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INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

*Elice Jase*  
CITY ATTORNEY'S OFFICE

**OAKLAND CITY COUNCIL**

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**ORDINANCE NO. \_\_\_\_\_ C.M.S.**

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**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE  
(OMC) CHAPTER 9.24 "GAMBLING" TO CLARIFY  
PROHIBITED GAMBLING ACTIVITIES AND TO DELETE  
OUTDATED PROVISIONS RELATED TO PINBALL MACHINES**

**WHEREAS**, ambiguity in the definition of gambling has enabled the rise of "internet sweepstakes cafes" across the United States; and

**WHEREAS**, the City has received inquiries regarding the establishment and operation of "internet sweepstakes cafes" within the City; and

**WHEREAS**, "internet sweepstakes cafes" are operations that sell internet time on computer terminals and in conjunction therewith provide free entries into "sweepstakes", which permit customers to play gambling-themed games on computers to win cash prizes typically, but not always, distributed based on the results of customers' operation of games on the computer terminals; and

**WHEREAS**, operators of "internet sweepstakes cafes" assert that their operations do not violate state gambling laws because customers pay for the right to use computer terminals and not for the privilege of entering the sweepstakes; and

**WHEREAS**, the California Bureau of Gambling Control has issued a Law Enforcement Advisory stating that it considers internet cafes that offer these types of "sweepstakes" to be illegal gambling operations; and

**WHEREAS**, even if the operations of "internet sweepstakes cafes" do not constitute illegal gambling under state law, customers of "internet sweepstakes cafes" experience an atmosphere that is similar to the experience that is offered on slot machines and other electronic gambling devices legally operated in the State of Nevada, and the operations therefore do have the same potential to generate deleterious effects that legal gambling operations do; and

**WHEREAS**, it is within the City’s police power authority to regulate gambling activities that are not regulated by state law; and

**WHEREAS**, the City Council finds that “internet sweepstakes cafes,” like legal gambling operations, must be appropriately regulated to ensure both that the “internet sweepstakes cafes” do not cross the line between a legal sweepstakes program and an illegal lottery or gambling establishment and that the public can have confidence and trust in the credibility and integrity of the operations; and

**WHEREAS**, the City Council finds that the development, establishment, and operation of “internet sweepstakes cafes” without adequate regulation has the potential to result in associated crime such as check and credit card fraud, loan sharking, robbery and money laundering; and

**WHEREAS**, the City Council further finds that the City at present does not have the financial and technical resources to appropriately regulate “internet sweepstakes cafes;” and

**WHEREAS**, the City Council believes, for all the foregoing reasons, that it is in the public interest to prohibit the operation of “internet sweepstakes cafes” in the City; and

**WHEREAS**, the City of Oakland’s ability to restrict or prohibit “sweepstakes cafes” is restrained by the City’s existing gambling ordinance; and

**WHEREAS**, revising the City’s gambling ordinance with unambiguous language that includes “internet sweepstakes cafes” will assist City staff and law enforcement in their enforcement and prevention efforts against these types of cafes; and

**WHEREAS**, the City’s revision of its gambling ordinance will complement parallel efforts at the state level; and

**WHEREAS**, the City’s past prohibition on pinball machines is deemed unnecessary; and

**WHEREAS**, each as a separate and independent basis, this action is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment); now, therefore,

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

**SECTION 2.** Oakland Municipal Code (“OMC”) Chapter 9.24 is hereby amended as follows. Additions to the OMC are shown as underscore and deletions are shown as ~~strike-through~~; portions of Chapter 9.24 not shown in underscore or strike-through are not changed.

## **Chapter 9.24 GAMBLING**

### **Sections:**

9.24.010 Definitions.

9.24.020 Gambling and betting.

9.24.030 Betting tips.

9.24.040 Card games.

9.24.050 Barricaded rooms.

9.24.060 Permit for barricaded rooms.

9.24.070 Revocation of permit for barricaded rooms—Appeals—Hearings.

9.24.080 Building permit—Barricaded rooms.

~~9.24.090 Pinball machines.~~

### **9.24.010 Definitions.**

For the purposes of this chapter certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended:

"Bet" and "Betting" mean an agreement, expressed or implied, between two or more persons that money or some valuable thing contributed by those so agreeing shall become the property of one or some of them upon the happening or not happening in the future of an event which at the time is an uncertainty, or upon the ascertainment of the fact in dispute.

"Computerized Sweepstakes Device" shall mean any computer, machine, game, apparatus or similar device which upon insertion of a coin, token, access number, magnetic card or similar object, or upon payment of anything of value, may be operated by the public generally for use in a contest of skill, entertainment, amusement or chance whether or not registering a score, and which provides the user with a chance to win any cash payout or anything that could be redeemed, directly or indirectly for any cash payout or anything of value. However, pinball, skeeball, and other amusement machines or devices that afford the opportunity of additional chances, free plays or nominal payments are not included within the term "Computerized Sweepstakes Device."

