

# TOWN OF EATONVILLE

## Agenda Staff Report

Agenda Item No.:	_____	Meeting Date:	<u>June 10, 2019</u>
Subject:	<u>Ordinance No. 2019-5 Amending EMC</u>	Prepared by:	<u>Greg Jacoby</u>
	<u>Chapter 5.16 Gambling Activities Tax</u>		<u>Town Attorney</u>
	_____	Atty Routing No:	<u>012-19</u>
	_____	Atty Review Date:	<u>June 5, 2019</u>

**Summary:** RCW 9.46.110 permits the Town Council to tax certain gambling activities, including punch boards/pull tabs, bingo, raffles, amusement games, and social card games. The Town's gambling tax regulations are in EMC Chapter 5.16. The state law have been revised since the code was last updated in 2011. The purpose of this ordinance is to align the municipal code and the state law. A summary of the specific changes and the rationale is set forth below:

5.16.010 – There is no reason for the municipal code to adopt by reference the entire state law governing gambling; most of it does not apply to the town. On the other hand, it is useful to adopt the definitions cited in the RCW.

5.16.015 – Paragraph B was deleted because it duplicates 5.16.140. Paragraph C was moved to 5.16.010.

5.16.020 – These changes reflect revisions to RCW 9.46.110, particularly changes in the amount of the tax the Town can levy. Other changes were made in order to track the exact language of the state law.

5.16.025 – This is the only brand new provision. RCW 9.46.110 now requires the tax revenue to be used primarily for public safety purposes.

5.16.040 and .080 – The only change is to delete the reference to Chapter 230-08 WAC, which no longer exists.

5.16.120 – I have added language from RCW 9.46.110 that clarifies unpaid taxes become a lien against the property used in the gambling activity.

5.16.130 – I am proposing to delete this statute of limitations provision. It may have been relevant in 1989 but it is not required today. Chapter 4.16 RCW lists the applicable statutes of limitations for most legal actions.

5.16.140 – I deleted the reference to the clerk-treasurer. I don't think we can charge someone with a misdemeanor based on violation of clerk-treasurer rules—as opposed to a Council-adopted ordinance.

**Recommendation:** Staff recommends approval of the first reading of Ordinance No. 2019-5 amending EMC Chapter 5.16 Gambling Activities Tax.

**Motion for consideration:** I move to approve the first reading of Ordinance No. 2019-5 amending EMC Chapter 5.16 Gambling Activities Tax.

**Fiscal Impact:** Minimal

**Attachments:** Ordinance No. 2019-5

ORDINANCE NO. 2019-5

AN ORDINANCE OF THE TOWN OF EATONVILLE,  
WASHINGTON, AMENDING EATONVILLE MUNICIPAL CODE  
CHAPTER 5.16 GAMBLING ACTIVITIES TAX

WHEREAS, RCW 9.46.110 permits the legislative authority of any town to provide for the taxing of any gambling activity authorized by chapter 9.46 RCW; and

WHEREAS, the Eatonville Town Council previously enacted Eatonville Municipal Code chapter 5.16 regarding a gambling activities tax; and

WHEREAS, from time to time it is necessary to update the Eatonville Municipal Code to conform to changes in state law; now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF EATONVILLE AS FOLLOWS:**

**Section 1.** Eatonville Municipal Code 5.16.010 is hereby amended to read as follows:

**5.16.010 State statutes-definitions incorporated.**

Chapter 135, Laws of Washington 1974, 3rd Ex. Sess. and Chapter 155, Laws of Washington 1974, 3rd Ex. Sess., are incorporated in total by reference, including any amendments thereto. For the purposes of this chapter the words and terms used herein shall have the same meaning given to each pursuant to Chapter 9.46 RCW, as the same may exist and from time to time be amended; and as set forth in the rules of the Washington State Gambling Commission, Title 230 WAC, as the same may exist or hereafter be amended, unless otherwise specifically provided herein.

