



In the matter of:

Request for Variance submitted by the New Mexico Gaming Control Board Licensing Division (“Licensing Division”) regarding Board Rules 15.1.5.23(B)(7), 15.1.16.13(B) and 15.1.13.9(A)(6) NMAC as applied to licensed Gaming Operators (“Licensees”) and Request for Variance submitted by The Downs At Albuquerque, R004 (“Licensee”) regarding Board Rule 15.1.16.13(B) NMAC.

DECISION AND ORDER

This Decision and Order is issued pursuant to the New Mexico Gaming Control Act (“Act”), Sections 60-2E-1 through 60-2E-62, NMSA 1978. All relevant evidence having been considered, and based on the information made available to the New Mexico Gaming Control Board (“Board”) at its regular board meeting on December 16, 2020, and as of the date of this Decision and Order, the Board hereby finds as follows:

Findings of Fact

1. All licensed gaming operators (“Licensees”) are required to submit a \$25.00 fee along with renewal applications for each of their currently licensed gaming machines pursuant to Board Rule 15.1.13.9(A)(6) NMAC.
2. Licensees are required to renew Gaming Machine Licenses on an annual basis at year’s end. The Licensees, in accordance with state government orders, have been closed for business since mid-March 2020.
3. On November 18, 2020, The Downs at Albuquerque submitted a variance request asking for a variance allowing the Licensee to defer payment of 2021 gaming machine license fees until 90 days after allowed to resume operations by Order of the Governor or Department of Health. The Licensee requested further that 2021 gaming machine licensee renewal fees be prorated or

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reduced based on having only 76 days of gaming operations under its 2020 gaming machine licenses.

4. The Licensing Division has determined that these closures have impacted revenues to the extent that paying the Gaming Machine License Renewal Fees may create a financial hardship on the Licensees. The Licensing Division is requesting that the payment of the Gaming Machine License Renewal Fees be waived for licenses to be issued for the calendar year 2021.

5. The Licensing Division requests, on behalf of the Licensee and all gaming operator Licensees, a variance from Board Rule 15.1.13.9(A)(6) to the extent it specifically requires that the Licensees submit the applicable renewal fee of for each actively licensed gaming machine whose license expires on December 31, 2020 pursuant to NMAC 15.1.16.13(B).

6. This variance request recommended by the Licensing Division would apply only to the renewal applications related to Licensee's gaming machines which are currently licensed through December 31, 2020. The Licensees should continue to be required to obtain a new gaming machine license for all other gaming machines and pay all applicable fees along with those new applications pursuant to Rules 15.1.5.18 and 15.1.5.23(B)(7) NMAC.

7. This matter was presented to the Board at the December 16, 2020 regular Board meeting and was discussed in the open session only.

8. In the open session of the Board's regular meeting on December 16, 2020, the Board voted 3-0 to: (a) deny the variance requests to waive in whole or part the required payment of 2021 gaming machine license renewal fees; and (b) grant a global variance to all nonprofit and race track gaming operator licensees extending the due date for payment of 2021 gaming machine license renewal fees until 90 days after which gaming operators are allowed to re-open to the public by order of the New Mexico Governor or Department of Health.

Conclusions of Law

9. The Board has jurisdiction and authority to act in this matter pursuant to the New Mexico Gaming Control Act ("Act"), Sections 60-2E-1 through 60-2E-62, NMSA 1978.

10. Section 60-2E-7(B)(3) of the Gaming Control Act authorizes the board to develop, adopt and promulgate all necessary regulations to implement and administer the provisions of the Act.

11. Additionally, the Board has authority pursuant to Board Rule 15.1.10.48(C) NMAC to grant the variance to its Board Rules when it is consistent with the purposes of the Act and is not contrary to the public interest.

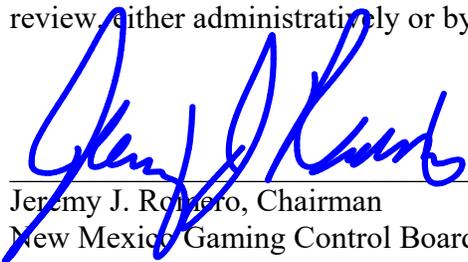
12. A deferral of the Rule-required fee of \$25.00 per gaming machine renewal license applications set forth in Rule 15.1.13.9(A)(6), only for calendar year 2021 renewal licenses to be issued, until 90 days after gaming operators are allowed to re-open by Order of the Governor or Department of Health, will not adversely affect the public interest.

Order

IT IS HEREBY ORDERED that the requests for variances are GRANTED in part and DENIED in part as described in Paragraph 8 herein. It is further ORDERED that a global variance is GRANTED to all nonprofit and race track gaming operator licensees extending the due date for payment of 2021 gaming machine license renewal application fees until 90 days after which gaming operators are allowed to re-open to the public by order of the New Mexico Governor or Department of Health.

Notice of Right to Appeal

Pursuant to Section 60-2E-59(A) of the Gaming Control Act, any person aggrieved by this decision may request and receive a hearing for the purpose of reviewing the Board's action. To obtain a hearing, the aggrieved person must file a request for hearing with the Board within 30 days after the date the action is taken. Failure to file the request within the specified time is an irrevocable waiver of the right to a hearing, and the action complained of will be final with no further right to review, either administratively or by a court.



Jeremy J. Romero, Chairman
New Mexico Gaming Control Board

12/21/20

Date