Gambling. "To Gamble" and "Gambling" mean the playing at a game, device or contrivance in which the element of chance is the controlling factor, for Stakes, or the Betting on the result of any game, device or contrivance, whether it be one of skill or chance.

"Internet Sweepstakes Café" means any premises upon which a Computerized Sweepstakes Device is located for the use or entertainment of the public, whether or not such premises has other business purposes of any nature whatsoever.

"Public Place" means any place or premises except a bona fide private dwelling or an apartment, suite or room which is used in good faith as the residence of one or more persons.

"Stake" means a fund or valuable thing or things contributed by two or more persons on an understanding, express or implied, that each one so contributing is to have a chance to gain a portion or all of such fund, thing or things, dependent upon the happening or not happening of some uncertain event.

(Prior code §§ 3-5.01—3-5.05)

#### **9.24.015 Power to impose regulations on Computerized Sweepstakes Devices and Internet Sweepstakes Cafes.**

The City Administrator shall have the power to adopt regulations to further the intent and purposes of this chapter in regards to Computerized Sweepstakes Devices and Internet Sweepstakes Cafes.

#### **9.24.020 Gambling and betting.**

A. It is unlawful for any person in any Public Place within the city to Gamble at cards, dice or any other game, device or contrivance, or to Bet money upon the result of any game, or upon the occurring of a future contingency; or to knowingly visit any Public Place where Gambling or Betting is being carried on or conducted; or to knowingly keep, maintain or conduct, or contribute to the support of, any Public Place where Gambling or Betting is being carried on or conducted; or to knowingly let, or sub-let, or transfer the possession of, any premises for use for said purposes; or to entice or persuade any person or persons to visit any Public Place known by the person so inviting or enticing or persuading to be a place where Gambling or Betting is being carried on or conducted; or to buy or sell anything of value won in any game, or as the result of any bet, or as the result of the determination of any uncertain event.

B. Internet Sweepstakes Cafes are prohibited within the City.

C. It is unlawful for any person to establish, manage or otherwise engage in the business of operating an Internet Sweepstakes Café.

D. It is unlawful for any person, either as owner, lessee, agent, employee, mortgagor, or otherwise, to permit any room, building or premises, or any furniture, fixtures, equipment or other article or anything of value to be used in the City for or in connection with any Internet Sweepstakes Café.

E. The operation, conduct, or maintenance of an Internet Sweepstakes Café is a public nuisance.

(Prior code § 3-5.06)

#### **9.24.030 Betting tips.**

It is unlawful for any person to print, publish, distribute, circulate, sell, or give away, in the city, any chart, table, list, sheet, circular, or publication of any kind, giving, or purporting to give, or represented as giving any list, or probable or possible list, of entries for any horse race thereafter anywhere to take place, if there be printed as part thereof, or in connection therewith, or in any other publication, printing or writing accompanying the same, or referring thereto, or connected therewith, any tip, information, prediction, or selection or advice, as to any key, cipher or cryptogram indicating, containing or giving a tip, information, publication or selection of, or advice as to the winner or probable winner, or loser or probable loser, or the result or probable result of any such race, or the standing or probable standing of any horse therein, or any statement as to, or comment upon, or reference to, the form, condition or standing of, or the actual, probable or possible standing, past, present or future of the Betting, wagering or odds upon or against any horse named in such list, or probable or possible list of entries, or to print, publish, distribute, circulate, sell or give away in the city any printed or written information, or pretended informational comment, tip, prediction, or reference, concerning any horse or horse race which will or may, or is designed to, aid, enable, encourage or assist any person to Bet or wager, or to establish odds, or to lay a basis upon which to bet or wager, at any time thereafter, against any horse or upon any horse race.

(Prior code § 3-5.08)

#### **9.24.040 Card games.**

It is unlawful for any person, or any social club or other club, in the city, to conduct or participate in any card game in any Public place, or to which an admission fee is charged, unless such person, social club or other club shall have first obtained a permit from the Chief of Police of the city to conduct such card game. Such permit shall be granted by the Chief of Police only after an application therefor in writing has been made. Such permit shall be granted within seven days after such application is made unless it shall appear to said Chief of Police that the applicant is not a fit and proper person to hold such a permit, or the moral conditions associated with such applicant are detrimental to public morals. Such permit shall continue in full force and effect for a period of one year from and after the date it is issued unless within such period it shall be revoked for good cause by the Chief of Police; provided, further, that nothing herein shall prevent granting by the Chief of Police of a temporary permit to be effective for a period of seven days after the granting thereof.

