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MEMORANDUM

TO: Carson City Board of Supervisors
FROM: Dan Yu, Deputy District Attorney
DATE: November 30, 2016
RE: *Request for approval to transfer gaming license from Nevada Treasure Chest, dba Carson Horseshoe Club, to Silver Bullet of Nevada, LLC.*

BACKGROUND

This memorandum is intended to provide to the Board of Supervisors (“Board”) an analysis relating to the transferability of gaming licenses in Carson City. Specifically, this memorandum concerns a request from Silver Bullet of Nevada, LLC (“Applicant”) to receive ownership via transfer of an existing gaming license currently held by Nevada Treasure Chest, dba Carson Horseshoe Club and addresses whether: (1) Nevada Treasure Chest has a gaming license in “good standing” under the provisions of the Carson City Municipal Code of Ordinances (CCMC); and (2) the Board may approve the Applicant’s request to transfer ownership of the gaming license without also requiring as a condition the Applicant to maintain guest rooms as part of the property.

This memorandum incorporates by reference the Staff Report and related attachments that were submitted by the Planning Division of the Carson City Community Development Department as supporting material to the agenda item under which this matter will be heard by the Board on December 1, 2016.

DISCUSSION

Chapter 4.14 of Title 4 of CCMC establishes various provisions governing the issuance of gaming licenses and regulating the operation of gaming establishments located in Carson City, including provisions relating to the transferability of existing licenses. CCMC 4.14.050 requires the majority vote of the Board to approve the transfer of a gaming license and provides, in relevant part, the following:

1. A license issued to any person to conduct or operate a gambling game of gambling device under the provisions of this chapter on any premises in Carson

City may not be used for any other premises or for any other part of the building containing the licensed premises, without the consent of the majority vote of the board.

2. No license granted under the provisions of this chapter may be transferred by the licensee to any other person except upon application made to the sheriff, and which application must be approved by a majority vote of the board, who shall have the power and authority to grant the transfer or deny the request and require that a new and original application be made by the proposed transferee.

In addition to Board approval, the issuance of a gaming license in Carson City is further limited by the provisions of CCMC 4.14.045(1) which provide that:

No Carson City gaming license shall be granted to or maintained by the holder of an unrestricted gaming license issued by the State of Nevada unless such licensee maintains on the same parcel of property no fewer than one hundred (100) guest rooms which comply with the requirements of Chapter 447 of the Nevada Revised Statutes as it may from time to time be amended, and which rooms shall be held out to the public as and for transient nightly occupancy.

However, CCMC 4.14.045 also establishes certain exemptions from the requirement of having to maintain guest rooms, including the exemption set forth in CCMC 4.14.045(5) which concerns the transfer of a gaming license:

The provisions of subsection 1 do not apply to the transfer of any unrestricted gaming license issued by the State of Nevada, nor the transfer of any gaming license issued by Carson City, providing that such license is in good standing at the time of the transfer.

(Emphasis added). Those exemptions established in CCMC 4.14.045, including the exemption pertaining to the transfer of a gaming license as described in CCMC 4.14.045(5), do not apply if there has been a discontinuation of unrestricted gaming for twenty-four consecutive months. As provided in CCMC 4.14.046:

If gaming operations at any location for unrestricted gaming under the provisions of this code are discontinued for twenty-four (24) consecutive months, the exemptions set forth in Section 4.14.045 do not apply unless the licensee demonstrates that the discontinuance is due to the demolition and reconstruction, remodeling or expansion of the structure in which the licensed gaming activity took place. The licensee must have obtained a Carson City building permit for any such work and in any event has the burden of demonstrating that the discontinuance is for the purposes set forth herein. Any

such demolition and reconstruction, remodeling or expansion must be diligently pursued and completed in a reasonably timely manner.