**Section 2.** Eatonville Municipal Code 5.16.015 is hereby amended to read as follows:

**5.16.015 Social card games.**

A. Social card games are not prohibited within the town of Eatonville and bona fide charitable or nonprofit organizations may operate or conduct social card games if social card games have been duly licensed by the Washington State Gambling Commission and if they are otherwise operator-conducted and in compliance with this code.

~~B. Any person who violates or fails to comply with the provisions of this section shall be guilty of a misdemeanor and punishable pursuant to the general penalty ordinance of this code.~~

~~C. For the purposes of this section the words and terms used herein shall have the same meaning given to each pursuant to Chapter 9.46 RCW, as the same may exist and from time to time be amended; and is set forth in the rules of the Washington State Gambling Commission, Chapter 230 WAC, as the same may exist or hereafter be amended, unless otherwise specifically provided herein.~~

**Section 3.** Eatonville Municipal Code 5.16.020 is hereby amended to read as follows:

**5.16.020 Persons subject to tax – Rates.**

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

A. Any punch boards or pull tabs, in the amount of ~~five-ten~~ percent of ~~adjusted~~ gross receipts ~~distributed directly~~ from the operation of the ~~games, punch board or pull tabs themselves.~~ “Adjusted gross receipts” is ~~defined as gross receipts minus the actual cost of prizes distributed less the amount awarded as cash or merchandise prizes~~ to customers;

B. ~~Social C~~card ~~playing games~~ in the amount of ~~10-twenty~~ percent of the gross ~~receipts-revenue received from such card games; as fees charged persons for the privilege of playing in card games; provided, however, a minimum tax of \$100.00 per year shall be imposed on each licensee, the tax payable at such time as the licensee is authorized to conduct social card games within the town. Credit for the \$100.00 payment shall be given for the tax due under EMC 5.16.030;~~

C. Bingo in the amount of five percent of gross ~~revenues~~receipts, less ~~the amounts distributed awarded as cash for or merchandise prizes; provided, however, no tax shall be imposed when that conducted by any~~ bona fide charitable or nonprofit organizations, ~~which organization has no paid operating or management personnel and has gross receipts from bingo not exceeding five thousand dollars per year, less the amount awarded as cash or merchandise prizes~~ conducting once per year bingo shall be exempt up to the first \$10,000 of revenue, less amount distributed for prizes;



D. Raffles in the amount of ~~10~~ five percent of the gross ~~revenues~~ receipts, less the amounts distributed for prizes awarded as cash or merchandise prizes; and provided further, that no tax shall be imposed on the first ten thousand dollars of gross receipts less the amount awarded as cash or merchandise prizes conducted by any bona fide charitable organization or nonprofit organization ~~shall be exempt up to the first \$10,000 of revenues, less amounts distributed for prizes; and~~

E. Amusement games in the amount of two percent of the gross ~~revenues~~ receipts, less the amounts distributed for awarded as prizes or an amount sufficient to pay the actual costs of enforcement of the provisions of this chapter by town law enforcement, whichever is less.

**Section 4.** Eatonville Municipal Code chapter 5.16 is hereby amended by adding a new section 5.16.025 to read as follows:

**Section 5.16.025 Use of Gambling Activity Tax Revenue.**  
Gambling activity tax revenue paid to the town shall be used primarily for the purpose of public safety.

**Section 5.** Eatonville Municipal Code 5.16.040 is hereby amended to read as follows:

**5.16.040 Administration and collection – Report to state.**

A. Administration and collection of the various taxes imposed by this chapter shall be the responsibility of the town clerk-treasurer. Remittance of the amount due shall be accompanied by a completed return form prescribed and provided by the town clerk-treasurer. The taxpayer shall be required to swear and affirm that the information given in the return is true, accurate and complete.

