



# City of San Leandro

Meeting Date: December 3, 2012

## Staff Report

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**File Number:** 12-536

**Agenda Section:** ACTION ITEMS

**Agenda Number:** 10.B.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Sandra Spagnoli  
Chief of Police and  
Tom Liao  
Acting Community Development Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** Staff Report for the Matter of an Interim Urgency Ordinance Prohibiting Consideration, Issuance and/or Approval of Use Permits, Business Licenses, Variances, Building Permits, Start of New Construction, or Other Entitlements for Any Establishment or Operation of an Internet or Computer Gaming Use, On-Site Internet Access Businesses, Cafe, or Other Use that Involves Internet Sweepstakes Type Games Within the City for a Forty-Five Day Period

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### SUMMARY AND RECOMMENDATION

Staff recommends that the City Council adopt the interim urgency ordinance to place a temporary moratorium on the approval of any planning approvals, building permits, or other entitlements and the issuance of business licenses that are necessary for the establishment or operation of any Internet gaming, Internet café, businesses that provide on-site Internet access or other use that involves the playing or participation in any Internet sweepstakes type games within the City of San Leandro. The moratorium would be effective immediately for forty-five days upon adoption, unless extended by the City Council through a future public hearing and action.

### BACKGROUND

The City has recently received and anticipates additional requests for the development, establishment, and operation of Internet and computer gaming and Internet access businesses within the City. While the City's codes regulate mechanical or electronic games, the computer stations at Computer Gaming and Internet Access Businesses are used in a manner that is different from coin-operated video game machines, and therefore have different impacts. For example, a main difference has been the operation of computer terminals for administration of a "sweepstakes" game, which is an activity and use that is not addressed in the City's codes.

## **Questionable Legality of Sweepstakes Games**

Computer Gaming and Internet Access Businesses that utilize a “sweepstakes” game purport to sell their customers time on computers that are connected to the Internet. Based on the amount of computer time purchased, customers are provided a certain number of credits to play games on the computers. These games hold out the possibility of winning cash prizes. Frequently, the games have the appearance of Vegas-style games of chance, such as slot machines, thus creating a casino-like atmosphere. The operators of these establishments assert that although the games appear to be gambling games, which are highly restricted and regulated under state law, they are actually “sweepstakes” that are provided as a means of promoting the businesses of renting computer time in compliance with state law requirements relating to the operation of sweepstakes. That said, it appears that the resemblance of the games to casino-style games, and the possibility of winning cash prizes by playing them is a driving factor for the customers that patronize these Computer Gaming and Internet Access Businesses.

Business and Professions Code defines “sweepstakes” to mean “any procedure for the distribution of anything of value by lot or by chance that is not unlawful under other provisions of law including, but not limited to, the provisions of Section 320 of the Penal Code.” (Bus. and Prof. Code § 17539.5(a)(12).) Penal Code section 320 relates to commercial lotteries, which are illegal under State law. State law also prohibits commercially operated banked or percentage games and “gambling machines,” and highly restricts and regulates other gambling operations.

Under state law, a lottery is comprised of three elements: a prize, payment of consideration to be eligible to win the prize, and distribution of the prize by chance. Though the definition of “sweepstakes” is not particularly illuminating, case law and other legal sources establish that a sweepstakes is essentially a lottery in which no purchase or payment is required to play the game. There are a number of provisions in the Business and Professions Code that regulate the conduct of sweepstakes, including a requirement that an entry submitted without a purchase or payment will be treated the same as an entry submitted with payment. Sweepstakes operators must also comply with certain noticing and advertisement requirements, including the publication of the odds of winning the sweepstakes.

Operators of these businesses argue that they comply with these requirements. That said, the number of entries given to a paying customer will typically greatly outnumber the number of entries that will be given to a non-paying participant in the game. There have been at least a few cases in the state where an internet sweepstakes cafe or similar operation has been deemed to be an illegal gambling operation, rather than the operator of a legitimate sweepstakes program.

## **Secondary Effects of Computer Gaming and Internet Access Businesses**

Due to the atmospheric similarities between a casino and these Computer Gaming and Internet Access Businesses and the presence of large amounts of currency on the premises, the businesses have the same potential to generate deleterious effects that legal gambling operations generate, such as check and credit card fraud, loan sharking, robbery, and money laundering. Other cities in the Oakland/San Jose/San Francisco Bay Area have experienced criminal activity associated with Computer Gaming and Internet Access businesses, including

incidents involving robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism, property damage, loitering, and illegal lotteries. Staff has also found that other cities in California have experienced significant gang-related activities and prostitution occurring at Computer Gaming and Internet Access businesses. For example, the Antioch Police Department and Planning Department have documented a significant increase in service related calls involving a variety of crimes in these businesses and within the neighborhoods adjacent to Computer Gaming and Internet Access Businesses including physical assault, robbery, illicit drugs, vehicle theft, excessive noise, vandalism, and panhandling. Staff found that at least two District Attorney's Offices - Kern County and San Diego County - are taking an active role in shutting down such businesses because of illegal gaming activities. Finally, the Attorney General conducted raids of Computer Gaming and Internet Access Businesses for illegal gaming activities in Stockton and San Diego.