(Emphasis added). Finally, CCMC 4.14.060 requires “[e]very license issued under the provision of this chapter shall be for a period of three (3) months and shall expire at the end of the quarterly period in which issued, namely, on March 31st, June 30th, September 30th, and December 31st.” The required fees are established in CCMC 4.14.070.

Based on information provided to this office and as discussed in the Staff Report, the Carson Horseshoe Club has been operating as a gaming establishment in Carson City since as early as 1975, but the last payment made pursuant to CCMC 4.14.060 was for the final quarter in 2014, carrying the payment through December 31. The Carson Horseshoe Club has never had guest rooms because it was established before the effective date of CCMC 4.14.045(1) requiring a minimum of 100 guest rooms as part of a gaming establishment. Also based on information provided to this office, the Carson Horseshoe Club has not operated since January 19, 2015. Again, based on information provided to this office, in October of this year the Applicant made a quarterly payment pursuant to CCMC 4.14.060 purporting to do business as the Carson Horseshoe Club.

1. Is the Carson Horseshoe Club’s license in “good standing?”

When considering the proper interpretation of a statute, courts in Nevada are guided by several rules of statutory construction which have been established by the Nevada Supreme Court. The controlling factor in statutory interpretation is the intent of the legislative body. County of Clark ex rel. Univ. Med. Ctr. v. Upchurch, 114 Nev. 749, 753 (1998). As a general rule of statutory construction, a court will presume that the plain meaning of statutory language reflects a full and complete statement of the legislative body’s intent. Villanueva v. State, 117 Nev. 664, 669 (2001). Therefore, when the plain meaning of statutory language is clear and unambiguous on its face, a court generally will apply the plain meaning of the language and will not search for any meaning beyond the language of the statute itself. Erwin v. State, 111 Nev. 1535, 1538-39 (1995). These same rules of statutory construction apply to the construction of an ordinance. Carson City v. Red Arrow Garage, 47 Nev. 473, 484 (1924); *see also*, Rollo v. Tempe, 586 P.2d 1285, 1286 (Ariz. 1978) (“City charters and ordinances are to be construed by the same rules and principles which govern the construction of statutes.”). Accordingly, when interpreting an ordinance, the plain meaning of the ordinance language will be applied if it is clear and unambiguous on its face, and there should be no search for any additional meaning beyond the language itself.

Applying these rules of statutory construction to the relevant provisions of CCMC, the plain meaning of CCMC 4.14.045 is that the provision in subsection 1 of the ordinance which requires a licensee to maintain at least 100 guest rooms “on the same parcel of property” where the gaming establishment is located does not apply to “the transfer of any unrestricted gaming license issued by the State of Nevada, nor the transfer of any gaming license issued by Carson City, providing that such license is in good standing at the time of the transfer.” (emphasis added). But that exemption is removed if, pursuant to CCMC 4.14.046, “gaming operations at any location for unrestricted gaming under the provisions of

this code are discontinued for twenty-four (24) consecutive months ... unless the licensee demonstrates that the discontinuance is due to the demolition and reconstruction, remodeling or expansion of the structure in which the licensed gaming activity took place.”

First, although the term “good standing” is not defined by Title 4 of CCMC, another rule of statutory construction employed by Nevada courts is to look to the entire statute or related statutes to give meaning to an undefined word or term. *See Sports Info., Inc. v. Novotnak*, 114 Nev. 336, 341 (1998). By looking to other ordinances in Title 4 of CCMC and considering, as a whole, the regulatory scheme of issuing gaming licenses in Carson City, it is reasonably clear that a licensee is in “good standing” if the licensee conducts its operations in accordance with Title 4 and maintains its license by remitting required payments to Carson City, including the quarterly payments required by CCMC 4.14.060.

