

**MEMORANDUM**

TO: Amy Oehlers, Assistant City Manager  
FROM: Scott Lepak, Outside Counsel  
RE: Regulation of lawful gambling – considerations relating to city-administered fund  
DATED: January 12, 2026

At the January 5, 2026 city council meeting, additional questions were raised related to the potential amendment of the ordinance to create a City fund and a gambling tax. Council also directed that the trade area be revised to recognize that Dayton is a contiguous city.

The proposed language is as follows:

**Sec. 10-97. Contribution of Net Profits to City Administered Fund.**

Each licensed organization conducting lawful gambling within the City shall contribute 10% of its net profits derived from lawful gambling conducted in the City of Anoka to a fund administered and regulated by the City without cost to the fund. The City shall disburse the funds for lawful purposes as defined by Minnesota Statutes. Such contributions shall be made to the City on the last day of each month.

**Sec. 10-98. Local Gambling Tax.**

- (1) A local gambling tax of 1/10<sup>th</sup> %<sup>1</sup> per year is imposed on the gross receipts of a licensed organization for all lawful gambling less prizes actually paid out by the organization.
- (2) The tax shall be paid by the organization on a monthly basis and shall be reported on a copy of the monthly gambling activity summary and tax return filed with the Minnesota Department of Revenue. The report shall be an exact duplicate of the report filed with the Department, without deletions or additions, and must contain the signatures of organization officials as required on the report form.
- (3) The tax return and payment of the tax due must be postmarked, or if hand-delivered, received in the office of the Finance Director, on or before the last business day of the month following the month for which the report is made.
- (4) An incomplete tax return will not be considered timely filed unless corrected and returned by the due date for the filing.
- (5) Interest shall be charged at a rate of eight percent (8%) on all overdue taxes owed by the organization under this Article.

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<sup>1</sup> The Council clarified intent that this should be interpreted as one-tenth of one percent.

At the meeting, the American Legion Post 102 (the Legion) located in the City raised an objection to the potential application of both the contemplated fund and gambling tax. The Legion is a 501(c)(19) entity rather than the commonly referenced nonprofits organized pursuant to 5019(c)(3).

The council raised the following questions:

- 1) Is there a mechanism available to treat the Legion differently under the applicable law related to the contribution toward the proposed City fund and the gambling tax.
- 2) What are permitted uses for the Gambling tax proceeds?
- 3) What are permitted (allowable) expenses that are used to calculate the "net profits" referenced in the proposed 10-97 fund.
- 4) Is the City permitted to utilize funds from the proposed City fund to pay for expenditures that the Legion is currently paying for?

### Review

- 1) There is not a mechanism available to treat the Legion differently under the applicable law related to the contribution toward the proposed City fund and the gambling tax.**

It is my opinion that the requirements to the proposed City fund and the gambling tax must be applied uniformly to all lawful gambling organizations within the City regardless of how they are constituted. The statute on local authority over charitable gambling notes:

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

Minn. Stat. Sec. 213, Subd. 1(h). <https://www.revisor.mn.gov/statutes/cite/349.213>. In other words, the statute does not permit selective application or exemptions for certain organizations. Any ordinance imposing this contribution must therefore be drafted to cover every licensed gambling entity operating in Anoka. Applying the requirement unevenly would risk non-compliance with state law and could expose the City to legal challenges based on equal protection or administrative fairness.

- 2) Permitted uses for the Gambling tax proceeds are limited to City costs for regulating lawful gambling.**

The City is limited in its use of gambling tax proceeds to reimburse the City for regulating lawful gambling. The State notes:

Minnesota Statutes, section 349.213, subdivision 3, allows local units of government to impose an up to 3% of gross receipts lawful gambling regulatory tax on licensed lawful gambling organizations within the city's jurisdiction. A city may only impose this lawful gambling tax on licensed charities if it incurred costs to regulate the five forms of lawful gambling.

The annual lawful gambling regulatory tax is designed to reimburse a city if lawful gambling regulatory expenses are incurred. However, if a city spends more on regulating lawful gambling than it receives by imposing the up to 3% regulatory tax, it may not carry a negative balance forward to the next year. Funds may not be retained for future regulatory costs, and funds collected but not used should be refunded to the charities.