### **Analysis**

The provisions of the City Municipal Code and Zoning Code that may regulate the development, establishment, and operation of Computer Gaming and Internet Access businesses in the City are inadequate and need review, study, and revision. Moreover, Computer Gaming and Internet Access Businesses that provide sweepstakes games should be closely regulated to ensure that they comply with state law requirements and that they do not cross the line between a legal sweepstakes program and an illegal lottery or gambling establishment. Absent such regulation, the public would be unable to have confidence and trust in the integrity of the sweepstakes program. That said, adequate regulation and monitoring of the type of sweepstakes programs offered by such businesses exceeds the City's current financial and technical resources.

Pursuant to Government Code Section 65858, the City may establish a moratorium prohibiting any uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal that the legislative body, planning commission or the planning department is considering in order to protect and preserve the public safety, health and welfare. A moratorium may be extended for up to a total of two (2) years, provided that the current and immediate threat to the public safety, health and welfare still exists, and the City follows the public notice and hearing procedures required for extension of the moratorium.

Staff has prepared the attached urgency ordinance for the City Council's consideration. This urgency ordinance would establish a forty-five (45) day moratorium on the establishment, development, and/or operation of Computer Gaming, Café, and Internet Access businesses in the City. This urgency ordinance would establish a temporary moratorium on the issuance of any permit or any applicable license or entitlement for use, including but not limited to, the issuance of a business license, building permit, and conditional use permit, for Computer Gaming and Internet Access businesses in the City.

If the City approved a Computer Gaming and Internet Access business prior to the City having an opportunity to study and adopt regulations concerning such businesses, such approval could create conflicts among land uses, or conflict with the City's long-term planning goals. Some jurisdictions that have approved Computer Gaming and Internet Access businesses have experienced criminal activity at or near these businesses. Accordingly, establishment of Computer Gaming and Internet Access businesses in the City at this time, before the City can adopt regulations or determine how best to address the secondary civil and criminal effects of

these types of uses, presents a current and immediate threat to the public health, safety, and welfare. Therefore, staff recommends the adoption of the urgency ordinance in order to avoid this current and immediate threat to the public health, safety, and welfare, which could occur if parties seeking to evade the adoption of regulations were permitted to obtain approval for uses that might defeat the ultimate objective of the adoption of regulations.

The City has not adopted rules and regulations specifically applicable to the development, establishment and operation of Computer Gaming and Internet Access businesses. The lack of such controls may lead to the proliferation of such businesses and the inability of the City to protect the general public, homes and businesses adjacent to and near the Computer Gaming and Internet Access businesses. Absent the adoption of this interim urgency ordinance, it is likely that the development, establishment and operation of Computer Gaming and Internet Access businesses in locations within the City, without appropriate controls in place to regulate the impacts on the community, may result in harmful effects to the businesses, property owners and residents of the City.

In order to ensure that the City's zoning provisions are adequate, and that Computer Gaming and Internet Access businesses will be located and regulated in a manner that protects the public and satisfies the policies, goals and objectives of the General Plan, staff recommends that the City Council direct staff to review the current provisions in the Municipal Code and Zoning Code and consider whether they are adequate to meet the needs of the City or should be amended to ensure sufficient protection for the community.

#### **Environmental Review**

Adoption of the interim urgency ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code section 21065 based on the finding that this ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

#### **Fiscal Impact**

None anticipated during the moratorium.

**PREPARED BY:** Rich Pio Roda, Assistant City Attorney, City Attorney's Office



# City of San Leandro

Meeting Date: December 3, 2012

## Urgency Ordinance

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**File Number:** 12-537

**Agenda Section:** ACTION ITEMS

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Tom Liao  
Acting Community Development Director and  
Sandra Spagnoli  
Chief of Police

**FINANCE REVIEW:** Not Applicable

**TITLE:** PASS TO PRINT AND ADOPT: An Interim Urgency Ordinance Prohibiting Consideration, Issuance, and/or Approval of Use Permits, Business Licenses, Variances, Building Permits, Start of New Construction, or Other Entitlements for Any Establishment or Operation of an Internet or Computer Gaming Use, Cafe, On-Site Internet Access Businesses or Other Use that Involves Internet Sweepstakes Type Games Within the City for a Forty-Five Day Period (adopts an ordinance by at least four-fifths vote of the City Council to place a temporary moratorium on the development, establishment, and operation of Internet and computer gaming and internet access businesses within the City)

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The City Council of the City of San Leandro DOES ORDAIN as follows:

SECTION 1. Findings.