As noted above, CCMC 4.14.060 states that all licenses issued under the provisions of Title 4 of CCMC expire at the end of each quarter, but the ordinance is silent with regard to: (1) the exact date by which a quarterly payment must be made; (2) late payments; and (3) the status of a license after a payment has been made past those quarter-end dates on which a license expires. Although it could be argued that a license, once expired, cannot be reinstated or renewed but must instead be issued as a new license, such a reading would violate another rule of statutory construction that cautions against interpreting legislation in such a manner as to lead to an unreasonable or absurd result. *See Nev. Tax. Comm’n v. Bernhard*, 100 Nev. 348, 351 (1984) (“Where the meaning of a particular provision is doubtful, the courts will give consideration to the effect or consequences of proposed constructions. If the language of the provision fairly permits, the courts will avoid construing it in a manner which will lead to an unreasonable result.”). Here, interpreting the provisions of CCMC 4.14.060 to mean that a license which expires because of a late payment or nonpayment, as differentiated from a “revoked” license discussed below, results in a licensee being required to immediately cease all operations. The holder of the expired license would have to apply for an entirely new gaming license and await the processing of the new application before resuming operations. That result is an unreasonably harsh consequence as it would cripple any gaming establishment that misses any one of the quarterly payments by even one day. Such an interpretation of CCMC 4.14.060 would lead to the absurd result of large properties halting all business until a new request for a new license could be granted, during which time those gaming establishments are exposed to the risk of irreparable business harm while simultaneously not generating any taxes for Carson City. Thus, to avoid reaching an unreasonable or absurd result, CCMC 4.1.4060 should not be interpreted to mean that a license expired at the end of a quarter loses all rights and privileges once attached to that license. Instead it seems the more reasonable interpretation is that once payment is tendered, the license is reinstated or renewed.

Furthermore, Carson City’s Community Development Department is charged with administering licenses issued pursuant to Chapter 4.14 of CCMC. The Community Development Department does not interpret the ordinances in a manner that an “expired” license and any appurtenant rights are permanently extinguished. On the contrary, the Community Development

Department has, on occasion, accepted late payments of license fees. This has bearing upon the Board's interpretation of the ordinances at issue because a legal interpretation of a legislative provision "by the agency charged with the duty of administering it is entitled to deference." See City of Las Vegas Downtown Redevelopment Agency v. Crockett, 117 Nev. 816, 831 (2001) (internal quotation marks omitted) (*citing* SIIS v. Miller, 112 Nev. 1112, 1118 (1996); SIIS v. Snyder, 109 Nev. 1223, 1228 (1993)). These late payments have historically been accepted without adverse consequence to the license. Consequently, it can be reasonably said that the fact the Applicant as the Carson Horseshoe Club made a quarterly payment pursuant to CCMC 4.14.060 for the last quarter of 2016 means that the existing license is now in good standing.

By way of comparison, a revoked license is not "in good standing" for purposes of CCMC 4.14.045(5). One of the reasons a license may be subject to revocation is the failure to pay quarterly license fees in advance, a circumstance that would apply to the Carson Horseshoe Club's license. See CCMC 4.14.170(4). But revocation requires an affirmative action by the Board of Supervisors, and no such action has been taken by the Board relative to the Carson Horseshoe Club's license. See CCMC 4.14.180, which establishes the procedure for the revocation of a license and provides, in relevant part, "in instances where a licensee fails to pay the fees, his establishment may be closed down by the board of supervisors"

The distinction between an "expired" license and a "revoked" license must have a legal consequence because CCMC's statutory scheme expressly designates those as separate classifications of a license's status. See City of Reno v. Citizens for Cold Springs, 126 Nev. 263, 274 (2010) (holding ordinances must be interpreted "in a manner that gives meaning to all of the terms and language" and "each sentence, phrase, and word" must be read in a way that renders "it meaningful within the context of the purpose of the legislation." (*citing* Bd. of County Comm'rs v. CCMC of Nevada, 99 Nev. 739, 744, 670 P.2d 102, 105 (1983)). CCMC expressly establishes one consequence in CCMC 4.14.190. After revocation, a licensee may not be granted a license for two years. See CCMC 4.14.190. On the contrary, CCMC imposes no period of ineligibility for the holder of a license that has expired under CCMC 4.14.060. This distinction further bolsters the interpretation of CCMC 4.14.060 to mean that once expired due to a late quarterly payment or nonpayment, the license can be renewed or reinstated once payment is made for the quarter in which operations resume.

