, shall become effective as set forth in Section 1, Chapter 8 of Title III of the Ordinance.