The City of San Leandro City Council hereby finds, determines, and declares as follows:

A. Pursuant to Article XI, Section 7 of the California Constitution, the City of San Leandro may make and enforce within its limits all local police, sanitary, and other ordinances and regulations not in conflict with general laws; and

B. The City has received and anticipates additional requests for the development, establishment, and operation of Computer Gaming and Internet Access Businesses (as defined herein) within the City. However, the provisions of the City Municipal Code and Zoning Code that may regulate the development, operation, and establishment of Computer Gaming and Internet Access Businesses in the City are inadequate and need review, study, and revision. The current provisions also fail to thoroughly address the impacts related to the location and manner of development, establishment, and operation of Computer Gaming and Internet Access Businesses in relation to public health, safety, and welfare concerns, including, but not limited to, the impacts these businesses may have on parking, surrounding

uses, and the community; and

C. Computer Gaming and Internet Access Businesses often target students and minors within the local community, thereby potentially encouraging the assembly of significant numbers of unsupervised minors. Further, such congregations of students should not be allowed during regular school hours as it encourages poor school attendance; and

D. While the City's codes do regulate mechanical or electronic games, the computer stations at Computer Gaming and Internet Access Businesses are used in a manner that is different from coin-operated video game machines, and therefore have different impacts. There is generally a charge for use of the computer station, and many users may occupy a particular station for multiple consecutive hours, creating unknown impacts on the surrounding areas and businesses, such as observed lines of individuals waiting to access these businesses. Recently there have been Computer Gaming and Internet Access Businesses that promote "sweepstakes gaming," which encourages game playing that may provide chances to be awarded prizes or money through the use or betting of additionally gained or bought sweepstakes game entries. These games hold out the possibility of winning cash prizes. Frequently, the games have the appearance of Las Vegas-style games of chance, such as slot machines, thus creating a casino-like atmosphere at such businesses. Use of such sweepstakes type games in this manner have a strong resemblance to an illegal commercial lottery. State law also prohibits commercially operated banked or percentage games and "gambling machines," and highly restricts and regulates other gambling operations. In addition to the questionable legality of such gaming under State law, the extended use of such facilities by multiple persons waiting for a limited number of computer stations could contribute to increased detrimental effects on the commercial area where located and the surrounding residential area; and

E. The City Council of the City of San Leandro is concerned with the questionable legality of such uses, the atmospheric similarities to a casino and the presence of large amounts of currency on the premises that create the same potential to generate deleterious effects that legal gambling operations generate, such as check and credit card fraud, loan sharking, robbery, and money laundering, increased calls for service, increasing reports of violent criminal behavior, and related detrimental neighborhood effects associated with Computer Gaming and Internet Access Businesses; and

F. One or more cities in the Oakland/ San Jose/ San Francisco Bay Area have experienced criminal activity associated with Computer Gaming and Internet Access Businesses, including incidents involving robbery, illegal drug use and sales, burglary, assaults, public intoxication, vandalism, property damage, loitering, and illegal lotteries. It is also known that other cities have experienced significant gang-related activities and prostitution occurring at Computer Gaming and Internet Access Businesses. For example, within the last two years, the City of Antioch Police Department has documented a significant increase in service-related calls involving a variety of crimes in these businesses and within the neighborhoods adjacent to Computer Gaming and Internet Access Businesses; and

G. Other California cities have experienced increased law enforcement activities at Computer Gaming and Internet Access Businesses as a result of crimes occurring at such businesses, such as burglary, robbery, sale of illegal drugs and illegal lotteries; and

H. Other California cities that have permitted the establishment of Computer Gaming and Internet Access Businesses have experienced an increase in crime, such as burglary, robbery, sale of illegal drugs and illegal lotteries in the areas immediately surrounding such Computer Gaming and Internet Access Businesses. The City Council is concerned that the development, establishment and operation of Computer Gaming and Internet Access Businesses without adequate regulation will result in an increase in crime in the City of San Leandro; and

I. Without the enactment of this Ordinance, multiple applicants could quickly receive entitlements that would allow additional Computer Gaming and Internet Access Businesses that pose a threat to the public health, safety, and welfare. The City Council hereby determines that the Municipal Code and Zoning Code are in need of updating to protect the public against health, safety, and welfare dangers caused by Computer Gaming and Internet Access Businesses. The City requires additional time to prepare, evaluate and adopt reasonable regulations regarding the development, establishment, and operation of Computer Gaming and Internet Access Businesses; and

