

CITY OF OAKLAND

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OFFICE OF THE CITY CLERK
OAKLAND

AGENDA REPORT

2014 JAN -2 PM 1:43

TO: DEANNA J SANTANA
CITY ADMINISTRATOR

FROM: Arturo M Sanchez
Deputy City Administrator

SUBJECT: Informational Report on Internet Cafés **DATE:** December 16, 2013

City Administrator Approval	<i>Deanna Santana</i>	Date	<i>1/2/13</i>
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COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the Public Safety Committee accept this informational report and provide further direction to the Administration on how the Committee wishes to proceed with regulation of Internet Café's that may be conducting "sweepstake, gaming, and/or gambling" activity. If staff is directed to pursue land use regulation then staff recommends that such report go to the Community and Economic Development Committee because planning and land use issues typically go to this committee.

EXECUTIVE SUMMARY

The City has recently received inquiries regarding businesses operating internet cafés and which conduct a "sweepstakes" game or program whereby people may play games on the computers at the café in the hopes of winning prizes. Similar businesses have been opening throughout the State of California, and some have come under investigation for being illegal gambling operations. Due to the presence of large amounts of currency on the premises, the cafés have the same potential to generate deleterious effects that gambling operations generate, such as check and credit card fraud, loan sharking, robbery, and money laundering.

Internet sweepstakes cafes purport to sell their customers time on computers that are connected to the internet. The "sweepstakes aspect" of the internet cafes permits customers to play gambling-themed games on computers to win cash prizes, including internet bingo, "sweepstakes", and casino-type games. The California Bureau of Gambling Control has determined internet cafes that offer these types of sweepstakes to be illegal gambling operations, and enforcement is commonly referred to the State of California.

Currently the cities of Hayward and San Leandro are working with California State legislators to close a regulatory hole that allows these businesses to appear to comply with state law. Councilmember Gallo has asked Townsend and Associates to pursue legislative fixes to prohibit these types of businesses.

While this legislative solution works its way through the State, modifying our local municipal and zoning regulations may afford us an opportunity to assure that internet café's currently operating in Oakland conduct only the activities that are legally permitted. Under the existing Oakland Municipal Code, enforcement either through public nuisance or Red Light Abatement actions may be the only remedies available to the City if businesses continue to operate. However, enforcement is difficult due to the ambiguous language of our regulations and the need to obtain evidence of gambling at the location. The difficulty in obtaining the evidence is that the activity may happen only on the computers and may require an expert to determine the nature of the activity.

OUTCOME

This informational report and discussion will provide further direction to the Administration on how the Public Safety Committee wishes to proceed with regulation of Internet Café's.

BACKGROUND/LEGISLATIVE HISTORY

Internet cafes are generally classified as **Business, Communication and Media Services Activities** in the Zoning regulations. These uses are generally providing computers, printer and sometimes copying primarily for print production, communications, video editing and mailing services. This is the closest definition the City has that describes this sort of activity and is similar to how they often describe themselves to city staff.

ANALYSIS

The issue here is how internet cafés can be regulated, so as to assure that the operators conduct the activities described above, and not add activities that are not desired or which may circumvent state law. Methods to control through land use include Municipal and Zoning Code amendments, enforcement, and/or adoption of a moratorium with an interim ordinance. However, because the central issue is that of an activity that circumvents or lies about its business, land use restrictions alone may not address the problem completely. In this sense, the issue here may not be seen as solely a Land Use, but rather a Police issue. In other words, regardless of the direction taken and the modifications made, businesses may still try to operate illegally without clearance or approval and it will be up to the City to enforce. Such enforcement would of course be subject to the limitations of resources and conflicting priorities.

Oakland Municipal Code Amendment

The fastest option would be to amend Chapter 9 24 of the Oakland Municipal Code (OMC), "Gambling", to include online sweepstakes gambling activities currently being conducted at the problem locations. This specific chapter contains prohibitions on gambling, however under the existing language in the OMC, it is not clear if online sweepstakes gambling is covered as a

prohibited activity Operators have made the argument to the City of Oakland as well as other cities that sweepstake gaming is different than gambling and therefore not banned This solution would require working with the City Attorney's Office to determine appropriate language, viability of amendment as a solution, and conformance with state law Once adopted enforcement would be easier as staff can point to this unambiguous language to show that the activity is prohibited in the City Currently enforcement can be hampered by the ambiguous nature of the gambling language which does not specifically identify "sweepstakes" as a violation Staff would recommend that the Planning department concurrently work on a Zoning Code amendment which would further enhance the City's ability to prevent and enforce against operators attempting to open these businesses

Zoning Code Amendments

If staff is directed to make an amendment to the Planning Code that would take 4-6 months First planning staff would need to take the amendment to the Zoning Update Committee, followed by presentation to the Planning Commission for their approval, then a report to the City Council CED committee, and finally the City Council