B. The town clerk-treasurer is authorized, but not required, to mail to taxpayers forms for returns. Failure of the taxpayer to receive such a form shall not excuse a taxpayer from making the return and timely paying all tax due. The town clerk-treasurer shall make forms available to the public in reasonable numbers in the town clerk-treasurer's office during regular business hours.

C. In addition to the return form, a copy of the taxpayer's quarterly report to the Washington State Gambling Commission required by Title 230 WAC ~~WAC 230-08~~ for the period in which the tax accrued, shall accompany remittance of the tax amount due.

**Section 6.** Eatonville Municipal Code 5.16.080 is hereby amended to read as follows:

**5.16.080 Records.**

Each person, association or organization engaging in an activity taxable under this chapter shall maintain records respecting that activity which truly, completely and accurately discloses all information necessary to determine the taxpayer's tax liability hereunder during each base tax period. Such records shall be kept and maintained for a period of not less than three years. In addition, all information and items required by the Washington State Gambling Commission under [Title 230 Chapter 230-08 WAC](#), and the United States Internal Revenue Service respecting taxation, shall be kept and maintained for the periods required by those agencies.

All books, records and other items required to be kept and maintained under this section shall be subject to, and immediately made available for, inspection and audit at any time with or without notice, at the place where such records are kept, upon demand by the town clerk-treasurer or his designees, for the purpose of enforcing the provisions of this taxing ordinance codified herein.

Where a taxpayer does not keep all of the books, records or items required to be kept or maintained under this section in this jurisdiction so that the town clerk-treasurer may examine them conveniently, the taxpayer shall either:

A. Produce all of the required books, records or items within this jurisdiction for such inspection within 10 days following a request of the local official that he do so; or

B. Bear the actual cost of inspection by the town clerk-treasurer or his designee, at the location at which such books, records or items are located, provided that a taxpayer choosing to bear these costs shall pay in advance to the town clerk-treasurer the estimated cost thereof, including but not limited to, round-trip fare by the most rapid means, lodging, meals and incidental expenses. The actual amount due, or to be refunded for expenses shall be determined following said examination of the records.

A taxpayer who fails, neglects or refuses to produce such books and records either within or without this jurisdiction, in addition to being subject to other civil and criminal penalties provided by this chapter shall be subject to a jeopardy fee or tax assessment by the town clerk-treasurer.



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

**Section 7.** Eatonville Municipal Code 5.16.120 is hereby amended to read as follows:

**5.28.120 Taxes, penalties and fees as debts; taxes as lien.**

Any tax due and unpaid under this chapter and all penalties or fees shall constitute a debt to the city and may be collected by court proceedings the same as any other debt. Taxes imposed under this chapter become a lien upon personal and real property used in the gambling activity in the same manner as provided for under RCW 84.60.010. The lien shall attach on the date the tax becomes due and shall relate back and have priority against real and personal property to the same extent as ad valorem taxes.

**Section 8.** Eatonville Municipal Code 5.16.130 is hereby deleted in its entirety:

~~**5.16.130 Limitation on right to recovery.**~~

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

**Section 9.** Eatonville Municipal Code 5.16.140 is hereby amended to read as follows:

**5.16.140 Violation – Penalties.**

Any person violating or failing to comply with any of the provisions of this chapter ~~or any lawful rule or regulation adopted by the town clerk-treasurer pursuant thereto~~ is guilty of a misdemeanor.

**Section 10.** Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its

application to other persons or circumstances.

**Section 11.** This ordinance shall take effect after publication of a summary, consisting of the title, pursuant to RCW 35.27.300.

1ST READING: 06/10/2019

2ND READING: 06/24/2019

PASSED by the Town Council of the Town of Eatonville and attested by the Clerk in authentication of such passage this \_\_\_\_ day of June 2019.

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Mike Schaub  
Mayor

ATTEST:

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Kathy Linnemeyer  
Town Clerk

APPROVED AS TO FORM:

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Gregory A. Jacoby  
Town Attorney