2. May the Board approve the Applicant's request to transfer ownership of Carson Horseshoe Club's gaming license without also requiring the Applicant to maintain guest rooms as part of the same property?

The conclusion above is further supported by the provisions of CCMC 4.14.046. As previously noted, the exemption from the requirement to maintain a minimum of 100 guest rooms pursuant to CCMC 4.14.045(1) is inapplicable "[i]f gaming operations at any location for unrestricted gaming under the provisions of this code are discontinued for twenty-four (24) consecutive months ... unless the licensee demonstrates that the discontinuance is due to the demolition and reconstruction, remodeling or expansion of the structure in which the licensed

gaming activity took place.” (Emphasis added). The fact that this provision of CCMC specifically renders inapplicable any of the exemptions from the general requirement to maintain at least 100 guest rooms if certain circumstances exist, but the provisions of CCMC 4.14.060 do not, may be construed as evidence of an intent not to render inapplicable the license transfer and “good standing” exemption provided in CCMC 4.14.045(5) as the result of a late quarterly payment or nonpayment under CCMC 4.14.060. *See Boucher v. Shaw*, 124 Nev. 1164, 1169-70 (2008) (holding that “had the Nevada Legislature intended to qualify individual managers as employers and thus expose them to personal liability, it would have done so explicitly.”).

With regard to the exemption-removing effect of CCMC 4.14.046, the plain meaning of the language clearly indicates, by the use of the term “if” as a condition precedent, that a licensee is unable to avail itself of any of the exemptions enumerated in CCMC 4.14.045 only after operations have discontinued for twenty-four consecutive months, unless the discontinuance is due to demotion, reconstruction, remodeling or expansion of the establishment. In other words, if operations have only been in discontinuation for less than twenty-four months, the exemption set forth in CCMC 4.14.045(1) is applicable regardless of the reason for the discontinuation.

Because the Carson Horseshoe Club has not ceased operating for twenty-four consecutive months, the Applicant may still be exempted from the requirement of maintaining guest rooms under CCMC 4.14.045(1) if the Board decides to grant the Applicant’s request for transfer ownership of the gaming license held by the Carson Horseshoe Club.

CONCLUSION

Based on the foregoing analysis, it is the opinion of this office that:

1. The gaming license held by the Carson Horseshoe Club can be reasonably determined to be in good standing; and
2. If the Board grants the Applicant’s request to transfer ownership of the gaming license currently held by the Carson Horseshoe Club, the Applicant is exempted from the general requirement to maintain a minimum of 100 guest rooms on the same parcel of property where the gaming establishment is located.

This opinion, however, would be remiss to omit a qualification to the certainty of that position. This opinion relies upon an interpretation of the plain language of the ordinances at issue as guided by judicially accepted rules of statutory construction. However, those rules of statutory construction are not binding upon this Board. Rather, they are merely guidelines to assist the interpretation of legal provisions such as the ordinances implicated in this matter. In fact, the United States Supreme Court has recognized that “[c]anons of construction need not be conclusive and are often countered, of course, by some maxim pointing in a different direction.” Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 115 (2001). Further, it must be acknowledged that one would expect more precisely articulated legislation to allow a far simpler and more direct answer to the issues addressed herein than this office is able to provide within the confines of the existing language of the ordinances. The very fact that this office was required to apply

various rules of construction tends to indicate that the applicable ordinances are not free from the tension of potentially different interpretations. Ultimately, as stated above, it is the legislative intent of ordinances that must direct their application. And it must be allowed that conclusions contrary to the opinion of this office are not unreasonable if, in the Board's discretion, those conclusions reflect the legislative intent of the applicable ordinances.