J. In order to address both community and statewide concerns regarding the establishment of Computer Gaming and Internet Access Businesses, it is necessary for the City to study the potential impact such facilities may have on the public health, safety and welfare; and

K. In order to address both community and statewide concerns regarding the establishment of Computer Gaming and Internet Access Businesses, it is necessary for the City of San Leandro staff to study the possible adoption of amendments to the City's Municipal Code and Zoning Code regarding Computer Gaming and Internet Access Businesses. Staff needs time to study amongst other issues related to such businesses, whether to limit such businesses to certain zoning districts, which zoning districts would be appropriate for such uses, and whether to recommend to the City Council a uniform ban on such businesses; and

L. Because the City has not adopted rules and regulations specifically applicable to the establishment and operation of Computer Gaming and Internet Access Businesses, the lack of such controls may lead to the proliferation of such businesses and the inability of the City to regulate these establishments in a manner that will protect the general public, homes and businesses adjacent to and near such businesses, and the clients of such establishments. There is a threat to the public health, safety and welfare of the community if Computer Gaming and Internet Access Businesses locate within the City without proper regulations in place; and

M. Based on the adverse secondary impacts experienced by other cities and counties, and the lack of any regulatory program in the City regarding the establishment and operation of Computer Gaming and Internet Access Businesses, it is reasonable to conclude that negative effects on the public, health, safety and welfare may occur in the City as a result of the proliferation of Computer Gaming and Internet Access Businesses and the lack of appropriate regulations governing the establishment and operation of such facilities; and

N. Subdivision (a) of California Government Code Section 65858 provides that city legislative bodies may, to protect public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or

intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be of no effect 45 days from the date of adoption, and may be extended a maximum of two times and have a maximum total duration of 2 years; and

O. Subdivision (c) of California Government Code Section 65858 provides that legislative bodies may not adopt or extend such interim ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to the public health, safety or welfare; and

P. The City Council desires to (1) address the community concerns regarding the establishment and operation of Computer Gaming and Internet Access Businesses, (2) study the potential impacts Computer Gaming and Internet Access Businesses may have on the public health, safety and welfare, (3) study and determine what local regulations may be appropriate or necessary for Computer Gaming and Internet Access Businesses, (4) study the appropriate zoning and location for Computer Gaming and Internet Access Businesses within the City, or if there are any at all, and (5) determine appropriate controls for protection of public health, safety and welfare.

## SECTION 2. Moratorium Imposed.

### A. Scope.

In accordance with the authority granted the City of San Leandro under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, from and after the effective date of this ordinance, no permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, business permit, building permit, conditional use permit, or zoning text amendment shall be approved or issued for the establishment or operation of Computer Gaming and Internet Access Businesses in the City of San Leandro. Additionally, Computer Gaming and Internet Access Businesses are hereby expressly prohibited in all areas and zoning districts of the City.

### B. Definitions.

1. For purposes of this ordinance, "Computer Gaming and Internet Access Business" shall mean an establishment that provides more than three (3) computers or other electronic devices for access to the world wide web, internet, e-mail, video games or computer software programs that operate alone or are networked (via LAN, WAN or otherwise) or that function as a client/server program, and which seeks compensation or reimbursement, in any form, from users. "Computer Gaming and Internet Access Business" shall also be synonymous with a personal computer ("PC") cafe, internet cafe, cyber cafe, sweepstakes gaming facilities, business center, internet sales business and internet center with Internet sweepstakes type games, but does not include a Public Use or Internet Learning Center as defined herein.

2. For purposes of this ordinance, "Public Use or Internet Learning Center" shall mean an establishment that provides computer access which is operated by the City of San Leandro, a school district, a library, a college district, or a private institution of learning which provides classes in computer instruction or a non-profit organization which does not receive



compensation or reimbursement in any form other than school tuition.

### C. Statutory Findings and Purpose

This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council of the City of San Leandro set forth in the findings above, incorporated into Section 1 of this Ordinance.

#### SECTION 3. Development, Establishment, and Operation of a Computer Gaming and Internet Access Business Declared a Public Nuisance.

The establishment, maintenance or operation of a Computer Gaming and Internet Access Business as defined herein within the City limits of the City of San Leandro is a public nuisance. Violations of this ordinance may be enforced by any applicable law, including but not limited to, injunctions, administrative citations, or criminal penalties.

#### SECTION 4. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of San Leandro hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

#### SECTION 5. CEQA

(1) This ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.

(3) This ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2) above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment;

#### SECTION 6. Effective Date.

This Ordinance shall become effective immediately upon passage and adopted by at least four-fifths vote of the City Council and shall be in effect for 45 days there from unless

extended by the City in accordance with California Government Code Section 65858.