[https://mn.gov/gcb/assets/city3taxguide\\_tcm1192-550137.pdf](https://mn.gov/gcb/assets/city3taxguide_tcm1192-550137.pdf)

**3) Permitted (allowable) expenses that are used to calculate the “net profits” referenced in the proposed City Code Section 10-97 City fund are outlined in state law.**

The 10% net profit noted in the draft City Administered Fund is subject to the net profit definition in the state law at Minn. Stat. § 349.213, Subd. 1(e):

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

Minn. Stat. Sec. 349.213, Subd. 1(e) <https://www.revisor.mn.gov/statutes/cite/349.213>.

It should be noted that gross profits is defined to exclude sums paid out as prizes:

Subd. 20. Gross profit.

"Gross profit" means the gross receipts collected from lawful gambling, less reasonable sums necessarily and actually expended for prizes.

<https://www.revisor.mn.gov/statutes/cite/349.12>

This amount is then reduced by “allowable expenses”:

Subd. 3(a): Allowable expense.

“Allowable expense” means the percentage of the total cost incurred by the organization in the purchase of any good, service, or other item which corresponds to the proportion of the total actual use of the good, service, or other item that is directly related to conduct of lawful gambling.

In other words, it is:

- a) the percentage of the total cost incurred by the organization in the purchase of any:
  - a. good,
  - b. service, or
  - c. other item
- b) which corresponds to the proportion of the total actual use of the good, service, or other item;
- c) that is directly related to conduct of lawful gambling.

The State Gambling Control Board details the application of this term on its web site at <https://mn.gov/gcb/publications/manual/expenditures/allowable-expenses/>

The percentage is related to the percentage of use:

In some cases, an organization may use gambling funds to help purchase an item that will not be used exclusively for lawful gambling. However, first determine the percentage of the expenditure that applies directly to gambling.

EXAMPLE—A portion of the cost to purchase or lease a copy machine used to copy gambling reports and other items related to gambling may be taken as an allowable expense. If 25% of the machine use is related to gambling, then 25% of the cost of the copy machine is an allowable expense:

- Pay the 25% allowable expense portion from the gambling bank account.
- Pay the remaining 75% from your general account.

Goods, service or other items directly related to conduct of lawful gambling fall within the following broad categories:

#### Accounting Services and Annual Audit

The costs of accounting services related to the conduct of charitable gambling and the annual audit are allowable expenses.

#### Advertising

Only the portion of an advertisement that is directly related to charitable gambling qualifies as an allowable expense.

#### Compensation and Payroll Taxes

This section includes information on the rate of pay and benefits, "shared employees", restrictions on who may be compensated, and compensation records, payment, and reporting.

#### Equipment and Repairs

Examples of the purchase, lease, or repair of office equipment, gambling equipment, and gambling-related equipment are bingo balls, bingo hard cards, etc.

#### Investigation Fees and G.M. Bond

Examples of allowable expenses for fees and bond include city or county investigation fee, filing fee, cost of bond.

#### Gambling Product

Gambling product and sales tax includes electronic games, paper pull-tab games, bingo paper, etc.

#### Theft and Liability Insurance

Amounts expended for theft insurance and/or liability insurance may be allowed.

#### Miscellaneous Expenses

Examples of miscellaneous services and supplies include:

- Bank service charges for the gambling account.
- Help wanted ad for gambling employees.
- Office supplies, such as paper, pens, envelopes, rubber bands, toner, etc.

- Printing costs. This does not include printing costs for raffle tickets. Refer to the Gambling Product section.
- Lodging, meals, and transportation for attending authorized gambling classes and seminars.
- Off-site storage used for gambling. The sites must be located in Minnesota.
- For owned sites, the percentage of expenses directly related to lawful gambling for garbage, trash hauling, or cleaning the gambling area may be paid from the gambling account.

#### Penalties and Interest

Tax penalties, interest on taxes, and interest on tax penalties directly related to the conduct of lawful gambling, including payroll taxes, may be reported as an allowable expense.

#### Rent and Cash Shortages

Rent limits and restrictions for leasing space for the conduct of charitable gambling and reimbursement and reporting of cash shortages.

#### Utilities

- Owned premises—If an organization owns the permitted premises, the percentage of utilities that is directly related to gambling may be paid as an allowable expense. Utilities may include heating, cooling, lighting, water, and telephone services.
- Licensed veterans and fraternal organizations that wholly own or wholly lease a building as their primary headquarters may qualify to report certain utility costs for that building as a lawful purpose expenditure under code A16.
- Leased premises—If an organization leases the premises, rent is all-inclusive and no utilities may be paid for that site.