This option would amend the Zoning Regulations to modify the Planning Code definition of "Mechanical or Electronic Games" (Section 17 10 320) to include Internet Cafes That definition was written over 30 years ago and was designed to address the developing phenomenon of video game centers This definition is obsolete as these sorts of businesses no longer open due to the rise of personal electronic games

As it is currently written, the definition is not helpful as it specifies games, however planning staff could modify the definition of this land use activity to more broadly cover internet sweepstakes cafes By doing so this could have several positive outcomes First, it could be drafted to require a Conditional Use Permit which would require public notice and would allow the City to approve with conditions or deny This is a time consuming process with fees close to \$2900 00 This may serve to deter an operator not planning to follow the law, as it delays them, and adds uncertainty to the process Even if granted, staff could impose strict conditions about how the business operates that could further hinder these businesses from being used for gaming Finally, this use could also trigger a requirement for a Special Business Permit with the City Administrator's Office, subject to Planning approval where further review (including criminal background checks of the applicants) can be conducted

It should be noted that amendments to either Planning Code section 17 10 320 or OMC Chapter 9 24 will enhance the ability of Code Enforcement, the Nuisance Abatement Division of the City Administrator's Office, and/or the City Attorney's Office, possibly through the Neighborhood Law Corps, to pursue enforcement cases However, the Council must keep in mind that pursuit of enforcement and monitoring is still subject to constraints based on available resources and staff time, along with multiple conflicting priorities And enforcement may require the use of

experts This sort of multi-disciplinary approach is being pursued currently in the City of San Leandro

Moratorium and Ordinance adoption

The third option is adopting interim controls relating to internet sweepstakes cafes If the Committee directs that a moratorium with an emergency ordinance is the appropriate step to take then it must note that a moratorium would require an emergency ordinance be approved by the City Council adopting interim regulations, which would be followed by further study and preparation of permanent regulations Staff would later take the permanent regulations to the Zoning Update Committee, followed by presentation to the Planning Commission for their approval, then a report to the City Council CED committee, and finally the City Council With all of the noticing and reporting timelines the entire process would take at minimum 10 months Staff recommends that either a Zoning Code and/or OMC amendment be processed, as both options would only require approximately 4- 6 months to complete and would achieve the same result

Interim regulations can only be adopted in certain emergency circumstances, in which case the Council can introduce and adopt an emergency ordinance at the same meeting if passed by the affirmative vote of at least six councilmembers (Oakland City Charter, section 213) City Charter section 213 requires the Council to make specific legislative findings that the ordinance is "necessary for preserving the public peace, health, or safety in an emergency" and give a statement of the reasons constituting such necessity Staff would not recommend pursuing such a course as the central issue is not the legitimate activities that open and operate pursuant to the zoning definition but is the potential illegal activity being conducted by the operators Nor is there an emergency per se occurring in terms of public safety and or impact to the health of our residents The purpose of an emergency ordinance is to "pause" a particular type of development in order to allow the City to study, consider and, if appropriate, adopt permanent regulations to govern the use that is the subject of the emergency regulation It should also be noted that an emergency ordinance would not cease operation of existing internet sweepstakes café facilities

Staff believes pursuing amendments to Chapter 9 24 "Gambling" combined with a zoning definition amendment which more explicitly prohibits businesses conducting "internet café" activities from conducting sweepstakes games, bingo, and electronic gaming whether for credits or prizes as they are not ancillary to the affiliated zoning clearance

PUBLIC OUTREACH/INTEREST

This item did not require any additional public outreach other than the required posting on the City's website

COORDINATION

This report was developed in consultation with staff in the Planning and Building Department, Budget Office, and the City Attorney's Office

Item _____
Public Safety Committee
January 14, 2014

COST SUMMARY/IMPLICATIONS

This informational report would have no fiscal impact to the City

SUSTAINABLE OPPORTUNITIES

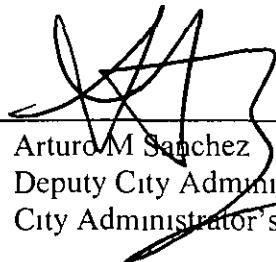
Economic Adopting new regulations to prevent unpermitted activities from happening will ensure that we only have businesses and operators operating lawfully throughout the City

Environmental There are no environmental opportunities associated with this informational report

Social Equity Adopting new regulations will afford the City an opportunity to assure that only permitted and regulated businesses operate in the City, and will prevent illegal gaming activities from preying on impoverished or working class communities

For questions regarding this report, please contact Arturo M Sanchez, Deputy City Administrator, at (510) 238-7542

Respectfully submitted,



Arturo M Sanchez
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City Administrator's Office

Reviewed by Robert Merkamp,
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Planning and Building