(Prior code § 3-5.11)

#### **9.24.050 Barricaded rooms.**

It is unlawful for any person, whether as owner, agent, lessor, lessee or tenant, or otherwise, without first obtaining a permit so to do, to erect, construct or maintain any barred or barricaded house, or room, or a room or hall with double doors, or other place so built, constructed or protected as likely to be difficult of access or ingress to police officers or members of the Fire Department in the performance of their official duties, or to erect, hang or maintain, in or upon any building, any door made wholly of metal, or metal and wood, or any door composed of

wood, or of wood, nails and glass, over two inches in thickness. No door or room shall without a permit be fastened by any bar or bars, prop or props, behind or across the same, or be secured otherwise than by a lock or locks, bolt or bolts.

(Prior code § 3-5.12)

#### **9.24.060 Permit for barricaded rooms.**

Application for a permit provided for in Section 9.24.050 shall be in writing, specifying the purpose or reason for which it is sought, the location and character of, the premises involved, and the address of the applicant, and shall be filed with the City Clerk. Immediately upon filing, it shall be referred to the Chief of the Fire Department and the Chief of Police for investigation and report. Unless the Chief of the Fire Department or the Chief of Police shall within seven days after receipt of said application file with the City Clerk a written report that it should be denied on the grounds that such house or room or door by reason of its nature, location or purpose, specifying the objections thereto, has become or is likely to become a serious and needless or unreasonable obstruction or obstacle to members of the Fire Department or of the Police Department in extinguishing fires, making arrests or raids, or otherwise discharging their public duties, the permit shall be granted. Such permit may also be granted before the expiration of the seven-day period whenever the Chief of Police and the Chief of the Fire Department shall each file a written approval thereof.

(Prior code § 3-5.13)

#### **9.24.070 Revocation of permit for barricaded rooms—Appeals—Hearings.**

Whenever any barred or barricaded house, or room, or door referred to in Section 9.24.050 shall be erected, maintained, or kept, under the authority of or by a permit provided for in Section 9.24.060, and the Chief of the Fire Department, or the Chief of Police shall file a written report with the Council setting forth reasons for revocation of such permit, the Council shall fix a time for the hearing of the same, and shall send notice to the holder of such permit to appear at such time and show cause why the said permit should not be revoked.

Within seven days after the denial of any application in the manner set forth in Section 9.24.060, the applicant may renew the application by filing it with the City Council and the Council shall fix the time for the hearing of the same.

In revoking, confirming, denying or granting any permit, the Council shall consider the application, the reports of the Chief of the Fire Department and the Chief of Police, and other attending facts and circumstances, and shall exercise a reasonable and sound discretion in the premises.

(Prior code § 3-5.14)

#### **9.24.080 Building permit—Barricaded rooms.**

The permit provided for in Section 9.24.060 shall be in addition to any building permit which may be required under the building laws of the city. The granting of a permit by the

Council to erect or maintain a public garage shall be understood to include authority to install necessary automatic fire doors of metal or of metal and other material.

(Prior code § 3-5.15)

**9.24.090 Pinball machines.**

A. ~~It is unlawful for any person to keep or use in any public place any pinball machine equipped with any device which cancels and records the cancellation of free games won without the actual playing of said free games by the player.~~

B. ~~It is unlawful for any person to keep or use in any public place any pinball machine game which permits the insertion of more than one coin per game.~~

(Prior code §§ 3-5.17, 3-5.18)

**SECTION 3.** Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

**SECTION 4.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 5.** This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 15 2014

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF AND PRESIDENT KERNIGHAN - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:  for  
LATONDA SIMMONS

City Clerk and Clerk of the Council  
of the City of Oakland, California

Introduction Date

= JUL 01 2014

Date of Attestation: \_\_\_\_\_

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

## NOTICE AND DIGEST

2014 JUN 12 PM 2:26

### **AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE (OMC) CHAPTER 9.24 "GAMBLING" TO CLARIFY PROHIBITED ACTIVITIES AND TO DELETE OUTDATED PROVISIONS RELATED TO PINBALL MACHINES**

This ordinance would amend OMC 9.24 to include "computerized sweepstakes devices" and "internet sweepstakes cafés" as prohibited items and activities within the City. This ordinance would make it unlawful for any person to establish, manage, or otherwise engage in the business of operating an internet sweepstakes café. This ordinance would make it unlawful to permit any room, building or premises, or any furniture, fixtures, equipment or other article or anything of value to be used in the City for or in connection with any internet sweepstakes café. This ordinance would make the operation, conduct, or maintenance of an internet sweepstakes café a public nuisance. This ordinance would also delete "pinball machines" from OMC 9.24.