#### **4) The City is permitted to utilize funds from the proposed City fund to pay for expenditures that the Legion is currently paying for if they fall within the defined charitable purposes.**

The City fund may be utilized for a number of different purposes that potentially overlap with existing Legion contributions to various organizations. The City may only use the City funds for the following defined purposes:

- (i) charitable contributions as defined in section 349.12, subdivision 7a, or
- (ii) police, fire, and other emergency or public safety-related services, equipment, and training, excluding pension obligations.

The "Charitable contribution" noted in (i) must fit within one or more of the following:

- (1) any expenditure by or contribution to a 501(c)(3) or festival organization, as defined in subdivision 15c, provided that the organization and expenditure or contribution are in conformity with standards prescribed by the board under section 349.154, which standards must apply to both types of organizations in the same manner and to the same extent;

(2) a contribution to or expenditure for goods and services for an individual or family suffering from poverty, homelessness, or disability, which is used to relieve the effects of that suffering;

(3) a contribution to a program recognized by the Minnesota Department of Human Services for the education, prevention, or treatment of problem gambling;

(4) a contribution to or expenditure on a public or private nonprofit educational institution registered with or accredited by this state or any other state;

(5) a contribution to an individual, public or private nonprofit educational institution registered with or accredited by this state or any other state, or to a scholarship fund of a nonprofit organization whose primary mission is to award scholarships, for defraying the cost of education to individuals where the funds are awarded through an open and fair selection process;

(6) activities by an organization or a government entity which recognize military service to the United States, the state of Minnesota, or a community, subject to rules of the board, provided that the rules must not include mileage reimbursements in the computation of the per diem reimbursement limit and must impose no aggregate annual limit on the amount of reasonable and necessary expenditures made to support:

(i) members of a military marching or color guard unit for activities conducted within the state;

(ii) members of an organization solely for services performed by the members at funeral services;

(iii) members of military marching, color guard, or honor guard units may be reimbursed for participating in color guard, honor guard, or marching unit events within the state or states contiguous to Minnesota at a per participant rate of up to \$50 per diem; or

(iv) active military personnel and their immediate family members in need of support services;

(7) recreational, community, and athletic facilities and activities, intended primarily for persons under age 21, provided that such facilities and activities do not discriminate on the basis of gender and the organization complies with section 349.154, subdivision 3a;

...

(10) a contribution to the United States, this state or any of its political subdivisions, or any agency or instrumentality thereof other than a direct contribution to a law enforcement or prosecutorial agency;

(11) a contribution to or expenditure by a nonprofit organization which is a church or body of communicants gathered in common membership for mutual support and edification in piety, worship, or religious observances;

(12) an expenditure for citizen monitoring of surface water quality by individuals or nongovernmental organizations that is consistent with section 115.06, subdivision 4, and Minnesota Pollution Control Agency guidance on monitoring procedures, quality assurance protocols, and data management, provided that the resulting data is submitted

to the Minnesota Pollution Control Agency for review and inclusion in the state water quality database;

(13) a contribution to or expenditure on projects or activities approved by the commissioner of natural resources for:

- (i) wildlife management projects that benefit the public at large;
- (ii) grant-in-aid trail maintenance and grooming established under sections 84.83 and 84.927, and other trails open to public use, including purchase or lease of equipment for this purpose; and
- (iii) supplies and materials for safety training and educational programs coordinated by the Department of Natural Resources, including the Enforcement Division;

(14) conducting nutritional programs, food shelves, and congregate dining programs primarily for persons who are age 62 or older or disabled;

(15) a contribution to a community arts organization, or an expenditure to sponsor arts programs in the community, including but not limited to visual, literary, performing, or musical arts;

...

(19) a contribution or expenditure to honor an individual's humanitarian service as demonstrated through philanthropy or volunteerism to the United States, this state, or local community;

There is a specific definition applicable to certain 501(c)(19) entities:

Subd. 25. Lawful purpose.

(a) "Lawful purpose" means one or more of the following:

...

(26) a contribution to a 501(c)(19) organization that does not have an organization license under section 349.16 and is not affiliated with the contributing organization, and whose owned or leased property is not a permitted premises under section 349.165. The 501(c)(19) organization may only use the contribution for lawful purposes under this subdivision or for the organization's primary mission. The 501(c)(19) organization may not use the contribution for expansion of a building or for bar-related expenditures. A contribution may not be made to a statewide organization representing a consortia of 501(c)(19) organizations.

<https://www.revisor.mn.gov/statutes/cite/349.12>. However this (26) is not listed as an area where the City can make a direct payment from its fund.

As an aside, the City must acknowledge financial contributions of organizations conducting lawful gambling to the community and to the recipients of the funds. This may occur in communications about the funds as well as in the distribution of funds.

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